



Written by [Joe Wolverton, II, J.D.](#) on May 15, 2017

Texas Bill Creates Committee to Identify, Nullify Unconstitutional Federal Acts

A bill is working its way through the Texas state legislature that would create a way for Lone Star State lawmakers to refuse to cooperate or enforce any act of the federal government that exceeds its constitutional authority.

The Texas Sovereignty Act — HB 2338 — has already been approved by the state House of Representatives Select Committee on State and Federal Power and Responsibility by a vote of 5-2 and will now continue on through the long legislative process, with the goal of restoring the sovereignty of the state and forcing the federal beast back inside its constitutional cage.

Specifically, the bill creates the Joint Legislative Committee on Constitutional Enforcement to “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 rehearse the proper relationship between the states and the federal government (creators and creation) and restates the power retained by the states to legislate in any area not placed within federal purview in the Constitution.

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As written in the text of the legislation:

The people of the several states comprising the United States of America created the federal government to be their agent for certain enumerated powers delegated by the states and the people to the federal government through the United States Constitution.

The Tenth Amendment to the U.S. Constitution confirms the intent and understanding of the people of the United States that all powers not delegated to the United States by the Constitution, or prohibited by it to the states, are reserved to the states respectively, or to the people.

Each power delegated to the federal government by the United States Constitution is constitutionally limited to that power as it was understood and exercised at the time it was delegated. An amendment to the Constitution as ratified by the states is required to expand or limit a constitutionally delegated power.

Exactly.

Thomas Jefferson, James Madison, and other Founders would support the bill recently introduced in Texas and would encourage other states to demand that the government of the United States cease its constant abuse of power and confine its activities within those boundaries drawn by state





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representatives in the Constitution and later agreed to by separate ratifying conventions in the states.

The documents sent by the states to Congress announcing their ratification of the Constitution provide additional evidence of the founding generation's appreciation of the states' and federal government's respective roles as creator and creation. In nearly every one of these letters, the state legislature or ratifying convention delegation explicitly remind Congress that the consent of the states formed the federal government.

Delaware, for example, declared: "We the Deputies of the People of the Delaware State, in Convention met, having taken into our serious consideration the Federal Constitution proposed and agreed upon by the Deputies of the United States in a General Convention held at the City of Philadelphia."

New Jersey expressed a similar understanding of the parties to the constitutional compact: "Whereas a convention of Delegates from the following States, vizt. New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, met at Philadelphia for the purpose of deliberating on, and forming a constitution for the United States of America."

Georgia's ratification notice letter also recorded the states' role as creators of the new federal government: "Whereas the form of a Constitution for the Government of the United States of America, was, on the seventeenth day of September, one thousand seven hundred and eighty-seven, agreed upon and reported to Congress by the Deputies of the said United States convened in Philadelphia."

And on, and on, and on. 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.

One provision of the Texas Sovereignty Act is very uncommon among similar measures introduced in other states for the purpose of pushing back against federal overreach.

Section 1(b)(2) of the bill reminds state legislators of their own constitutional obligation to protect the Constitution's boundaries on federal power. "Article VI, United States Constitution, makes supreme the Constitution and federal laws enacted pursuant to the Constitution, further requiring that public officials at all levels and in all branches of government support the Constitution," that paragraph reads.

The Supremacy Clause (as some wrongly call it) of Article VI does not declare that federal laws are the supreme law of the land. It states that the Constitution "and laws of the United States made in pursuance thereof" are the supreme law of the land.

The phrase that pays is "In pursuance thereof," not "in violation thereof." If an act of Congress is not permissible under any enumerated power, it is not made in pursuance of the Constitution and therefore not only is not the supreme law of the land, it is not the law at all.

Additionally, while that clause of this article seems to always be brought up by those who would see the states reduced to administrative subunits of the federal government, everyone — even those seeking the restoration of state sovereignty — tends to overlook another clause of that same section.

Article VI, Clause 3 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."



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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 who put them in office would sue them and hold them legally 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 lawsuits charging them with dereliction of their constitutional duty!

Fortunately for Texas, if HB 2338 passes and is ultimately signed by Governor Abbott, state lawmakers will be not only required to oppose federal usurpation, but they will have a reliable mechanism within their own representative body to help them do just that.

The Texas Sovereignty Act is currently waiting to be placed on the House of Representatives' calendar for further consideration.



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