

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1433

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, INCLUDING FEDERAL STATUTES, MANDATES AND EXECUTIVE
28 ORDERS ENACTED BEFORE THE EFFECTIVE DATE OF THIS SECTION, FOR THE PURPOSE OF
29 DETERMINING THEIR CONSTITUTIONALITY.

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

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

39 G. THE COMMITTEE SHALL ENSURE THAT THE LEGISLATURE ADOPTS AND ENACTS
40 ALL MEASURES THAT MAY BE NECESSARY TO PREVENT THE ENFORCEMENT OF ANY FEDERAL
41 LAW OR REGULATION NULLIFIED PURSUANT TO THIS SECTION. THE COMMITTEE SHALL
42 ENSURE THAT THE JURISDICTION OF ANY CAUSE OF ACTION BETWEEN THIS STATE AND
43 THE FEDERAL GOVERNMENT REGARDING NULLIFICATION OF ANY FEDERAL LEGISLATION,
44 MANDATE OR EXECUTIVE ORDER WITH THE SUPREME COURT OF THE UNITED STATES ALONE,
45 AS STATED IN ARTICLE III, SECTION 2, UNITED STATES CONSTITUTION.

1 Sec. 2. Legislative intent

2 The legislature finds and declares:

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

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

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

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

34 5. At the time the United States Constitution was ratified on June 21,
35 1788, the sole and sovereign power to regulate the state business and affairs
36 rested in the state legislature and has always been a compelling state
37 concern and central to state sovereignty. Accordingly, the public meaning
38 and understanding of Article I, section 8, the "establishment clause" of the
39 First Amendment and the Tenth Amendment of the United States Constitution, is
40 a matter of compact between this state and the United States as of the time
41 Arizona was admitted to statehood in 1912. Further, the power to regulate
42 commerce among the several states as delegated to the Congress in Article I,
43 section 8, clause 3, United States Constitution, as understood at the time of
44 the founding, was meant to empower Congress to regulate the buying and
45 selling of products made by others, and sometimes land, associated finance

1 and financial instruments and navigation and other carriage across state
2 jurisdictional lines. This power to regulate commerce does not include
3 agriculture, manufacturing, mining, major crimes or land use, and does not
4 include activities that merely substantially affect commerce.

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

26 7. At the time the United States Constitution was ratified on June 21,
27 1788, Article I, section 8, clause 1 of the United States Constitution, the
28 "general welfare clause," did not empower the federal government with the
29 ability to do anything it deems good. It is instead a general introduction
30 explaining the exercise of the enumerated powers of Congress that are
31 prescribed in Article I, section 8 of the Constitution of the United States.
32 When James Madison was asked if this clause was a grant of power, he replied,
33 "If not only the means but the objects are unlimited, the parchment (the
34 Constitution) should be thrown into the fire at once." Thus, this clause is
35 a limitation on the power of the federal government to act in the welfare of
36 all when passing laws in pursuance of the powers delegated to the United
37 States. The Commerce Clause was not meant or understood to authorize
38 Congress or the federal judiciary to establish religious sectarian or foreign
39 statute or case law as controlling or influential precedent. This 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, as
42 they pertain to controlling or influential legal authority, has never been
43 modified by any duly ratified amendment to the United States constitution.
44 Accordingly, the public meaning and understanding of Article I, section 8,
45 the Establishment Clause of the First Amendment and the Tenth Amendment of

1 the United States Constitution, is a matter of compact between this state and
2 the United States as of the time Arizona was admitted to statehood in 1912.

3 8. We acknowledge that the "Commerce Clause", the "General Welfare
4 Clause" and the "Necessary and Proper Clause" of the United States
5 Constitution were amended, and made more specific by limiting the peoples'
6 insistence through the creation of the Bill of Rights, in particular the
7 Second Amendment, the Ninth Amendment and the Tenth Amendment. All
8 amendments within the Bill of Rights were for the purpose of further
9 restricting federal powers, vesting or retaining the ultimate power and
10 control of the states by the people within the states. Therefore, we
11 specifically reject and deny any federal claim of expanded or additional
12 authority, which the federal government may from time to time attempt to
13 exert, exercise or enforce under these clauses.

14 Further, the people of the State of Arizona are aware that the federal
15 government has amended and altered the spirit and the meaning of the
16 "Commerce Clause", all without proper legislative authority through
17 amendment. Therefore, we reject and deny this unauthorized and excessive
18 abuse of power, which has primarily acted as a detriment to states' rights
19 and individual rights.

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

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

29 11. Further, no authority has ever been given to the legislative
30 branch, the executive branch or the judicial branch of the federal government
31 to preempt state legislation.

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

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

36 A. The Secretary of State shall transmit copies of this act to the
37 legislatures of the several states to assure that this state continues in the
38 same esteem and friendship as currently exists and that this state considers
39 union for specific national purposes and particularly those enumerated in the
40 Constitution of the United States to be friendly to the peace, happiness and
41 prosperity of all the states.

1 B. The Secretary of State shall transmit copies of this act to the
2 President of the United States, the President of the United States Senate,
3 the Speaker of the United States House of Representatives and each Member of
4 Congress from the State of Arizona with the request that this act be
5 officially entered into the congressional record.