

SENATE CONCURRENT RESOLUTION NO. 21

BY SENATOR CATHEY AND REPRESENTATIVE GAROFALO

A CONCURRENT RESOLUTION

To affirm the sovereign right of Louisiana to nullify unconstitutional acts of the federal government.

WHEREAS, Article I of the Constitution of Louisiana establishes a "Declaration of Rights"; and

WHEREAS, Section 1 of Article I declares in pertinent part that "All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole"; and

WHEREAS, Section 1 of Article I further provides that "The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state"; and

WHEREAS, Section 2 of Article I declares that "No person shall be deprived of life, liberty, or property, except by due process of law"; and

WHEREAS, when "We the People" ordained and established the Constitution of the United States of America, the people and states granted only specific, limited powers to the federal government, enumerated in Section 8 of Article I; and

WHEREAS, Articles I, II, and III of the Constitution of the United States, respectively, exclusively vest legislative, executive, and judicial powers to the corresponding branches of government; and

WHEREAS, this horizontal separation of powers reflects the understanding the founding fathers derived from both scripture and experience that sinful man could not be

trusted to always be virtuous and public-minded; and

WHEREAS, the founding fathers did not want undue power to be combined in any branch of government where, if left unchecked, it could become tyrannical; and

WHEREAS, the Constitution of the United States does not permit Congress to delegate or confer any lawmaking power to any other branch of government; and

WHEREAS, no other person, agency, or department of any other branch of the federal government has any lawmaking power under the Constitution of the United States; and

WHEREAS, Article I, Section 7 of the Constitution of the United States establishes the only process by which a bill becomes a law; and

WHEREAS, this process requires passage by both houses of Congress followed by either presidential approval or congressional override of presidential veto; and

WHEREAS, any action by the executive or judicial branches that purports to enact law or that is treated as such is a usurpation of power; and

WHEREAS, federal court opinions and executive orders are often erroneously interpreted as law or to have amended the Constitution of the United States; and

WHEREAS, the principle of separation of powers is so innately representative of a republican form of government that it is upheld and reinforced in the Constitution of Louisiana through the establishment of three branches of state government; and

WHEREAS, when creating a federal government through ratification of the Constitution of the United States, the people and the states also designed a vertical separation of powers between the superior sovereign states and the inferior federal government; and

WHEREAS, a vertical separation of powers is explicitly articulated in Article I, Section 8 of the Constitution of the United States, granting to the federal government only limited, enumerated, lawmaking powers; and

WHEREAS, this vertical separation of powers is also incorporated into the Bill of Rights; and

WHEREAS, the First Amendment specifically denies Congress lawmaking power within certain listed fields; and

WHEREAS, the Ninth Amendment specifically prohibits the federal government from interfering with rights not expressly enumerated in the Constitution of the United States; and

WHEREAS, the Tenth Amendment, denies the federal government powers not delegated to it in the Constitution of the United States; and

WHEREAS, this vertical separation of powers is generally well known by the people and the states and was known and respected by the federal government for over one hundred years of our nation's history; and

WHEREAS, this principle has become increasingly disregarded in recent decades, as if the federal government were supreme in all areas and unlimited in its jurisdiction; and

WHEREAS, whether this shift was intentional or accidental, active or passive, it nevertheless finds no support in the Constitution of the United States of America, the laws of the United States, or the constitutions of any of the sovereign states and is an illegal usurpation of power and the unalienable rights of the people; and

WHEREAS, any federal action that violates either the horizontal or vertical separation of powers is void as the Constitution of the United States is the supreme law of the land; and

WHEREAS, the landmark Supreme Court case *Marbury v. Madison* declared that "a law repugnant to the Constitution is void"; and

WHEREAS, an act of Congress repugnant to the Constitution of the United States cannot become a law; and

WHEREAS, the provisions of the Constitution of the United States supersede all other laws; and

WHEREAS, in the 1879 decision, *Ex parte Siebold*, the Supreme Court ruled that "An unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment"; and

WHEREAS, in *Norton v. Shelby County* the Supreme Court stated that "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had

never been passed"; and

WHEREAS, in *Miranda v. Arizona*, the Supreme Court further opined that "Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them"; and

WHEREAS, as Thomas Jefferson explained in the Kentucky Resolutions of 1798, "whenever the General government assumes undelegated powers, its acts are unauthoritative, void, and of no force."; and

WHEREAS, Jefferson further added "but where powers are assumed which have not been delegated a nullification of the act is a rightful remedy: that every state has a natural right, in cases not within the compact to nullify of their own authority all assumptions of power by others within their limits"; and

WHEREAS, the Constitution of the United States binds federal lawmakers by oath to support the constitution, and when they fail to do so, the rightful remedy for states is to nullify their usurpations and to declare their acts void; and

WHEREAS, every constitutional officeholder must know and understand these important constitutional limitations of power and individually determine how best to defend the rights of the people and fulfill his or her oath of office; and

WHEREAS, President Andrew Jackson illustrated commitment to this principle in 1832 through his veto of a bill to recharter the Bank of the United States; and

WHEREAS, President Jackson argued that the principle of separation of powers meant that no branch of government could claim the exclusive right to settle constitutional differences of opinion because each public officer swears to uphold the constitution as he understands it, not as it is understood by others; and

WHEREAS, President Jackson's veto illustrated the requirement that every officeholder must reach an independent judgment about the jurisdictional scope of the federal government and act consistently upon those judgments; and

WHEREAS, the Constitution of the United States assures the people and the states that their respective rights and powers will be respected by the federal government; and

WHEREAS, these sacred rights shall not be infringed upon by any action of the federal government purporting to wield any undue authority.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby affirm the sovereign right of Louisiana to nullify unconstitutional acts of the federal government.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES