



Episode 1,075: Today's Resistance to the FDA, NSA, DEA, and Other Evils

Guest: Michael Boldin

WOODS: Let's talk about the Tenth Amendment Center. How many years in a row now have you been releasing a report, end-of-year, beginning-of-year kind of report about what's going on? A couple years in a row?

BOLDIN: That's amazing. I actually don't have the answer to that. I'm thinking it's four, because when we first started I thought it was going to be a biannual report, but we got so much feedback from it and so many things have been happening in the last few years that it was essential to redo this. And this isn't just like an article to read. We basically do a handbook, a full book. This year's — I added a lot of pictures to increase the length, but this year's report is about 70+ pages talking about our philosophy, our strategy, and then how we're working to implement it on various issues, whether it's on undermining the Federal Reserve or dealing with civil asset forfeiture and a lot of things in between.

WOODS: Yeah, it's a great report and we're going to link to it at TomWoods.com/1075. You can also get it directly at TenthAmendmentCenter.com/report. And you know, I think we're going to skip over the idea of nullification and stuff like that, because if people haven't gotten that on this podcast yet, there ain't no hope for these folks. We're going to go right into the issues. We're talking about what states can do against the federal government, and we've got so many episodes on that topic of this podcast. Just go to TomWoods.com/episodes and just do a search on page for "nullify" or "nullification." There's a lot of stuff there.

But you'll also get it in the report. But I want to go right to the kinds of issues where we're able to take these ideas and really make them stick. Now, this report is helpful for a variety of reasons, not least of which is that simply by bringing together all these different initiatives, we can see the outlines of an actual phenomenon. It's not just a bunch of articles you come across from time to time. You've brought this all together with issues that don't always have the same people backing them but to show that it's all the same kind of thing: decentralization against centralization.

Let's start with the bills about the so-called right to try. I want to start there because we did talk about this in the past when you've been on and also because this is the kind of law I can't imagine anybody could be against.

BOLDIN: Tom, actually, I want to back up just briefly and mention that I got the idea — and you make a really good observation about how there are all these different issues where people and states and local communities are either rejecting or straight out defying or nullifying unconstitutional or immoral federal acts, and they may not be on the same team on

any of the issues. But I got the idea years ago to put a report like this together after reading Murray Rothbard's *Conceived in Liberty*. And in that book, there's a brief passage where he talks about true revolutionary movements not always having the same impetus, and when you get different people doing different things, you kind of build this kind of I guess a blob of resistance, and I guess that's really working.

If you look at our report at TenthAmendmentCenter.com/report, Right to Try Act is I think one of the best examples of putting this into practice. This is basically defying FDA regulations that say that if a person is on their death bed, they have to get FDA approval to try something that may not have gone through the whole process of FDA approval, which oftentimes is 10, 15, 20 years. So those people always die if they wait on the federal FDA. And what states are doing — and we talked about this a few years ago after Arizona voters passed Proposition 303. This may have been 2014 or 2015 when they passed this. They were one of the first states to have passed this saying, hey, in many situations — not all, so it's not a perfect thing, but in many situations we're going to say the people in our state can try things even though the FDA says they cannot.

And now there are over 30 states that are doing this, so that have these laws on the books. And over the last few years, we constantly hear from people that this will just give people false hope, this is just grandstanding, no one's going to do this. But the heroic Dr. Ebrahim Delpassand in Texas was told by the FDA to stop his treatment of people with a very advanced stage of cancer, the type that took the life of Steve Jobs. And after the Texas Right to Try Act went into pass, that gave him enough courage under the umbrella of the state law to continue treating people. And as of the last time we reported on this, I think there were about 80 people that he was actively treating, in essence nullifying the federal regulations in practice and effect. And this is an example of how we can see that, when people and states work together to defy federal regulations, people can live instead of die.

WOODS: Yeah, that — I mean, really, again, if their opposition to it is that it's just grandstanding, well, so what? Let me grandstand. I'm going to die anyway.

BOLDIN: [laughing] Exactly.

WOODS: You're going to protect me from grandstanding? I think I have something a little bit more disturbing hanging over my head at the moment [laughing]. Good grief.

BOLDIN: Certainly. Well, and that is a real argument against it. We've seen a number of op-eds in local papers in state capitals where we see these bills being considered, and that's what they say. It's this false hope, they're telling people that they're going to be able to try something. And mind you, the bill is called Right to Try, not You Are Going to Try or You're Guaranteed Going to Try. It does take multiple parties. Obviously, it takes a businessperson, maybe a doctor, someone providing the treatments, and then someone who wants to try them for themselves. And when you get local government out of the way, it increases the likelihood that people will defy the federal acts in question.

WOODS: All right, let's talk about some other issues. I'm interested in asset forfeiture. What does that have to do with the states and federal government, though?

BOLDIN: Well, what happens is a number of states in recent years have — and first of all, asset forfeiture, what's basically going on is law enforcement is charging someone's property with a crime. If they just assume that it's been used in a crime, they take it and you have to prove that it wasn't to get your property back. They hold onto it. It's almost impossible. This is a really nasty thing. I think Ron Paul calls it legalized government theft. I think that's a good description of it, robbery, something like that. So in recent years, this has drawn attention from both sides of the major political spectrum, both Democrats and Republicans, to oppose it on a state level, trying to reform these police practices.

Well, the rub there is that the federal government has its own asset forfeiture program, and it can undermine state restrictions on it. So for example, California, where I live, had some of the strictest restrictions on asset forfeiture by law enforcement in any state in the country. It was actually surprisingly good. Maybe that is unusual, but it certainly was.

But what would happen was law enforcement here in California, instead of following the state law, what they would do — let's say they were on a marijuana bust, which doesn't happen too often here in California, but in recent years it certainly did. And when they were restricted from taking people's property and keeping it and maybe funding their own programs, what they would do is they would say, *Oh, wow, this drug issue, this is a federal law, so we need to call our federal partners in the Department of Justice.*

And then it becomes part of the federal, what's called the equitable sharing program. As soon as the state would partner with the federal government, the feds then take the lead. The states do most of the work, and then the feds do the asset forfeiture and pass 80% of it back to the state anyway. So this is an end run around state and local restrictions on civil asset forfeiture. And this is basically how it plays out in most states that restrict it. And in fact, Jeff Sessions, the AG, recently said that he was going to really kind of ramp up this specific equitable sharing program.

So our work primarily on asset forfeiture — although we believe in stopping the locals, our work has been in supporting that effort by having states opt out of this program. We've seen here in California, New Mexico, Nebraska, Colorado, and elsewhere basically just say in most situations — we like to see it in all — we're not going to partner with the federal government on asset forfeiture and we're not going to transfer any seized property or funds to the federal government in most situations. In Colorado, I think the percentage is like 85%, if I'm remembering that in the report correctly. I think it's on like page 20 or so that has that information. So in general, we want to see states opt out from the federal asset forfeiture equitable sharing program so state-level restrictions actually come into play and take effect.

WOODS: Let's move on actually to marijuana, because I'm afraid we might not get to that, because anytime I have a conversation with —

BOLDIN: Oh, I'll always get to weed.

WOODS: Yeah, I was going to say anytime I have a conversation with Michael Boldin, I'm always worried about whether that subject will come up or not.

BOLDIN: [laughing]

WOODS: So I think people are interested in it now, though, because of the whole Jeff Sessions fiasco. But then I had Dan McCarthy on, who's very sound on this issue, who said this is a tempest in a teapot, this is no big deal, that he's not actually saying go after them. He repealed like some kind of recommendation, like something that no teeth in it anyway and he got rid of that, but it doesn't really change anything, so at worst, it's an indication of where things might go, but we already knew that under Sessions. So what's really happening here?

BOLDIN: Well, first of all, marijuana, weed, cannabis, whatever you want to call it – pot, this is really what we call the granddaddy of the modern nullification movement back in 1996. Again, California voters passed Proposition 215 allowing for limited at the time medical uses of this plant that the federal government said was prohibited in all situations all the time. Three different presidents came and lobbied the people not to vote for this, but they passed it anyways. And then the Clinton administration said we're going to shut them down, we're going to take away licenses of doctors, and they did it anyways.

And this is really how I see in today's climate nullification work in practice. The feds say one thing; the states say and do another. And then more importantly, whatever the states say, if individuals and businesses don't take any action, nothing happens. So that's really the bulk of the activity happens.

Now, Sessions today, it's kind of a convoluted thing, because on the one hand, he's basically rescinding some guidance, this thing called the Cole Memo that came under the Obama administration. Now, this implies that the Cole Memo that was issued – I think it was in 2013 – was that the Obama administration was good on the Tenth Amendment regards to marijuana. Absolutely untrue. He was actually worse than anybody. The Obama administration, in their first term alone, they spent more money and conducted more raids than the previous two administrations, Bush and Clinton, combined. So he was awful. And in fact, just before the Colorado legalization went into effect, the passage of Amendment 64 there – before it went into effect in November, before they started opening stores, the Obama administration conducted the largest series of federal raids on Colorado history.

So I think what really happened there was the federal government under Obama, just like the previous administrations, aggressively tried to shut down individuals, states, and businesses. And faced with a lot of backlash – there are now about 30 states that are defying D.C.'s prohibition on this plant at this point – I think faced with that, they had to recognize, look, we've only got limited resources. So this Cole Memo came out and said we're only going to really focus our resources in these scenarios. Primarily it was going to say the federal government was going to back off on people who were following state law. They just physically don't have the numbers. We've actually calculated that it would take about 40% of the annual budget of the DEA just to shut down Los Angeles alone. There's over a thousand dispensaries here in L.A. and that would just eat up about half the budget of the DEA.

Now, what Sessions did was he repealed that guidance saying that the federal government is – not he overturned it; he just withdrew that memo saying that the federal government wasn't going to take that approach and it was up to each prosecutor in each area to make their own decision on how they were going to do the resources. Now, on the one hand, you could say, oh, that doesn't really change anything because, in essence, the Cole Memo left that kind of up to discretion; it was just adding that, *Well, we are really limited on resources, so let's kind of back off*. It was more of a centralized decision-making, saying let's

back off when they're following the state law because we don't have the money for it. We want to focus on these other areas.

But on the other hand, one could easily argue that Sessions is not just keeping the status quo, because on top of that, he is actively lobbying Congress, who passed an amendment, a budget rider over the past few years saying that they couldn't use federal money to enforce federal prohibition laws in states that had legalized medical marijuana, not on the legalized recreational states. And Sessions is actively lobbying Congress on top of that to no longer continue that. They have a — I don't know when the next so-called shutdown is coming in the next few weeks or so, but that's when this is going to come up again. And Sessions is not just keeping the status quo; he's actively trying to be aggressive from the federal level against the states.

But I think that the end result is the same, and I talked to a producer at CNN last week telling them the same. Look, if they don't have the budget for it and we're talking about a budget crisis right now — if they aren't talking about going maybe five to ten times the DEA budget, it doesn't matter what Jeff Sessions wants to do, as long as states, businesses, localities, and individuals keep pushing forward with what they're doing. And just days after Sessions came out and announced this new approach, both New Hampshire and Vermont passed bills — the New Hampshire House and then all of Vermont. It's going to the governor — passed laws to legalize marijuana anyways. I mean, if that's not flipping the bird to the Department of Justice and all of Washington, D.C., I don't know what else is. And if more states continue to do that, I don't think it really matters.

WOODS: All right, so I know I've been reading, thanks to the Tenth Amendment Center, about at least one or two, maybe more states that have at least made some kind of announcement about what their intentions are. In Colorado, I think the Secretary of State indicated an intention to fight back. Can you summarize exactly what the states appear to have in mind?

BOLDIN: Well, it seems like that a number of states are going to go ahead and legalize anyways. Vermont it's almost certain. The governor has said that he's going to sign the Bill. New Hampshire I think is going to be very difficult. And there's going to be a vote in Oklahoma. It's going to be on the ballot this summer for medical, so maybe the people of Oklahoma, of all places, will also defy Washington, D.C.

But more importantly than that, I think we're seeing a number of states — for example, again here in California, Assembly Bill 1578 has already passed the State Assembly and it's going to go to the State Senate, which I think is easy-peasy here of all places, to withdraw the use of state resources to help in the enforcement of federal marijuana prohibition. And some statistics that we've seen from I think Drug Policy Alliance says it's around 90% of all enforcement resources come from the state and local level. So if the states don't participate, the feds are in big trouble.

There's a similar bill in Washington State from a Republican representative, Matt Shea, and a few cosponsors, and another one from a Democrat down in Arizona — I think it's House Bill 44 — to basically just say, hey, we're taking a hands-off approach. If you want to try to enforce it, bring it on, but we're not going to help you. And I think the end result is going to be very clear. The feds don't have the manpower to do this. And if you take that approach, plus maybe an AG in one state or another adding a lawsuit to it, I think it's just going to overwhelm what the federal government has the capacity to do.

WOODS: Now how about surveillance? I want to mention this just because I have always loved your Utah plan that you came up with some time ago. But what is the federal government up to that the states have any hope of cracking down on or in some way blocking?

BOLDIN: Well, Judge Napolitano had a fantastic article last week in his *Creators* syndicate column talking about what the federal government, both the Trump administration, the Republican leadership, and Democrat leadership all working together to not only reauthorize but in some ways expand warrantless surveillance from the NSA and other federal agencies under what's known as Section 702. This just happened. It passed the House easily. I think it was last week Thursday.

But even in the face of that, we expect as soon as maybe Wednesday of this week the Michigan House to pass a bill, House Bill 4430, to withdraw the use of resources for the carrying out of any warrantless surveillance programs from the federal government. Now, you mentioned Utah, Tom. We've talked about this a bunch of times. In a place like Utah, where there is a physical NSA facility — Utah, Texas, Washington State, Tennessee, West Virginia, and elsewhere, especially Maryland — if they were to pass a piece of legislation like this, this would ban the state from providing essential resources. In Utah, that would be water, about a million gallons of water to keep their super computers cool, which wouldn't be able to operate or store the data they collect.

Or in Texas, the Texas cryptologic center, this is a really important facility that's even larger than the Utah one. It's in an old Sony warehouse in San Antonio just down the street from a Microsoft facility. There the NSA expanded there. Specifically you can read their paperwork behind the scenes, the requisition paperwork, because they like the independent Texas power grid. A guy named Jonathan Stickland a couple of years ago — they're an every-other-year session, so they won't be back until 2019. He filed a bill to turn off the electricity to the NSA.

And I think, even though it's very difficult to get something like that passed in a location with a federal facility already built, in a place like New Hampshire, where there's House Bill 171, or Michigan, for example, House Bill 4430, that really kind of boxes them in. We know the NSA is expanding rapidly because they really need to. They keep collecting more and more data on us. And the more states that pass this, we can kind of cut them off at the knees a little bit and block them from being able to open facilities in new states.

WOODS: Before I wrap up, I have one more question I want to ask you, and then I again want to tell people, if you like this kind of thing, you're going to enjoy reading this report. It doesn't cost you anything. You can get it at TenthAmendmentCenter.com/report. I'll link to it at TomWoods.com/1075. It's beautifully laid out, and the content is absolutely excellent.

But let's step back and ask a broader question. Leaving apart these individual issues, do you find that it is more challenging to promote Tenth Amendment solutions under a Republican administration than under a Democratic one?

BOLDIN: Well, keep in mind, Tom — you know me. I'm an old lefty that's been reformed towards liberty, so I get excited to do the right thing no matter who's in charge. And in a way, it's kind of disheartening and exciting, because when there's a Republican in charge, you hear people like Bernie Sanders and Elizabeth Warren talking about states' rights and the Tenth Amendment on their Twitter. I mean, really, this happened last week. You would never, ever think that they would be talking about this. And when it's the other way around, it's the right

talking about it. I think with the major political parties, the majority of what they like to oppose is the other team.

So we're going to jump on and push, and I hope that the more that this type of thing happens, the more that the grassroots, the average people like you and I recognizes that you can't rely on Washington, D.C. to do what you want no matter where you are on the political spectrum. And for those that oppose liberty, if they want to just take one small state and make it a nightmare – and they've probably done this many places already – I think we'd all be better off because we'd have an opportunity to have more freedom in the other areas.

WOODS: Well, remember, everybody, I am a huge, huge fan and supporter of Michael Boldin and of the Tenth Amendment Center because I believe that things happen and conversations occur because of this organization that would not have happened or occurred otherwise. That's just not debatable, if you ask me. It's not debatable. These guys are doing – and this one guy with a team, but really, the idea for the whole thing was yours – are indispensable. And you operate on a shoestring budget, especially compared to these multi-hundred-million-dollar do-nothing think-tanks that issue policy reports that go in the garbage. And by the way, nothing enrages them more than the Tenth Amendment Center that actually accomplishes something. So if you like an organization that actually accomplishes something and you're wondering what's a good, worthy organization to support, well, I would say the Tenth Amendment Center ranks up there, certainly from my point of view. That's why I donate every month. So TenthAmendmentCenter.com is where to go. Any parting thoughts, Michael?

BOLDIN: No, you're really awesome. I really appreciate you giving me the opportunity to share this information, and I think, again, TenthAmendmentCenter.com/report is going to give you all of the philosophical underpinnings plus what's going on today. We're going to continue pushing and making more good things happen in the future.

WOODS: Thanks so much, Michael, for your time today and for all these terrific things you're doing.

BOLDIN: Likewise, Tom.