

SECOND REGULAR SESSION

# HOUSE JOINT RESOLUTION NO. 88

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES NIEVES (Sponsor), JONES (89), EMERY, SCHARNHORST, SELF, LOEHNER, RUESTMAN, GATSCHENBERGER, SCHAD, SCHAAF, FLOOK, DUSENBERG, SATER, PRATT, TRACY, POLLOCK, KRAUS, STEVENSON, ERVIN, LEARA, GRISAMORE, ALLEN, BURLISON, NOLTE, DAVIS, WELLS, LAIR, SCHIEFFER, FISHER (125), ZERR, SANDER, SMITH (14), PARKINSON, BIVINS, KOENIG, SCHOELLER, DETHROW, FUNDERBURK, SCHLOTTACH, FLANIGAN, MUNZLINGER, MCGHEE, KINGERY, VIEBROCK, WETER, FAITH, NANCE, DUGGER, THOMSON, WILSON (130), DENISON, SMITH (150) AND GUERNSEY (Co-sponsors).

4464L.011

D. ADAM CRUMBLISS, Chief Clerk

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### JOINT RESOLUTION

Submitting to the qualified voters of Missouri, an amendment to article I of the Constitution of Missouri, and adopting one new section relating to state sovereignty.

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*Be it resolved by the House of Representatives, the Senate concurring therein:*

That at the next general election to be held in the state of Missouri, on Tuesday next following the first Monday in November, 2010, or at a special election to be called by the governor for that purpose, there is hereby submitted to the qualified voters of this state, for adoption or rejection, the following amendment to article I of the Constitution of the state of Missouri:

Section A. Article I, Constitution of Missouri, is amended by adding one new section, to be known as section 35, to read as follows:

**Section 35. 1. The state of Missouri hereby enforces its constitutional sovereignty and the sovereignty of its citizens under the Tenth Amendment to the Constitution of the United States of America over all powers not enumerated and delegated to the federal government by the Constitution of the United States of America, nor prohibited by it to the states.**

**2. The state of Missouri shall:**

**(1) Uphold and defend the Constitution of the United States of America by hereby prohibiting the Missouri legislative, executive, and judicial branches of government from**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

9 recognizing, enforcing, or acting in furtherance of any federal law, executive order, judicial  
10 ruling, administrative ruling, collection of revenue, dispersal of revenue, or other action  
11 by the legislative, executive, or judicial branches of the federal government that exceeds  
12 the limited powers enumerated and delegated to the federal government;

13 (2) Not recognize, enforce, or act in furtherance of the following:

14 (a) Federal actions restricting the right of private citizens to bear arms;

15 (b) Federal actions legalizing or funding abortions, or the destruction of any  
16 embryo containing human DNA from the zygote stage onward through all stages of  
17 development;

18 (c) Any federal action requiring the sale or trade of carbon credits or imposing a  
19 tax, fee, fine, or penalty on the release of carbon emissions;

20 (d) Federal actions involving a public option for health care, mandating end of life  
21 counseling, rationing health care, dictating or limiting the type of treatment a doctor may  
22 provide to his or her patient, authorizing or mandating the collection of a patient's medical  
23 record into a database, covering illegal aliens under health insurance or prohibiting  
24 enforcement of laws regarding coverage for illegal aliens, mandating the benefits health  
25 insurance must cover, requiring insurance providers to cover abortion services, restricting  
26 the ability of patients to purchase health insurance in another state, or assessing fees, fines,  
27 or penalties on employers who do not provide health insurance to their employees;

28 (e) Any federal action mandating the recognition of same sex marriage, civil unions,  
29 or any relationship other than the marriage of one man and one woman;

30 (f) Any federal action increasing the punishment for a crime based on the thoughts  
31 of the perpetrator or the designation of the crime as a "hate crime";

32 (g) Any federal action regarding the establishment clause based upon a "wall of  
33 separation" between church and state. As Supreme Court Justice William Rehnquist  
34 wrote in *Wallace v. Jafree*, 472 U.S. 38, 99: "It is impossible to build sound constitutional  
35 doctrine upon a mistaken understanding of Constitutional history. . . . The establishment  
36 clause has been expressly freighted with Jefferson's misleading metaphor for nearly forty  
37 years. . . . There is simply no historical foundation for the proposition that the framers  
38 intended to build a wall of separation [between church and state]. . . . The recent court  
39 decisions are in no way based on either the language or intent of the framers.";

40 (h) Any federal action restricting the right of parents or guardians to home school,  
41 enroll their children in a private or parochial school, or placing restrictions on curriculum;

42 (3) Interpret the Constitution of the United States of America based on its language  
43 and the intent of the signers of the Constitution at the time of its passage. The several  
44 amendments shall be interpreted by their language and the intent of the congressional

45 sponsor and co-sponsors of the amendment. Any interpretation of the Constitution based  
46 on an emerging awareness, penumbras or shadows of the Constitution, a theory of the  
47 Constitution being a "living, breathing document", or any interpretation that expands  
48 federal authority beyond the limited powers enumerated and delegated to the federal  
49 government, without an amendment to the Constitution, shall be deemed to exceed the  
50 limited powers enumerated and delegated to the federal government;

51 (4) Missouri citizens shall have standing to bring a cause of action to enforce the  
52 provisions of this section. Enforcement of this section shall apply to federal actions taking  
53 effect after approval of this section by Missouri voters, federal actions enumerated herein,  
54 and any federal action, regardless of its effective date, the general assembly or Missouri  
55 supreme court shall hereafter determine, in accordance with subparagraph (3) of this  
56 subsection, to exceed the powers enumerated and delegated to the federal government by  
57 the Constitution of the United States of America;

58 (5) As used in this section, the following terms mean:

59 (a) "Federal action", any federal law, executive order, judicial ruling,  
60 administrative ruling, collection of revenue, dispersal of revenue, or other action by the  
61 legislative, executive, or judicial branches of the federal government that exceeds the  
62 limited powers enumerated and delegated to the federal government by the Constitution;

63 (b) "Public option", any health insurance plan passed after January 1, 2009,  
64 operated by the federal government or its agent that competes directly or indirectly with  
65 private health insurance providers;

66 (c) "Constitution", the Constitution of the United States of America;

67 (6) The provisions of this section are self-executing. All of the provisions of this  
68 section are severable. If any of the provisions of this section is found by a court of  
69 competent jurisdiction, in compliance with subparagraph (3) of this subsection, to be  
70 unconstitutional or unconstitutionally enacted, the remaining provisions of this section  
71 shall be and remain valid. Any ruling by a court of competent jurisdiction in violation of  
72 subparagraph (3) of this subsection shall be invalid and not recognized, enforced, or  
73 otherwise furthered in the state of Missouri.

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