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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 506  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. LaRe and Bird

S. Ben Fogle, Attorney

### SUMMARY

- Codifies the Office of the Solicitor General within the Office of the Attorney General.
- Creates the Tenth Amendment Center within the Office of the Attorney General.
- Requires the Attorney General to provide adequate space, staff, equipment, and materials to both new Offices.

### DETAILED ANALYSIS

#### Office of the Solicitor General

The bill codifies the already existing Office of the Solicitor General under the Office of the Attorney General. The bill specifies that the Attorney General must set the duties of the Solicitor General.<sup>1</sup>

In current practice, the Solicitor General represents the state of Ohio and its agencies on appeals in the U.S. Supreme Court, the U.S. Court of Appeals for the Sixth Circuit, the Ohio Supreme Court, and other state and federal courts. Additionally, the existing section aides in the preparation of petitions, briefs, and other papers filed by the State on appeal. Its lawyers also regularly participate in oral arguments before those courts.<sup>2</sup>

#### The Tenth Amendment Center

The bill also creates a new office called the Tenth Amendment Center. The Center must actively monitor federal executive orders and federal regulations for potential abuse or

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<sup>1</sup> R.C. 109.38(A).

<sup>2</sup> Please see the Attorney General's website for more details:  
<https://www.ohioattorneygeneral.gov/About-AG/Service-Divisions/Appeals>.

overreach, and must have at least one attorney who is dedicated to that task. If the Center determines that a federal executive order or regulation is not supported by law, the Center must make a recommendation to the Solicitor General. The Solicitor General must then advise the Attorney General about possible causes of action, and the Attorney General has discretion about how to respond.<sup>3</sup>

The Tenth Amendment to the U.S. Constitution reads “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” In cases involving the Tenth Amendment, the U.S. Supreme Court has found that states are protected from undue coercion from the federal government, including coercion by withholding a large percentage of funding.<sup>4</sup> The Tenth Amendment also includes the “anti-commandeering principle,” under which the federal government cannot commandeer – or take control of – state governments in service of federal objectives.<sup>5</sup> Below are selected cases.

Case Name	Holding
<i>South Dakota v. Dole</i> , 483 U.S. 203 (1987)	Conditioning federal highway funds on passage of a law making the legal drinking age 21 did not violate the Tenth Amendment.
<i>Oklahoma v. United States Civil Serv. Com.</i> , 330 U.S. 127 (1947)	Conditioning federal highway funds on a state’s compliance with an order of the Civil Service Commission to remove an employee in violation of the Hatch Act did not violate the Tenth Amendment.
<i>Murphy v. NCAA</i> , 138 S.Ct. 1461 (2018)	Federal law prohibiting sports betting violated the anti-commandeering principle, as it unequivocally dictated what a state legislature may or may not do.
<i>New York v. United States</i> , 505 U.S. 144 (1992)	Federal law forcing states to either adopt and comply with certain federal regulations regarding toxic waste, or take title to the waste, was a violation of the anti-commandeering principle.

<sup>3</sup> R.C. 109.38(B).

<sup>4</sup> *South Dakota v. Dole*, 483 U.S. 203 (1987).

<sup>5</sup> *New York v. United States*, 505 U.S. 144, (1992); *Printz v. United States*, 521 U.S. 898 (1997).

## Attorney General resources

The bill also requires the Attorney General to provide adequate staff, equipment, and materials to both the Office of the Solicitor General and the Tenth Amendment Center.<sup>6</sup>

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### HISTORY

Action	Date
Introduced	12-07-21

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<sup>6</sup> R.C. 109.38(C).