

By: Representatives Chism, Smith (39th)

To: Constitution

HOUSE BILL NO. 490

1 AN ACT TO CLARIFY THE COMPACT ENTERED INTO BETWEEN THE STATE  
 2 OF MISSISSIPPI AND THE UNITED STATES WHEN MISSISSIPPI WAS ADMITTED  
 3 TO STATEHOOD IN 1817; TO ASSERT THE SOVEREIGNTY OF THE STATE UNDER  
 4 THE MISSISSIPPI CONSTITUTION OF 1890; TO PROHIBIT THE INFRINGEMENT  
 5 OF THE CONSTITUTIONALLY PROTECTED RIGHTS OF THE STATE OF  
 6 MISSISSIPPI, OR ITS PEOPLE BY MEANS OF ANY FEDERAL STATUTE,  
 7 MANDATE, EXECUTIVE ORDER, JUDICIAL DECISION OR OTHER ACTION DEEMED  
 8 BY THE STATE TO BE UNCONSTITUTIONAL; TO CREATE THE JOINT  
 9 LEGISLATIVE COMMITTEE ON THE NEUTRALIZATION OF FEDERAL LAW; TO  
 10 PROVIDE FOR THE MEMBERSHIP AND DUTIES OF THE COMMITTEE; AND FOR  
 11 RELATED PURPOSES.

12 WHEREAS, the State of Mississippi has a compelling interest  
 13 as a sovereign state of the United States of America in the proper  
 14 implementation of protection and justice within its borders.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** The provisions of this act may be cited as the  
 17 "Mississippi Balance of Powers Act."

18 **SECTION 2.** The Mississippi State Legislature declares the  
 19 following:

20 (a) The Tenth Amendment to the United States  
 21 Constitution guarantees and reserves to the states and the people,  
 22 all powers not delegated to the federal government elsewhere in



23 the Constitution as they were originally intended and publicly  
24 understood at the time that the amendment was ratified on December  
25 15, 1791, and subject only to modifications by duly ratified  
26 subsequent amendments to the United States Constitution. The  
27 guarantee of those powers is a matter of compact between the state  
28 and people of Mississippi and the United States as of the time  
29 that Mississippi was admitted to statehood on December 10, 1817.

30 (b) In accordance with the compact between the state  
31 and people of Mississippi and the United States as of the time  
32 that Mississippi was admitted to statehood on December 10, 1817,  
33 the Tenth Amendment to the United States Constitution reserves to  
34 the state and people of Mississippi that, other than the  
35 enumerated powers expressly delegated to the United States under  
36 Article 1, Section 8 of the United States Constitution, Congress  
37 and the federal government are prohibited from exercising any  
38 purported additional control over, or from commandeering rights  
39 belonging to, the State of Mississippi, or its people.

40 (c) The United States Constitution was ratified on June  
41 21, 1788, and it affirms that the sole and sovereign power to  
42 regulate the state business and affairs rests in the state  
43 legislatures and that such power has always been a compelling  
44 state concern and central to state sovereignty and security.  
45 Accordingly, the foregoing public meaning and understanding of  
46 Article 1, Section 8, the Establishment Clause of the First  
47 Amendment and the Tenth Amendment, of the United States



48 Constitution is a matter of compact between the state and people  
49 of Mississippi and the United States as of the time that  
50 Mississippi was admitted to statehood. Further, the power to  
51 regulate commerce among the several states as delegated to the  
52 Congress in Article 1, Section 8, Clause 3 of the United States  
53 Constitution as understood at the time of the founding, was meant  
54 to empower Congress to regulate the buying and selling of products  
55 made by others, of land under certain circumstances, including  
56 associated finance and financial instruments, and the navigation  
57 and other carriage across state jurisdictional lines. This power  
58 to regulate commerce does not include the power to regulate  
59 agriculture, manufacturing, mining, major crimes, or land use, nor  
60 does it include activities that merely substantially affect  
61 commerce.

62 (d) At the time the United States Constitution was  
63 ratified, the commerce clause was not meant or understood to  
64 authorize Congress, the executive branch or the federal judiciary  
65 to regulate the state courts in the matter of state substantive  
66 law or state judicial procedure. This meaning and understanding  
67 of Article 1, Section 8, the Establishment Clause of the First  
68 Amendment and the Tenth Amendment, of the United States  
69 Constitution, as they pertain to the validity of religious,  
70 sectarian or foreign law as being controlling or influential  
71 precedent has never been modified by any duly ratified amendment  
72 to the United States Constitution. Accordingly, the foregoing



73 public meaning and understanding of Article 1, Section 8, and the  
74 Tenth Amendment, of the United States Constitution is a matter of  
75 compact between the state and people of Mississippi and the United  
76 States as of the time that Mississippi was admitted to statehood  
77 on December 10, 1817.

78 Further, under Article 1, Section 8, Clause 18 of the United  
79 States Constitution, the necessary and proper clause is not a  
80 blank check that empowers the federal government to do anything it  
81 deems necessary or proper. It is instead a limitation of power  
82 under the common law doctrine of principals and incidents, which  
83 restricts the power of Congress to exercise incidental powers.  
84 There are two (2) main conditions required for something to be  
85 incidental, and therefore, necessary and proper. The law or power  
86 exercised must be (i) directly applicable to the main, enumerated  
87 power and (ii) it must be lesser than the main power.

88 (e) In accordance with Article 1, Section 8, Clause 1  
89 of the United States Constitution, the general welfare clause does  
90 not empower the federal government with the ability to do anything  
91 it deems good. It is instead a general restriction limiting the  
92 exercise of the enumerated powers of Congress set forth in Article  
93 1, Section 8 of the United States Constitution, requiring that  
94 Congress only enact laws which serve all citizens well and  
95 equally. When James Madison was asked if this clause were a grant  
96 of power, he replied, "If not only the means but the objects are  
97 unlimited, the parchment [the Constitution] should be thrown into



98 the fire at once." Thus, we reestablish that this clause is a  
99 limitation on the power of the federal government to act in the  
100 welfare of all when passing laws in pursuance of the powers  
101 delegated to the United States, showing no favor to any race,  
102 creed, color or socio-economic class. Likewise, the commerce  
103 clause was not meant or understood to authorize Congress or the  
104 federal judiciary to establish religious, sectarian or foreign  
105 statutes or case law as controlling or influential precedent.  
106 Accordingly, the foregoing public meaning and understanding of  
107 Article 1, Section 8, the Establishment Clause of the First  
108 Amendment, and the Tenth Amendment, of the United States  
109 Constitution is a matter of compact between the state and people  
110 of Mississippi and the United States as of the time that  
111 Mississippi was admitted to statehood on December 10, 1817.

112 (f) We acknowledge that the commerce clause, the  
113 general welfare clause, and the necessary and proper clause of the  
114 United States Constitution were amended, and made more specific  
115 and limiting at the peoples' insistence, through the creation of  
116 the Bill of Rights, and more specifically, the Second Amendment,  
117 the Ninth Amendment and the Tenth Amendment. All amendments  
118 contained in the Bill of Rights were for the purpose of further  
119 restricting federal powers, vesting and/or retaining the ultimate  
120 power and control of the states by the people within the states.  
121 Therefore, we specifically reject and deny any federal claim of  
122 expanded and/or additional authority which the federal government



123 may from time to time attempt to exert, exercise or enforce under  
124 these clauses, as these actions totally disrupt and degrade the  
125 emphasis on the balance of powers articulated by the founding  
126 fathers of this country.

127 Further, the people of the State of Mississippi are aware  
128 that the federal government has amended and altered the spirit and  
129 the meaning of the commerce clause, without proper legislative  
130 authority through amendment. Therefore, we reject and deny this  
131 unauthorized and excessive abuse of power which has primarily  
132 acted as a detriment to states' rights and individual rights, a  
133 deliberate attempt to negatively alter the balance of powers.

134 **SECTION 3.** (1) In accordance with the United States  
135 Constitution, Congress and the federal government are denied the  
136 power to establish or affect laws within this state which are  
137 repugnant and obtrusive to the United States Constitution, the  
138 Mississippi Constitution of 1890, state law and the citizens of  
139 the state. The federal government is restrained and confined in  
140 authority by the eighteen (18) items as set forth in Article 1,  
141 Section 8 of the United States Constitution.

142 (2) Congress and the federal government are hereby denied  
143 the power to bind the states under foreign statute, court order or  
144 opinion, or executive order, other than those provisions duly  
145 ratified by the Congress as a treaty, so long as the treaty does  
146 not violate the Mississippi Constitution of 1890 or United States  
147 Constitution.



148 (3) No authority has ever been given to the legislative  
149 branch, the executive branch, or the judicial branch of the  
150 federal government, to preempt state legislation, or to destroy  
151 the balance of powers, which is set forth in the United States  
152 Constitution.

153 (4) The provisions of this act shall serve as a notice and  
154 demand to the federal government to cease and desist any and all  
155 activities outside the scope of its designated constitutionally  
156 enumerated powers, and that attempt to diminish the balance of  
157 powers as established.

158 **SECTION 4.** (1) To enforce a constitutional balance of  
159 powers, the Joint Legislative Committee on the Neutralization of  
160 Federal Laws is created. The membership of the committee is as  
161 follows: the Lieutenant Governor or his designee, six (6) members  
162 of the Senate appointed by the Lieutenant Governor, the Speaker of  
163 the House of Representatives or his designee and six (6) members  
164 of the House of Representatives appointed by the Speaker. No more  
165 than four (4) members of the Senate and no more than four (4)  
166 members of the House of Representatives may be from the same  
167 political party. Members shall serve two-year terms beginning and  
168 ending on the convening of the regular session of the Legislature  
169 each odd-numbered year. A majority of the members constitute a  
170 quorum for the transaction of business. The Lieutenant Governor  
171 and the Speaker shall serve as cochair of the committee, the  
172 committee shall meet on the call of either cochair.



173           (2) The committee shall recommend, propose and call for a  
174 vote by simple majority to neutralize in its entirety a specific  
175 federal law or regulation that is outside the scope of the powers  
176 delegated by the people to the federal government in the United  
177 States Constitution. The committee shall make its recommendation  
178 within thirty (30) days after receiving the federal legislation  
179 for consideration and process.

180           (3) The committee may review any and all existing federal  
181 statutes, mandates and executive orders for the purpose of  
182 determining their constitutionality. The committee may recommend  
183 for neutralization any existing federal statutes, mandates and  
184 executive orders enacted before the effective date of this act, if  
185 the committee determines that those measures are either beyond the  
186 scope and power assigned to the federal government under Article 1  
187 of the United States Constitution or in direct violation of the  
188 Mississippi Constitution of 1890.

189           (4) Upon the committee's recommendation for neutralization,  
190 each house of the Mississippi State Legislature shall vote on  
191 whether to neutralize the action within sixty (60) days after the  
192 committee's recommendation. Until the vote, the issue in question  
193 is of no effect. The Legislature's vote shall be documented in  
194 the journals of the respective houses.

195           (5) If the Mississippi State Legislature votes by simple  
196 majority to neutralize any federal statute, mandate or executive  
197 order on the grounds of its lack of proper constitutionality, then



198 the state and its citizens shall not recognize or be obligated to  
199 live under the statute, mandate or executive order.

200 (6) The committee shall also be charged to communicate the  
201 intentions of this act to the legislatures of the several states  
202 to assure that this state continues in the same esteem and  
203 friendship as currently exists, and that it considers union for  
204 specific national purposes and particularly those enumerated in  
205 the United States Constitution to be friendly to the peace,  
206 happiness and prosperity of all the states.

207 **SECTION 5.** (1) It is the duty of the Mississippi State  
208 Legislature to adopt and enact any and all measures that may  
209 become necessary to prevent the wrongful enforcement of any  
210 federal laws or regulations duly neutralized within the boundaries  
211 and limits of this state.

212 (2) Article 3, Section 2 of the United States Constitution  
213 states that in all cases affecting ambassadors, other public  
214 ministers and consuls, and those in which a state shall be party,  
215 the Supreme Court of the United States shall have original  
216 jurisdiction. In any cause of action between this state and the  
217 federal government regarding state neutralization of a federal  
218 legislation, judicial mandate or executive order, the proper  
219 jurisdiction for these disputes will lie with the Supreme Court of  
220 the United States alone. If there is improper adjudication by the  
221 Supreme Court, then the people's interest shall be maintained and  
222 retained through state referendum.



223           (3) Under the Tenth Amendment, the people and State of  
224 Mississippi retain their exclusive power to regulate the State of  
225 Mississippi, subject only to the Fourteenth Amendment's guarantee  
226 that the people and State of Mississippi shall exercise such  
227 sovereign power in accordance with each citizen's lawful  
228 privileges or immunities, and in compliance with the requirements  
229 of due process and equal protection of the law.

230           (4) The Ninth Amendment to the United States Constitution  
231 secures and reserves to the people of Mississippi, as against the  
232 federal government, their natural rights to life, liberty and  
233 property as entailed by the traditional Anglo-American conception  
234 of ordered liberty and as secured by state law, including, but not  
235 limited to, their rights as they were understood and secured by  
236 the law at the time that the amendment was ratified on December  
237 15, 1791, as well as their rights as they were understood and  
238 secured by the law in the State of Mississippi at the time the  
239 Mississippi Constitution of 1890 was adopted on November 1, 1890.  
240 The people and state hereby proclaim that the guarantee of those  
241 rights is a matter of compact between the state and people of  
242 Mississippi and the United States as of the time that Mississippi  
243 was admitted to statehood on December 10, 1817.

244           Upon passage of this act, a certified copy shall be sent to  
245 the President of the United States, the President of the United  
246 States Senate, the Speaker and Clerk of the United States House of  
247 Representatives, each member of the Mississippi congressional



248 delegation, with the request that this act be officially entered  
249 into the congressional record.

250           **SECTION 6.** This act shall take effect and be in force from  
251 and after its passage.

