

By: Berman

H.C.R. No. 76

CONCURRENT RESOLUTION

1           WHEREAS, The Constitution of the State of Texas declares that  
2 Texas is a free and independent State, subject only to the  
3 Constitution of the United States, and the maintenance of our free  
4 institutions and the perpetuity of the Union depend upon the  
5 preservation of the right of local self-government, unimpaired to  
6 all the States; and

7           WHEREAS, The State of Texas acknowledges that the Ninth  
8 Amendment to the U.S. Constitution states that "[t]he enumeration  
9 in the Constitution, of certain rights, shall not be construed to  
10 deny or disparage others retained by the people," and that the Tenth  
11 Amendment states that "[t]he powers not delegated to the United  
12 States by the Constitution, nor prohibited by it to the States, are  
13 reserved to the States respectively, or to the people"; and

14           WHEREAS, The 50 states composing the United States of America  
15 are not united on the principle of unlimited submission to their  
16 general government but by a compact, described as "a Constitution  
17 for the United States of America," with amendments thereto, through  
18 which they constituted a general government for special purposes  
19 and delegated to that government certain definite powers,  
20 reserving, each state to itself, the residuary mass of rights to its  
21 own self-government; whensoever the general government assumes  
22 undelegated powers, its acts are unauthoritative, void, and of no  
23 force; to this compact each state acceded as a state, and is an  
24 integral party, its co-states forming, as to itself, the other

1 party; the government created by this compact was not made the  
2 exclusive or final judge of the extent of the powers delegated to  
3 itself, since that would have made its discretion, and not the  
4 Constitution, the measure of its powers; as in all other cases of a  
5 compact among powers having no common judge, each party has an equal  
6 right to judge for itself, as well of infractions as of the mode and  
7 measure of redress; and

8         WHEREAS, The Constitution of the United States delegated to  
9 Congress a power to punish treason, counterfeiting the securities  
10 and current coin of the United States, piracies, felonies committed  
11 on the high seas, offences against the law of nations, slavery, and  
12 no other crimes whatsoever; it being true as a general principle,  
13 and one of the amendments to the Constitution having also declared,  
14 that "the powers not delegated to the United States by the  
15 Constitution, nor prohibited by it to the States, are reserved to  
16 the States respectively, or to the people," therefore all acts of  
17 Congress that undertake to create, define, or punish crimes, other  
18 than those so enumerated in the Constitution, are altogether void  
19 and of no force; the power to create, define, and punish such other  
20 crimes is reserved, and of right appertains, solely and exclusively  
21 to the respective states, each within its own territory; and

22         WHEREAS, It is true as a general principle, and is also  
23 expressly declared by one of the amendments to the Constitution,  
24 that "the powers not delegated to the United States by the  
25 Constitution, nor prohibited by it to the States, are reserved to  
26 the States respectively, or to the people"; no power over the  
27 freedom of religion, freedom of speech, or freedom of the press

1 being delegated to the United States by the Constitution, nor  
2 prohibited by it to the states, all lawful powers respecting the  
3 same did of right remain with, and were reserved to, the states or  
4 the people; thus was manifested their determination to retain to  
5 themselves the right of judging how far the licentiousness of  
6 speech and of the press may be abridged without lessening their  
7 useful freedom, and how far those abuses that cannot be separated  
8 from their use should be tolerated, rather than the use be  
9 destroyed; thus also they guarded against all abridgment by the  
10 United States of the freedom of religious opinions and exercises,  
11 and retained to themselves the right of protecting the same; in  
12 addition to this general principle and express declaration, another  
13 and more special provision has been made by one of the amendments to  
14 the Constitution, which expressly declares that "Congress shall  
15 make no law respecting an establishment of religion, or prohibiting  
16 the free exercise thereof, or abridging the freedom of speech or of  
17 the press," thereby guarding in the same sentence, and under the  
18 same words, the freedom of religion, of speech, and of the press,  
19 insomuch that whatever violates either, throws down the sanctuary  
20 that covers the others, and that libels, falsehood, and defamation,  
21 equally with heresy and false religion, are withheld from the  
22 cognizance of federal tribunals; therefore, all acts of the  
23 Congress of the United States which do abridge the freedom of  
24 religion, freedom of speech, and freedom of the press are not law,  
25 but are altogether void and of no force; and

26         WHEREAS, The construction applied by the general government,  
27 as is evidenced by sundry of its proceedings, to those parts of the

1 Constitution of the United States that delegate to Congress a power  
2 "to lay and collect taxes, duties, imports, and excises, to pay the  
3 debts, and provide for the common defense and general welfare of the  
4 United States," and "to make all laws which shall be necessary and  
5 proper for carrying into execution the powers vested by the  
6 Constitution in the government of the United States, or in any  
7 department or officer thereof," goes to the destruction of all  
8 limits prescribed to its power by the Constitution; words meant by  
9 the instrument to be subsidiary only to the execution of limited  
10 powers ought not to be so construed as themselves to give unlimited  
11 powers, nor a part to be so taken as to destroy the whole residue of  
12 that instrument; the proceedings of the general government under  
13 color of these articles will be a fit and necessary subject of  
14 revisal and correction; now, therefore, be it

15       RESOLVED, That the 81st Legislature of the State of Texas  
16 hereby request the lieutenant governor and speaker of the house of  
17 representatives to appoint a joint committee that shall have as its  
18 charge to communicate this resolution to the legislatures of the  
19 several states and to assure them: that this state continues to  
20 esteem their friendship and union; that it considers union, for  
21 specified national purposes, and particularly those specified in  
22 their federal compact, to be friendly to the peace, happiness, and  
23 prosperity of all the states; that being faithful to that compact,  
24 according to the plain intent and meaning in which it was understood  
25 and acceded to by the several parties, it is sincerely anxious for  
26 its preservation; that it does also believe that to take from the  
27 states all the powers of self-government and transfer them to a

1 general and consolidated government, without regard to the special  
2 delegations and reservations solemnly agreed to in that compact, is  
3 not for the peace, happiness, or prosperity of these states, and  
4 that therefore this state is determined, as it doubts not its  
5 co-states are, to submit to undelegated, and consequently  
6 unlimited, powers in no man or body of men on earth; that in cases of  
7 an abuse of the delegated powers, the members of the general  
8 government, being chosen by the people, a change by the people would  
9 be the constitutional remedy, but where powers are assumed that  
10 have not been delegated, a nullification of the act is the rightful  
11 remedy; that every state has a natural right, in cases not within  
12 the compact (*casus non foederis*), to nullify of its own authority  
13 all assumptions of power by others within its limits; that without  
14 this right, the states would be under the dominion, absolute and  
15 unlimited, of whosoever might exercise this right of judgment for  
16 them; that nevertheless, this state, from motives of regard and  
17 respect for its co-states, has wished to communicate with them on  
18 the subject; that with them alone it is proper to communicate, they  
19 alone being parties to the compact, and solely authorized to judge  
20 in the last resort of the powers exercised under it, Congress being  
21 not a party, but merely the creature of the compact, and subject as  
22 to its assumptions of power to the final judgment of those by whom,  
23 and for whose use itself and its powers were all created and  
24 modified; that if the acts before specified should stand, these  
25 conclusions would flow from them: that it would be a dangerous  
26 delusion were a confidence in the men of our choice to silence our  
27 fears for the safety of our rights; that confidence is everywhere

1 the parent of despotism--free government is founded in jealousy,  
2 and not in confidence; it is jealousy and not confidence that  
3 prescribes limited constitutions, to bind down those whom we are  
4 obliged to trust with power; that our Constitution has accordingly  
5 fixed the limits to which, and no further, our confidence may go; in  
6 questions of power, then, let no more be heard of confidence in man,  
7 but bind him down from mischief by the chains of the Constitution;  
8 and, be it further

9       RESOLVED, That this state therefore call on its co-states for  
10 an expression of their sentiments on acts not authorized by the  
11 federal compact; and it doubts not: that their sense will be so  
12 announced as to prove their attachment unaltered to limited  
13 government, whether general or particular; that the rights and  
14 liberties of their co-states will be exposed to no dangers by  
15 remaining embarked in a common bottom with their own; that they will  
16 concur with this state in considering acts as so palpably against  
17 the Constitution as to amount to an undisguised declaration that  
18 that compact is not meant to be the measure of the powers of the  
19 general government, but that it will proceed in the exercise over  
20 these states, of all powers whatsoever; that they will view this as  
21 seizing the rights of the states, and consolidating them in the  
22 hands of the general government, with a power assumed to bind the  
23 states, not merely as in the cases made federal (*casus foederis*),  
24 but in all cases whatsoever, by laws made, not with their consent,  
25 but by others against their consent; that this would be to surrender  
26 the form of government we have chosen, and live under one deriving  
27 its powers from its own will, and not from our authority; and that

1 the co-states, recurring to their natural right in cases not made  
2 federal, will concur in declaring these acts void and of no force,  
3 and that each will take measures of its own for providing that  
4 neither these acts, nor any others of the general government not  
5 plainly and intentionally authorized by the Constitution, shall be  
6 exercised within its territory; and, be it further

7       RESOLVED, That the joint committee be authorized to  
8 communicate by writing or personal conference, at any time or place  
9 whatever, with any person or persons who may be appointed by any one  
10 or more co-states to correspond or confer with it, and that it  
11 submit a complete report of its proceedings to the 82nd Texas  
12 Legislature when it convenes in January 2011; and, be it further

13       RESOLVED, That any act by the Congress of the United States,  
14 executive order of the president of the United States of America, or  
15 judicial order by the judicatories of the United States of America  
16 that assumes a power not delegated to the government of the United  
17 States of America by the Constitution for the United States of  
18 America and that serves to diminish the liberty of any of the  
19 several states will be considered null and void by the State of  
20 Texas; acts that would make a federal mandate null and void include,  
21 but are not limited to:

22       I. Establishing martial law or a state of emergency within  
23 one of the states comprising the United States of America without  
24 the consent of the legislature of that state;

25       II. Requiring involuntary servitude, or governmental  
26 service other than a draft during a declared war, or pursuant to, or  
27 as an alternative to, incarceration after due process of law;

1           III.     Requiring involuntary servitude or governmental  
2 service of persons under the age of 18, other than pursuant to, or  
3 as an alternative to, incarceration after due process of law;

4           IV.     Surrendering any power delegated or not delegated to any  
5 corporation or foreign government;

6           V.     Any act regarding religion; placing further limitations  
7 on freedom of political speech or further limitations on freedom of  
8 the press;

9           VI.     Further infringing on the right to keep and bear arms,  
10 including prohibiting type or quantity of arms or ammunition; and,  
11 be it further

12           RESOLVED, That the Texas secretary of state forward official  
13 copies of this resolution to the president of the United States, to  
14 the speaker of the house of representatives and the president of the  
15 senate of the United States Congress, to all the members of the  
16 Texas delegation to Congress with the request that this resolution  
17 be officially entered in the Congressional Record as a memorial to  
18 the Congress of the United States of America, and to the presiding  
19 officers of each state's legislature.