

REFERENCE TITLE: federal legislation; state nullification

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1433

Introduced by
Senators Klein, Allen; Representatives Burges, Harper; Senator Pearce R;
Representative Montenegro

AN ACT

AMENDING TITLE 41, CHAPTER 7, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1291; RELATING TO THE LEGISLATURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 41, chapter 7, article 12, Arizona Revised Statutes,
3 is amended by adding section 41-1291, to read:

4 41-1291. Joint legislative committee on nullification of
5 federal laws; membership; recommendations;
6 legislative action

7 A. THE JOINT LEGISLATIVE COMMITTEE ON NULLIFICATION OF FEDERAL LAWS IS
8 ESTABLISHED CONSISTING OF THE PRESIDENT OF THE SENATE OR THE PRESIDENT'S
9 DESIGNEE, WHO SERVES AS COCHAIRPERSON, SIX MEMBERS OF THE SENATE WHO ARE
10 APPOINTED BY THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF
11 REPRESENTATIVES OR THE SPEAKER'S DESIGNEE WHO SERVES AS COCHAIRPERSON AND SIX
12 MEMBERS OF THE HOUSE OF REPRESENTATIVES WHO ARE APPOINTED BY THE SPEAKER OF
13 THE HOUSE OF REPRESENTATIVES. NO MORE THAN FOUR MEMBERS OF THE SENATE AND NO
14 MORE THAN FOUR MEMBERS OF THE HOUSE OF REPRESENTATIVES MAY BE FROM THE SAME
15 POLITICAL PARTY. MEMBERS SHALL SERVE TWO YEAR TERMS BEGINNING AND ENDING ON
16 THE CONVENING OF THE REGULAR SESSION OF THE LEGISLATURE EACH ODD-NUMBERED
17 YEAR.

18 B. A MAJORITY OF THE MEMBERS CONSTITUTE A QUORUM FOR THE TRANSACTION
19 OF BUSINESS. THE COMMITTEE SHALL MEET ON THE CALL OF EITHER COCHAIRPERSON.

20 C. THE COMMITTEE SHALL RECOMMEND, PROPOSE AND CALL FOR A VOTE BY
21 SIMPLE MAJORITY TO NULLIFY IN ITS ENTIRETY A SPECIFIC FEDERAL LAW OR
22 REGULATION THAT IS OUTSIDE THE SCOPE OF THE POWERS DELEGATED BY THE PEOPLE TO
23 THE FEDERAL GOVERNMENT IN THE UNITED STATES CONSTITUTION. THE COMMITTEE
24 SHALL MAKE ITS RECOMMENDATION WITHIN THIRTY DAYS AFTER RECEIVING THE FEDERAL
25 LEGISLATION FOR CONSIDERATION AND PROCESS.

26 D. THE COMMITTEE MAY REVIEW ALL EXISTING FEDERAL STATUTES, MANDATES
27 AND EXECUTIVE ORDERS FOR THE PURPOSE OF DETERMINING THEIR CONSTITUTIONALITY.
28 THE COMMITTEE MAY RECOMMEND FOR NULLIFICATION EXISTING FEDERAL STATUTES,
29 MANDATES AND EXECUTIVE ORDERS ENACTED BEFORE THE EFFECTIVE DATE OF THIS
30 SECTION.

31 E. ON THE COMMITTEE'S RECOMMENDATION FOR NULLIFICATION, THE
32 LEGISLATURE SHALL VOTE ON WHETHER TO NULLIFY THE ACTION WITHIN SIXTY DAYS
33 AFTER THE COMMITTEE'S RECOMMENDATION. UNTIL THE VOTE, THE ISSUE IN QUESTION
34 IS OF NO EFFECT. THE APPROPRIATE DOCUMENTATION REFLECTING THE LEGISLATURE'S
35 VOTE SHALL BE DOCUMENTED IN THE JOURNALS OF THE RESPECTIVE HOUSES.

36 F. IF THE LEGISLATURE VOTES BY SIMPLE MAJORITY TO NULLIFY ANY FEDERAL
37 STATUTE, MANDATE OR EXECUTIVE ORDER ON THE GROUNDS OF CONSTITUTIONALITY, THIS
38 STATE AND ITS CITIZENS SHALL NOT RECOGNIZE OR BE OBLIGATED TO LIVE UNDER THE
39 STATUTE, MANDATE OR EXECUTIVE ORDER.

40 G. THE COMMITTEE SHALL ENSURE THAT THE LEGISLATURE ADOPTS AND ENACTS
41 ALL MEASURES THAT MAY BE NECESSARY TO PREVENT THE ENFORCEMENT OF ANY FEDERAL
42 LAW OR REGULATION NULLIFIED PURSUANT TO THIS SECTION. THE COMMITTEE SHALL
43 ENSURE THAT THE JURISDICTION OF ANY CAUSE OF ACTION BETWEEN THIS STATE AND
44 THE FEDERAL GOVERNMENT REGARDING NULLIFICATION OF ANY FEDERAL LEGISLATION,

1 MANDATE OR EXECUTIVE ORDER WITH THE SUPREME COURT OF THE UNITED STATES ALONE,
2 AS STATED IN ARTICLE III, SECTION 2, UNITED STATES CONSTITUTION.

3 Sec. 2. Legislative intent

4 The legislature finds and declares:

5 1. The Tenth Amendment to the United States Constitution guarantees
6 and reserves to the states or their people all powers not specifically
7 granted to the federal government elsewhere in the Constitution as they were
8 publicly understood at the time that the amendment was ratified on December
9 15, 1791, subject only to modification by duly ratified subsequent amendments
10 to the United States constitution. The guarantee of those powers is a matter
11 of compact between this state and the United States as of the time Arizona
12 was admitted to statehood in 1912.

13 2. As a matter of compact between this state and the United States as
14 of the time Arizona was admitted to statehood in 1912, the Tenth Amendment to
15 the United States Constitution guarantees to this state that, other than the
16 enumerated powers expressly granted to the United States under Article I,
17 section 8 of the United States Constitution, Congress and the federal
18 government will not exercise any purported additional control over or
19 commandeer rights belonging to this state or its people.

20 3. Under the Tenth Amendment to the United States Constitution, the
21 people and this state retain their exclusive power to regulate this state
22 subject only to the Fourteenth Amendment's guarantee that the people and the
23 state of Arizona exercise those sovereign powers pursuant to each citizen's
24 lawful privileges or immunities and in compliance with the requirements of
25 due process and equal protection of the law.

26 4. The ninth amendment to the United States Constitution secures and
27 reserves to the people of Arizona as against the federal government their
28 natural rights to life, liberty and property as entailed by the traditional
29 Anglo-American concept of ordered liberty and as secured by state law,
30 including their rights as they were understood and secured by the law at the
31 time the amendment was ratified on December 15, 1791, as well as their rights
32 as they were understood and secured by the law in this state at the time the
33 Arizona Constitution was adopted. The guarantee of those rights is a matter
34 of compact between this state and the United States as of the time Arizona
35 was admitted to statehood in 1912.

36 5. At the time the United States Constitution was ratified on June 21,
37 1788, the sole and sovereign power to regulate the state business and affairs
38 rested in the state legislature and has always been a compelling state
39 concern and central to state sovereignty. Accordingly, the public meaning
40 and understanding of Article I, section 8, the "establishment clause" of the
41 First Amendment and the Tenth Amendment of the United States Constitution, is
42 a matter of compact between this state and the United States as of the time
43 Arizona was admitted to statehood in 1912. Further, the power to regulate
44 commerce among the several states as delegated to the Congress in Article I,
45 section 8, clause 3, United States Constitution, as understood at the time of

1 the founding, was meant to empower Congress to regulate the buying and
2 selling of products made by others, and sometimes land, associated finance
3 and financial instruments and navigation and other carriage across state
4 jurisdictional lines. This power to regulate commerce does not include
5 agriculture, manufacturing, mining, major crimes or land use, and does not
6 include activities that merely substantially affect commerce.

7 6. At the time the United States Constitution was ratified on June 21,
8 1788, the commerce clause was not meant or understood to authorize Congress
9 or the federal judiciary to regulate the state courts in the matter of state
10 substantive law or state judicial procedure. This meaning and understanding
11 of Article I, section 8, the Establishment Clause of the First Amendment and
12 the Tenth Amendment of the United States Constitution, as they pertain to the
13 validity of religious sectarian or foreign law as being controlling or
14 influential precedent, has never been modified by any duly ratified amendment
15 to the United States Constitution. Accordingly, the public meaning and
16 understanding of Article I, section 8 and the Tenth Amendment of the United
17 States Constitution is a matter of compact between this state and the United
18 States as of the time Arizona was admitted to statehood in 1912.
19 Additionally, Article I, section 8, clause 18 of the United States
20 Constitution, the "necessary and proper clause," is not a blank check that
21 empowers the federal government to do anything it deems necessary or
22 proper. It is instead a limitation of power under the common law doctrine of
23 principals and incidents that allows the Congress to exercise incidental
24 powers. There are two main conditions required for something to be
25 incidental, and therefore, "necessary and proper", the law or power exercised
26 must be directly applicable to the main, enumerated power and it must be
27 "lesser" than the main power.

28 7. At the time the United States Constitution was ratified on June 21,
29 1788, Article I, section 8, clause 1 of the United States Constitution, the
30 "general welfare clause," did not empower the federal government with the
31 ability to do anything it deems good. It is instead a general introduction
32 explaining the exercise of the enumerated powers of Congress that are
33 prescribed in Article I, section 8 of the Constitution of the United States.
34 When James Madison was asked if this clause was a grant of power, he replied,
35 "If not only the means but the objects are unlimited, the parchment (the
36 Constitution) should be thrown into the fire at once." Thus, this clause is
37 a limitation on the power of the federal government to act in the welfare of
38 all when passing laws in pursuance of the powers delegated to the United
39 States. The Commerce Clause was not meant or understood to authorize
40 Congress or the federal judiciary to establish religious sectarian or foreign
41 statute or case law as controlling or influential precedent. This meaning
42 and understanding of Article I, section 8, the establishment clause of the
43 First Amendment and the Tenth Amendment of the United States Constitution, as
44 they pertain to controlling or influential legal authority, has never been
45 modified by any duly ratified amendment to the United States constitution.

1 Accordingly, the public meaning and understanding of Article I, section 8,
2 the Establishment Clause of the First Amendment and the Tenth Amendment of
3 the United States Constitution, is a matter of compact between this state and
4 the United States as of the time Arizona was admitted to statehood in 1912.

5 8. Accordingly, we affirm that neither the "Commerce Clause," the
6 "general welfare clause" or the "necessary and proper clause" of the United
7 States Constitution have ever been expanded, modified or amended and
8 therefore, this state specifically rejects and denies any expanded authority
9 that the federal government may attempt to enforce.

10 9. The Congress and the federal government are denied the power to
11 establish laws within this state that are repugnant and obtrusive to state
12 law and to the people in this state. They are restrained and confined in
13 authority by the eighteen items as prescribed in Article I, section 8 of the
14 United States Constitution.

15 10. Congress and the federal government are denied the power to bind
16 the states under foreign statute or case law other than those provisions duly
17 ratified by the Congress as a treaty, so long as the treaty does not violate
18 this state or the United States Constitution.

19 11. Further, no authority has ever been given to the legislative
20 branch, the executive branch or the judicial branch of the federal government
21 to preempt state legislation.

22 12. This act serves as a notice and demand to the Congress and the
23 federal government to cease and desist all activities outside the scope of
24 their constitutionally designated powers.

25 Sec. 3. Secretary of state; transmission of act to others

26 A. The Secretary of State shall transmit copies of this act to the
27 legislatures of the several states to assure that this state continues in the
28 same esteem and friendship as currently exists and that this state considers
29 union for specific national purposes and particularly those enumerated in the
30 Constitution of the United States to be friendly to the peace, happiness and
31 prosperity of all the states.

32 B. The Secretary of State shall transmit copies of this act to the
33 President of the United States, the President of the United States Senate,
34 the Speaker of the United States House of Representatives and each Member of
35 Congress from the State of Arizona with the request that this act be
36 officially entered into the congressional record.