

## Model Legislation (SPA)

[Proposed Draft Language for Missouri 2018 February 22]

Summary: Petition for a **State Powers Amendment (SPA)**

In one sentence:

SPA empowers the States acting together to repeal/revoke any federal law or regulations (in whole or part) or to overrule Court decisions by restricting jurisdiction.

The idea is:

To **petition the Congress** of the United States to **propose an amendment** to the Constitution **empowering a “representative majority” of the state legislatures:**

(1) to **repeal any federal law** or regulation by tantamount resolutions thereon;

(2) to **regulate exceptions to the appellate Jurisdiction** of the Courts of the United States by identical resolutions for this purpose no more than five years apart.

(“Representative Majority” = A majority of states with a majority of Representatives in the House)

To invite all the several states to join support in this petition, that **should Congress fail to act after two-thirds of the several states petition alike in substance, a “convention to propose amendments”** under Article V of the United States Constitution **is the proper course.**

## CONCURRENT RESOLUTION

WHEREAS, Article I of the United States Constitution begins “All legislative powers herein granted shall be vested in a Congress”; and

WHEREAS, the Congress has exceeded the legislative powers granted in the Constitution thereby encroaching on the powers that are “reserved to the states respectively, or to the people” as the Tenth Amendment affirms and the rights “retained by the people” to which the Ninth Amendment refers; and

WHEREAS, in Federalist No. 10, James Madison wrote that “No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, . . . with greater reason, a body of men are unfit to be both judges and parties at the same time;” and

WHEREAS, this same principle was emphasized in the 1798 Kentucky Resolutions (drafted by Thomas Jefferson) that the United States government “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;” and

WHEREAS, the Congress has latent but neglected powers to correct such Judicial Supremacy by means of Article III Section 2 regulations on Appellate Jurisdiction, yet by similar reasoning such regulatory powers should be additionally extended to the Several States, heeding Jefferson’s warnings that we not make the Constitution ‘a mere thing of wax in the hands of the judiciary’ for “to consider the judges as the ultimate arbiters of all constitutional questions” would then “place us under the despotism of an oligarchy”, rather “the people themselves” are the “true corrective of constitutional abuses” and the States remain the closest and most representative voice of the people; and

WHEREAS, the United States Constitution should then be amended to enable the several states to correct violations of the limited powers by the United States and thereby restore the proper balance between the

powers of Congress and those of the several States, and better prevent the denial or disparagement of the rights retained by the people.

NOW THEREFORE BE IT RESOLVED that the members of the Missouri Senate, Ninety-ninth General Assembly, Second Regular Session, the House of Representatives concurring therein, hereby strongly urge the Congress of the United States to propose the following amendment, known as the State Powers Amendment, or SPA:

“Section 1.

Any provision of law or regulation of the United States may be repealed by the several states, and such repeal shall be effective when the legislatures of a Representative Majority of the several states approve resolutions for this purpose that particularly describe the same provision or provisions of law or regulation to be repealed. A Representative Majority of the several states is a majority of the states also having together a majority of the apportioned Representatives in the Congress.”

“Section 2.

The several States shall have Power to make Regulations and Exceptions to the appellate Jurisdiction of the Supreme Court and all inferior Courts and Tribunals of the United States, and such regulations and exceptions shall be effective when the legislatures of a Representative Majority of the several States approve identical resolutions for this purpose no more than five years apart.”

AND BE IT FURTHER RESOLVED that should the Congress fail to act after two-thirds of the Several States petition alike in substance for a State Powers Amendment, then a "convention to propose amendments" under Article V of the United States Constitution shall be the proper course and that delegates to such convention should be selected by the legislatures in the several states and should vote by state, according to the practices established by the 1787 Federal Convention in Philadelphia; and

BE IT FURTHER RESOLVED that the state of Missouri reserve its further right to petition in the same manner for further amendments as the General Assembly may deem warranted; and

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to the Legislatures of all the several states inviting them to likewise join in support of this petition; and

BE IT FURTHER RESOLVED that the Secretary of the Missouri Senate be instructed to prepare properly inscribed copies of this resolution for the Speaker of the United States House of Representatives, the President of the United States Senate, and each member of the Missouri Congressional delegation.