Written by **Joe Wolverton, II, J.D.** on January 26, 2017

Arizona State House Considers Bill to Block All Unconstitutional Federal Acts

This week, a bill was approved by a second committee of the Arizona House of Representatives that, if passed into law, would prevent state officials from complying with unconstitutional acts of the federal government.

The bill, HB 2097, was introduced by state Representative Bob Thorpe and specifically prohibits state resources from being used to participate in the execution of any federal "action" not within the federal government's enumerated constitutional authority.

In the text of the bill, "action" is defined as "an executive order issued by the president of the United States; a rule, regulation or policy directive issued by an agency of the United States; a ruling issued by a court of the United States; a law or other measure enacted by the Congress of the United States."

Furthermore, the attempt by the federal government to force Arizona to participate — a doctrine known as "commandeering" — is outlawed, as well.

The proposal specifically prohibits "this state and any county, city or town of this state from using any personnel or financial resources to enforce, administer or cooperate with any action of the united states government that constitutes commandeering."

In what is perhaps the proposal's most powerful provision, the public is authorized to present to the state legislature evidence of unlawful participation with unconstitutional federal programs and policies.

The bill directs that "the legislature shall consider written complaints received from residents, groups, organizations, businesses or government agencies of this state concerning any suspected commandeering action by the United States government."

States, James Madison said in *The Federalist*, No. 46, possess a "means of opposition" to federal overreach: "refusal to cooperate with the officers of the Union."

About 10 years later, Madison said that states have not only the right to resist encroachments of the federal government, but also an obligation to do so. "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 fact 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," Madison wrote in the Virginia Resolution of 1798.

Constitutionally speaking, then, whenever the federal government passes any measure not provided for in the limited roster of its enumerated powers, those acts are not the final word. Instead, they are "merely acts of usurpation" and do not qualify as the supreme law of the land. In fact, acts of Congress are the supreme law of the land only if they are made in pursuance of its constitutional powers, not in

defiance thereof.

Alexander Hamilton put an even finer point on the issue when he wrote in *The Federalist*, No. 78, "There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid."

Put simply, anti-commandeering prohibits the federal government from forcing states to participate in any federal program that does not concern "international and interstate matters."

While this expression of federalism ("dual sovereignty," as it was named by Justice Antonin Scalia) was first set forth in the case of *New York v. United States* (1992), most recently it was reaffirmed by the high court in the case of *Mack and Printz v. United States* (1997).

Writing for the majority, Justice Antonin Scalia explained:

> As Madison expressed it: "The local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere." The Federalist No. 39, at 245. [n.11]
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> This separation of the two spheres is one of the Constitution's structural protections of liberty. "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."

When the federal government assumes powers not explicitly granted to it in the Constitution, it puts the states on the road toward obliteration and citizens on the road to enslavement.

The Founding Fathers understood this.

For example, speaking at the convention considering ratification of the new Constitution in New York, part-time Constitutional Convention attendee Alexander Hamilton said:

> I maintain that the word supreme imports no more than this — that the Constitution, and laws made in pursuance thereof, cannot be controlled or defeated by any other law. The acts of the United States, therefore, will be absolutely obligatory as to all the proper objects and powers of the general government … but the laws of Congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding.

Having successfully passed through two committees of the state House of Representatives, HB 2097 will now go to a committee of the whole to be debated by the membership of the state House of Representatives before that body votes up or down on the measure. Approval of the bill would send it on to the state Senate for that body's consideration.

Representative Thorpe understands the historically unassailable fact that the Constitution is the creation of the states, an agreement among those sovereigns creating an agent: the federal government. The parties to this contract — the states — are, in Madison's words, "duty bound" to "interpose" between the people and the federal government to prevent the former from becoming subjects of the latter.