



Written by [Joe Wolverton, II, J.D.](#) on March 11, 2016

## Arizona Bill Would Block Enforcement of Unconstitutional Acts of Federal Gov't

A bill that would prohibit state and local governments in Arizona from using personnel or funds to enforce unconstitutional acts of the federal government has passed its first hurdle in the state Senate.

On March 8 the Arizona House Committee on Federalism, Mandates, and Fiscal Responsibility voted 4-3 to pass HB 2201, as amended.



The bill would amend the Arizona Revised Statutes so as to forbid the state government and any municipalities from using money or manpower to “enforce, administer or cooperate with any action of the United States government that constitutes commandeering.”

As defined by the Supreme Court of the United States, commandeering is the attempt by the federal government to force state and local authorities to carry out its mandates. This concept was declared unconstitutional in two cases, *New York v. United States* (1992) and *Printz v. United States* (1997).

The ruling in these cases prohibits the federal government from forcing states to participate in any federal program that does not concern “international and interstate matters.”

Writing for the majority in the *Printz* decision, the late Justice Antonin Scalia explained,

As Madison expressed it: “The local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.” *The Federalist* No. 39, at 245. [n.11]

This separation of the two spheres is one of the Constitution’s structural protections of liberty. “Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.”

Specifically, the text of the Arizona measure defines a covered act of the federal government to be any of the following:

Executive order of the president of the United States

Rule, regulation, or policy issued by an agency of the United States

Ruling issued by a court of the United States

Law or any other measure enacted by the Congress of the United States

As for actions of the federal government whose enforcement by Arizona officials would constitute commandeering, those are defined in the proposal as either “any action not in pursuance of the



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Constitution of the United States and that has not been affirmed by a vote of the Congress and signed into law as prescribed by the Constitution of the United States” or any act “that exceeds the powers of the Congress of the United States enumerated in the Constitution of the United States.”

The original text of the bill was amended before being approved by the committee. This amendment gives the state some leeway in determining whether to cooperate with acts of the federal government that otherwise qualify as “commandeering.” The amendment reads: “The legislature shall consider written complaints received from residents of this state, groups, organizations, businesses or government agencies of this state concerning any suspected commandeering action by the United States government.”

The sponsors of this bill and those state representatives who voted to approve it in the committee hearing are to be commended for their understanding of the concept of federalism and the sovereignty retained by the states.

James Madison, for one, would certainly be proud of these lawmakers, as it was he who recommended, in *Federalist*, No. 46, “refusal to cooperate with officers of the union” when those officers are attempting to enforce a policy, program, or procedure that exceeds the narrowly defined powers allotted by the states to the federal government in the Constitution.

As is often the case in questions of federalism, Madison’s constant collaborator, Thomas Jefferson, explained the proper relationship between state and federal authorities in the Kentucky Resolution of 1798: “[The states] constituted a general government for special purposes — delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force.”

Jefferson, Madison, and many Founding Fathers believed states should demand that the government of the United States cease the constant abuse of power and confine itself to activities within those boundaries drawn by state representatives in the Constitution and later ratified by conventions held for that purpose in the states.

The ratifying conventions called throughout the 13 states understood that the delegates sent to Philadelphia in the summer of 1787 created a general government of limited power, retaining for themselves nearly the full panoply of powers they had exercised successfully for over a century.

Other state lawmakers should follow the example of the sponsors of Arizona’s anti-commandeering proposal and remember that the Constitution is a creature of the states and that the federal government was delegated very few and very limited powers over objects of national importance. Any act of Congress, the courts, or the president that exceeds that small scope is null, void, and of no legal effect, as written into the Arizona bill. No exceptions. James Madison said it best in *Federalist*, No. 45, “The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

Finally, the authors of HB 2201 concluded the text of their bill by quoting from George Washington’s Farewell Address, whose text was written chiefly by James Madison with a few key insertions by Washington himself.

The bill reminds legislators that in this historic address Washington declared,

It is important, likewise, that the habits of thinking in a free country should inspire caution in those



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entrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism.... The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositaries, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern; some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

Having successfully passed out of the Federalism, Mandates, and Fiscal Responsibility Committee, the bill now awaits action by the Rules Committee of the Arizona House of Representatives.



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