Written by **Joe Wolverton, II, J.D.** on December 4, 2013

Do Constitutionalists Intentionally "Misconstrue" the Constitution?

In an op-ed published by TruthOut.org on December 1, Robert Parry claims that the Right has "misconstrued" the Constitution.

Writing in defense of ObamaCare, Parry argues that constitutional "strict constructionists" have a "bizarre" understanding of the Constitution.

Parry believes that the Supreme Court's decision upholding the individual mandate of ObamaCare was constitutionally sound and a legally defensible protection of the exercise of the so-called General Welfare and Commerce Clauses of the Constitution.

In fact, Parry writes that the dissenting opinion in the ObamaCare case ignored "the clear intent of the Framers to give the federal government's elected representatives broad powers to do whatever they judged necessary to "provide for … the general Welfare of the United States" and — through the Commerce Clause — the power to regulate interstate commerce, which clearly applied to the health insurance industry."

Continuing along that path, Parry claims:

> The Constitution grants sweeping powers to the federal government to "provide for … the general Welfare" and to enact whatever legislation is deemed "necessary and proper" to achieve that and other goals. The language about the "general Welfare" appears both in the Preamble and in Article I, Section 8, the so-called "enumerated powers." It is an open-ended concept giving wide discretion to the country's elected representatives.

To believe otherwise, Parry suggests, is dishonest, "crimped, and revisionist."

Despite Parry's recasting of constitutional history, it is irrational to believe that the Constitution would purport to give Congress the power to raise revenue for unconstitutional purposes. That is to say, logically, taxes may only be collected and those funds may only lawfully be spent on those items that fall within the limited scope of authority afforded to the central government. The Constitution defines those limits as the general welfare and defense.

No one would sensibly argue that the individual mandate is an act in defense of the United States, but there are those who will say that by providing access to medical care insurance to those who would otherwise be unable to afford it, ObamaCare promotes the general welfare and is thus constitutional.

James Madison disagreed. As he wrote in 1792, "If Congress can do whatever in their discretion can be done by money, and will promote the general welfare, the Government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions."

In addition to the individual mandate forcing Americans to buy a good or commodity (health insurance), there are even more frightening aspects of ObamaCare empowering the federal government to force us to live according to how the government decides best.

Furthermore, although Parry paints many of the Founding Fathers as "nationalists" who "favored a powerful role for the federal government," the truth is that not a single one of our Founding Fathers, not even the most ardent advocate of a powerful central government, would have remained a single day at the Philadelphia Convention if he believed that the government they were creating would become the instrument of tyranny that it has become.

In their dissent, four justices expressed this same sad description of America in 2012.

> The case is easy and straightforward, however, in another respect. What is absolutely clear, affirmed by the text of the 1789 Constitution, by the Tenth Amendment ratified in 1791, and by innumerable cases of ours in the 220 years since, is that there are structural limits upon federal power — upon what it can prescribe with respect to private conduct, and upon what it can impose upon the sovereign States. Whatever may be the conceptual limits upon the Commerce Clause and upon the power to tax and spend, they cannot be such as will enable the Federal Government to regulate all private conduct and to compel the States to function as administrators of federal programs.

How has our Republic become an elected tyranny? Sadly, the states and the people have sat idly by as if in a stupor while those who would destroy freedom and our Constitution have passed one law after the other exceeding the boundaries of power set in our founding document.

The saddest fact, however, is that not only has Congress passed unconstitutional laws, the president issued despotic edicts, and the Courts upheld every unimaginable expansion of federal power, but the states have obeyed these orders as if heeding their master's voice.

The states have become mere administrative units of the federal government. They have allowed themselves to become such. They may occasionally pull at the leash or nip at the hand that feeds them, but they slaver over the scraps handed them by their federal masters.

While the states have become servants, there is hope in the fact that they may yet regain their proper role as masters.

The states, through the exercise of the Tenth Amendment and their right to rule as sovereign entities created by the people, 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 Supreme Court more respectful of the Constitution. 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.

Of course, Parry has something to say about the "extra-constitutional theory of 'nullification,'" as well. He labels nullification and states' rights as principles espoused by "white supremacists" and says these concepts were "eliminated when the Articles of Confederation were scrapped in 1787."

Perhaps Parry hasn't read the Tenth Amendment or doesn't realize that it is actually a part of the

Constitution and not the racist product of ignorant neo-confederates.

The states created the federal government and reserve the right to resist the exercise by Congress of any powers not specifically granted to it by the states in the Constitution.

The documents sent by the states to Congress announcing their ratification of the Constitution provide additional evidence of the founding generation's appreciation of the states' and federal government's respective roles as creator and creation. In nearly every one of these letters, either the state legislature or ratifying convention delegation explicitly reminds Congress that the consent of the states formed the federal government.

Delaware, for example, declared:

> We the Deputies of the People of the Delaware State, in Convention met, having taken into our serious consideration the Federal Constitution proposed and agreed upon by the Deputies of the United States in a General Convention held at the City of Philadelphia…

New Jersey expressed a similar understanding of the parties to the constitutional compact:

> Whereas a convention of Delegates from the following States, viz. New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, met at Philadelphia for the purpose of deliberating on, and forming a constitution for the United States of America…

Georgia's ratification notice letter also recorded the states' role as creators of the new federal government:

> Whereas the form of a Constitution for the Government of the United States of America, was, on the seventeenth day of September, one thousand seven hundred and eighty-seven, agreed upon and reported to Congress by the Deputies of the said United States convened in Philadelphia…

And on, and on, and on. The ratifying conventions called throughout the 13 states understood that the delegates sent to Philadelphia in the summer of 1787 created a general government of limited power, retaining for themselves nearly the full panoply of powers they had exercised successfully for over a century.

The fact is, that in trying to carve a Constitution that creates an all-powerful central government, Parry has done precisely what he accuses constitutionalists of doing, namely, "cherry-pick[ing] a few quotes from the *Federalist Papers* and twist[ing] whatever words might be useful in the Constitution."

Parry should revisit the *Federalist Papers*, the Constitution, and Madison's *Notes of Debates in the Federal Convention*; then he would learn (unless he is dishonest) that the states created the federal government, set the boundaries of its power, and reserved to themselves all other rights not specifically delegated to the new national authority. The contract containing the rights and responsibilities of the parties to this contract that created the federal government is called the Constitution.

This element of the creation of the union is precisely where the states derive their power to negate acts of the federal government that exceed its constitutional authority. It is a thread woven inextricably in every strand of sovereignty. It was the sovereign states that conditionally ceded the limited territory of authority which the federal government occupies.

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