

HOUSE BILL NO. HB0167

Restoring state sovereignty through nullification.

Sponsored by: Representative(s) Strock, Allemand, Bear, Haroldson, Heiner, Jennings, Knapp, Locke, Pendergraft, Slagle, Smith and Ward and Senator(s) Hutchings and Ide

A BILL

for

1 AN ACT relating to the administration of government;
 2 providing legislative findings; establishing a process by
 3 which the state of Wyoming may enter an order of
 4 nullification to nullify unconstitutional federal actions;
 5 authorizing petitions for seeking nullification; specifying
 6 duties of the secretary of state and legislative
 7 leadership; authorizing rulemaking; and providing for an
 8 effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 9-14-301 through 9-14-305 are created
 13 to read:

14

1

CHAPTER 14

2

PROTECTION OF CONSTITUTIONAL AND STATE RIGHTS

3

4

ARTICLE 3

5

NULLIFICATION OF FEDERAL LAW

6

7

9-14-301. Short title.

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9 This article shall be known and may be cited as the
10 "Restoring State Sovereignty Through Nullification Act."
11

11

12

9-14-302. Legislative findings.

13

14

(a) The legislature finds that:

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(i) Article 1, section 1 of the Wyoming
constitution provides that "all power is inherent in the
people, and all free governments are founded on their
authority, and instituted for their peace, safety and
happiness";

(ii) When "We the People" ordained and
established the United States constitution, the people and

1 the states granted only specific, limited powers to the
2 federal government, with those powers being enumerated in
3 Article I, Section 8 of the United States constitution;

4

5 (iii) Articles I, II and III of the United
6 States constitution vests the legislative, executive and
7 judicial powers to and within separate branches of the
8 federal government, creating a horizontal separation of
9 powers so that lawmaking powers are vested only in the
10 legislative branch through the United States congress,
11 enforcement powers are vested only in the executive branch
12 through the president and executive agencies and judicial
13 powers are vested only in the judicial branch through the
14 United States supreme court and other inferior courts that
15 Congress may create;

16

17 (iv) Nothing in the United States constitution
18 permits congress to delegate or confer any lawmaking power
19 to any other branch of government because congress has no
20 enumerated powers to create lawmakers. When the president
21 and the federal courts are vested with the executive and
22 judicial powers, neither of those branches are granted
23 general powers of lawmaking. Therefore, no person, agency

1 or department of any other branch of the federal
2 government, including the United States supreme court, has
3 any lawmaking power under the United States constitution;

4

5 (v) The principle of separation of powers is so
6 innately representative of a republican form of government
7 that the Wyoming constitution, in article 2, section 1,
8 upholds and reinforces the principle of separation of
9 powers within three (3) departments of the state government
10 of Wyoming;

11

12 (vi) When creating a federal government by
13 ratifying the United States constitution, the people and
14 the states also designed a second, and more important,
15 separation of powers, that being a vertical separation of
16 powers between the superior sovereign states and the
17 inferior federal government;

18

19 (vii) A vertical separation of powers was
20 explicitly set out in Article I, Section 8 of the United
21 States constitution, wherein only limited, enumerated
22 lawmaking powers were granted to the federal government;

23

1 (viii) This vertical separation of powers was
2 also incorporated into the bill of rights in the United
3 States constitution, where:

4

5 (A) In the first amendment to the United
6 States constitution, congress was specifically denied
7 lawmaking power within those fields listed in the first
8 amendment;

9

10 (B) In the ninth amendment to the United
11 States constitution, the federal government was expressly
12 prohibited from interfering with rights not specified in
13 the United States constitution; and

14

15 (C) In the tenth amendment to the United
16 States constitution, the federal government was expressly
17 denied powers not delegated to it in the United States
18 constitution.

19

20 (ix) Any federal action that violates the
21 horizontal separation of powers or that exceeds the
22 jurisdictional limits imposed by the vertical separation of

1 powers in the United States constitution is void, as the
2 United States constitution is the supreme law of the land;

3

4 (x) The United States supreme court has stated
5 that "a law repugnant to the Constitution is void." An act
6 of congress repugnant to the United States constitution
7 cannot become a law. The Constitution supersedes all other
8 laws, and the individual's rights shall be liberally
9 enforced in favor of him, the clearly intended and
10 expressly delegated beneficiary. Marbury v. Madison, 5 U.S.
11 137, 180 (1803);

12

13 (xi) "An unconstitutional law is void and is as
14 no law. An offence created by it is not a crime. A
15 conviction under it is not merely erroneous, but is illegal
16 and void, and cannot be a legal cause of imprisonment." Ex
17 parte Siebold, 100 U.S. 371, 376-77 (1879);

18

19 (xii) "An unconstitutional act is not a law; it
20 confers no rights; it imposes no duties; it affords no
21 protection; it creates no office; it is, in legal
22 contemplation, as inoperative as though it had never been
23 passed." Norton v. Shelby County, 118 U.S. 425, 442 (1886);

1

2 (xiii) "Where rights secured by the Constitution
3 are involved, there can be no rule making or legislation
4 which would abrogate them." Miranda v. Arizona, 384 U.S.
5 436, 491 (1966);

6

7 (xiv) The United States constitution assures the
8 people and the states that their respective rights and
9 powers will be respected by the federal government;

10

11 (xv) Under Article 6, Section 20 of the Wyoming
12 constitution, each member of the legislature is required to
13 take an oath to support, obey and defend the constitution
14 of the United States and the Wyoming constitution;

15

16 (xvi) The people are the ultimate source of
17 human governmental power under our constitutions. The
18 states, through their elected officers, are bound to
19 fulfill their oath of office to preserve the rights of the
20 people. It is therefore long overdue and urgently necessary
21 for the state of Wyoming to prescribe the manner in which,
22 under the United States constitution and the Wyoming
23 constitution, the people's rights and the state's

1 sovereignty may be asserted as against federal
2 officeholders, whether individually or collectively.

3

4 **9-14-303. Definitions.**

5

6 (a) As used in this act:

7

8 (i) "Federal action" means:

9

10 (A) A federal law, rule, regulation, policy
11 or standard;

12

13 (B) An executive order issued by the
14 president of the United States;

15

16 (C) An order or decision of a federal
17 court;

18

19 (D) The making or enforcing of a treaty.

20

21 (ii) "Nullification" means the process by which
22 the state makes an official declaration in accordance with
23 this act;

1

2 (iii) "Unconstitutional federal action" means a
3 federal action that is enacted, adopted or implemented
4 without authority that was expressly delegated to the
5 federal government by the people and the states through the
6 United States constitution;

7

8 (iv) "This act" means W.S. 9-14-301 through
9 9-4-305.

10

11 **9-14-304. Review of federal actions; authority for**
12 **nullification of federal actions.**

13

14 (a) When evaluating a federal action under this act,
15 the legislature shall consider the plain reading and
16 reasoning of the text of the United States constitution and
17 the understood definitions at the time of the framing and
18 construction of the United States constitution by the
19 framers before making a final declaration of
20 constitutionality, as demonstrated by:

21

22 (i) The ratifying debates in the several states;

23

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

3

4 (iii) The understanding of the doctrine in
5 question by the constitutions of the several states in
6 existence at the time the United States constitution was
7 adopted;

8

9 (iv) The understanding of the United States
10 constitution by the first United States congress;

11

12 (v) The opinions of the first chief justice of
13 the United States supreme court;

14

15 (vi) The background understanding of the
16 doctrine in question under the principles comprising the
17 British constitution at the time the United States
18 constitution was ratified;

19

20 (vii) The statements of support for natural law
21 and natural rights by the framers and the philosophers
22 admired by the framers.

23

1 (b) Before conducting a roll call vote on the floor
2 of each house of the legislature to adopt an order of
3 nullification, the assigned committee may debate any order
4 of nullification, express its approval or disapproval and
5 add any penalty for violations. The results of all
6 committee action and the result of any roll call vote shall
7 be published in the journal of each house and disseminated
8 in the same manner as other bills.

9

10 (c) The legislature shall have the sole authority to
11 prescribe the crimes, fines, penalties or other
12 consequences of the violation of an order of nullification
13 by any person found within Wyoming. Any penalties
14 associated with nullification shall be specified in
15 accordance with law before a final vote is taken for
16 passage.

17

18 (d) All federal actions shall comply with the
19 jurisdictional limitations of the United States
20 constitution. Any federal action outside the enumerated
21 powers set forth in the United States constitution are in
22 violation of the peace and safety of the people of the
23 state of Wyoming, are void and shall be resisted.

1

2 (e) The proper manner of resistance of a void federal
3 action is a state action of nullification of the federal
4 action in accordance with this act.

5

6 (f) For purposes of this act, nullification of a
7 federal action shall be an official declaration of the
8 state made in accordance with this act that:

9

10 (i) A specific federal action has exceeded the
11 prescribed authority under the United States constitution;

12

13 (ii) The identified federal action that is
14 declared ultra vires shall not be recognized as valid
15 within the bounds of the state of Wyoming and shall be null
16 and void;

17

18 (iii) An officeholder, agency or government
19 employee of the state of Wyoming, city, county and any
20 other political subdivision shall not assist in any
21 attempted enforcement of the identified federal action;

22

1 (iv) State or local funds collected under the
2 authority of the Wyoming constitution or under Wyoming law
3 shall not be used to assist in any attempted enforcement of
4 the identified federal action.

5

6 **9-14-305. Petitions for reviewing federal action;**
7 **state nullification of unconstitutional federal actions.**

8

9 (a) A federal action that is unconstitutional may be
10 nullified in any of the following ways:

11

12 (i) The governor may issue an executive order
13 nullifying an unconstitutional federal action. Any
14 executive order issued under this paragraph shall bind all
15 agencies, boards and departments of the executive
16 department;

17

18 (ii) Any member or committee of the legislature
19 may introduce an order nullification in the legislature to
20 nullify an unconstitutional federal action. Any order of
21 nullification shall have the force and effect of law;

22

1 (iii) Any court operating under the authority of
2 the Wyoming constitution and Wyoming law may render a
3 finding or a holding of nullification in any case in which
4 the court has proper jurisdiction. Any parties subject to a
5 finding or holding under this paragraph shall be bound in
6 the same manner as in other cases or opinions;

7
8 (iv) Any combination of ten (10) cities, towns
9 or counties, through the action of a majority of the
10 governing body of each city, town or county, may submit a
11 petition of nullification of an unconstitutional federal
12 action to the speaker of the house of representatives or
13 the president of the senate and to the attorney general and
14 governor. Upon receipt of a valid petition submitted under
15 this paragraph, the speaker or president shall introduce a
16 legislative order to nullify the unconstitutional federal
17 action at the next legislative session;

18
19 (v) The people of Wyoming may submit a petition
20 of nullification of an unconstitutional federal action to
21 the secretary of state in accordance with subsection (b) of
22 this section. Upon receipt of a valid petition submitted
23 under this paragraph, the speaker or president shall

1 introduce a legislative order to nullify the
2 unconstitutional federal action at the next legislative
3 session.

4

5 (b) A petition submitted by the people to seek
6 nullification of an unconstitutional federal action shall
7 be submitted in accordance with all of the following:

8

9 (i) The petition shall be signed by not less
10 than two thousand (2,000) qualified electors of the state;

11

12 (ii) The petition shall be submitted to the
13 secretary of state;

14

15 (iii) The petition shall be in a form and manner
16 prescribed by rule of the secretary of state. The petition
17 shall include, at a minimum, the unconstitutional federal
18 action subject to the petition, the date or year of the
19 unconstitutional federal action, the federal branch,
20 official or agency that issued the action and the action or
21 part of the action believed to be unconstitutional;

22

1 (iv) Upon submission of a petition under this
2 subsection, the secretary of state shall review the
3 petition and determine whether the petition complies with
4 the requirements of this paragraph;

5

6 (v) Upon determining that a petition complies
7 with the requirements of this paragraph, the secretary of
8 state shall certify the petition and shall forward the
9 petition to the speaker of the house of representatives,
10 the president of the senate, the governor and the attorney
11 general for action in accordance with paragraph (a)(v) of
12 this section.

13

14 (c) The procedures for nullification specified in
15 this act may be used to challenge any federal action
16 enacted before, on or after the effective date of this act.
17 No order or petition for nullification shall be rejected
18 because of any perceived statute of limitation or because
19 of the time that has lapsed since the federal action was
20 first issued or taken.

21

1 **Section 2.** This act is effective immediately upon
2 completion of all acts necessary for a bill to become law
3 as provided by Article 4, Section 8 of the Wyoming
4 Constitution.

5

6

(END)