Written by **Joe Wolverton, II, J.D.** on October 11, 2010

Federal Judge Upholds Individual Mandate of ObamaCare

Late last week a federal judge ruled that according to the settled case law undergirding the jurisprudence of the Commerce Clause, the individual mandate of ObamaCare is constitutional.

According to the holding in the Michigan case, one of at least fifteen similar challenges wending their way through the federal court system, ObamaCare's requirement that all individuals, regardless of personal choice, purchase a qualifying health insurance plan does not violate the Constitution, in fact it is but another of an acceptable example of "activities that substantially affect interstate commerce." It is that precise phrase — "substantially affect interstate commerce" — that set the threshold over which the Supreme Court for decades has determined that challenges to Congress's Article I power to regulate interstate commerce must climb.

Judge George C. Steeh, a Clinton-era appointee, sided with the Obama Administration in his ruling that if an individual does not buy health care insurance, he is making a conscious decision to go without health insurance and if enough people make the same mistake, then such a decision "viewed in the aggregate, [will] have clear and direct impacts on health care providers, taxpayers and the insured population who ultimately pay for the care provided to those who go without insurance." That is to say, if you don't obey the ObamaCare mandates, you are increasing the cost of obedience to the national government for the rest of the country and that sort of dissent is incompatible with the principles of statism now being judicially enforced.

The "rational basis" for the decision cited by Judge Steeh is that increased cost of health care affects everyone and since everyone, at one time or another, sips from the stream of commerce, the affect is substantial and thus Congress is empowered to manipulate the flow into and out of the stream that after years of judicial misinterpretation of the Constitution and usurpation of the legislative power, has reached Nile-like proportions.

Despite this setback, the other legal challenges to ObamaCare will proceed as scheduled. The Florida case, perhaps the most publicized as it was filed by attorneys general of 20 states, will likely have a hearing on the merits of the case as currently docketed on December 16. The complaint filed by Virginia Attorney General Ken Cuccinelli will be heard as early as October 18, provided that all goes according to the timeline currently in place.

In the case of ObamaCare, as with so many other cases that have expanded the reach of congressional regulating authority, the federal courts are complicit in the systematic constricting of the sphere of

personal liberty. What were once the economic choices of free individuals have become the incriminating evidence of aggregated crimes. You needn't participate materially in the restricted activity if your participation, no matter how slight, can be combined with similarly insignificant contributions to form one substantially affecting whole.

What recourse remains available to Americans determined to cling to the liberties that have made us free and kept us the envy of all nations? As this ruling and its antecedents clearly demonstrate, the courts offer no hope as they have tied their wagons to the horses of tyranny running roughshod over our Constitution. There is one place to which we may turn for refuge, however. A place protected by law and armed with the natural and unalienable sovereignty by which all its citizens were "endowed by their Creator."

The several states are the answer. Not in their present and frankly debasing role as plaintiffs in lawsuits against the federal government, but rather in their traditional and ennobling role as bulwarks of liberty and checks on the unconstitutional imbalance created by federal overreaching. While states are unarguably free to assert their natural right of self-government in the manner they deem most fitting, history and the timeless principles of constitutional law have provided a sound and permanent option, one absolutely independent of federal oversight and unsusceptible to the conspiracy of tyranny consisting of the legislative, executive, and judicial branches of the national government.

Nullification has been written about in this magazine by this author and others since before the enactment of the ObamaCare package. We have touted its benefits and promoted its worthiness as a foil to the mandates of ObamaCare and other similarly untenable laws passed by a power-mad Congress.

In a nutshell, nullification is the principle that each state retains the right to nullify, or invalidate, any statute passed by the national government that the state regards as unconstitutional. This powerful weapon against tyranny is in the arsenal of every state. As the sovereign states formed the union, and as creators of that compact, they hold the ultimate authority as to the limits of the power of the central government to enact laws that are to bind the states and the people. That is to say, may the creation be more powerful than the creator?

As cited previously in this magazine, the Founding Fathers were very clear as to their views of this matter. James Madison, writing in the *Federalist Papers*, declared very plainly that the states were sovereign and that they relinquished none of that sovereignty in the act of confederating to form the Constitution. No clause or phrase of that document may be accurately interpreted to exalt the national government to a position above the states or the people.

In light of Judge Steeh's decision in the Michigan case (the plaintiffs in which have expressed their intent to appeal the decision), perhaps it is time for that bloc of Americans who are yet determined to uphold the Constitution, to retrench the federal government to within the boundaries of constitutional enumeration, and to steadfastly defend the sovereignty of states and ultimately of themselves, to elect men and women to the state legislatures who are equally committed to exercise the privileges and obligations attendant to their status as sovereigns and nullify ObamaCare and all other similarly oppressive statutes.

In time, perhaps the pursuit of such a program by a plurality of enlightened state assemblies will "substantially affect" the balance of power in this nation and restore the delicate equilibrium of federalism that is the hallmark and the genius of the American experiment.

Photo: An overflow crowd attends a subcommittee meeting on March 31, 2010, in Nashville, Tenn., dealing with legislation that would require the

state attorney general to mount a legal challenge to President Barack Obama's federal health care overhaul: AP Images