Written by **Joe Wolverton, II, J.D.** on April 20, 2015

N.C. Takes Aim at Nullifying Federal Gun Control Regulations

North Carolina is taking substantial strides toward protecting the right of citizens to keep, carry, and use weapons.

As reported to *The New American* by sources in the Tar Heel State, North Carolina's legislature is considering House Bill 886, appropriately titled the Second Amendment Preservation Act. The measure, authored by state Representatives Mitchell Setzer and Jay Adams, would forbid the enforcement of any federal regulation aimed at unconstitutionally abridging the right to keep and bear arms as protected by the Second Amendment.

House Bill 886 follows the counsel given by James Madison regarding the proper course for states whose sovereign territory is being encroached upon by the federal government.

States, Madison said in *The Federalist*, No. 46, possess a "means of opposition" to federal overreach: "refusal to cooperate with the officers of the Union."

About 10 years later, Madison said that states have not only the right to resist encroachments of the federal government, but also an obligation to do so. "In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them," Madison wrote in the Virginia Resolution of 1798.

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 the final word. 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.

Alexander Hamilton put an even finer point on the issue when he wrote 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."

The North Carolina bill's philosophy rests on another solid constitutional foundation — a doctrine known as anti-commandeering.

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).

Writing for the majority, 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]
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> 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."

When the federal government assumes powers not explicitly granted to it in the Constitution, it puts the states on the road toward obliteration and citizens on the road to enslavement.

The Founding Fathers understood this. For example, speaking at the convention considering ratification of the new Constitution in New York, part-time Constitutional Convention attendee Alexander Hamilton said, "I maintain that the word supreme imports no more than this — that the Constitution, and laws made in pursuance thereof, cannot be controlled or defeated by any other law. The acts of the United States, therefore, will be absolutely obligatory as to all the proper objects and powers of the general government … but the laws of Congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding."

Speaking of the Supreme Court's consideration of the anti-commandeering doctrine, Georgetown Law professor Randy Barnett is quoted in a Tenth Amendment Center (TAC) article as saying, "This line of cases is now considered well settled."

An analysis by the Tenth Amendment Center of North Carolina's Second Amendment Preservation Act reveals that the bill is no paper tiger. TAC reports:

> H886 is no mere statement of principle, as noted by its express prohibition on material support and enforcement by state officials. It also expressly lists what types of federal acts fall under the scope of this prohibition.
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> > (1) [imposing] a tax, fee, or stamp on a firearm, firearm accessory, or firearm ammunition that is not common to all other goods and services and may be reasonably expected to create a chilling effect on the purchase or ownership of those items by a law-abiding citizen.
> >
> > (2) [requiring] the registration or tracking of a firearm, firearm accessory, or firearm ammunition or the owners of those items that may be reasonably expected to create a chilling effect on the purchase or ownership of those items by a law-abiding citizen.
> >
> > (3) [prohibiting] the possession, ownership, use, or transfer of a firearm, firearm accessory, or firearm ammunition by a law-abiding citizen.
> >
> > (4) [ordering] the confiscation of a firearm, firearm accessory, or firearm ammunition from a law-abiding citizen.

Not content to put all their constitutional eggs in one basket, the North Carolina legislature is currently

considering a pair of additional bills that would shore up the fundamental rights protected by the Second Amendment, shielding citizens from the near constant federal march toward civilian disarmament.

House Bill 699 — sponsored by state representatives Setzer, Jones, Ford, Pittman, and Speciale — is titled the Gun Rights and Privacy Act, and it lives up to its name.

Specifically, this legislation makes it unlawful "for a state or local official, agent, or employee knowingly and willfully to order another State or local official, agent, or employee to enforce any executive order, agency order, law, rule or regulation of the United States government as provided in subsection (b) of this section upon a personal firearm, a firearm accessory, or ammunition."

Furthermore, the bill guarantees the right of people in North Carolina to "obtain health care free from discrimination based on knowledge of, or unwarranted inquiry into, constitutionally protected conduct involving firearms and ammunition."

Finally, there is House Bill 648, the North Carolina Firearms Freedom Act.

Were it enacted, this bill mandates that "Firearms, firearm accessories, and ammunition manufactured and retained in North Carolina from federal regulation under the Commerce Clause of the Constitution of the United States."

This approach to protecting gun rights is savvy, given the habit of Congress of regulating everything under its Commerce Clause "power."

To the credit of its authors, this measure mentions the Constitution's reservation of unenumerated powers to the states and people:

"Regulation of intrastate commerce does not fall within the powers of Congress. Under the Tenth Amendment to the Constitution of the United States, the power to regulate intrastate commerce is a power reserved to the states, as it is not enumerated as a power of the United States."

While none of the bills is perfect, they each accomplish the goal of nullifying federal overreach and restoring the balance of federalism.

As the North Carolina legislature seems to understand, the government in Washington, D.C., is out of control and it is time for every citizen to demand that every state legislator perform his constitutionally imposed duty to protect the Constitution.

The best way to do this is to reverence our founding document by educating ourselves as to the legitimate relationship between the states and the feds and then insisting that the limits on power established in the Constitution be respected and enforced by those elected on a state and local level to represent us.