

By: Bell of Montgomery

H.B. No. 78

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the legislature or a state court to declare certain federal actions to be unconstitutional federal actions, including the effect and enforcement of such a declaration.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) This Act may be cited as the Texas Sovereignty Act.

(b) The legislature finds that:

(1) The people of the several states forming 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.

(2) The Tenth Amendment to the United States 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.

(3) 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

1 power.

2 (4) The United States Constitution authorizes the
3 United States Congress to exercise only those specific powers
4 enumerated in Section 8, Article I, United States Constitution, and
5 those other powers as may be delegated to Congress through
6 amendments to the Constitution as ratified by the states.

7 (5) Article VI, United States Constitution, makes
8 supreme the Constitution and federal laws enacted pursuant to the
9 Constitution, further requiring that public officials at all levels
10 and in all branches of government support the Constitution.

11 (6) The power delegated to the United States Congress
12 to regulate commerce among the several states under Section 8,
13 Article I, United States Constitution, is limited to federal
14 regulation of actual commerce between the states and among foreign
15 nations. Regulation of intrastate commerce is reserved to the
16 states and to the people of the states. The Commerce Clause of the
17 Constitution constrains the legislative, executive, and judicial
18 branches of the federal government.

19 (7) The power delegated to the United States Congress
20 to make all necessary and proper federal laws under Section 8,
21 Article I, United States Constitution, allows Congress to enact
22 only those laws necessary and proper to execute the
23 constitutionally delegated powers vested in the federal
24 government, all other powers being reserved to the states and to the
25 people of the states.

26 (8) The power delegated to the United States Congress
27 to provide for the general welfare of the United States under

1 Section 8, Article I, United States Constitution, in the General
2 Welfare Clause constitutionally constrains Congress when
3 exercising a delegated power to act in a manner that serves the
4 states and the people of the states well and uniformly.

5 (9) Sections 1 and 2, Article I, Texas Constitution,
6 provide that this state and the people of this state retain the
7 sovereign power to regulate the affairs of Texas, subject only to
8 the United States Constitution.

9 (c) The federal government does not have the power to take
10 any legislative, executive, or judicial action that violates the
11 United States Constitution.

12 (d) The contract with the State of Texas has been wilfully
13 violated by the federal government and must be constitutionally
14 restored.

15 (e) This Act calls on all officials in federal, state, and
16 local government, in all branches and at all levels, to honor their
17 oaths to preserve, protect, and defend the United States
18 Constitution and its ratified amendments against any federal action
19 that:

20 (1) would unconstitutionally undermine, diminish, or
21 disregard the balance of powers between the sovereign states and
22 the federal government established by the United States
23 Constitution and its ratified amendments; or

24 (2) is outside the scope of the power delegated to the
25 federal government by the United States Constitution.

26 SECTION 2. Subtitle Z, Title 3, Government Code, is amended
27 by adding Chapter 394 to read as follows:

CHAPTER 394. ENFORCEMENT OF UNITED STATES CONSTITUTION

Sec. 394.001. DEFINITIONS. In this chapter:

(1) "Committee" means the Joint Legislative Committee on Constitutional Enforcement.

(2) "Federal action" includes:

(A) a federal law;

(B) a federal agency rule, policy, or standard;

(C) an executive order of the president of the United States;

(D) an order or decision of a federal court; and

(E) the making or enforcing of a treaty.

(3) "Unconstitutional federal action" means a federal action enacted, adopted, or implemented without authority specifically delegated to the federal government by the people and the states through the United States Constitution.

Sec. 394.002. JOINT LEGISLATIVE COMMITTEE ON CONSTITUTIONAL ENFORCEMENT. (a) The Joint Legislative Committee on Constitutional Enforcement is established as a permanent joint committee of the legislature. The committee is established 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.

(b) The committee consists of the following 12 members:

(1) six members of the house of representatives appointed by the speaker of the house; and

(2) six members of the senate appointed by the lieutenant governor.

1 (c) Not more than four house members of the committee may be
2 members of the political party whose members constitute a majority
3 of the membership of the house. Not more than four senate members
4 of the committee may be members of the political party whose members
5 constitute a majority of the membership of the senate.

6 (d) Members of the committee serve two-year terms beginning
7 with the convening of each regular legislative session.

8 (e) If a vacancy occurs on the committee, the appropriate
9 appointing officer shall appoint a member of the house or senate, as
10 appropriate, to serve for the remainder of the unexpired term.

11 (f) The speaker of the house and the lieutenant governor
12 shall each designate one member of the committee as a joint chair of
13 the committee.

14 (g) The committee shall meet at the call of either joint
15 chair.

16 (h) A majority of the members of the committee constitutes a
17 quorum.

18 Sec. 394.003. COMMITTEE REVIEW OF FEDERAL ACTION. (a) The
19 committee may review any federal action to determine whether the
20 action is an unconstitutional federal action.

21 (b) When reviewing a federal action, the committee shall
22 consider the plain reading and reasoning of the text of the United
23 States Constitution and the understood definitions at the time of
24 the framing and construction of the Constitution by our forefathers
25 before making a final declaration of constitutionality, as
26 demonstrated by:

27 (1) the ratifying debates in the several states;

1 (2) the understanding of the leading participants at
2 the constitutional convention;

3 (3) the understanding of the doctrine in question by
4 the constitutions of the several states in existence at the time the
5 United States Constitution was adopted;

6 (4) the understanding of the United States
7 Constitution by the first United States Congress;

8 (5) the opinions of the first chief justice of the
9 United States Supreme Court;

10 (6) the background understanding of the doctrine in
11 question under the English Constitution of the time; and

12 (7) the statements of support for natural law and
13 natural rights by the framers and the philosophers admired by the
14 framers.

15 (c) Not later than the 180th day after the date the
16 committee holds its first public hearing to review a specific
17 federal action, the committee shall vote to determine whether the
18 action is an unconstitutional federal action.

19 (d) The committee may determine that a federal action is an
20 unconstitutional federal action by majority vote.

21 Sec. 394.004. LEGISLATIVE DETERMINATION. (a) If the
22 committee determines that a federal action is an unconstitutional
23 federal action, the committee shall report the determination to the
24 house of representatives and to the senate during:

25 (1) the current session of the legislature if the
26 legislature is convened when the committee makes the determination;

27 or

1 (2) the next regular or special session of the
2 legislature if the legislature is not convened when the committee
3 makes the determination.

4 (b) Each house of the legislature shall vote on whether the
5 federal action is an unconstitutional federal action. If a
6 majority of the members of each house determine that the federal
7 action is an unconstitutional federal action, the determination
8 shall be sent to the governor for approval or disapproval as
9 provided by Section 14, Article IV, Texas Constitution, regarding
10 bills.

11 (c) A federal action is declared by the state to be an
12 unconstitutional federal action on the day:

13 (1) the governor approves the vote of the legislature
14 making the determination; or

15 (2) the determination would become law if presented to
16 the governor as a bill and not objected to by the governor.

17 (d) The secretary of state shall forward official copies of
18 the declaration to the president of the United States, to the
19 speaker of the House of Representatives and the president of the
20 Senate of the Congress of the United States, and to all members of
21 the Texas delegation to Congress with the request that the
22 declaration of unconstitutional federal action be entered in the
23 Congressional Record.

24 Sec. 394.005. OTHER DETERMINATIONS OF UNCONSTITUTIONAL
25 FEDERAL ACTS. (a) This chapter does not limit or alter the
26 authority of the governor, the attorney general, a statewide
27 elected official, a state or federal court, a judge or justice, a

1 state or local appointed or elected official, or the governing body
2 of a political subdivision of this state to issue a verbal or
3 written opinion determining a federal action to be
4 unconstitutional.

5 (b) An opinion issued under Subsection (a) may be referred
6 to the committee for review under this chapter.

7 Sec. 394.006. EFFECT OF DECLARED UNCONSTITUTIONAL FEDERAL
8 ACTION. (a) A federal action declared to be an unconstitutional
9 federal action under Section 394.004 has no legal effect in this
10 state and may not be recognized by this state or a political
11 subdivision of this state as having legal effect.

12 (b) The state and a political subdivision of the state may
13 not spend public money or resources or incur public debt to
14 implement or enforce a federal action declared to be an
15 unconstitutional federal action.

16 (c) A person authorized to enforce the laws of this state
17 may enforce those laws, including Section 39.03, Penal Code,
18 against a person who attempts to implement or enforce a federal
19 action declared to be an unconstitutional federal action.

20 (d) This chapter does not prohibit a public officer who has
21 taken an oath to defend the United States Constitution from
22 interposing to stop acts of the federal government which, in the
23 officer's best understanding and judgment, violate the United
24 States Constitution.

25 (e) Texas officials in federal, state, and local government
26 shall honor their oaths to preserve, protect, and defend the United
27 States Constitution and shall act to constitutionally defend this

1 state and the people of this state.

2 Sec. 394.007. AUTHORITY OF ATTORNEY GENERAL. The attorney
3 general may defend the state to prevent the implementation and
4 enforcement of a federal action declared to be an unconstitutional
5 federal action.

6 SECTION 3. Chapter 37, Civil Practice and Remedies Code, is
7 amended by adding Section 37.0056 to read as follows:

8 Sec. 37.0056. DECLARATIONS RELATING TO UNCONSTITUTIONAL
9 ACTS OF THE FEDERAL GOVERNMENT. (a) In this section, "federal
10 action" and "unconstitutional federal action" have the meanings
11 assigned by Section 394.001, Government Code.

12 (b) Any court in this state has original jurisdiction of a
13 proceeding seeking a declaratory judgment that a federal action
14 effective in this state is an unconstitutional federal action.

15 (c) A person is entitled to declaratory relief if the court
16 determines that a federal action is an unconstitutional federal
17 action.

18 (d) In determining whether to grant declaratory relief to a
19 person under this section, a court:

20 (1) may not rely solely on the decisions of other
21 courts interpreting the United States Constitution; and

22 (2) must rely on the plain meaning of the text of the
23 United States Constitution and any applicable constitutional
24 doctrine as understood by the framers of the constitution.

25 (e) Section 37.008 does not apply to relief sought under
26 this section.

27 SECTION 4. (a) Not later than the 30th day following the

effective date of this Act:

(1) the speaker of the house of representatives and the lieutenant governor shall appoint the initial members of the Joint Legislative Committee on Constitutional Enforcement established under Section 394.002, Government Code, as added by this Act; and

(2) the secretary of state shall forward official copies of this Act to the president of the United States, to the speaker of the House of Representatives and the president of the Senate of the Congress of the United States, and to all members of the Texas delegation to Congress with the request that this Act be officially entered in the Congressional Record.

(b) Not later than the 45th day following the effective date of this Act, the speaker of the house of representatives and the lieutenant governor shall forward official copies of this Act to the presiding officers of the legislatures of the several states.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.