Written by **Joe Wolverton, II, J.D.** on August 29, 2013

Fed. Judge Rules Oklahoma Challenge to ObamaCare May Proceed

In yet another indication that ObamaCare must be repealed, a federal judge ruled last week that a challenge to the healthcare "law" filed by the state of Oklahoma may proceed.

According to a report in the *Washington Times*, the suit filed by the Sooner State "claims the federal government is unlawfully extending tax credits to states that opted not to set up their own insurance exchanges under the new health care law."

In his order, U.S. District Court Judge Ronald A. White refused to rule on the merits of the case, but simply permitted the challenge to proceed along the path of adjudication.

Although not all of the state's assertions were accepted by White, among those that the judge did sign off on was the claim that the state as an employer would be harmed by the administration's application of various provisions in the Affordable Care Act (ACA).

Specifically, Oklahoma Attorney General Scott Pruitt argues that President Obama is permitting federal healthcare agencies to ignore the letter of the law in order to benefit the federal government. The *Washington Times* explains the government's alleged errant interpretation:

> The Affordable Care Act says government subsidies intended to help people buy health insurance should go to exchanges "established by the State."
>
> The exchanges, where Americans without employer-based insurance will buy coverage through premium tax credits, will start to enroll consumers in all 50 states and the District of Columbia on Oct. 1 for health coverage that takes effect in January.
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> Mr. Pruitt wants the court to issue an injunction that prevents the government from doling out tax credits to exchanges set up by the federal government. His lawsuit also seeks a court ruling that declares invalid the Internal Revenue Service rule that cleared the way for subsidies to be offered on the federally run exchanges.

Attorney General Pruitt claims that if the Obama administration's tax credit policy is allowed to continue, Oklahoma and all other states which establish exchanges will be subject to the ACA's employer mandate, a provision requiring companies with 50 or more full-time employees to provide approved health insurance or pay a fine. The fines are assessed if even one employee chooses to take advantage of federal subsidies offered on the federally-run exchange.

By offering these tax credits, it appears, the Obama administration is not only violating the Affordable Care Act, but is stacking the deck against states by making it more attractive for less fortunate Americans to rely on the federal government for healthcare coverage than on the states. For that matter, given the financial incentive to go on the dole provided by the Obama administration, it seems less likely that Americans in need would turn anywhere other than to the federal government, making

Washington the source of all sustenance from cradle to grave.

State governments — already strapped financially — would then be subject to enormous penalties when one state employee takes the carrot off the federal stick.

Not surprisingly, lawyers for the Obama administration take a different view of the tax credit scheme. They argue that their interpretation of the provisions in the "law" governing the availability of tax credits is the correct one and that, as the *Washington Times* reports, "Congress would never have intended to treat some states differently than others."

The direction of this tack is similar to that taken by the federal government on immigration policy, as well. Regarding that issue and the relationship of federal and state law, outgoing Secretary of Homeland Security Janet Napolitano said, "A patchwork of immigration laws is not the answer and will only create further problems in our immigration system. While we appreciate cooperation from states, which remains important, it is clearly unconstitutional for a state to set its own immigration policy."

What is clearly unconstitutional is the federal government's attempt to create a national healthcare system. Fortunately, there is a remedy for when the federal government acts outside of its constitutionally granted sphere of authority: nullification.

All state legislatures have an obligation to liberty and to their citizens to uphold the Tenth Amendment and exercise their natural right to rule as sovereign entities, stopping ObamaCare at the state borders by enacting state statutes nullifying the healthcare law.

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."

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.

Unfortunately, in Oklahoma the state legislature's attempt to nullify ObamaCare was thwarted by one state senator.

As constitutionalists familiar with the fight against ObamaCare know, a bill sponsored by state Representative (and medical doctor) Mike Ritze's bill was reintroduced in the Oklahoma state legislature in January 2013. Although that measure was passed by the state House of Representatives in March by a vote of 72-20, the will of the people was subject to the will of one state senator — Clark Jolley.

After passing the state House, Ritze's bill moved to the Senate side of the state legislature and there is where Jolley killed it.

Jolley's deplorable ignorance of the key constitutional concepts of states' rights, federalism, and enumerated powers was on full display in a letter sent to a constituent explaining his spiking of the ObamaCare nullification bill passed by the House of Representatives.

In the letter, published by Mike Church, Jolley described nullification as "simply a fantasy that is the most dangerous type — one semi based in reality. It gives false hope to those that oppose ObamaCare that we can somehow veto the actions of the federal government because we find them unconstitutional. This is pure legal fiction that has been trounced by everyone."

A fantasy? Trounced by everyone? I guess James Madison and Thomas Jefferson aren't included in Jolley's definition of "everyone," but are counted among the naïve nullifiers who have fallen for the "fantasy."

Undaunted, Dr. Ritze is determined to continue the fight against federal overreaching and its detrimental effect on the citizens of Oklahoma. In an exclusive statement to *The New American*, Ritze commented on the lawsuit that is set to proceed, as well as other prongs in the attack on the ACA:

> This is one part of the triple R approach: Reject, Resist and Refund as OK did three years ago with a constitutional amendment that passed by 65 percent to reject the [individual] mandate.
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> Also, rejection by nullification that passed in the Oklahoma state House 73-20, but did not get a hearing in the state Senate.
>
> Resist by what the Oklahoma attorney general is doing with lawsuits.
>
> Refund or defund at the U.S. congressional level.
>
> An all out battle by fighting the ACA monster is needed to defeat it.

As for himself, Ritze declared, "I will continue the nullification approach."

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