Written by **Joe Wolverton, II, J.D.** on October 3, 2013

King Amendment to the Farm Bill Gives Feds Power Over State Regs

Touted by some as a "Tea Party favorite," Representative Steve King (R-Iowa) has offered an amendment to the farm bill that would significantly reduce the sovereignty of states and is described by the *Des Moines Register* as being "focused on consolidating power in the federal government to a degree that would make members of the Politburo proud."

The King Amendment, known as the Protect Interstate Commerce Act, takes from states the right to impose agricultural standards on products brought in from out of state.

Rather than empowering states to nullify unconstitutional federal acts, the King Amendment would, according to the *Washington Times*, "have far-reaching implications, nullifying a large spectrum of state and local laws concerning everything from livestock welfare to GMO labeling, restrictions on pesticide and antibiotic use, horse slaughter, child labor, fire safe cigarettes, shark finning, Christmas trees, and even the sale of cat and dog meat."

Specifically, the measure mandates that:

> the government of a state or locality therein shall not impose a standard or condition on the production or manufacture of any agricultural product sold or offered for sale in interstate commerce if (1) such production or manufacture occurs in another state; and (2) the standard or condition is in addition to the standards and conditions applicable to such production or manufacture pursuant to (A) federal law; and (B) the laws of the state and locality in which such production or manufacture occurs.

Put simply, if enacted, Rep. King's bill would consolidate agricultural regulatory power into federal hands, taking the power from state legislatures where it constitutionally resides.

Although in many ways King has demonstrated his interest in forcing the federal beast back inside its constitutional cage, in this instance, he assumes that Washington, D.C. is better equipped than state and local lawmakers to set agricultural policy.

Many of King's fellow lawmakers from both sides of the aisle have lined up to oppose the amendment.

Fifteen Republicans in the House sent a letter to Representative Frank Lucas (R-Okla.), chairman of the House Agriculture Committee, warning that King's bill posed a potentially significant threat to the ability of states to set their own agriculture policies.

"The King Amendment," the congressmen tell Lucas, "is very broadly written to nullify state laws that impose a 'standard or condition' on agricultural products and establish federal supremacy."

A similar letter penned by Democratic representatives claims that "the breadth and ambiguity of Rep. King's amendment are striking. It would nullify state laws that impose a 'standard or condition' on

agricultural products, and has the potential to repeal a vast number of state laws and regulations covering everything from food safety to environmental protection to child labor to animal welfare."

Grassroots activists recognize the radical revision of principles of federalism, as well. A cross-section of consumer, environmental, and animal rights groups sent letters to the entire body of the Congress calling on them to reject King's attempt to unconstitutionally enlarge the scope of federal authority.

In the text of his legislation, passed by the House as Section 11312 of the Federal Agriculture Reform and Risk Management Act of 2013 (H.R. 2642), King cites the Commerce Clause of Article I, Section 8 of the Constitution as justification for his enlargement of federal regulatory power. The fact is, however, that the spirit of his bill relies on the so-called "Supremacy Clause" of Article VI in its exalting of "federal law" in subsection (a)(2)(A) over state and local statutes.

The Supremacy Clause (as some wrongly call it) of Article VI does not declare that federal laws are the supreme law of the land without qualification. What it says is that the Constitution "and laws of the United States made in pursuance thereof" are the supreme law of the land.

Read that clause again: "*In pursuance* thereof," not in violation thereof. If an act of Congress is not permissible under any enumerated power given to it in the Constitution, it was not made in pursuance of the Constitution and therefore not only is not the supreme law of the land, it is not the law at all.

Constitutionally speaking, then, whenever the federal government passes any measure not provided for in the limited roster of its enumerated powers, those acts are not awarded any sort of supremacy. Instead, they are "merely acts of usurpation" and do not qualify as the supreme law of the land. In fact, acts of Congress are the supreme law of the land only if they are made in pursuance of its constitutional powers, not in defiance thereof.

It isn't apparent why King would not only go along with a substantial federal power grab, but be the author of it.

One explanation is that King believes he is doing the right thing by forcing federal standards on states in the name of controlling interstate commerce.

Judging not only from King's depiction of his amendment, but from the support it's received from others, the intent of the provision is to preempt restrictive state laws, such as the "California egg roll" regulation.

The "egg roll" is a California state law that requires egg producers in the state to comply with very strict hen house standards. The *Washington Times* reports that the regulation requires "cages large enough to allow egg-laying hens to stand and spread their wings if their eggs are to be sold within the state."

At the heart of the King amendment and all other federal bills that impose "one size fits all" regulations is collectivism, a doctrine diametrically opposed to the federalism that lies at the heart of the Constitution.

The Founding Fathers understood that what was good policy in Virginia would not necessarily be good for Pennsylvania. In uniting to form the federal government, states retained their authority to pass laws in all but a very few, particularly prescribed areas of national interest — defense, for example.

Regardless of whether the amendment makes sense policy-wise (and there are a number of farmers who say that it does), the fact that it unconstitutionally violates the power of states to impose their own agriculture standards within their sovereign borders is not a course that should be supported by

conservatives.

Federal lawmakers and their constituents who care about the Constitution and the core principles of federalism and states' rights upon which it is founded should oppose the Senate's adoption of the King Amendment to that body's version of the farm bill. Not, however, because they disagree with the philosophy of the provision, but because they refuse to cooperate with any consolidation of power in Washington, D.C.

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