



Written by [Joe Wolverton, II, J.D.](#) on January 11, 2014

Good News and Bad News for ObamaCare Nullification

If one liberty-minded lawmaker has his way, ObamaCare won't be welcome in West Virginia.

[Eric Householder, a member of the state House of Delegates](#), intends to offer a bill that would effectively void key provisions of the Affordable Care Act (ACA) within West Virginia.

"As you know, for the first time in our history, Americans are going to be forced to purchase health insurance — or be penalized heavily by the federal government," Householder said, as [reported by the Martinsburg \(West Virginia\) Journal-News](#).

"Obamacare would enact up to 20 new taxes, costing American taxpayers up to \$800 billion over a 10-year period."

Householder's bill would make it a felony to attempt to enforce ObamaCare, as well.

In his statements quoted in the *Journal-News*, Householder demonstrates that he understands the role of states in protecting the people from unconstitutional demands of the federal government.

"West Virginia can put a stop to this federal overreach within its borders, and this legislation will do just that," he said.

Householder goes on to use Chief Justice Roberts' decision in the ObamaCare case to justify his refusal to cooperate in the health care scheme. As the *Journal-News* reported:

According to Householder, Supreme Court Justice John Roberts suggested that if states act as sovereign bodies, as outlined in the Constitution's Tenth Amendment, the federal government can't impose the ACA on them.

"Following Roberts' logic, the states must 'act sovereign' and tell the federal government the state will not participate," Householder said. "Health insurance is created and regulated within a specific state. It is intrastate commerce, which means the federal government has no authority to regulate it under the Tenth Amendment."

He's right. The Tenth Amendment specifically recognizes the retention by the states of what James Madison described as "numerous and indefinite" powers. On the other hand, the federal government's powers are "few and defined."

The ObamaCare ruling cited by Householder is a perfect example of the situation described by [Patrick Henry during the Virginia ratification convention](#) where the states will need to thwart the federal assault on liberty:

If there be a real check intended to be left on Congress, it must be left in the state governments. There will be some check, as long as the judges are incorrupt. As long as they are upright, you may





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preserve your liberty. But what will the judges determine when the state and federal authority come to be contrasted? Will your liberty then be secure, when the congressional laws are declared paramount to the laws of your state, and the judges are sworn to support them?

All state legislators are obliged to follow Householder's example and through the exercise of the Tenth Amendment stop ObamaCare at the state borders by enacting state statutes nullifying the healthcare law and criminalizing state participation in carrying out the president's unconstitutional orders.

Householder understands federalism and the role of states in "erecting barriers" against federal power grabs.

Nullification recognizes the power of states to invalidate any federal measure that a state deems unconstitutional. Nullification is founded on the fact that the sovereign states formed the union, and as creators of the compact, they define the limits of the power of the federal government.

Despite the improving prospects for the Constitution in West Virginia, the news on ObamaCare nullification isn't all good, however.

A report out of South Carolina contains a disturbing statement made by state senator Tom Davis, a sponsor of the Palmetto State senate's anti-ACA bill.

In a statement published on [a Tea Party website](#), Davis said nullification was not "an available remedy" and then went on to misinterpret Article VI's so-called "Supremacy Clause" and perpetuate the myth of unquestionable judicial authority. Read my take on those [egregious errors here](#).

Island Packet quotes Davis's denial of a state's power to nullify ObamaCare:

"The conversation really has gotten off the rails a little bit," Davis said Wednesday, after holding three public hearings across the state that drew hundreds. "Everybody talks about nullification. This isn't nullification. We can't nullify."

Can't nullify? States must nullify!

As James Madison wrote in the [Virginia Resolution of 1798](#):

In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

So, someone should tell Senator Davis that not only can South Carolina nullify ObamaCare, but it is *duty bound* to do so.

Davis believes, though, that the South Carolina legislature's only option is to delay enforcement of ObamaCare "as best they can until such time as Congress repeals the Affordable Care Act."

Nullification is growing in popularity because a quickly multiplying number of concerned citizens of every state are learning the hard way that Congress will never repeal any of the unconstitutional acts it has passed. Reluctantly, people have stopped recurring to that body of so-called representatives for aid in the war against the federal assault on liberty.

This same frustrated group of citizens also is beginning to realize the futility of filing legal complaints in the hope that the federal courts will strike down offensive measures.

They understand that while there might once have been a day when these tactics were effective, those



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days are gone and those responses to the federal government's abuses of power are futile.

That said, there is no reason that concerned citizens should not use every weapon in the constitutional arsenal, including working to convince Congress to repeal this offensive act.

Concerned citizens refuse to wait on Washington to fix a problem Washington caused. Instead, they know they need to forcibly derail the "long train of abuses and usurpations" and "provide new Guards for their future security" — the states and themselves.

Senator Davis's opinion to the contrary, nullification is still the "[rightful remedy](#)."

Acts not authorized under the enumerated powers of the Constitution are "[merely acts of usurpations](#)" and deserve to be disregarded, ignored, and denied any legal effect.

More state legislators need to learn this. Familiarity with these facts is fundamental to a reclaiming of state authority and removing the threat to liberty posed by the centralization of power in the federal government.

Until the states get over [their inferiority complex](#), though, there will be no end of the federal government's demands and state reliance on the federal government will make their compliance compulsory.

The trajectory is easy to see and follow into the future. The federal government will — mandate by mandate, regulation by regulation, grant program by grant program — devolve into a central government after the model of the so-called European democracies.

Senator Davis and any of his colleagues who are hesitant to boldly nullify every unconstitutional act, every time, without exception, should read these words from Edward Livingston of New York during the debates in Congress about the [Alien and Sedition Acts](#), the legislation that caused Thomas Jefferson and James Madison to write the Kentucky and Virginia Resolutions:

Whenever our laws manifestly infringe the Constitution under which they were made, the people ought not hesitate which they should obey. If we exceed our powers, we become tyrants, and our acts have no effect.

To Delegate Householder's credit, he is no stranger to the duty of state legislators to push back against the federal onslaught. During the 2013 legislative session, he sponsored [the bill prohibiting West Virginia's participation in the federal REAL ID program](#).

The legislative session in West Virginia just began and the year begins for South Carolina's lawmakers on January 14, so there is still time to congratulate West Virginia Delegate Eric Householder and correct South Carolina State Senator Tom Davis.

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