Written by **Joe Wolverton, II, J.D.** on August 29, 2016

Governor of Maine Refuses to Enforce Federal Surveillance Edict

Last month, Governor Paul LePage of Maine (shown) was informed by the Obama administration that he would have to send to the U.S. Department of Commerce classified personal data on all recipients of state welfare funds. Specifically, LePage was being commanded to give the feds "access to data from [his] state's food assistance, family assistance and welfare programs."

The strong arm tactic didn't set well with LePage, and his response is refreshing:

> This is a bold request, considering almost every request Maine makes of the federal government is denied and our efforts at reform are generally met with a resounding "no." The Obama administration has been reflexively obstructionist in its dealings with Maine, particularly as they relate to our welfare programs, and now it expects cooperation with a request of its own regarding our welfare programs. It is important for President Obama and the entire federal government to know: states don't work for you. Our relationship is a two-way street.

He ends the memo with a direct and defiant statement of his refusal to dance to the federal government's tune:

> To answer your question, I will absolutely not be directing Maine's welfare program directors to enter into a data-sharing agreement with your staff for the purposes outlined in your letter.…
>
> Maine will not oblige the federal government's requests while our own requests so routinely get denied or go unanswered by the federal government.

In fairness, it's not as if Maine or LePage is an exemplar of state resistance to federal usurpation. The state and its chief executive routinely cooperate with the central government in a panoply of unconstitutional programs and policies.

Regardless, LePage's stern refusal to bow to the bureaucracy's edicts is praiseworthy.

In short, the principle upon which LePage's position is based is called anti-commandeering, and it is a fundamental element of American constitutional construction; were it better understand and more universally applied by state lawmakers and executives, we could extricate ourselves overnight from the statist swamp into which we have wandered.

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).

Former Arizona Sheriff Richard Mack was one of the named plaintiffs in the latter landmark case, and on the website of his organization, the Constitutional Sheriffs and Peace Officers Association, he recounts the basic facts of the case:

> The Mack/Printz case was the case that set Sheriff Mack on a path of nationwide renown as he and Sheriff Printz sued the Clinton administration over unconstitutional gun control measures, were eventually joined by other sheriffs for a total of seven, went all the way to the Supreme Court and won.
>
> There is much more "ammo" in this historic and liberty-saving Supreme Court ruling. We have been trying to get state and local officials from all over the country to read and study this most amazing ruling for almost two decades. Please get a copy of it today and pass it around to your legislators, county commissioners, city councils, state reps, even governors!

The *Mack/Printz* ruling makes it clear that the states do not have to accept orders from the feds.

Writing for the majority in the *Printz* decision, 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]
>
> 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.

Moreover, state lawmakers and governors are not left defenseless in the battle to fight the cancer of consolidation. There is a remedy — a "rightful remedy" — that can immediately retrench the federal government's constant overreaching. This antidote can stop the poison of all unconstitutional federal acts and executive orders at the state borders and prevent them from working on the people.

The remedy for federal tyranny is *nullification*, and applying it liberally will leave our states and our nation healthier and happier.

In fact, if nullification is to be successfully deployed and defended, states 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 *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."

That our Founders understood this principle is demonstrated by Alexander Hamilton 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. To deny this, would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the

> representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

James Madison, also writing in *The Federalist*, recommended that state legislators, in order to prevent federal abridgment of fundamental liberties, should refuse "to co-operate with the officers of the Union."

Founding era jurist Joseph Story described the Second Amendment's critical check on tyranny: "The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them."

So, while Maine may not be the Shangri-La of state sovereignty, the action taken by LePage reminds Washington, D.C. that the states are not drill-sergeants sworn to follow orders issued by the commanders on Capitol Hill.

In fact, the *states created the federal government*, and should the latter cease serving the former's purposes, the power to create includes the power to abrogate. The federal government would be wise to remember their subordinate, enumerated, and limited role in the constitutional confederacy finalized in Philadelphia in 1787.

Photo of Governor Paul LePage: AP Images