

# Resolutions Adopted by the Kentucky General Assembly

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In the House of Representatives, November 10th, 1798.

I. Resolved, that the several states composing the United States of America, are not united on the principle of unlimited submission to their General Government; but that by compact under the style and title of a Constitution for the United States and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving each state to itself, the residuary mass of right to their own self Government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force: That to this compact each state acceded as a state, and is an integral party, its co-states forming as to itself, the other party: That the Government created by this compact was not made the exclusive or final *judge* of the extent of the powers delegated to itself; since that would have made its discretion, and not the constitution, the measure of its powers; but that as in all other cases of compact among parties having no common Judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

II. Resolved, that the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the High Seas, and offences against the laws of nations, and no other crimes whatever, and it being true as a general principle, and one of the amendments to the Constitution having also declared, “that the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people,” therefore also the same act of Congress passed on the 14th day of July, 1798, and entitled “An act in addition to the act entitled an act for the punishment of certain crimes against the United States;” as also the act passed by them on the 27th day of June, 1798, entitled “An act to punish frauds committed on the Bank of the United States” (and all other their acts which assume to create, define, or punish crimes other than those enumerated in the constitution) are altogether void and of no force, and that the power to create, define, and punish such other crimes is reserved, and of right appertains solely and exclusively to the respective states, each within its own Territory.

III. Resolved, that it is true as a general principle, and is also expressly declared by one of the amendments to the Constitution that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people;” and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the states, all lawful powers respecting the same did of right remain, and were reserved to the states, or to the people: That thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use, should be tolerated rather than the use be destroyed; and thus also they guarded against all abridgement by the United States of the freedom of religious opinions<sup>[1]</sup> and exercises, and retained to themselves the right of protecting the same, as this state by a Law passed on the general demand of its Citizens, had already protected them from all human restraint or interference: And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution which expressly declares, that “Congress shall make no law respecting an Establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press,” thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch, that whatever violates either, throws down the sanctuary which covers the others, and that libels, falsehoods, and

defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That therefore the act of the Congress of the United States passed on the 14th day of July 1798, entitled “An act in addition to the act for the punishment of certain crimes against the United States,” which does abridge the freedom of the press, is not law, but is altogether void and of no effect.[2]

IV. Resolved, that alien friends are under the jurisdiction and protection of the laws of the state wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual states distinct from their power over citizens; and it being true as a general principle, and one of the amendments to the Constitution having also declared, that “the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people,” the act of the Congress of the United States passed on the 22d day of June, 1798, entitled “An act concerning aliens,” which assumes power over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

V. Resolved, that in addition to the general principle as well as the express declaration, that powers not delegated are reserved, another and more special provision inserted in the Constitution from abundant caution has declared, “that the *migration* or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808.” That this Commonwealth does admit the migration of alien friends described as the subject of the said act concerning aliens; that a provision against prohibiting their migration, is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them when migrated is equivalent to a prohibition of their migration, and is therefore contrary to the said provision of the Constitution, and void.

VI. Resolved, that the imprisonment of a person under the protection of the Laws of this Commonwealth on his failure to obey the simple *order* of the President to depart out of the United States, as is undertaken by the said act entitled “An act concerning Aliens,” is contrary to the Constitution, one amendment to which has provided, that “no person shall be deprived of liberty without due process of law,” and that another having provided “that in all criminal prosecutions, the accused shall enjoy the right to a public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence,” the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the Law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favour, without defence, without counsel, is contrary to these provisions also of the Constitution, is therefore not law but utterly void and of no force.

That transferring the power of judging any person who is under the protection of the laws, from the Courts to the President of the United States, as is undertaken by the same act concerning Aliens, is against the article of the Constitution which provides, that “the judicial power of the United States shall be vested in Courts, the Judges of which shall hold their offices during good behaviour,” and that the said act is void for that reason also; and it is further to be noted, that this transfer of Judiciary power is to that magistrate of the General Government who already possesses all the Executive, and a qualified negative in all the Legislative powers.

VII. Resolved, that the construction applied by the General Government (as is evinced[3] by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence, and general welfare of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the Constitution—That words meant by that instrument to be subsidiary only to the execution of the limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part so to be taken, as to destroy the whole residue of the instrument: That the proceedings of the General Government under colour of these articles, will be a fit and necessary subject for revisal and correction at a time of greater tranquility, while those specified in the preceding resolutions call for immediate redress.

VIII. Resolved, that the preceding Resolutions be transmitted to the Senators and Representatives in Congress from this Commonwealth, who are hereby enjoined to present the same to their respective Houses, and to use their best endeavours to procure at the next session of Congress, a repeal of the aforesaid unconstitutional and obnoxious acts.

IX. Resolved lastly, that the Governor of this Commonwealth be, and is hereby authorised and requested to communicate the preceding Resolutions to the Legislatures of the several States, to assure them that this Commonwealth considers Union for specified National purposes, and particularly for those specified in their late Federal Compact, to be friendly to the peace, happiness, and prosperity of all the states: that faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the states all the powers of self government, and transfer them to a general and consolidated Government, without regard to the special

delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these states: And that therefore, this Commonwealth is determined, as it doubts not its Co-states are, tamely<sup>[4]</sup> to submit to undelegated & consequently unlimited powers in no man or body of men on earth: that if the acts before specified should stand, these conclusions would flow from them; that the General Government may place any act they think proper on the list of crimes & punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them: that they may transfer its cognizance to the President or any other person, who may himself be the accuser, counsel, judge, and jury, whose *suspicious* may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction: that a very numerous and valuable description of the inhabitants of these states, being by this precedent reduced as outlaws to the absolute dominion of one man and the barrier of the Constitution thus swept away from us all, no rampart now remains against the passions and the power of a majority of Congress, to protect from a like exportation or other more<sup>[5]</sup> grievous punishment the minority of the same body, the Legislatures, Judges, Governors, & Counsellors of the states, nor their other peaceable inhabitants who may venture to reclaim the constitutional rights & liberties of the states & people, or who for other causes, good or bad, may be obnoxious to the views or marked by the suspicions of the President, or be thought dangerous to his or their elections or other interests public or personal: that the friendless alien has indeed been selected as the safest subject of a first experiment: but the citizen will soon follow, or rather has already followed; for, already has a Sedition Act marked him as its prey: that these and successive acts of the same character, unless arrested at the threshold, may tend to<sup>[6]</sup> drive these states into revolution and blood, and will furnish new calumnies against Republican Governments, and new pretexts for those who wish it to be believed, that man cannot be governed but by a rod of iron: that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is every where the parent of despotism: free government is founded in jealousy and not in confidence; it is jealousy and not confidence which prescribes limited Constitutions to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which and no further our confidence may go; and let the honest advocate of confidence read the Alien and Sedition Acts, and say if the Constitution has not been wise in fixing limits to the Government it created, and whether we should be wise in destroying those limits? Let him say what the Government is if it be not a tyranny, which the men of our choice have conferred on the President, and the President of our choice has assented to and accepted over the friendly strangers, to whom the mild spirit of our Country and its laws had pledged hospitality and protection: that the men of our choice have more respected the bare suspicions of the President than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms & substance of law and justice. In questions of power then let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution. That this Commonwealth does therefore call on its Co-states for an expression of their sentiments on the acts concerning Aliens, and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or are not authorised by the Federal Compact? And it doubts not that their sense will be so announced as to prove their attachment unaltered to limited Government, whether general or particular, and that the rights and liberties of their Co-states will be exposed to no dangers by remaining embarked on a common bottom with their own: That they will concur with this Commonwealth in considering the said acts as so palpably against the Constitution as to amount to an undisguised declaration, that the Compact is not meant to be the measure of the powers of the General Government, but that it will proceed in the exercise over these states of all powers whatsoever: That they will view this as seizing the rights of the states and consolidating them in the hands of the General Government with a power assumed to bind the states (not merely in cases made federal) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent: That this would be to surrender the form of Government we have chosen, and to live under one deriving its powers from its own will, and not from our authority; and that the Co-states recurring to their natural right in cases not made federal, will concur in declaring these acts void and of no force, and will each unite with this Commonwealth in requesting their repeal at the next session of Congress

Text from a broadside printed by Hunter and Beaumont, Frankfort, Kentucky (Evans, Nos. 33952, 33953, apparently both printed from the same lines of type, the columns differently arranged for the two printings); across top of page: "Legislature of Kentucky" (Evans, No. 33952), "Kentucky Legislature" (Evans, No. 33953); between dateline and text: "The House according to the standing Order of the Day, resolved itself into a Committee of the Whole on the state of the Commonwealth, Mr. CALDWELL in the Chair, And after sometime spent therein the Speaker resumed the Chair, and Mr. Caldwell reported, that the Committee had according to order had under consideration the Governor's Address, and had come to the following Resolutions thereupon, which he delivered in at the Clerk's table, where they were twice read and agreed to by the House"; at foot of text: names of Edward Bullock, speaker of the Kentucky House of Representatives, and John Campbell, speaker pro tem of the Senate; attestation by clerks that the resolutions were passed by the House on 10 Nov. and the Senate unanimously concurred on 13 Nov.; approval by Governor James Garrard, 16

Nov., certified by Harry Toulmin, secretary of state; near the end of the final resolution the phrase “deriving its powers from its own will” appears in the originals as “deriving it powers. . . .” Broadside (Evans, No. 48494); also by Hunter and Beaumont; at head of text: “Wednesday, Nov. 7, 1798. Mr. BRECKENRIDGE gave notice that he would on To-morrow move the House to go into a Committee of the whole on the state of the Commonwealth, on that part of the Governor’s address which relates to certain unconstitutional laws passed at the last session of Congress, and that he would then move certain resolutions on that subject. Thursday, Nov. 8. The House according to the order of the day resolved itself into a Committee of the whole on the state of the Commonwealth, and Mr. Breckenridge according to his notice yesterday moved the following RESOLUTIONS, which were seconded by Mr. Johnson”; substantive differences between this version and that passed by the assembly are noted below.

[1]Evans, No. 48494: “principles.”

[2]Evans, No. 48494: “force.”

[3]Evans, No. 48494: “evident.”

[4]Word lacking in Evans, No. 48494, and in the resolutions as printed in *Kentucky Gazette*, 14 Nov. 1798.

[5]Word lacking in Evans, No. 48494.

[6]In place of the preceding three words Evans, No. 48494, has “necessarily.”

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