Written by **Joe Wolverton, II, J.D.** on June 28, 2012

Constitutional Defiance: Romney Says He'll Repeal ObamaCare

"What the Court did not do on its last day in session I will do on my first day if elected President of the United States. And that is I will act to repeal Obamacare…. Obamacare was bad policy yesterday. It's bad policy today. Obamacare was bad law yesterday. It's bad law today."

That was Republican presidential candidate (and presumptive nominee) Mitt Romney's response to today's Supreme Court ruling upholding ObamaCare.

Earlier today I analyzed the Court's decision in terms of its misreading, misinterpretation, and mangling of the Constitution and the principles of limited government upon which it is founded.

Mitt Romney's statement on that subject deserves the same scrutiny.

First, Romney's promise to "repeal Obamacare" is as unconstitutional a statement as anything written by Chief Justice John Roberts in today's Supreme Court's majority opinion.

Article I, Section 7 and Article II, Sections 2 and 3 set out the very brief list of powers allotted by the states to the president in the Constitution. Basically, those provisions give the president power to veto an act of Congress or sign it into law; act as the commander-in-chief of the armed forces; make treaties, appoint ambassadors, federal judges, and other federal officers (with the advice and consent of the Senate); fill vacancies in those offices during recess of the Senate; and take care that the laws of the country are "faithfully executed."

Nowhere in that list is the president empowered to repeal any act of Congress. In fact, in Article I, the Constitution specifically places the exclusive power to make (and by logical extension, to repeal) laws with the legislative branch.

Of course, Romney's assumption of this unconstitutional power should come as no surprise, especially in light of his statement made last week that as president he would not need the permission of Congress to take military action against Iran.

"I don't believe at this stage, therefore, if I'm president that we need to have a war powers approval or special authorization for military force. The president has that capacity now," Romney told Bob Schieffer on CBS's *Face the Nation*.

At this point readers should be reminded of the words of the Father of the Constitution, James Madison:

> No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

Using the transitive properties of politics, Mitt Romney has just equated himself with the "very definition of tyranny."

The second important point to be made regarding Romney's response to the ObamaCare ruling is that despite the wishes of the President and the decision of the Supreme Court, ObamaCare is not the law.

Consider some clear and irrefutable statements by our Founding Fathers and other authorities regarding the proper regard and legal status of those acts of the federal government that exceed its very limited constitutional mandate:

Alexander Hamilton at the Constitutional Convention of 1787: "… the laws of Congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding. In the same manner the states have certain independent power, in which their laws are supreme."

Alexander Hamilton in *Federalist* #78: "There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid."

Chief Justice John Marshall: "All laws which are repugnant to the Constitution are null and void."

Thomas Jefferson: "Every law consistent with the Constitution will have been made in pursuance of the powers granted by it. Every usurpation or law repugnant to it cannot have been made in pursuance of its powers. The latter will be nugatory and void."

William Davie, delegate from North Carolina to the Constitutional Convention: "This Constitution, as to the powers therein granted, is constantly to be the supreme law of the land.… It is not the supreme law in the exercise of a power not granted."

Finally, *The New American's* own William F. Jasper: "Clearly, a federal law which is contrary to the Constitution is no law at all; it is null, void, invalid. And a Supreme Court decision, which is not a 'law,' has no 'supremacy' — even if it is faithfully interpreting the Constitution. So it is the height of absurdity to claim that a Supreme Court decision that manifestly violates the Constitution is the 'supreme law of the land.'"

Notably, several of the foregoing writers mentioned the so-called "Supremacy Clause" of the Constitution. That clause is part of Article VI that reads in relevant part:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof … shall be the supreme law of the Land.…

"In pursuance thereof" is the key phrase in that sentence. President Obama, presidential hopeful Mitt Romney, and a majority of the Supreme Court obviously misread that phrase and substituted the word "violation" for the word "pursuance." No legitimate authority can be cited and no reasonable person could argue that an act of Congress that is not within its enumerated powers is valid and is, therefore, the law of the land.

Despite the Supreme Court's constitutionally offensive Obamacare ruling and Romney's equally unconstitutional response to it, there is one reliable freedom fighter who can always be counted on to ride to the defense of the Constitution and liberty.

In a statement released on his official campaign website, Texas Congressman Ron Paul and presidential candidate reacts to the Supreme Court's Obamacare decision:

> I strongly disagree with today's decision by the Supreme Court, but I am not surprised. The Court

> has a dismal record when it comes to protecting liberty against unconstitutional excesses by Congress.
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> Today we should remember that virtually everything government does is a "mandate." The issue is not whether Congress can compel commerce by forcing you to buy insurance, or simply compel you to pay a tax if you don't. The issue is that this compulsion implies the use of government force against those who refuse. The fundamental hallmark of a free society should be the rejection of force. In a free society, therefore, individuals could opt out of "Obamacare" without paying a government tribute.
>
> Those of us in Congress who believe in individual liberty must work tirelessly to repeal this national health care law and reduce federal involvement in healthcare generally.
>
> Americans will opt out of Obamacare with or without Congress, but we can seize the opportunity today by crafting the legal framework to allow them to do so.

Finally, Mitt Romney said today that it is clear that if "we want to get rid of Obamacare, we have to get rid of President Obama."

With all due respect, Mr. Romney, if we want to get rid of Obamacare we must get rid of all those in Congress, the White House, and the Courts who will disregard, in any way, the limits placed on their power by the Constitution — regardless of party or promises. Then, we must realize that regardless of the actions of these federal overlords, the states and the people are under no legal or constitutional obligation to obey the mandates of those acts if they do not conform to the limits on government power as established in the Constitution.

Photo of Mitt Romney: AP Images

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