

HOUSE BILL 1705

By Hill

AN ACT to amend Tennessee Code Annotated, Title 3,
relative to prohibiting infringement of the state of
Tennessee's constitutional right to nullification of
any federal legislation deemed unconstitutional by
the state.

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, now, therefore,

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

SECTION 1. This act shall be known and may be cited as "Tennessee Nullification Reaffirmation Act."

SECTION 2. The general assembly declares:

(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 publicly understood at the time that the amendment was ratified on December 15, 1791, subject only to modification 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 in 1796;

(2) In accordance with the compact between the state and people of Tennessee and the United States when Tennessee was admitted to statehood, 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 will not exercise any purported additional control over or commandeered rights belonging to the state of Tennessee or its people;

(3) The United States Constitution, ratified on June 21, 1788, established that the sole and sovereign power to regulate the state business and affairs rested in state legislatures and has always been a compelling state concern and central to state sovereignty. 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 when Tennessee was admitted to statehood. Further, the power to regulate commerce among the several states as delegated to the Congress in Article I, Section 8, Clause 3 of the 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, associated finance and financial instruments, and navigation and other carriage, across state jurisdictional lines. This power to regulate “commerce” does not include agriculture, manufacturing, mining, major crimes, or land use. Nor does it include activities that merely “substantially affect” commerce;

(4) At the time the United States Constitution was ratified on June 21, 1788, the Commerce Clause was not meant or understood to authorize Congress 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 have 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 when Tennessee was admitted to statehood in 1796. Further, Article I, Section 8, Clause 18 of the 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:

(A) Directly applicable to the main, enumerated power; and

(B) It must be “lesser” than the main power;

(5) In accordance with Article I, Section 8, Clause 1 of the U.S. Constitution ratified on June 21, 1788, 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 I, Section 8 of the Constitution of the United States, requiring that Congress only enact laws which serve all citizens well and equally. When James Madison was asked if this clause was 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, 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. 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 when Tennessee was admitted to statehood;

(6) The general assembly acknowledges 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 people's insistence through the creation of the Bill of Rights, i.e. the 2nd Amendment, the 9th Amendment and the 10th Amendment. All amendments within the Bill of Rights were for the purpose of further restricting federal powers, vesting 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 or additional authority which the federal government may from time to time attempt to exert, exercise, or enforce under these clauses. 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, all 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;

(7) In accordance with the U.S. Constitution, Congress and the federal government is denied the power to establish laws within the state which are repugnant and obtrusive to the U.S. Constitution, the state Constitution, 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 I, Section 8 of the United States Constitution;

(8) Congress and the federal government are denied the power to bind the states under foreign statutes or case law other than those provisions duly ratified by the Congress as a treaty, so long as the treaty does not violate the state or United States Constitution.

(9) Further, 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;

(10) 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 their constitutionally-designated powers;

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

(12) Whereas 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 of Tennessee at the time the Tennessee constitution was adopted, the people and state hereby proclaim that the guarantee of those rights is a matter of compact between the state and the people of Tennessee and the United States as of the time that Tennessee was admitted to statehood.

SECTION 3. Tennessee Code Annotated, Title 3, Chapter 1, Part 1, is amended by adding the following new sections thereto:

3-1-123.

(a) The general assembly shall appoint a commission of recommendation, consisting of ten (10) members, five (5) members from the senate to be appointed by the speaker of the senate and five (5) members from the house of representatives to be appointed by the speaker of the house of representatives, which shall be charged to recommend and propose for a vote by a constitutional majority to nullify in its entirety a specific federal law or regulation which is deemed to be outside the scope of the powers delegated by the people to the federal government in the United States Constitution, or at odds with the Tennessee Constitution.

(b) The members of the commission shall be appointed for terms concurrent with the general assembly from which they are appointed. In the event a vacancy occurs, the appropriate speaker shall appoint a member to fill the vacancy for the unexpired term.

(c) The commission shall respond with its recommendations within thirty (30) days of receiving such federal legislation for consideration. The commission of recommendation shall have the power to reach back and take up or review any and all existing federal statutes, mandates, and executive orders for the purpose of determining the constitutionality thereof, and such commission may recommend existing federal statutes, mandates, and executive orders put in place prior to the passage of this act for nullification.

(d) Upon recommendation for nullification, the general assembly shall vote to nullify following such recommendation. The appropriate documentation reflecting the vote shall be documented in legislative journals of the house and senate. In the event the general assembly votes by a constitutional majority to nullify any federal statute, mandate, or executive order on the grounds of

constitutionality, the state nor its citizens shall recognize or be obligated to live under such statute, mandate, or executive order.

3-1-124. It shall be 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 nullified within the boundaries and limits of this state.

SECTION 4. The clerk of the senate is directed to send a copy of this act to the President of the United States, the President of the Senate, the Speaker and Clerk of the House of Representatives, each member of the States' Congressional delegation, with the request that this Act be officially entered into the Congressional Record.

SECTION 5. For the purposes of making appointments to the committee of recommendation this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect July 1, 2011, the public welfare requiring it.