



Written by [Joe Wolverton, II, J.D.](#) on March 21, 2023

Tennessee Rep. Authors Bill Nullifying Past, Present, and Future Unconstitutional Federal Acts

Tennessee State Representative Bud Hulseley has proposed a bill that would establish a permanent procedure for Tennessee to nullify all unconstitutional acts of the federal government.

Hulseley correctly insists that Tennessee — and every other state in the union — retains the authority to refuse to cooperate with any act of the federal government that exceeds the scope of its constitutionally enumerated powers.

Hulseley's [Restoring State Sovereignty Through Nullification Act](#) — HB 0726 and its companion bill, SB 1092 — would bring every “past, present, or future” federal action under the scrutiny of state evaluation, with an eye on establishing whether the federal action in question is permissible according to the authority granted to it by the states in the U.S. Constitution.

In reviewing a federal action, the state would 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 the framers.”

An action deemed “unconstitutional” would be subject to nullification, and a declaration that the act is “null and void” in Tennessee would bar state and local governments from enforcing the nullified federal act.

Representative Hulseley understands the correct constitutional relationship between the states and the federal government.

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 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 nullify 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 ceded the territory of authority that the federal government occupies.

James Madison said it best in *The Federalist*, No. 45:

The powers delegated by the proposed Constitution to the federal government, are few and



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defined. Those which are to remain in the State governments are numerous and indefinite.

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, nullifying) 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.

The Virginia and Kentucky Resolutions plainly set forth James Madison's and Thomas Jefferson's understanding of the source of all federal power. Those landmark documents clearly demonstrate what these two agile-minded champions of liberty considered the constitutional delegation of power.

Jefferson summed it up very economically in the Kentucky Resolutions:

That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy.

Representative Hulseley understands this, and he is determined to apply this remedy to the disease of federal despotism.

Hulseley — and his 14 co-sponsors of the Restoring State Sovereignty Act — realize that there is no serious debate as to whether the national authority has repeatedly attempted to break down the boundaries placed by the Constitution around its power. From the beginning, our elected representatives have overstepped the limits drawn around their rightful authority and have passed laws retracting, reversing, and redefining the scope of American liberty and state sovereignty. Our sacred duty is to tirelessly resist such advances and exercise all our natural rights to restrain government and keep it within the limits set by the Constitution.

Regarding the bill's requirement that all federal acts be interpreted according to the definition of key terms at the time of the framing, in his speech on the bank bill delivered in 1791, Madison said, "In controverted cases, the meaning of the parties to the instrument, if collected by reasonable evidence, is a proper guide."

Thomas Jefferson similarly explained that the Constitution should be interpreted "according to the true sense in which it was adopted by the states, that in which it was advocated by its friends, and not that which its enemies apprehended."

After the governor of Tennessee flagged his bill over concerns that the Volunteer State might lose out on federal funding, Hulseley refused to back down and, in fact, doubled down on his drive to restore his state's sovereignty.

"I've got to remind you, you and I stood up on that House floor over there a few weeks ago and we raised our hand and we swore to 7 million people in this state, we swore not that we would rake in all



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the federal money we could get,” Hulse said. “We swore that we would always defend the inalienable rights of Tennessee people by defending and upholding the Constitution of the United States and the Constitution of the state of Tennessee.”

Hulse’s HB 0726 is scheduled to be heard by the Tennessee House of Representative’s State Government Committee on March 22.



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