Written by **Joe Wolverton, II, J.D.** on April 3, 2014

South Carolina Bill Opposing ObamaCare Rejected by State Senate

A South Carolina bill that would have restricted the applicability of ObamaCare to citizens of the Palmetto State has failed in the state senate. By a vote of 9-33, state senators rejected HB 3101, the Freedom of Health Care Protection Act. As the record shows, debate on the bill in its original form was interrupted repeatedly by the introduction of hundreds of amendments.

One such amendment was proposed by the bill's primary sponsor, Tom Davis. Davis's proposal would have relieved businesses of the purported "quandary" of choosing between obedience to state law or federal law. The Morning News Online reports on the legislative wrangling that accompanied Davis's effort:

> Under Senate Rule No. 24, any amendment attached to a bill must have related language or be germane to the bill. President Glenn McConnell ruled that the amendment was not germane.

> Sen. Davis attempted to override McConnell's ruling, but the attempt failed by a vote of 18 to 24. The Senate invoked cloture, which is rare. Cloture is a procedure by which the Senate can vote to place a time limit on consideration of a bill or other matter, and thereby cause an immediate vote to be taken on the bill.

According to the Associated Press, Davis' proposed amendment "sets regulations for navigators who help people sign up for health insurance through the federal website. It also requires state agencies to hold hearings before applying for federal grants tied to the Affordable Care Act."

Earlier on in the deliberations, Davis reportedly said that "he wants to narrow the proposed ban on state agencies aiding Obamacare to exempt those required to carry out parts of the law." Another story quoted Davis as saying that he "accepts the federal government's ability to enact the law."

That's hardly the bold blueprint for state nullification of an unconstitutional federal act, as anticipated by our Founding Fathers.

James Madison, for example, in *The Federalist*, No. 45, recommended that state lawmakers "refuse to cooperate with officers of the Union" when the federal authority attempted to enforce any act not falling within its constitutionally enumerated powers.

While Davis' language as reported by MyrtleBeachOnline.com is not as forceful as the Founders would prefer, in another interview he pointed to a solid Supreme Court case that supports his position of a state's right to refuse to carry the federal government's water.

Davis named his failed amendment the "Anti-Commandeering Amendment." In MedCityNews, Davis's reliance on the anti-commandeering principle was first reported:

> According to Davis, his "anti-commandeering" measure is based on a 1997 U.S. Supreme Court ruling that says the federal government cannot force states to use their resources to carry out laws approved by Congress.

As we have reported on many occasions, the concept of 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).

Anti-commandeering, as set forth in the Supreme Court decision in *Mack and Printz v. United States*, prohibits the federal government from forcing states to participate in any federal program that does not concern "international and interstate matters."

Writing for the majority, Scalia explained:

> The Constitution thus contemplates that a State's government will represent and remain accountable to its own citizens. As Madison expressed it: "[T]he 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. [Citations removed.]

According to Davis, then, the House bill he helped re-write for the State Senate relies, at least in part, on the decision handed down in the *Mack/Printz* case.

Apparently, though, despite taking a stance against Palmetto State enforcement of ObamaCare, Davis does not see his bill as an example of nullification. In fact, he seems not to accept nullification as a valid weapon in the arsenal of liberty.

A report out of South Carolina published earlier this year contains a disturbing statement made by Davis. In a statement published in January on a Tea Party website, Davis reportedly said nullification was not "an available remedy" and then went on to misinterpret Article VI's so-called Supremacy Clause and perpetuate the myth of unquestionable judicial authority.

Island Packet quotes Davis's denial of a state's power to nullify ObamaCare: "The conversation really has gotten off the rails a little bit," Davis said Wednesday, after holding three public hearings across the state that drew hundreds. "Everybody talks about nullification. This isn't nullification. We can't nullify."

But state legislators not only *can* nullify every unconstitutional act of the federal government, they *must do so* if they are to faithfully adhere to the oath they swear as mandated by Article VI. What's more, the Founders of our Republic would expect state lawmakers to stand for state sovereignty.

As James Madison wrote in the Virginia Resolution of 1798:

> 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.

Put simply: State legislators are bound by an oath and by fidelity to the Constitution to nullify every unconstitutional act of the federal government, every time, without exception.

Davis believes, though, that the South Carolina legislature's only option is to delay enforcement of ObamaCare "as best they can until such time as Congress repeals the Affordable Care Act."

This tack is moot, now, though, as the bill failed to pass out of the State Senate.

Perhaps it is the failure of the legislation's own advocates to boldly embrace the nullification of ObamaCare that led to the confusion as to the bill's purpose; confusion that ultimately led to its defeat.

Concerned citizens aren't confused, though, and they refuse to wait on Washington to fix a problem Washington caused. Instead, they realize they need to forcibly derail the "long train of abuses and usurpations" and "provide new Guards for their future security" — the states and themselves.

Senator Davis' opinion to the contrary, nullification is still the "rightful remedy."

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

More state legislators need to learn this. Familiarity with these facts is critical to reclaiming state authority and destroying the threat to liberty posed by the centralization of power in Washington, D.C.

As for Davis, his seemingly self-fulfilling prophecy that "At the end of the day, the ACA will still be the law of the land in South Carolina," has come true, due in no small measure to his own failure to embrace nullification and unapologetically assert the authority of states to act in all but a few enumerated areas, as protected by the Tenth Amendment.

Perhaps in the next legislative session there can be found in the Palmetto State a lawmaker committed to the Constitution and to forcing the federal beast back inside its constitutional cage.

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