

HOUSE BILL 726

By Hulsey

AN ACT to amend Tennessee Code Annotated, Title 3 and
Title 4, relative to nullification.

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

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding Sections 2 through 13 as a new chapter.

SECTION 2. This chapter is known and may be cited as the "Restoring State Sovereignty Through Nullification Act."

SECTION 3. The general assembly makes the following findings:

(1) Article I, Section 1 of the Constitution of Tennessee (All power is inherent in the people) declares: "That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.";

(2) Article I, Section 2 of the Constitution of Tennessee (Doctrine of nonresistance condemned) declares: "That government being instituted for the common benefit, the doctrine of nonresistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.";

(3) When "We the People" ordained and established the Constitution of the United States of America, the people and the states granted only specific, limited powers to the federal government, with those areas of federal powers being enumerated in Article I, Section 8 of the Constitution of the United States;

(4) Articles I, II, and III of the Constitution of the United States, respectively, vest the legislative, executive, and judicial powers to and within separate branches of the federal government (horizontal separation of powers), such that lawmaking powers are vested only in the legislative branch of the United States congress, that enforcement powers are vested only in the executive branch (president and executive agencies), and that judicial powers are vested only in the judicial branch (supreme court of the United States and other inferior federal courts created by the United States congress);

(5) This horizontal separation of powers in the Constitution of the United States reflects the understanding that our federal founding fathers had derived from both scripture and experience that sinful man could not be trusted to always be virtuous and public-minded, and as such, they did not want undue power to be combined in any branch of government where, if left unchecked, it could become tyrannical;

(6) Nothing in the Constitution of the United States permits congress to delegate or confer any lawmaking power to any other branch of government, because it has no enumerated powers to create lawmakers. When the president and federal courts are vested, respectively, with the executive and judicial powers, neither of those branches are granted general powers of lawmaking. Therefore, no person, agency, or department of any other branch of the federal government, not even the supreme court or the president of the United States, has any lawmaking power under the Constitution of the United States;

(7) In Article I, Section 7, paragraph 2 of the Constitution of the United States, the text describes how federal laws are to be made. Bills must be passed by both houses of congress and then approved by the president (or by a presidential veto by congress). This is the only method of lawmaking under the Constitution of the United States. Thus, contrary to popular opinion, federal executive orders, federal agency rules

and regulations, and federal court opinions are not laws at all, and they are certainly not settled law or the supreme law of the land. Instead, any action by the executive branch or the judicial branch that purports to be law, or that purports to be treated as law, is a usurpation of powers not delegated to it;

(8) It is not uncommon for congress and the federal executive branch to erroneously elevate federal court opinions to the status of "law," sometimes even regarding court opinions as having amended the language of the Constitution of the United States;

(9) It is not uncommon for congress and the federal courts to erroneously elevate federal executive orders to the status of "law," sometimes even regarding executive orders as having amended the language of the Constitution of the United States;

(10) The principle of "separation of powers" is so innately representative of a republican form of government that the Constitution of Tennessee (Article II, Sections 1 and 2) upholds and reinforces this principle of horizontal "separation of powers" within the three departments of our Tennessee state government;

(11) When creating a federal government by ratifying the Constitution of the United States, the people and the states also designed a second, and more important, "separation of powers," that being a vertical separation of powers between the superior sovereign states and the inferior federal government;

(12) A vertical "separation of powers" was explicitly set out in Article I, Section 8 of the Constitution of the United States, wherein only limited, enumerated, lawmaking powers were granted to the federal government;

(13) This vertical "separation of powers" was also incorporated into the United States bill of rights, whereby (a) in the first amendment, congress was specifically denied

lawmaking power within those fields listed in the first amendment; (b) in the ninth amendment, the federal government was specifically prohibited from interfering with rights not mentioned in the Constitution of the United States; and (c) in the tenth amendment, the federal government was specifically denied powers not delegated to it in the Constitution of the United States;

(14) This vertical "separation of powers" was generally well-known by the people and the states, and was known and respected by the federal government, for over one hundred (100) years of our nation's history, but the principle has in more recent decades been first disregarded, and subsequently even disbelieved, as if the federal government was supreme in all areas and was unlimited in its jurisdiction. Whether this shift in jurisprudence was intentional or accidental, active or passive, the shift is nevertheless not supported by the Constitution of the United States, by the laws of the United States, or by the constitutions of any of the sovereign states. The shift is thus an illegal usurpation of the Constitution of the United States, of the various state constitutions, and of the unalienable rights of the people;

(15) Any federal action that violates the horizontal "separation of powers" imposed by the Constitution of the United States, or that exceeds the jurisdictional limits imposed by the vertical "separation of powers," is therefore void, since the Constitution of the United States is the supreme law of the land;

(16) "[A] law repugnant to the Constitution is void." An act of congress repugnant to the Constitution of the United States cannot become a law. The Constitution supersedes all other laws and the individual's rights shall be liberally enforced in favor of him, the clearly intended and expressly designated beneficiary. *Marbury v. Madison*, 5 U.S. 137 (1803);

(17) "An unconstitutional law is void and is as no law. An offense created by it is not crime. A conviction under it is not merely erroneous but is illegal and void and cannot be used as a legal cause of imprisonment." *Ex parte Siebold*, 100 U.S. 371 (1879);

(18) "An unconstitutional act is not law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." *Norton v. Shelby County*, 118 U.S. 425 (1886);

(19) "Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436 (1966);

(20) As Thomas Jefferson explained in the Kentucky Resolution of 1798: "When-so-ever the [Federal] government assumes undelegated power, its acts are unauthoritative, void and of no force." He added, "Where powers are assumed which have not been delegated, a nullification of the act is the remedy. That every state has a natural right and duty in cases not within [the authority of the Constitution]... to nullify of their own authority all assumptions of powers by others within their own states boundaries." The Constitution of the United States binds federal lawmakers by oath to support the Constitution, and when they fail to do so, the rightful remedy is for states to nullify their usurpations and to declare their acts void;

(21) Every constitutional officeholder, whether local, state, or federal, must first know and understand these important constitutional limitations of power, and thereafter, must determine individually how best to defend the rights of the people and to fulfill the oath of office. As illustrative of this principle, in 1832, Tennessee's own Andrew Jackson, as president, vetoed a bill to recharter the Bank of the United States. President Jackson opposed the bank's political power and financial influence, but his

veto was based substantially on constitutional grounds, notwithstanding the judgment of prior presidents and congress, not to mention the supreme court's decision upholding the bank's validity. President Jackson argued that the "separation of powers" principle meant that none of the branches of the federal government can pretend to have exclusive or supreme right to settle constitutional differences of opinion among them, since each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. He further said the opinion of judges has no more authority over congress than the opinion of congress has over judges, and on that point, the president is independent of both of them;

(22) President Andrew Jackson's veto illustrates that every officeholder must reach an independent judgment about the jurisdictional scope of the federal government under the Constitution of the United States and must thereafter act consistently on those judgments;

(23) The Constitution of the United States assures the people and the states that their respective rights and powers will be respected by the federal government;

(24) Each member of the general assembly shall, before they proceed to business, take an oath or affirmation to support the Constitution of Tennessee, and of the United States, and also the following oath: "I _____do solemnly swear (or affirm) that as a member of this General Assembly, I will, in all appointments, vote without favor, affection, partiality, or prejudice; and that I will not propose or assent to any bill, vote, or resolution, which shall appear to me injurious to the people, or consent to any act or thing, whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this state." (Tennessee Constitution, Article X, Section 2);

(25) The people are the ultimate source of human governmental power under our constitutions, and the states, through their elected officers, are dutybound to fulfill their oath of office to preserve the rights of the people, it is therefore long overdue, and therefore urgently necessary, for this state to prescribe the manner in which, under the authority of the Constitutions of the United States and of Tennessee, the people's rights and the state's sovereignty may be asserted as against federal officeholders, whether individually or collectively; and

(26) This act is written to aid the people and the government of this state in the implementation and enforcement of the various provisions of the Constitution of the United States that expressly limit federal power and federal jurisdiction, and in furtherance of the rights of the people as set forth in Article I, Section 1 and Article I, Section 2 of the Constitution of Tennessee.

SECTION 4. As used in this chapter:

(1) "Federal action" includes federal law; a federal agency rule, policy, or standard; an executive order of the president of the United States; an order or decision of a federal court; and the making or enforcing of a treaty; and

(2) "Unconstitutional federal action" means a federal action enacted, adopted, or implemented without authority specifically delegated to the federal government by the people and the states through the United States Constitution.

SECTION 5. This chapter contemplates the review of any federal action to determine whether the action is an unconstitutional federal action. When evaluating a federal action, the general assembly shall consider the plain reading and reasoning of the text of the United States Constitution and the understood definitions at the time of the framing and construction of the Constitution by the framers before making a final declaration of constitutionality, as demonstrated by:

- (1) The ratifying debates in the several states;
- (2) The understanding of the leading participants at the constitutional convention;
- (3) The understanding of the doctrine in question by the constitutions of the several states in existence at the time the United States Constitution was adopted;
- (4) The understanding of the United States Constitution by the first United States congress;
- (5) The opinions of the first chief justice of the United States supreme court;
- (6) The background understanding of the doctrine in question under the English Constitution of the time; and
- (7) The statements of support for natural law and natural rights by the framers and the philosophers admired by the framers.

SECTION 6. It is declared that federal laws, federal executive actions, and federal court opinions must comply with the jurisdictional limitations of the United States Constitution. It is further declared that any federal action outside the enumerated powers set forth in the United States Constitution are in violation of the peace and safety of the people of this state, and therefore, said acts are declared void and must be resisted.

SECTION 7. The proper manner of resistance is a state action of nullification of the federal action.

SECTION 8.

(a) Nullification is the process whereby this state makes an official declaration that:

- (1) A specific federal action has exceeded the prescribed authority under the United States Constitution;

(2) That said action, as being *ultra vires*, will not be recognized as valid within the bounds of this state;

(3) That said action, as being *ultra vires*, is null and void in this state;

(4) That an officeholder, agency, or government employee, whether state, county, or city, serving under the authority of the Constitution of Tennessee shall not assist in any attempted enforcement of said federal action; and

(5) That state or local funds collected under the authority of the Constitution of Tennessee shall not be used to assist in any attempted enforcement of said federal action.

(b) The general assembly has sole authority to prescribe the crimes, penalties, fines, or other consequences of the violation of a bill of nullification by any person found within the boundary of this state. Said consequences must be specified in the bill of nullification before a final vote is taken on its passage.

SECTION 9. State nullification of federal action may be accomplished in any of the following ways:

(1) The governor may, by the governor's own executive authority, issue an executive order nullifying the same, whereby all executive departments of the state are bound by said order;

(2) Any member of the general assembly may introduce a bill of nullification in the general assembly. For any such proposed bill of nullification, the bill is not subject to debate or passage in committees, and proceeds directly to the floor of each house, where said bill shall, within five (5) legislative days, be scheduled for debate on the floor of each house, and thereafter, within three (3) legislative days after the debate is closed, shall be presented for a roll call vote on each floor. The bill, if passed in the same manner as other general law, has the force and effect of law, and becomes effective

immediately upon enactment. The time constraints listed in this subdivision (2) may be changed by majority vote of any house of subsequent general assemblies;

(3) Any court operating under the authority of the Constitution of Tennessee may render a finding or a holding of nullification in any case of which it otherwise has proper venue and jurisdiction, wherein the parties to said case will, upon final judgment, be bound thereby in the same manner as in other cases;

(4) Any combination of ten (10) counties and municipalities may, through the action of the executive or through the action of a majority of the governing legislative body, submit a petition of nullification to the speaker of the house of representatives, with a copy to the office of the attorney general and reporter, and upon satisfactory proof that said petitions are valid, the speaker of the house of representatives shall proceed to introduce the bill and follow the same methods and protocols as described in subdivision (2); and

(5) The signed petitions of two thousand (2,000) registered voters of this state may submit a petition of nullification to the speaker of the house of representatives, with a copy to the office of the attorney general and reporter, and upon satisfactory proof that said signatures are valid, the speaker of the house of representatives shall proceed to introduce the bill and follow the same methods and protocols as described in subdivision (2). Said voter petitions must not be submitted individually, but said petitions must be coordinated and compiled in batches, by county of voter registration, of not less than twenty-five (25) voters per county in a bundled batch.

SECTION 10. Before conducting a roll call vote on the floor of each house of the general assembly, the several committees of the general assembly may debate any bill of nullification, express its approval or disapproval, and add any penalty for violations of the bill. The results of all committee actions, as well as the result of the roll call vote on each house

floor, shall be published in the official records of each house and disseminated to the people in the same manner as with other bills.

SECTION 11. The procedures contained in this chapter are available to challenge any federal action, whether said action is past, present, or future. A bill of nullification must not be rejected because of any perceived statute of limitation or because said federal action was taken in the distant past. Any federal action may be considered, or reconsidered, as the people or their representatives may think proper.

SECTION 12. Regarding the same federal action, a bill of nullification must not be considered by the general assembly more than once each year. If said bill fails, then it may be considered again in any succeeding year, but not more than once per year. If said bill passes, then the provisions of Section 8 become the law of this state.

SECTION 13. Formal pleadings or petitions are not required for a bill of nullification. It is sufficient if the pleading or petition is in substantially the form as set forth below:

**Petition for Action Under the
"Restoring State Sovereignty Through Nullification Act."**

Regarding your claim that the federal government has exceeded its authority under the U.S. Constitution, please list the following:

1. Date or Year of federal action: _____
2. Identify the federal branch, official, or agency: _____
3. Give the official name of the action, if known. If not known, then give the name by which the action is commonly known or identified: _____

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4. Identify the specific action, or part of the action, that you assert is unconstitutional: _____

Identification of Petitioner (Registered Voter):

Signature

Printed Name

Street Address, City, County — Must match voter registration.

SECTION 14. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 15. This act takes effect upon becoming a law, the public welfare requiring it.