

By: Toth

H.C.R. No. 86

CONCURRENT RESOLUTION

1 WHEREAS, When presidents use executive orders to legislate,
2 they usurp the powers of the United States Congress or the states
3 and undermine our federalist system of government; and

4 WHEREAS, The U.S. Constitution does not explicitly vest the
5 president with the authority to issue executive orders;
6 presidential power to issue such orders has been derived from
7 implied constitutional authority and express or implied statutory
8 authority; in addition, the 1952 Supreme Court ruling in *Youngstown*
9 *Sheet & Tube Co. v. Sawyer* created a framework for analyzing these
10 orders in the judicial context; and

11 WHEREAS, The framers of the constitution recognized that
12 separation of powers is essential and, accordingly, established
13 checks and balances not only among the branches of the federal
14 government but also between the federal government and state
15 governments; the Tenth Amendment to the United States Constitution
16 provides that "[t]he powers not delegated to the United States by
17 the Constitution, nor prohibited by it to the States, are reserved
18 to the States respectively, or to the people"; and

19 WHEREAS, Over the course of American history, some presidents
20 have encroached on congressional power and the powers reserved to
21 the states through the overly broad use of executive orders to
22 effectuate policy goals.

23 WHEREAS, The U.S. Congress has a continuing obligation to
24 remain vigilant and ensure that its institutional prerogatives and

1 the legislative process are not diminished or disregarded;
2 moreover, Congress has a role in raising public awareness of
3 policies implemented through executive orders; and

4 WHEREAS, The Supreme Court noted in *Youngstown* that "[t]he
5 Founders of this Nation entrusted the lawmaking power to the
6 Congress alone in both good and bad times"; the separation of powers
7 among the legislative, executive, and judicial branches of federal
8 government and the powers reserved to the states form the very
9 bedrock of our democracy, and freedom and liberty are imperiled
10 when this system of checks and balances is disregarded; now,
11 therefore, be it

12 RESOLVED, That the 83rd Legislature of the State of Texas
13 hereby respectfully urge the president of the United States to
14 refrain from issuing executive orders that exceed his authority and
15 that violate the U.S. Constitution; and, be it further

16 RESOLVED, That the Texas Legislature hereby memorialize the
17 U.S. Congress to carefully guard its institutional prerogatives,
18 the legislative process, and the powers reserved to the states from
19 executive overreach; and, be it further

20 RESOLVED, That the Texas secretary of state forward official
21 copies of this resolution to the president of the United States, to
22 the president of the Senate and the speaker of the House of
23 Representatives of the United States Congress, and to all the
24 members of the Texas delegation to Congress with the request that
25 this resolution be officially entered in the Congressional Record
26 as a memorial to the Congress of the United States of America.