Written by **Joe Wolverton, II, J.D.** on December 20, 2012

South Carolina's 1860 Declaration of Secession: What Has Changed?

On December 20, 1860, a South Carolina convention issued an ordinance of secession, and on Christmas Eve of that same year, the people and the legislature of South Carolina adopted the resolution, approving the Palmetto State's separation from the union.

In that document, South Carolina pointed to the "frequent violations of the Constitution of the United States, by the federal government, and its encroachments upon the reserved rights of the states" as justification for its departure. Then, citing the Declaration of Independence (as do many of the secession petitions filed recently on the White House's "We, the People" web page), the document declares, "Whenever any 'form of government becomes destructive of the ends for which it was established, it is the right of the people to alter or abolish it, and to institute a new government.'"

The declaration then goes on to rehearse the history of the formation of the union in 1787, arguing that South Carolina retained her sovereign right of self-defense should the federal government ever violate the compact entered into in Philadelphia in 1787. It argued:

> In 1787, Deputies were appointed by the States to revise the Articles of Confederation, and on 17th September, 1787, these Deputies recommended for the adoption of the States, the Articles of Union, known as the Constitution of the United States.
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> The parties to whom this Constitution was submitted, were the several sovereign States; they were to agree or disagree, and when nine of them agreed the compact was to take effect among those concurring; and the General Government, as the common agent, was then invested with their authority.
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> If only nine of the thirteen States had concurred, the other four would have remained as they then were — separate, sovereign States, independent of any of the provisions of the Constitution. In fact, two of the States did not accede to the Constitution until long after it had gone into operation among the other eleven; and during that interval, they each exercised the functions of an independent nation.
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> By this Constitution, certain duties were imposed upon the several States, and the exercise of certain of their powers was restrained, which necessarily implied their continued existence as sovereign States. But to remove all doubt, an amendment was added, which declared that the

> powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people. On the 23d May, 1788, South Carolina, by a Convention of her People, passed an Ordinance assenting to this Constitution, and afterwards altered her own Constitution, to conform herself to the obligations she had undertaken.
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> Thus was established, by compact between the States, a Government with definite objects and powers, limited to the express words of the grant. This limitation left the whole remaining mass of power subject to the clause reserving it to the States or to the people, and rendered unnecessary any specification of reserved rights.

Constitutionally speaking, secession is an allowable response to federal overreaching. There is, however, a simpler, less drastic remedy. Nullification.

Simply stated, nullification is a constitutional principle recognizing the right of states to invalidate any federal measure that exceeds the enumerated powers of the Constitution. Nullification is founded on the fact that the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to states and their citizens.

A growing number of concerned citizens of this Republic are no longer willing to recur to Congress to repeal unconstitutional laws or to file legal complaints in the hope that the courts will strike down offensive measures. They understand that while perhaps commendable, these tactics are futile and offer no guarantee of the restoration of constitutionally ensured freedom. They refuse to wait on this or that president, this or that congressman, or this or that political party to acknowledge their pleas for relief from federal oppression. Instead, they unashamedly will assume their right and their duty to derail the "long train of abuses and usurpations" and "provide new Guards for their future security" — the states and themselves.

It was the "strong centralizing tendencies" of the John Quincy Adams administration in 1824 that solidified the states' rights sentiment in the South. The federal government — nearly 200 years later — still has those same tendencies toward aggregation of all power. The gluttony of power of successive presidential administrations and congresses has set the states on their current trajectory toward nullification and secession.

In the 1820s, government consolidation began in earnest with congressional subsidy of certain industries. Sound familiar? In those days, this creation of corporate welfare caused unsubsidized segments of the marketplace to cry foul and seek for protection of their concerns, as well.

All too eager to please, the federal government passed legislation in the name of consumer protection that was no more than corporate welfare that shifted capital into fewer hands, giving those businesses and their owners greater influence and leverage over legislators and the laws passed by them.

In the early 19th century, southerners' realization that Congress was passing laws literally codifying protection of northern factories and merchants prompted Thomas Cooper, president of South Carolina College (now the University of South Carolina), to ask, "Is it worth our while to continue this union of states, where the North demand to be our master?"

It is another question from those early days of crony capitalism that more closely expresses our contemporary condition, however. An article published in the *South Carolina Circular* asked: "Are we to exist in the union merely as an object of taxation?"

Today it is universal centralism, not sectionalism based on preference for northern industry, that threatens the union. The central government — on its own and through its all-but-official media mouthpieces — elevates itself above all and demands dominion over every last acre of the formerly sovereign territory of this nation and the lives of its citizens. Any reluctance to toe the line is punished through legislation and regulation that strangles disobedient states.

In many ways, the world is a better place today than it was 152 years ago when South Carolina seceded from the union. When it comes to federal usurpation of power, however, if anything, things are worse today. Then as now, secession and nullification were prompted by a Congress that created a system where it had to legislate in order to win votes from beneficiaries of federal largesse.

Constitutionally speaking, states weary of the assault on their sovereignty don't need to secede to rid themselves of this repugnant despotism and unrepentant cronyism. They need only nullify every act of the central government that exceeds its constitutional authority, every time, without exception.

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