Written by **Joe Wolverton, II, J.D.** on January 5, 2014

11 State Attorneys General: Obama's So-called ObamaCare Tweaking Illegal

President Obama may claim that his executive actions to change laws passed by Congress are mere tweaks and technicalities, but in reality he is usurping legislative powers belonging to Congress every time he changes so much as a comma, let along makes substantive changes.

The very first sentence in Article I, Section 1 of the Constitution states that "all legislative Powers herein granted shall be vested in a Congress of the United States," which means of course that zero legislative powers are vested in the presidency, despite whatever claims or rationale Obama may provide to the contrary.

In letter dated December 26, 11 state attorneys general defend the separation of powers built into the U.S. Constitution and explain that Obama is acting illegally every time he changes provisions of his hallmark healthcare debacle — ObamaCare.

The Fiscal Times reports:

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> West Virginia Attorney General Patrick Morrisey sent a letter on Thursday [December 26] to Health and Human Services Secretary Kathleen Sebelius questioning the constitutionality of the president's latest executive action that allowed insurance companies to continue offering plans that had been cancelled. The letter, signed by attorneys general from Republican-dominated states including Alabama, Georgia, Idaho, Kansas, Louisiana, Michigan, Nebraska, Oklahoma, Texas and Virginia, called the rule change "flatly illegal under federal constitutional and statutory law."
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> "We support allowing citizens to keep their health insurance coverage, but the only way to fix this problem-ridden law is to enact changes lawfully: through Congressional action," the letter said. "The illegal actions by this administration must stop."

Regardless of the White House's rhetoric, it is simple to understanding that any alterations to a law creates, in fact, a new law. Any new law must be passed, as the AGs rightly point out, by Congress as prescribed by the Constitution.

In their letter, the 11 attorneys general make the case that the separation of powers that the president is violating is one of the core concepts of freedom from tyranny undergirding our Constitution.

James Madison warned of such a situation — when one body would unconstitutionally consolidate all authority — in *The Federalist*, No. 46. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny," Madison wrote.

While the action of the attorneys general is praiseworthy, as is their understanding of the need to keep each branch of the federal government within the boundaries of its powers as drawn by the Constitution, writing letters to Kathleen Sebelius is unlikely to keep President Obama from "tweaking" the healthcare law and acting as the autocrat that he believes he has the right and power to be.

One of the most potent weapons — and one of the most constitutionally sound — is nullification.

The states, through the exercise of the 10th Amendment and their authority to rule as sovereign entities, may stop ObamaCare at the state borders by enacting state statutes nullifying the healthcare law and criminalizing state participation in administering or executing the unconstitutional provisions thereof.

Nullification is the "rightful remedy" and is a much more constitutionally sound method of checking federal usurpation. It is quicker and less complicated than an attempt to have the law repealed by Congress or overturned by a future federal bench more respectful of the Constitution.

The best defense of nullification is found in Thomas Jefferson's Kentucky Resolution of 1798. In the Kentucky Resolution, Jefferson plainly pointed to the constitutional source of all federal power. He wrote:

> That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour [sic] of that instrument, is the rightful remedy.

All state legislative bodies have an obligation to liberty and to their citizens to follow the example of legislative chambers in states such as South Carolina, Missouri, and Oklahoma by voting to nullify unconstitutional ObamaCare mandates.

Nullification is a concept of constitutional law that recognizes the right of each state to nullify, or invalidate, any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the Constitution.

This power is founded on the assertion that the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

In the wake of the Supreme Court's ObamaCare decision, supporters of American federalism are encouraged to see state legislators boldly asserting their right to restrain the federal government through application of the very powerful and very constitutional principle of nullification.

Perhaps, though, there is even a stronger compulsion for elected and appointed state officials to stop ObamaCare at the state borders.

It would seem that resisting federal trampling of the Constitution is not only a right of state lawmakers, it is a constitutional obligation.

Article VI, Clause 3 reads:

> The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Simply put, this clause puts all state legislators under a legally binding obligation (assuming they've

taken their oath of office) to "support the Constitution."

There is no better way, it would seem, for these elected state representatives of the people to show support for the Constitution than by demanding that the officers of the federal government adhere to constitutional limits on their power.

Maybe more of these state legislators, attorneys general, and judges would be more inclined to perform their Article VI duty if the people that put them in office would sue them and hold them legally accountable for any failures to carry this burden.

Imagine, furthermore, the uproar in state assemblies across the country if every day the legislators were in session process servers showed up at their offices armed with lawsuits charging them with dereliction of their constitutional duty!

Again, the 11 attorneys general are to be commended for their efforts and for their concern for the preservation of these key concepts of constitutionally protected liberties. Something must be done and they are doing something.

If more isn't done, and soon, however, more of Madison's predictions might come true. For example, in *The Federalist*, No. 16, Madison writes that if state governments allow federal programs to be directly imposed on the people without the interference of the state legislatures, the result would be an "open and violent exertion of an unconstitutional power."

President Obama, in "tweaking" a law is making a new law and that is an outright, unapologetic assumption of powers that do not belong to him or to any president. As one observer wrote, the president cannot "change a single semicolon of a federal law by himself."

Who will try to stop him from step by step consolidating all power until he is the de facto dictator of the once free United States?

It is up to the states, the states that created the federal government, to interpose and defend the liberties and rule of law that have guaranteed the right of all men to be free from the dictates of despots.

Nullification by state legislators and governors of every unconstitutional act, every time one is passed by Congress and signed by the president, is the best and surest way for state lawmakers to discharge their constitutional duty to "preserve, protect, and defend" the Constitution of the United States.

And, as the ultimate sovereigns, we, the people, must demand that our elected officials uphold their oaths and prevent the president or anyone from "tweaking" any law without constitutional authority to do so.

Although ObamaCare certainly isn't a "law" in that it was a usurpation of power and deserves to be treated as such, states are right to fight the battle against it on all fronts.

Photo of President Obama: AP Images

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