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

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

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

A. The joint legislative committee on nullification of federal laws is established consisting of the President of the Senate or the President's designee, who serves as cochairperson, six members of the Senate who are appointed by the President of the Senate, the Speaker of the House of Representatives or the Speaker's designee who serves as cochairperson and six members of the House of Representatives who are appointed by the Speaker of the House of Representatives. No more than four members of the Senate and no more than four members of the House of Representatives may be from the same political party. Members shall serve two year terms beginning and ending on the convening of the regular session of the Legislature each odd-numbered year.

B. A majority of the members constitute a quorum for the transaction of business. The committee shall meet on the call of either cochairperson.

C. The committee shall recommend, propose and call for a vote by simple majority to nullify in its entirety a specific federal law or regulation that is outside the scope of the powers delegated by the people to the federal government in the United States Constitution. The committee shall make its recommendation within thirty days after receiving the federal legislation for consideration and process.

D. The committee may review all existing federal statutes, mandates and executive orders for the purpose of determining their constitutionality. The committee may recommend for nullification existing federal statutes, mandates and executive orders enacted before the effective date of this section.

E. On the committee's recommendation for nullification, the Legislature shall vote on whether to nullify the action within sixty days after the committee's recommendation. Until the vote, the issue in question is of no effect. The appropriate documentation reflecting the Legislature's vote shall be documented in the journals of the respective houses.

F. If the Legislature votes by simple majority to nullify any federal statute, mandate or executive order on the grounds of constitutionality, this state and its citizens shall not recognize or be obligated to live under the statute, mandate or executive order.

G. The committee shall ensure that the Legislature adopts and enacts all measures that may be necessary to prevent the enforcement of any federal law or regulation nullified pursuant to this section. The committee shall ensure that the jurisdiction of any cause of action between this state and the federal government regarding nullification of any federal legislation,
MANDATE OR EXECUTIVE ORDER WITH THE SUPREME COURT OF THE UNITED STATES ALONE, AS STATED IN ARTICLE III, SECTION 2, UNITED STATES CONSTITUTION.

Sec. 2. Legislative intent

The legislature finds and declares:

1. The Tenth Amendment to the United States Constitution guarantees and reserves to the states or their people all powers not specifically granted 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 this state and the United States as of the time Arizona was admitted to statehood in 1912.

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

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

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

5. At the time the United States Constitution was ratified on June 21, 1788, the sole and sovereign power to regulate the state business and affairs rested in the state legislature and has always been a compelling state concern and central to state sovereignty. Accordingly, the public meaning and understanding of Article I, section 8, the "establishment clause" of the First Amendment and the Tenth Amendment of the United States Constitution, is a matter of compact between this state and the United States as of the time Arizona was admitted to statehood in 1912. Further, the power to regulate commerce among the several states as delegated to the Congress in Article I, section 8, clause 3, United States 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, and sometimes land, 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, and does not
include activities that merely substantially affect commerce.

6. 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 I, 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, has never been modified by any duly ratified amendment
to the United States Constitution. Accordingly, the public meaning and
understanding of Article I, section 8 and the Tenth Amendment of the United
States Constitution is a matter of compact between this state and the United
States as of the time Arizona was admitted to statehood in 1912.

Additionally, Article I, section 8, clause 18 of the United States
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 that allows the Congress to exercise incidental
powers. There are two main conditions required for something to be
incidental, and therefore, "necessary and proper", the law or power exercised
must be directly applicable to the main, enumerated power and it must be
"lesser" than the main power.

7. At the time the United States Constitution was ratified on June 21,
1788, Article I, section 8, clause 1 of the United States Constitution, the
"general welfare clause," did not empower the federal government with the
ability to do anything it deems good. It is instead a general introduction
explaining the exercise of the enumerated powers of Congress that are
prescribed in Article I, section 8 of the Constitution of the United States.
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. The Commerce Clause was not meant or understood to authorize
Congress or the federal judiciary to establish religious sectarian or foreign
statute or case law as controlling or influential precedent. This meaning
and understanding of Article I, section 8, the establishment clause of the
First Amendment and the Tenth Amendment of the United States Constitution, as
they pertain to controlling or influential legal authority, has never been
modified by any duly ratified amendment to the United States constitution.
Accordingly, the public meaning and understanding of Article I, section 8, the Establishment Clause of the First Amendment and the Tenth Amendment of the United States Constitution, is a matter of compact between this state and the United States as of the time Arizona was admitted to statehood in 1912.

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

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

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

11. 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.

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

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

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

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