

HOUSE BILL 970

By Matheny

AN ACT to amend Tennessee Code Annotated, Title 3,  
Chapter 1, relative to the Tennessee Balance of  
Powers Act.

WHEREAS, the State of Tennessee has a compelling interest as a sovereign state of the United States of America in the proper implementation of protection and justice within its borders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Balance of Powers Act."

SECTION 2. The general assembly declares the following:

(1) The Tenth Amendment to the United States Constitution guarantees and reserves to the states and the people, all powers not delegated to the federal government elsewhere in the Constitution as they were originally intended and publicly understood at the time that the amendment was ratified on December 15, 1791, and subject only to modifications by duly ratified subsequent amendments to the United States Constitution. The guarantee of those powers is a matter of compact between the state and people of Tennessee and the United States as of the time that Tennessee was admitted to statehood on June 1, 1796;

(2) In accordance with the compact between the state and people of Tennessee and the United States as of the time that Tennessee was admitted to statehood on June 1, 1796, the Tenth Amendment to the United States Constitution reserves to the state and people of Tennessee that, other than the enumerated powers expressly delegated to the United States under Article 1, Section 8 of the United States Constitution, Congress and the federal government are prohibited from exercising any purported

additional control over, or from commandeering rights belonging to, the State of Tennessee, or its people;

(3) The United States Constitution was ratified on June 21, 1788, and it affirms that the sole and sovereign power to regulate the state business and affairs rests in the state legislatures and that such power has always been a compelling state concern and central to state sovereignty and security. Accordingly, the foregoing public meaning and understanding of Article 1, Section 8, the Establishment Clause of the First Amendment and the Tenth Amendment, of the United States Constitution is a matter of compact between the state and people of Tennessee and the United States as of the time that Tennessee was admitted to statehood. Further, the power to regulate commerce among the several states as delegated to the Congress in Article 1, Section 8, Clause 3 of the United States Constitution as understood at the time of the founding, was meant to empower Congress to regulate the buying and selling of products made by others, of land under certain circumstances, including associated finance and financial instruments, and the navigation and other carriage across state jurisdictional lines. This power to regulate commerce does not include the power to regulate agriculture, manufacturing, mining, major crimes, or land use, nor does it include activities that merely substantially affect commerce;

(4)

(A) At the time the United States Constitution was ratified, the commerce clause was not meant or understood to authorize Congress, the executive branch or the federal judiciary to regulate the state courts in the matter of state substantive law or state judicial procedure. This meaning and understanding of Article 1, Section 8, the Establishment Clause of the First Amendment and the Tenth Amendment, of the United States Constitution, as they pertain to the validity of religious, sectarian or foreign law as being controlling or influential precedent has never been modified by any duly ratified amendment to the United States Constitution. Accordingly, the foregoing public meaning and

understanding of Article 1, Section 8, and the Tenth Amendment, of the United States Constitution is a matter of compact between the state and people of Tennessee and the United States as of the time that Tennessee was admitted to statehood on June 1, 1796; and

(B) Further, under Article 1, Section 8, Clause 18 of the United States Constitution, the necessary and proper clause is not a blank check that empowers the federal government to do anything it deems necessary or proper. It is instead a limitation of power under the common law doctrine of principals and incidents, which restricts the power of Congress to exercise incidental powers. There are two (2) main conditions required for something to be incidental, and therefore, necessary and proper. The law or power exercised must be (i) directly applicable to the main, enumerated power and (ii) it must be lesser than the main power;

(5) In accordance with Article 1, Section 8, Clause 1 of the United States Constitution, the general welfare clause does not empower the federal government with the ability to do anything it deems good. It is instead a general restriction limiting the exercise of the enumerated powers of Congress set forth in Article 1, Section 8 of the United States Constitution, requiring that Congress only enact laws which serve all citizens well and equally. When James Madison was asked if this clause were a grant of power, he replied, "If not only the means but the objects are unlimited, the parchment [the Constitution] should be thrown into the fire at once." Thus, we reestablish that this clause is a limitation on the power of the federal government to act in the welfare of all when passing laws in pursuance of the powers delegated to the United States, showing no favor to any race, creed, color or socio-economic class. Likewise, the commerce clause was not meant or understood to authorize Congress or the federal judiciary to establish religious, sectarian or foreign statutes or case law as controlling or influential

precedent. Accordingly, the foregoing public meaning and understanding of Article 1, Section 8, the Establishment Clause of the First Amendment, and the Tenth Amendment, of the United States Constitution is a matter of compact between the state and people of Tennessee and the United States as of the time that Tennessee was admitted to statehood on June 1, 1796; and

(6)

(A) We acknowledge that the commerce clause, the general welfare clause, and the necessary and proper clause of the United States Constitution were amended, and made more specific and limiting at the peoples' insistence, through the creation of the Bill of Rights, and more specifically, the Second Amendment, the Ninth Amendment and the Tenth Amendment. All amendments contained in the Bill of Rights were for the purpose of further restricting federal powers, vesting and/or retaining the ultimate power and control of the states by the people within the states. Therefore, we specifically reject and deny any federal claim of expanded and/or additional authority which the federal government may from time to time attempt to exert, exercise or enforce under these clauses, as these actions totally disrupt and degrade the emphasis on the balance of powers articulated by the founding fathers of this country; and

(B) Further, the people of the State of Tennessee are aware that the federal government has amended and altered the spirit and the meaning of the commerce clause, without proper legislative authority through amendment. Therefore, we reject and deny this unauthorized and excessive abuse of power which has primarily acted as a detriment to states' rights and individual rights, a deliberate attempt to negatively alter the balance of powers.

SECTION 3. Tennessee Code Annotated, Title 3, Chapter 1, Part 1, is amended by adding the following language as new, appropriately designated section thereto:

3-1-1\_\_.

(a) In accordance with the United States Constitution, Congress and the federal government are denied the power to establish or affect laws within this state which are repugnant and obtrusive to the United States Constitution, the Constitution of Tennessee, state law and the citizens of the state. The federal government is restrained and confined in authority by the eighteen (18) items as set forth in Article 1, Section 8 of the United States Constitution.

(b) Congress and the federal government are hereby denied the power to bind the states under foreign statute, court order or opinion, or executive order, other than those provisions duly ratified by the Congress as a treaty, so long as the treaty does not violate the Constitution of Tennessee or United States Constitution.

(c) No authority has ever been given to the legislative branch, the executive branch, or the judicial branch of the federal government, to preempt state legislation, or to destroy the balance of powers, which is set forth in the United States Constitution.

(d) The provisions of this act shall serve as a notice and demand to the federal government to cease and desist any and all activities outside the scope of its designated constitutionally enumerated powers, and that attempt to diminish the balance of powers as established.

SECTION 4. Tennessee Code Annotated, Title 3, Chapter 1, Part 1, is amended by adding the following language as a new, appropriately designated section:

3-1-1\_\_.

(a) To enforce a constitutional balance of powers, the joint legislative committee on the neutralization of federal laws is created. The membership of the committee is as

follows: the speaker of the senate; six (6) members of the senate, appointed by the speaker of the senate; the speaker of the house of representatives or the speaker's designee; and six (6) members of the house of representatives, appointed by the speaker. No more than four (4) members of the senate and no more than four (4) members of the house of representatives may be from the same political party. Members shall serve two-year terms beginning and ending on the convening of the regular session of the general assembly each odd-numbered year. A majority of the members constitute a quorum for the transaction of business. The speaker of the senate and the speaker of the house of representatives shall serve as co-chairs of the committee, the committee shall meet on the call of either co-chair.

(b) The committee shall recommend, propose and call for a vote by simple majority to neutralize in its entirety a specific federal law or regulation that is outside the scope of the powers delegated by the people to the federal government in the United States Constitution. The committee shall make its recommendation within thirty (30) days after receiving the federal legislation for consideration and process.

(c) The committee may review any and all existing federal statutes, mandates and executive orders for the purpose of determining their constitutionality. The committee may recommend for neutralization any existing federal statutes, mandates and executive orders enacted before the effective date of this act, if the committee determines that those measures are either beyond the scope and power assigned to the federal government under Article 1 of the United States Constitution or in direct violation of the Constitution of Tennessee.

(d) Upon the committee's recommendation for neutralization, each house of the general assembly shall vote on whether to neutralize the action within sixty (60) days after the committee's recommendation. Until the vote, the issue in question is of no

effect. The general assembly's vote shall be documented in the journals of the respective houses.

(e) If the general assembly votes by simple majority to neutralize any federal statute, mandate or executive order on the grounds of its lack of proper constitutionality, then the state and its citizens shall not recognize or be obligated to live under the statute, mandate or executive order.

(f) The committee shall also be charged to communicate the intentions of this act to the legislatures of the several states to assure that this state continues in the same esteem and friendship as currently exists, and that it considers union for specific national purposes and particularly those enumerated in the United States Constitution to be friendly to the peace, happiness and prosperity of all the states.

3-1-1\_\_.

(a) It is the duty of the general assembly to adopt and enact any and all measures that may become necessary to prevent the wrongful enforcement of any federal laws or regulations duly neutralized within the boundaries and limits of this state.

(b) Article 3, Section 2 of the United States Constitution states that in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court of the United States shall have original jurisdiction. In any cause of action between this state and the federal government regarding state neutralization of a federal legislation, judicial mandate or executive order, the proper jurisdiction for these disputes will lie with the supreme court of the United States alone. If there is improper adjudication by the supreme court, then the people's interest shall be maintained and retained through state referendum.

(c) Under the Tenth Amendment, the people and the state retain their exclusive power to regulate the state, subject only to the Fourteenth Amendment's guarantee that

the people and the state shall exercise such sovereign power in accordance with each citizen's lawful privileges or immunities, and in compliance with the requirements of due process and equal protection of the law.

(d) The Ninth Amendment to the United States Constitution secures and reserves to the people of Tennessee, as against the federal government, their natural rights to life, liberty and property as entailed by the traditional Anglo-American conception of ordered liberty and as secured by state law, including, but not limited to, their rights as they were understood and secured by the law at the time that the amendment was ratified on December 15, 1791, as well as their rights as they were understood and secured by the law in the state at the time the Constitution of Tennessee was adopted. The people and state hereby proclaim that the guarantee of those rights is a matter of compact between the state and people of Tennessee and the United States as of the time that Tennessee was admitted to statehood on June 1, 1796.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it and upon passage of this act, a certified copy shall be sent to the president of the United States, the president of the United States senate, the speaker and clerk of the United States house of representatives, each member of the general assembly, with the request that this act be officially entered into the congressional record.