

REFERENCE TITLE: **neutralization; federal laws**

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SB 1358

Introduced by
Senators Klein, Burges: Griffin, Melvin, Shooter

AN ACT

**AMENDING TITLE 41, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 14;
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, Arizona Revised Statutes, is amended
3 by adding article 14, to read:

4 ARTICLE 14. JOINT LEGISLATIVE COMMITTEE
5 ON NEUTRALIZATION OF FEDERAL LAWS

6 41-1294. Joint legislative committee on neutralization of
7 federal laws; members; powers and duties

8 A. THE JOINT LEGISLATIVE COMMITTEE ON NEUTRALIZATION OF FEDERAL LAWS
9 IS ESTABLISHED CONSISTING OF:

10 1. THE PRESIDENT OF THE SENATE OR THE PRESIDENT'S DESIGNEE, WHO SERVES
11 AS COCHAIRPERSON OF THE COMMITTEE.

12 2. SIX MEMBERS OF THE SENATE WHO ARE APPOINTED BY THE PRESIDENT OF THE
13 SENATE, NOT MORE THAN FOUR OF WHOM ARE MEMBERS OF THE SAME POLITICAL PARTY.

14 3. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE SPEAKER'S
15 DESIGNEE, WHO SERVES AS COCHAIRPERSON OF THE COMMITTEE.

16 4. SIX MEMBERS OF THE HOUSE OF REPRESENTATIVES WHO ARE APPOINTED BY
17 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, NOT MORE THAN FOUR OF WHOM ARE
18 MEMBERS OF THE SAME POLITICAL PARTY.

19 B. MEMBERS SERVE TWO-YEAR TERMS BEGINNING AND ENDING ON THE CONVENING
20 OF THE REGULAR SESSION OF THE LEGISLATURE EACH ODD-NUMBERED YEAR. A MAJORITY
21 OF THE MEMBERS CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS. THE
22 COMMITTEE SHALL MEET ON THE CALL OF EITHER COCHAIRPERSON.

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

29 D. THE COMMITTEE MAY REVIEW ALL EXISTING FEDERAL STATUTES, MANDATES
30 AND EXECUTIVE ORDERS FOR THE PURPOSE OF DETERMINING THEIR CONSTITUTIONALITY.
31 THE COMMITTEE MAY RECOMMEND FOR NEUTRALIZATION EXISTING FEDERAL STATUTES,
32 MANDATES AND EXECUTIVE ORDERS ENACTED BEFORE THE EFFECTIVE DATE OF THIS
33 SECTION.

34 E. ON THE COMMITTEE'S RECOMMENDATION FOR NEUTRALIZATION, THE
35 LEGISLATURE SHALL VOTE ON WHETHER TO NULLIFY THE ACTION WITHIN SIXTY DAYS
36 AFTER THE COMMITTEE'S RECOMMENDATION. UNTIL THE VOTE, THE ISSUE IN QUESTION
37 IS OF NO EFFECT IN THIS STATE. THE APPROPRIATE DOCUMENTATION REFLECTING THE
38 LEGISLATURE'S VOTE SHALL BE DOCUMENTED IN THE JOURNALS OF THE RESPECTIVE
39 HOUSES.

40 F. IF THE LEGISLATURE VOTES BY SIMPLE MAJORITY TO NEUTRALIZE ANY
41 FEDERAL STATUTE, MANDATE OR EXECUTIVE ORDER ON THE GROUNDS OF
42 CONSTITUTIONALITY, THIS STATE AND THE CITIZENS OF THIS STATE SHALL NOT
43 RECOGNIZE OR BE OBLIGATED TO LIVE UNDER THE STATUTE, MANDATE OR EXECUTIVE
44 ORDER.

1 G. THE SECRETARY OF THE SENATE AND THE CHIEF CLERK OF THE HOUSE OF
2 REPRESENTATIVES SHALL COMMUNICATE THE INTENTIONS OF THIS SECTION TO THE
3 LEGISLATURES OF THE SEVERAL STATES TO ASSURE THAT THIS STATE CONTINUES IN THE
4 SAME ESTEEM AND FRIENDSHIP AS CURRENTLY EXISTS AND THAT THIS STATE CONSIDERS
5 UNION FOR SPECIFIC NATIONAL PURPOSES, PARTICULARLY THOSE ENUMERATED IN THE
6 CONSTITUTION OF THE UNITED STATES, TO BE FRIENDLY TO THE PEACE, HAPPINESS AND
7 PROSPERITY OF ALL THE STATES. THE SECRETARY OF THE SENATE AND THE CHIEF
8 CLERK OF THE HOUSE OF REPRESENTATIVES SHALL JOINTLY TRANSMIT A COPY OF THIS
9 LEGISLATION TO THE PRESIDENT OF THE UNITED STATES, THE PRESIDENT OF THE
10 UNITED STATES SENATE, THE SPEAKER OF THE UNITED STATES HOUSE OF
11 REPRESENTATIVES AND EACH MEMBER OF CONGRESS FROM THE STATE OF ARIZONA WITH
12 THE REQUEST THAT THIS LEGISLATION BE OFFICIALLY ENTERED INTO THE
13 CONGRESSIONAL RECORD.

14 Sec. 2. Purpose and legislative declarations

15 A. The tenth amendment to the United States constitution guarantees
16 and reserves to the states and the people all powers not delegated to the
17 federal government elsewhere in the constitution as they were publicly
18 understood at the time that the amendment was ratified on December 15, 1791,
19 subject only to modification by duly ratified subsequent amendments to the
20 United States constitution. The guarantee of those powers is a matter of
21 compact between the state and people of Arizona and the United States as of
22 the time that Arizona was admitted to statehood in 1912.

23 B. Pursuant to the compact between the state and people of Arizona and
24 the United States as of the time that Arizona was admitted to statehood in
25 1912, the tenth amendment to the United States constitution reserves to the
26 state and people of Arizona that other than the enumerated powers expressly
27 delegated to the United States under article I, section 8 of the United
28 States constitution, congress and the federal government will not exercise
29 any purported additional control over or commandeer rights belonging to the
30 state of Arizona or its people.

31 C. The United States constitution, ratified on June 21, 1788, affirms
32 that the sole and sovereign power to regulate the state business and affairs
33 rested in the state legislature and has always been a compelling state
34 concern and central to state sovereignty. Accordingly, the foregoing public
35 meaning and understanding of article I, section 8, the establishment clause
36 of the first amendment and the tenth amendment of the United States
37 constitution, is a matter of compact between the state and people of Arizona
38 and the United States as of the time that Arizona was admitted to statehood
39 in 1912. Further, the power to regulate commerce among the several states as
40 delegated to the congress in article I, section 8, clause 3 of the United
41 States constitution, as understood at the time of the founding, was meant to
42 empower congress to regulate the buying and selling of products made by
43 others, and sometimes land, associated finance and financial instruments, and
44 navigation and other carriage, across state jurisdictional lines. This power
45 to regulate commerce does not include agriculture, manufacturing, mining,

1 major crimes, or land use nor does it include activities that merely
2 "substantially affect" commerce.

3 D. At the time the United States constitution was ratified on June 21,
4 1788, the commerce clause was not meant or understood to authorize congress
5 the federal judiciary to regulate the state courts in the matter of state
6 substantive law or state judicial procedure. This meaning and understanding
7 of article I, section 8, the establishment clause of the first amendment and
8 the tenth amendment of the United States constitution, as they pertain to the
9 validity of religious, sectarian or foreign law as being controlling or
10 influential precedent, has never been modified by any duly ratified amendment
11 to the United States constitution. Accordingly, the foregoing public meaning
12 and understanding of article I, section 8 and the tenth amendment of the
13 United States constitution, is a matter of compact between the state and
14 people of Arizona and the United States as of the time that Arizona was
15 admitted to statehood in 1912. Further, article I, section 8, clause 18 of
16 the constitution, the "necessary and proper clause," is not a blank check
17 that empowers the federal government to do anything it deems necessary or
18 proper. It is instead a limitation of power under the common law doctrine of
19 "principals and incidents," which restricts the power of congress to exercise
20 incidental powers. There are two main conditions required for something to
21 be incidental, and therefore, "necessary and proper." The law or power
22 exercised must be:

23 1. Directly applicable to the main enumerated power. Some would say
24 that without it, the enumerated power would be impossible to exercise in
25 current, common understanding.

26 2. "Lesser" than the main power.

27 E. Pursuant to article I, section 8, clause 1 of the United States
28 constitution ratified on June 21, 1788, the "general welfare clause" does not
29 empower the federal government with the ability to do anything it deems good.
30 It is instead a general restriction limiting the exercise of the enumerated
31 powers of congress prescribed in article I, section 8 of the United States
32 constitution requiring that congress only enact laws that serve all citizens
33 well and equally. When James Madison was asked if this clause were a grant
34 of power, he replied, "If not only the means but the objects are unlimited,
35 the parchment [the Constitution] should be thrown into the fire at once."
36 Thus, this clause is a limitation on the power of the federal government to
37 act in the welfare of all when passing laws in pursuance of the powers
38 delegated to the United States. Likewise, the commerce clause was not meant
39 or understood to authorize congress or the federal judiciary to establish
40 religious, sectarian or foreign statutes or case law as controlling or
41 influential precedent. Accordingly, the foregoing public meaning and
42 understanding of article I, section 8, the establishment clause of the first
43 amendment and the tenth amendment of the United States constitution, is a
44 matter of compact between the state and people of Arizona and the United
45 States as of the time that Arizona was admitted to statehood in 1912.

1 F. The legislature of this state acknowledges that the commerce
2 clause, the general welfare clause and the necessary and proper clause of the
3 United States constitution were amended and made more specific and limiting
4 at the people's insistence through the creation of the bill of rights, i.e.,
5 the second amendment, the ninth amendment and the tenth amendment. All
6 amendments within the bill of rights were for the purpose of further
7 restricting federal powers, vesting or retaining the ultimate power and
8 control of the states by the people within the states. Therefore, the
9 legislature of this state specifically rejects and denies any federal claim
10 of expanded or additional authority that the federal government may from time
11 to time attempt to exert, exercise or enforce under these clauses, because
12 these actions totally disrupt and degrade the founders' emphasis on the
13 balance of powers. Further, the people of the state of Arizona are aware
14 that the federal government has amended and altered the spirit and the
15 meaning of the commerce clause, all without proper legislative authority
16 through amendment. Therefore, this state rejects and denies this
17 unauthorized and excessive abuse of power, which has primarily acted as a
18 detriment to states' rights and individual rights, and thereby deliberately
19 altered the balance of powers.

20 G. Pursuant to the United States constitution, congress and the
21 federal government are denied the power to establish laws within this state
22 that are repugnant and obtrusive to the United States constitution, this
23 state's constitution, state law and the citizens of this state. The federal
24 government is restrained and confined in authority by the eighteen items as
25 prescribed in article I, section 8 of the United States constitution.

26 H. Congress and the federal government are hereby denied the power to
27 bind the states under foreign statute, court order or opinion or executive
28 order, other than those provisions duly ratified by the congress as a treaty,
29 as long as the treaty does not violate this state's constitution or the
30 United States constitution.

31 I. Further, no authority has ever been given to the legislative
32 branch, the executive branch or the judicial branch of the federal government
33 to preempt state legislation or to destroy the balance of powers that is
34 prescribed in the United States constitution.

35 J. This act serves as a notice and demand to the federal government to
36 cease and desist all activities outside the scope of their constitutionally
37 designated powers that diminishes the balance of powers as established.

38 K. It is the duty of the legislature of this state to adopt and enact
39 all measures that may become necessary to prevent the wrongful enforcement of
40 any federal laws or regulations duly neutralized within the boundaries and
41 limits of this state.

42 L. Pursuant to article III, section 2 of the United States
43 constitution, "in all cases affecting ambassadors, other public ministers and
44 consuls, and those in which a state shall be party, the supreme court shall
45 have original jurisdiction." In any cause of action between this state and

1 the federal government regarding state neutralization of a federal
2 legislation, judicial mandate or executive order, the proper jurisdiction for
3 these disputes will lie with the supreme court of the United States alone.
4 In the event of improper adjudication, the people's interest shall be
5 maintained and retained through state referendum.

6 M. Under the tenth amendment, the people and state of Arizona retain
7 their exclusive power to regulate the state of Arizona, subject only to the
8 fourteenth amendment's guarantee that the people and state of Arizona shall
9 exercise such sovereign power in accordance with each citizen's lawful
10 privileges or immunities, and in compliance with the requirements of due
11 process and equal protection of the law.

12 N. The ninth amendment to the United States constitution secures and
13 reserves to the people of Arizona, as against the federal government, their
14 natural rights to life, liberty and property as entailed by the traditional
15 anglo-American conception of ordered liberty and as secured by state law,
16 including their rights as they were understood and secured by the law at the
17 time that the amendment was ratified on December 15, 1791, as well as their
18 rights as they were understood and secured by the law in the state of Arizona
19 at the time the Arizona constitution was adopted. The people and this state
20 hereby proclaim that the guarantee of those rights is a matter of compact
21 between this state and people of Arizona and the United States as of the time
22 that Arizona was admitted to statehood in 1912.