Written by **Joe Wolverton, II, J.D.** on December 26, 2013

Georgia Lawmakers Announce Bill Nullifying ObamaCare

Four Georgia state legislators are listening to the crescendo of constituent opposition to ObamaCare.

On December 16, State Representatives Jason Spencer, David Stover, Michael Caldwell, and Scot Turner announced their sponsoring of a bill that would halt the implementation of ObamaCare at the sovereign borders of the Peach State.

At their press conference, the lawmakers sought not only to explain their proposal, but to drum up support for it among like-minded Georgians.

HB 707 authorizes the Attorney General of Georgia to:

> provide that neither the State of Georgia nor any of its political subdivisions shall establish a health care exchange for the purchase of health insurance nor participate in or purchase insurance from a health care exchange established by a nonprofit organization; to provide that no agency, department, or other state entity shall authorize an employee, contractor, vendor, or any other person acting on behalf of such agency, department, or entity to undertake any action under the aegis of Section 2951 of the federal Patient Protection and Affordable Care Act of 2010 or a process established pursuant to such act.

Despite the apparent pulling of the constitutional punch, two of the four Georgia state legislators struck at the heart of the constitutional issue.

Representative Stover denounced the federal government's usurpation of unconstitutional power. "To tax someone for simply being alive is anti-American, anti-Constitutional and anti-common sense.... The federal government did not create the states; the states created the federal government."

Stover's analysis of the creation of the Constitution is right.

Understanding that the states created the federal government will help state legislators and citizens appreciate the constitutional propriety and potency of the principles of the Virginia and Kentucky Resolutions of 1798.

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. For too long, Congresses, presidents, judges, and bureaucrats have "worshipped and served the creature [the government] more than the creator [the states and the people]." (Romans 1:25)

In his statement, state Representative Michael Caldwell invoked the 10th Amendment and the retention by states of the "numerous and indefinite" powers not specifically granted to the federal government in the Constitution.

"I am here to protect and uphold the Constitution," Caldwell said. "The federal takeover of healthcare in the United States is the single largest infringement upon the Constitution, upon the Tenth Amendment,

upon individual rights in my lifetime, in recent history and, I would argue, in the history of our nation. HB 707 is telling the Obama Administration that if they want the ACA in Georgia, 'You're going to have to pay for it, you're going to have to implement it, and don't expect any aid from the State of Georgia in doing so.'"

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

The states, through the exercise of the 10th Amendment and their right 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. 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.

The Supreme Court's ratification of ObamaCare's individual mandate can be seen as a mandate of another sort. Americans should now turn their attention to removing from office every congressman who voted in favor of the "law" and electing those candidates for state legislature who will commit themselves to boldly asserting the sovereignty of the states and forcing the raging bull of the federal government back within the small and well-defined corral built by our Founding Fathers.

As the multitude of unconstitutional mandates contained within the ObamaCare behemoth begin breathing down the necks of Americans, thankfully, there are a few state legislators proposing bills to protect citizens from being subjected to the healthcare law.

Soon, the South Carolina state senate will consider a bill aimed at preventing enforcement of ObamaCare within its borders.

The growth of this movement is not only encouraging, but evidence of a increase in state assemblies of the proper role of states in checking the federal government.

ObamaCare and all future and former unconstitutional acts of Congress can (and must!) be nullified by state legislators and governors. The power to negate any act of the federal government that exceeds the constitutional scope of its power is innate in the states. All observers recognize that the creature has grown so large that it threatens to consume the creator.

If nullification is to be successfully deployed and defended, states lawmakers must remember that the Constitution is a creature of the states and that the federal government was given very few and very limited powers over objects of national importance. Any act of Congress, the courts, or the president that exceeds that small scope is null, void, and of no legal effect. No exceptions. James Madison said it best in *The Federalist*, No. 45: "The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite."

After news of the Georgia legislators' proposal began spreading on the Internet, opponents of nullification summoned up the old bogey man: the so-called Supremacy Clause of Article VI.

The Supremacy Clause does not declare that all laws passed by the federal government are the supreme law of the land, period. What it says is that the "laws of the United States made in pursuance" of the

Constitution are the supreme law of the land.

In *pursuance* thereof, not in *violation* thereof. Not one of the provisions of ObamaCare is permissible under any enumerated power given to Congress in the Constitution; therefore, they were not made in pursuance of the Constitution, and they are *not* the supreme law of the land.

Alexander Hamilton promoted this interpretation of Article VI when he wrote in *The Federalist*, No. 33:

> If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.… But it will not follow from this doctrine that acts of the larger society which *are not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. [Emphasis in original.]

State Representative Spencer understands this, and when asked at the press conference how he would respond to the argument that his bill is unconstitutional and trumped by federal law, he answered:

> We do not think this is a constitutional law at all and I believe the federal government should not have a monopoly on what they deem is constitutional. The states created the federal government and we should have say as to what is constitutional as well. We are a party to the compact. So we have our duty to uphold the Constitution as well as they do.

Understanding the facts of its formation demonstrates that although the government of the United States is a separate entity, it is not — indeed cannot be — superior to the states. Such a suggestion is illogical and there is not a single sentence of support for this supposition in all the annals of the history of the creation of the federal government.

Photo: Georgia State Capitol Building

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