Written by **Joe Wolverton, II, J.D.** on January 15, 2014

Rep. Randy Weber Offers Bill to Protect State Sovereignty

A Texas congressman is proactively protecting citizens of the Lone Star State and the other 49 from being forced to accept same-sex marriage.

CNSNews reports that Republican Representative Randy Weber (shown) has filed legislation to "mitigate the damage done to state sovereignty" by the Supreme Court's decision that held the Defense of Marriage Act to be unconstitutional.

In the past few weeks, the situation has become more critical as a federal judge set aside the will of the people of Utah, declaring unconstitutional a state constitutional amendment protecting traditional marriage. Another federal judge has followed suit in Oklahoma, setting aside that state's ban on same-sex marriage. The dominoes are falling.

As explained in a press statement published on Weber's House website, "The 'State Marriage Defense Act' will simply require federal agencies to look to a person's legal residence when determining marital status and application of federal law."

Weber issued the following statement along with the press release announcing his bill:

> The 10th Amendment was established to protect state sovereignty and individual rights from being seized by the Federal Government. For too long, however, the Federal Government has slowly been eroding state's rights by promulgating rules and regulations through federal agencies.
>
> I drafted the "State Marriage Defense Act of 2014" to help restore the 10th Amendment, affirm the authority of states to define and regulate marriage, as well as, provide clarity to federal agencies seeking to determine who qualifies as a spouse for the purpose of federal law. By requiring that the Federal Government defer to the laws of a person's state of legal residence in determining marital status, we can protect states' constitutionally established powers from the arbitrary overreach of unelected bureaucrats.

The congressman should be congratulated for his commitment to upholding the principles protected by the Tenth Amendment. The Tenth Amendment says:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Very simple. It is remarkable that in just a few words, millions of pages of federal acts, regulations, and orders are rendered null, void, and of no legal effect.

During the debates on the Alien and Sedition Acts in 1798, Representative Edward Livingston correctly explained the effect of unconstitutional acts of Congress:

> Whenever our laws manifestly infringe the Constitution under which they were made, the people ought not hesitate which they should obey. If we exceed our powers, we become tyrants, and our acts have no effect.

Ten years earlier, during the state ratification process, Alexander Hamilton promoted the same principle in *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.]

Nullification is the name given by Thomas Jefferson to this correct understanding of the role of states in preventing the federal government from overstepping the boundaries placed on its power in the Constitution.

Simply put, nullification recognizes the powers protected by the Tenth Amendment, specifically the obligation of state legislatures to nullify, or invalidate, any unconstitutional federal act. The states' power to nullify federal action is based on the fact that the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of Washington, D.C. to enact laws that are applicable to the states and the people.

State sovereignty deniers (including many on the Right) point to the so-called Supremacy Clause of Article VI of the Constitution as evidence that federal law trumps any contrary state statutes.

The fact is the Supremacy Clause does not declare that all laws passed by the federal government are the supreme law of the land, period. A closer reading reveals that it declares 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. Today, nearly every act of the federal government is not permissible under any enumerated power given to Congress in the Constitution; therefore, they were not made in pursuance of the Constitution, and therefore they are not the supreme law of the land.

Acts not authorized under the enumerated powers of the Constitution are "merely acts of usurpations" and deserve to be disregarded, ignored, and denied any legal effect.

Although Rep. Weber's intentions seem good, states do not need federal representatives to protect their sovereignty. State legislatures have not only the power, but the obligation to do so. As James Madison explained in the Virginia Resolution of 1798, he considered

> the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that 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.

State lawmakers, therefore, don't have just a right to nullify unconstitutional acts of the federal government, they have a duty to do so.

More state legislators need to learn this. Familiarity with these facts is fundamental to a reclaiming of state authority and removing the threat to liberty posed by the centralization of power in the federal

government.

Until the states reassert the sovereignty they theoretically retain, there will be no end of the demands and they will get more and more difficult to comply with and will thus justify increasing federal control over the apparatuses of state government.

As greater numbers of legislators, governors, and citizens learn of the immense power of nullification, they will more readily and fearlessly work to reverse this trend by insisting that the states resume their role as what Madison called the "sure guardians of the people's liberty."

An added benefit of nullification is that its persistent practice builds trust between the elected and the electorate by encouraging the recognition of reliable patterns of interaction between state and local authorities and the federal government. By consistently demanding that Washington confine itself to its small sphere of influence, everyone — citizen, state lawmaker, president, and congressman — knows where he stands, and elected officials can act knowing they enjoy the good will of those whom they serve.

Over time, even occasional deviations from the constitutional straight and narrow would evoke instant reprisals from the states and the people, savvy to the strictures imposed by the enumeration of powers in our founding compact.

According to information provided by Representative Weber's office, his legislation was introduced with 28 co-sponsors and is supported by Family Research Council, National Organization for Marriage, Ethics and Religious Liberty Commission, U.S. Conference on Catholic Bishops, Concerned Women for America, and Heritage Action.

Weber's bill is a good start at cutting the federal government's assault on state sovereignty off at the pass. It does not, however, relieve state legislators from their duty to propose nullifying legislation that, regardless of what happens on Capitol Hill, would stop every unconstitutional act at the state borders.

Photo of Rep. Randy Weber (R-Texas): AP Images

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