

Senate Resolution 889

By: Senators Albers of the 56th, Loudermilk of the 52nd, Rogers of the 21st, Williams of the 19th and Gooch of the 51st

A RESOLUTION

1 Creating the Joint Commission on Recommendation; and for other purposes.

2 WHEREAS, the General Assembly finds:

3 (1) The Tenth Amendment to the United States Constitution guarantees and reserves to
4 the states and the people all powers not delegated to the federal government elsewhere
5 in the Constitution as they were publicly understood at the time that the amendment was
6 ratified on December 15, 1791, subject only to modification by duly ratified subsequent
7 amendments to the United States Constitution;

8 (2) The Tenth Amendment to the United States Constitution reserves to the state and
9 people of Georgia that other than the enumerated powers expressly delegated to the
10 United States under Article I, Section 8 of the United States Constitution, Congress and
11 the federal government will not exercise any purported additional control over or
12 commander rights belonging to the State of Georgia or its people;

13 (3) The United States Constitution, ratified on June 21, 1788, established that the sole
14 and sovereign power to regulate the business and affairs of each state rested in state
15 legislatures and has always been a compelling state concern and central to state
16 sovereignty. Further, the power to regulate commerce among the several states as
17 delegated to the Congress in Article I, Section 8, Clause 3 of the Constitution, as
18 understood at the time of the founding, was meant to empower Congress to regulate the
19 buying and selling of products made by others, associated finance and financial
20 instruments, and navigation and other carriage across state jurisdictional lines. This
21 power to regulate "commerce" does not include agriculture, manufacturing, mining,
22 major crimes, or land use. Nor does it include activities that merely "substantially affect"
23 commerce;

24 (4) At the time the United States Constitution was ratified on June 21, 1788, the
25 Commerce Clause was not meant or understood to authorize Congress or the federal
26 judiciary to regulate the state courts in the matter of state substantive law or state judicial
27 procedure. This meaning and understanding of Article I, Section 8, the Establishment
28 Clause of the First Amendment, and the Tenth Amendment of the United States

29 Constitution, as they pertain to the validity of religious sectarian or foreign law as being
30 controlling or influential precedent, has never been modified by any duly ratified
31 amendment to the United States Constitution. Further, Article I, Section 8, Clause 18 of
32 the Constitution, the "necessary and proper clause," is not a blank check that empowers
33 the federal government to do anything it deems necessary or proper. It is instead a
34 limitation of power under the common-law doctrine of "principals and incidents," which
35 restricts the power of Congress to exercise incidental powers. There are two main
36 conditions required for something to be incidental and therefore "necessary and proper."
37 The law or power exercised must be:

38 (A) Directly applicable to the main, enumerated power; and

39 (B) It must be "lesser" than the main power;

40 (5) In accordance with Article I, Section 8, Clause 1 of the United States Constitution
41 ratified on June 21, 1788, the "general welfare clause" does not empower the federal
42 government with the ability to do anything it deems good. It is instead a general
43 restriction limiting the exercise of the enumerated powers of Congress set forth in Article
44 I, Section 8 of the Constitution of the United States, requiring that Congress only enact
45 laws which serve all citizens well and equally. When James Madison was asked if this
46 clause was a grant of power, he replied, "If not only the means but the objects are
47 unlimited, the parchment [the Constitution] should be thrown into the fire at once." Thus,
48 this clause is a limitation on the power of the federal government to act in the welfare of
49 all when passing laws in pursuance of the powers delegated to the United States.
50 Likewise, the Commerce Clause was not meant or understood to authorize Congress or
51 the federal judiciary to establish religious sectarian or foreign statutes or case law as
52 controlling or influential precedent;

53 (6) The General Assembly acknowledges that the "Commerce Clause," the "General
54 Welfare Clause," and the "Necessary and Proper Clause" of the United States
55 Constitution were amended and made more specific and limiting at the people's insistence
56 through the creation of the Bill of Rights, i.e., the Second Amendment, the Ninth
57 Amendment, and the Tenth Amendment. All amendments within the Bill of Rights were
58 for the purpose of further restricting federal powers, vesting or retaining the ultimate
59 power and control of the states by the people within the states. Therefore, this body
60 specifically rejects and denies any federal claim of expanded or additional authority
61 which the federal government may from time to time attempt to exert, exercise, or
62 enforce under these clauses. Further, the people of the State of Georgia are aware that
63 the federal government has amended and altered the spirit and the meaning of the
64 Commerce Clause, all without proper legislative authority through amendment.

65 Therefore, this body rejects and denies this unauthorized and excessive abuse of power
66 which has primarily acted as a detriment to states' rights and individual rights;

67 (7) In accordance with the United States Constitution, Congress and the federal
68 government is denied the power to establish laws within the state which are repugnant
69 and obtrusive to the United States Constitution, the state Constitution, state law, and the
70 citizens of the state. The federal government is restrained and confined in authority by
71 the 18 items as set forth in Article I, Section 8 of the United States Constitution;

72 (8) Congress and the federal government are denied the power to bind the states under
73 foreign statutes or case law other than those provisions duly ratified by the Congress as
74 a treaty, so long as the treaty does not violate the state or United States Constitution;

75 (9) Further, no authority has ever been given to the legislative branch, the executive
76 branch, or the judicial branch of the federal government to preempt state legislation;

77 (10) Under the Tenth Amendment, the people and the State of Georgia retain their
78 exclusive power to regulate the State of Georgia, subject only to the Fourteenth
79 Amendment's guarantee that the people and State of Georgia shall exercise such
80 sovereign power in accordance with each citizen's lawful privileges or immunities and
81 in compliance with the requirements of due process and equal protection of the law; and

82 (11) Whereas the Ninth Amendment to the United States Constitution secures and
83 reserves to the people of Georgia, as against the federal government, their natural rights
84 to life, liberty, and property as entailed by the traditional Anglo-American conception of
85 ordered liberty and as secured by state law; and

86 WHEREAS, it is the intent of the General Assembly that this resolution shall serve as a
87 notice and demand to the federal government to cease and desist any and all activities outside
88 the scope of its constitutionally designated powers.

89 NOW, THEREFORE, BE IT RESOLVED BY THE GENERAL ASSEMBLY OF
90 GEORGIA that:

91 (1) There is created the Joint Commission on Recommendation, which shall be charged
92 with recommending and proposing for a vote by a constitutional majority the nullification
93 in its entirety of a specific federal law or regulation which is deemed to be outside the
94 scope of the powers delegated by the people to the federal government in the United
95 States Constitution or at odds with the Georgia Constitution;

96 (2) The commission shall consist of ten members, five members from the Senate to be
97 appointed by the Senate Committee on Assignments and five members from the House
98 of Representatives to be appointed by the Speaker of the House of Representatives. The
99 Senate Committee on Assignments and the Speaker of the House of Representatives shall

100 each designate one of their respective appointees as cochairpersons of the commission.
101 The members of the commission shall be appointed for terms concurrent with their terms
102 as legislators. In the event a vacancy occurs, the appropriate appointing official shall
103 appoint a member to fill the vacancy for the unexpired term;

104 (3) The commission of recommendation shall have the power to review any and all
105 existing federal statutes, mandates, and executive orders for the purpose of determining
106 the constitutionality thereof, and such commission may recommend existing federal
107 statutes, regulations, mandates, and executive orders put in place prior to the passage of
108 this resolution for nullification. The commission shall respond with its recommendations
109 within 30 days of receiving such federal legislation for consideration; and

110 (4) Upon recommendation for nullification, the General Assembly may vote to nullify
111 following such recommendation. The appropriate documentation reflecting the vote shall
112 be documented in legislative journals of the House and Senate. In the event the General
113 Assembly votes by a constitutional majority to nullify any federal statute, mandate, or
114 executive order on the grounds of constitutionality, neither the state nor its citizens shall
115 recognize or be obligated to live under such statute, mandate, or executive order.

116 BE IT FURTHER RESOLVED that:

117 (1) It shall be the duty of the General Assembly to adopt and enact any and all measures
118 that may become necessary to prevent the wrongful enforcement of any federal laws or
119 regulations duly nullified within the boundaries and limits of this state; and

120 (2) The Secretary of the Senate is directed to send a copy of this resolution to the
121 President of the United States, the President of the United States Senate, the Speaker and
122 Clerk of the United States House of Representatives, and each member of Georgia's
123 Congressional delegation, with the request that this resolution be officially entered into
124 the Congressional Record.