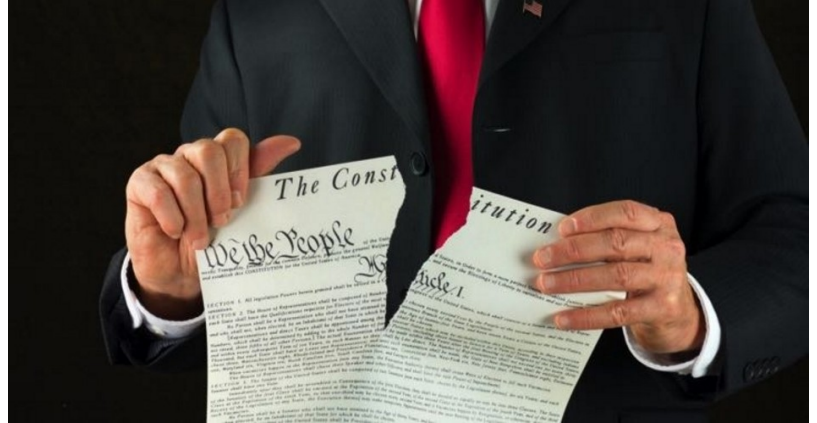




Written by [Joe Wolverton, II, J.D.](#) on April 25, 2019

Texas Bill Would Create Committee to Determine Constitutionality of Federal Acts

A bill making its way through the Texas state legislature would create a committee tasked with reviewing the constitutionality of federal laws, regulations, executive orders, federal court decisions, and treaties. Confirmation of unconstitutionality by the state legislature would prohibit state enforcement of the federal action in question.



The language of HB 1347 would create the Joint Legislative Committee on Constitutional Enforcement. The 12-person committee would “review federal actions that challenge the sovereignty of the state and of the people for the purpose of determining if the federal action is unconstitutional.”

The first few paragraphs of the bill lay out a historically correct description of the manner in which the federal government was created, including the purpose for its creation.

Put simply, the states created the federal government, set the boundaries of its power, and reserved to themselves all other rights not specifically delegated to the new federal authority. The contract containing the rights and responsibilities of the parties to this contract that created the federal government is called the Constitution. This act of collective consenting is called a compact.

This element of the creation of the union is precisely where the states derive their power to negate acts of the federal government that exceed its constitutional authority. It is a thread woven inextricably in every strand of sovereignty. It was the sovereign states that provisionally ceded the territory of authority that the federal government occupies at the pleasure of the states.

Once we realize that state governments are the collective expression of popular sovereignty and that the Constitution is a compact entered into by these duly empowered representatives of the people, the inquiry moves on to the scope of the new central government’s power as contained within the four corners of that agreement. A sound understanding of those enumerated powers is key to knowing when and why states are justified in ignoring (or, if they decide to do so, nullify) acts of the federal government.

Nullification, whether through active acts passed by the legislatures or the simple refusal to obey unconstitutional directives, is the “rightful remedy” for the ill of federal usurpation of authority. Americans committed to the Constitution must walk the fences separating the federal and state governments and they must keep the former from crossing into the territory of the latter.

And it is to that end that the Texas bill was proposed: to put the federal beast back inside its



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constitutional cage and keep it there!

Much to the credit of its authors — State Representatives Cecil Bell and Rick Miller — Section 1(b)(5) of the measure reminds state lawmakers that they not only have the authority to resist unconstitutional acts of the federal government, but they have a duty to do so, as well.

Article VI, Clause 3 of the U.S. Constitution reads: “The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.”

Simply put, this clause puts all state legislators under a legally binding obligation (assuming they’ve taken their oath of office) to “support the Constitution.” There is no better way, it would seem, for these elected state representatives of the people to show support for the Constitution than by demanding that the officers of the federal government adhere to constitutional limits on their power.

Perhaps a greater number of these state legislators, attorneys general, and judges would be more inclined to perform their Article VI duty if the people that put them in office would hold their representatives legally and electorally accountable for any failures to carry this burden.

Imagine, furthermore, the uproar in state assemblies across the country, if every day the legislators were in session, process servers showed up at their offices armed with complaints accusing those lawmakers with dereliction of their constitutional duty!

Just how would the committee go about determining whether a federal act should be carried out in Texas? The plain language of the bill sets out the procedure: “When reviewing a federal action, the committee shall consider the plain reading and reasoning of the text of the United States Constitution and the understood definitions at the time of the framing and construction of the Constitution by our forefathers before making a final declaration of constitutionality.”

That is a praiseworthy standard and would appropriately put the onus on state legislators to do the heavy lifting of learning to recognize federal acts that stray beyond the boundaries marked by the Constitution.

A grassroots organization called Texas Constitutional Enforcement accurately summarizes what would happen should the Joint Legislative Committee on Constitutional Enforcement determine that a federal act is unconstitutional.

Once an act is declared unconstitutional, law enforcement can arrest and prosecute federal agents who attempt enforcement action under the color of declared unconstitutional acts under the Texas penal code, including explicitly, the Texas Official Oppression Act (Texas Penal Code 39.03). While maintaining the ability of local district and county attorneys to prosecute, the attorney general is also given prosecutorial power to prosecute federal agents if a federal act has been declared unconstitutional.

That’s putting the teeth back in the tiger!

The John Birch Society (JBS) has been at the forefront of the fight to restore state sovereignty for decades. It has taken that position in this battle, as well.

In the effort to restore constitutional order to the union and to force the federal beast back inside its constitutional cage, rather than rashly and unnecessarily accept the risks inherent in a constitutional



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convention as set out in Article V of the U.S. Constitution, The John Birch Society proposes Article VI as a safer, surer alternative.

As explained by The John Birch Society's Director of Missions, Larry Greenley:

This is exactly the kind of activity at the state level that we are encouraging with our "Article VI, Not V" campaign. This bill (HB1347) would formalize the nullification procedure so that unconstitutional federal laws, regulations, executive orders, federal court decisions, and treaties would be systematically identified by a joint legislative committee.

Once the committee identified a specific federal action as unconstitutional, then both the full House and Senate would vote on whether to confirm that determination. "Passage of the resolution and the governor's signature would constitute an official determination of unconstitutionality and would prohibit state enforcement of the act."



Or as Texas Constitutional Enforcement said about the bill: "This approach relies completely on Texans and Texas officials to secure the liberty of Texans, and can be implemented immediately. No relying upon, or waiting on other states to secure our liberty."

And that is the ultimate aim of all who would see the U.S. Constitution preserved for our posterity: for the state governments to exercise those "numerous and indefinite" powers placed in them by the people and for the federal government to remain restricted to those "few and defined" powers granted to it by the states.

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