

The Senate Rules Committee offered the following substitute to SR 632:

A RESOLUTION

1 Affirming states' rights based on Jeffersonian principles; and for other purposes.

2 WHEREAS, the Ninth Amendment of the United States Constitution states "[t]he
3 enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage
4 others retained by the people" and the Tenth Amendment states "[t]he powers not delegated
5 to the United States by the Constitution, nor prohibited by it to the States, are reserved to the
6 States respectively, or to the people."

7 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE that this body reaffirms the
8 principles of government expressed by Thomas Jefferson in a resolution written for the
9 Kentucky legislature in 1798 stating that the several States composing the United States of
10 America, are not united on the principle of unlimited submission to their General
11 Government; but that, by a compact under the style and title of a Constitution for the United
12 States, and of amendments thereto, they constituted a General Government for special
13 purposes, -- delegated to that government certain definite powers, reserving, each State to
14 itself, the residuary mass of right to their own self-government; and that whensoever the
15 General Government assumes undelegated powers, its acts are unauthoritative, void, and of
16 no force; that to this compact each State acceded as a State, and is an integral party, its
17 co-States forming, as to itself, the other party: that the government created by this compact
18 was not made the exclusive or final judge of the extent of the powers delegated to itself;
19 since that would have made its discretion, and not the Constitution, the measure of its
20 powers; but that, as in all other cases of compact among powers having no common judge,
21 each party has an equal right to judge for itself, as well of infractions as of the mode and
22 measure of redress; and

23 That the Constitution of the United States, having delegated to Congress a power to punish
24 treason, counterfeiting the securities and current coin of the United States, piracies, and
25 felonies committed on the high seas, and offences against the law of nations, slavery, and no
26 other crimes whatsoever; and it being true as a general principle, and one of the amendments
27 to the Constitution having also declared, that "the powers not delegated to the United States

28 by the Constitution, nor prohibited by it to the States, are reserved to the States respectively,
29 or to the people," therefore all acts of Congress which assume to create, define, or punish
30 crimes, other than those so enumerated in the Constitution are altogether void, and of no
31 force; and that the power to create, define, and punish such other crimes is reserved, and, of
32 right, appertains solely and exclusively to the respective States, each within its own territory;
33 and

34 That it is true as a general principle, and is also expressly declared by one of the amendments
35 to the Constitution, that "the powers not delegated to the United States by the Constitution,
36 nor prohibited by it to the States, are reserved to the States respectively, or to the people;"
37 and that no power over the freedom of religion, freedom of speech, or freedom of the press
38 being delegated to the United States by the Constitution, nor prohibited by it to the States,
39 all lawful powers respecting the same did of right remain, and were reserved to the States or
40 the people: that thus was manifested their determination to retain to themselves the right of
41 judging how far the licentiousness of speech and of the press may be abridged without
42 lessening their useful freedom, and how far those abuses which cannot be separated from
43 their use should be tolerated, rather than the use be destroyed. And thus also they guarded
44 against all abridgment by the United States of the freedom of religious opinions and
45 exercises, and retained to themselves the right of protecting the same. And that in addition
46 to this general principle and express declaration, another and more special provision has been
47 made by one of the amendments to the Constitution, which expressly declares, that
48 "Congress shall make no law respecting an establishment of religion, or prohibiting the free
49 exercise thereof, or abridging the freedom of speech or of the press": thereby guarding in the
50 same sentence, and under the same words, the freedom of religion, of speech, and of the
51 press: insomuch, that whatever violated either, throws down the sanctuary which covers the
52 others, and that libels, falsehood, and defamation, equally with heresy and false religion, are
53 withheld from the cognizance of federal tribunals. That, therefore, all acts of Congress of the
54 United States which do abridge the freedom of religion, freedom of speech, freedom of the
55 press, are not law, but are altogether void, and of no force; and

56 That the construction applied by the General Government (as is evidenced by sundry of their
57 proceedings) to those parts of the Constitution of the United States which delegate to
58 Congress a power "to lay and collect taxes, duties, imports, and excises, to pay the debts, and
59 provide for the common defense and general welfare of the United States," and "to make all
60 laws which shall be necessary and proper for carrying into execution the powers vested by
61 the Constitution in the government of the United States, or in any department or officer
62 thereof," goes to the destruction of all limits prescribed to their power by the Constitution:
63 that words meant by the instrument to be subsidiary only to the execution of limited powers,
64 ought not to be so construed as themselves to give unlimited powers, nor a part to be so taken

65 as to destroy the whole residue of that instrument: that the proceedings of the General
66 Government under color of these articles, will be a fit and necessary subject of revisal and
67 correction; and

68 That a committee of conference and correspondence be appointed, which shall have as its
69 charge to communicate the preceding resolutions to the Legislatures of the several States; to
70 assure them that this State continues in the same esteem of their friendship and union which
71 it has manifested from that moment at which a common danger first suggested a common
72 union: that it considers union, for specified national purposes, and particularly to those
73 specified in their federal compact, to be friendly to the peace, happiness and prosperity of all
74 the States: that faithful to that compact, according to the plain intent and meaning in which
75 it was understood and acceded to by the several parties, it is sincerely anxious for its
76 preservation: that it does also believe, that to take from the States all the powers of
77 self-government and transfer them to a general and consolidated government, without regard
78 to the special delegations and reservations solemnly agreed to in that compact, is not for the
79 peace, happiness or prosperity of these States; and that therefore this State is determined, as
80 it doubts not its co-States are, to submit to undelegated, and consequently unlimited powers
81 in no man, or body of men on earth: that in cases of an abuse of the delegated powers, the
82 members of the General Government, being chosen by the people, a change by the people
83 would be the constitutional remedy; but, where powers are assumed which have not been
84 delegated, a nullification of the act is the rightful remedy: that every State has a natural right
85 in cases not within the compact, (*casus non foederis*), to nullify of their own authority all
86 assumptions of power by others within their limits: that without this right, they would be
87 under the dominion, absolute and unlimited, of whosoever might exercise this right of
88 judgment for them: that nevertheless, this State, from motives of regard and respect for its
89 co-States, has wished to communicate with them on the subject: that with them alone it is
90 proper to communicate, they alone being parties to the compact, and solely authorized to
91 judge in the last resort of the powers exercised under it, Congress being not a party, but
92 merely the creature of the compact, and subject as to its assumptions of power to the final
93 judgment of those by whom, and for whose use itself and its powers were all created and
94 modified: that if the acts before specified should stand, these conclusions would flow from
95 them: that it would be a dangerous delusion were a confidence in the men of our choice to
96 silence our fears for the safety of our rights: that confidence is everywhere the parent of
97 despotism -- free government is founded in jealousy, and not in confidence; it is jealousy and
98 not confidence which prescribes limited constitutions, to bind down those whom we are
99 obliged to trust with power: that our Constitution has accordingly fixed the limits to which,
100 and no further, our confidence may go. In questions of power, then, let no more be heard of
101 confidence in man, but bind him down from mischief by the chains of the Constitution. That

102 this State does therefore call on its co-States for an expression of their sentiments on acts not
103 authorized by the federal compact. And it doubts not that their sense will be so announced
104 as to prove their attachment unaltered to limited government, whether general or particular.
105 And that the rights and liberties of their co-States will be exposed to no dangers by remaining
106 embarked in a common bottom with their own. That they will concur with this State in
107 considering acts as so palpably against the Constitution as to amount to an undisguised
108 declaration that that compact is not meant to be the measure of the powers of the General
109 Government, but that it will proceed in the exercise over these States, of all powers
110 whatsoever: that they will view this as seizing the rights of the States, and consolidating them
111 in the hands of the General Government, with a power assumed to bind the States, not merely
112 as the cases made federal, (*casus foederis*,) but in all cases whatsoever, by laws made, not
113 with their consent, but by others against their consent: that this would be to surrender the
114 form of government we have chosen, and live under one deriving its powers from its own
115 will, and not from our authority; and that the co-States, recurring to their natural right in
116 cases not made federal, will concur in declaring these acts void, and of no force, and will
117 each take measures of its own for providing that neither these acts, nor any others of the
118 General Government not plainly and intentionally authorized by the Constitution, shall be
119 exercised within their respective territories; and

120 That the said committee be authorized to communicate by writing or personal conferences,
121 at any times or places whatever, with any person or person who may be appointed by any one
122 or more co-States to correspond or confer with them; and that they lay their proceedings
123 before the next session of the General Court.

124 BE IT FURTHER RESOLVED that any Act by the Congress of the United States, Executive
125 Order of the President of the United States of America or Judicial Order by the Judiciaries
126 of the United States of America which assumes a power not delegated to the government of
127 the United States of America by the Constitution for the United States of America and which
128 serves to diminish the liberty of the any of the several States or their citizens shall constitute
129 a nullification of the Constitution for the United States of America by the government of the
130 United States of America. Acts which would cause such a nullification include, but are not
131 limited to:

132 I. Establishing martial law or a state of emergency within one of the States comprising the
133 United States of America without the consent of the legislature of that State.

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

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

138 IV. Surrendering any power delegated or not delegated to any corporation or foreign
139 government.

140 V. Any act regarding religion; further limitations on freedom of political speech; or further
141 limitations on freedom of the press.

142 VI. Further infringements on the right to keep and bear arms including prohibitions of type
143 or quantity of arms or ammunition; and

144 That should any such act of Congress become law or Executive Order or Judicial Order be
145 put into force, all powers previously delegated to the United States of America by the
146 Constitution for the United States shall revert to the several States individually. Any future
147 government of the United States of America shall require ratification of three quarters of the
148 States seeking to form a government of the United States of America and shall not be binding
149 upon any State not seeking to form such a government.

150 BE IT FURTHER RESOLVED that the Secretary of the Senate is authorized and directed
151 to transmit an appropriate copy of this resolution to the President of the United States, each
152 member of the United States Congress.