

If we don't stand up to the feds, who will?

By Roger Koopman

There's an important reason why every state official, when sworn into office, must pledge to "support, protect and defend the constitution of the United States, and the constitution of the state of Montana."

These words, required by Article III of the Montana Constitution, convey much more than mere ceremony. They are meant to impress upon each office holder, his solemn obligation to not only honor and respect these guiding documents in the performance of his duties, but also to learn and understand them. The U.S. Constitution is the instruction manual for all public officials. It is the highest law of the land.

That obligation includes Public Service Commissioners.

But the oath of office says something more. It also establishes the sacred duty of every state office holder to actively – even boldly at times – defend the Constitution from corruption, whether that occurs by apathy and gradual erosion, or by direct assault.

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As I've often told public school classes, the Constitution may best be seen as a "license to serve," issued by the people to the three branches of the federal government, establishing a very explicit set of rules, conditions and limitations under which that government must operate. It is, in that sense, primarily a document of "do nots," that keeps secure the powers of the sovereign states and the rights of the people.

State office holders are called upon to be especially vigilant when defending the principles of federalism – jealously guarding those powers and prerogatives "reserved to the states respectively, or to the people" (Tenth Amendment.) None can deny that over the past half century, Americans have witnessed a dramatic expansion in the exercise of pre-emptive federal power over the states. At times, state officials feel like little more than appendages of Washington, DC.

For those of us who believe we should adhere to the original intent of the Constitution's framers, these centralized federal dictates, interventions and takeovers are extremely alarming, as they create a concentration of power vested in unelected federal "czars" and bureaucrats. It was abuses like these that led to our War for Independence, and that the Founders so warned against.

The Constitution's framers were students of history, who recognized that most free societies were short-lived. Thus, in crafting their brilliant system of checks and balances,

they uniquely understood that the principles of our Constitution could not be sustained through the judicial system alone. Rather, they envisioned the branches and the levels of government (state and federal) in tension, regularly contending on matters of jurisdiction and authority – thus maintaining a delicate constitutional balance designed to prevent the national government from assuming dictatorial powers.

In application, what that means is that all public officials share in the oath-based responsibility of protecting our constitutional rights, and always doing their work with one eye on the Constitution. In our time, most public officials are content with simply passing the buck. “Oh, that’s not my job,” they say. But the framers would disagree. There is no opting out on one’s duty to both understand and respect the Constitution. There is no honorable escape route for failing to defend it.

On June 17, the Montana Public Service Commission opted out. A proposal to secure nationally acclaimed constitutional scholar and former UM Law School professor Rob Natelson for a special, full day briefing on federalism and constitutional law as it related to the work of the PSC, was rejected on the false grounds of “not our job.” Only Commissioner Kavulla supported my failed effort. The other commissioners found nothing useful in hearing from a constitutional expert who has now been cited *thirteen times* in U.S. Supreme Court decisions.

An AP story mischaracterized the proposal as being only about the EPA’s draft rules for boosting consumer prices and shutting down coal-fired generation. Truth is, the PSC, in its dealings with FERC, the FCC and many other control-happy federal agencies, faces constitutional questions all the time. If we are not willing to defend our state and push back against this tidal wave of federal control, who will?

Gaining a basic framework of constitutional understanding from one of America’s foremost authorities (willing to come as a favor) would seem like time well spent. But education is empowerment leading to action, and the majority on the PSC, it seems, would rather know less on this particular subject.

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