Written by **Joe Wolverton, II, J.D.** on April 29, 2013

South Carolina House of Reps. Expected to Pass ObamaCare Rejection

A bill rejecting the enforcement of key provisions of ObamaCare passed another hurdle in the South Carolina state House of Representatives last Thursday. The bill — HB 3101 — was approved by a party-line vote (65-34) and will now move to its third and final reading. Passage of the measure after that reading is described by local media as "perfunctory."

This is good news for citizens of the Palmetto State — along with all their fellow citizens in other states — whose livelihoods are threatened by President Obama's pet healthcare overhaul passed in 2010 and upheld last year by the Supreme Court.

Although passage of the bill by the South Carolina state legislature is laudable and is a positive move toward resisting the tyranny of the federal government, the bill as passed last week is markedly weaker than the bill as originally drafted.

For example, while the original bill was an outright nullification of ObamaCare, imposing criminal penalties on anyone who attempted to enforce its provisions within the sovereign borders of South Carolina, in its current iteration the bill voids only those parts of the ObamaCare act that the state deems "unconstitutional."

Furthermore, rather than allowing state officials to hold anyone — including federal agents — accountable for participating in the application of the ObamaCare mandates to citizens of South Carolina, in its present form, the prohibitions apply only to state employees.

Section 1-7-180 of the bill — officially styled the South Carolina Freedom of Health Care Protection Act — does empower the state Attorney General to protect the state from any attempt to harm the state by enforcing ObamaCare. The section reads:

> Whenever the Attorney General has reasonable cause to believe that a person or business is being harmed by implementation of the Patient Protection and Affordable Care Act and that proceedings would be in the public interest, the Attorney General may bring an action in the name of the State against such person or entity causing the harm to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice. Unless the Attorney General determines in writing that the purposes of this section will be substantially impaired by delay in instituting legal proceedings, the Attorney General shall, at least three days before instituting a legal proceeding as provided in this section, give notice to the person or entity against whom the proceeding is contemplated and give such person or entity an opportunity to present reasons to the Attorney General why a proceeding should not be instituted. The action may be brought in a court of competent jurisdiction. Whenever the court issues a permanent injunction

> in connection with an action, which has become final, the court shall award reasonable costs to the State.

The bill goes further in protecting South Carolinians from the financial impact of ObamaCare by giving a dollar-for-dollar tax deduction to anyone assessed a federal tax penalty for failure to conform to the ObamaCare mandates.

Healthcare exchanges — government run insurance marketplaces — are outlawed in the South Carolina bill, as well. Section 38-71-44 of the bill forbids the state or any political subdivision thereof from established an ObamaCare exchange.

Additionally, state, county, and municipal agencies are prohibited from purchasing insurance from any exchange set up by a nonprofit organization.

Moreover, any health insurance polity purchased in violation of the provisions of the South Carolina bill is declared void and unenforceable in state courts.

While all of the foregoing sounds good on paper, the state House Minority Leader, Representative Todd Rutherford (D-Richland) told a state news agency that the bill was little more than a parchment barrier to the tyranny of ObamaCare. *The State*, a Columbia, South Carolina, online news service filed the following report:

> After the bill passed, Rutherford said it "amounts to nothing."
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> Rutherford said the bill's only impact would come if the state's Republican attorney general, Alan Wilson of Lexington, brought court action to block health-insurance companies, like Blue Cross Blue Shield, from complying with the health-care law. But that will not happen, Rutherford predicted, because the bill makes legal action optional, and "the attorney general of this state has sense."

Rutherford's view of the bill's potential potency nothwithstanding, his opinion that federal law trumps state law is all wrong.

Opponents of the state bill (and of nullification in general) point to the so-called Supremacy Clause of Article VI of the Constitution to rebut the state's claims. They argue that state laws contrary to federal laws are invalid and that federal law trumps all state attempts to legislate in territory already claimed by Congress.

This argument is easily dismissed.

The Supremacy Clause (as some wrongly call it) of Article VI does not declare that laws passed by the federal government are the supreme law of the land, period. What it says is that 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. None of the provisions of ObamaCare is permissible under any enumerated power given to Congress in the Constitution; therefore, they were not made in pursuance of the Constitution, and they are *not* the supreme law of the land.

Rutherford's colleagues in the State House who voted to approve the bill he bashes stand on solid footing, however, in their opposition to unconstitutional acts of the federal government.

In *Federalist* No. 33, Alexander Hamilton declared that any act of the federal government exceeding the limited powers granted it by the Constitution is not a law at all:

> 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.]

Hamilton is not alone. The undeniable truth is that not a single one of our Founding Fathers, not even the most ardent advocate of a powerful central government, would have remained even one day at the Philadelphia Convention if he had believed that the government they were creating would become the instrument of tyranny that it has become.

Following its third reading and presumed passage, the bill is expected to be transferred to the State Senate for deliberation sometime this week. Citizens of South Carolina are encouraged to contact their state senators and urge them to vote in favor of HB 3101, the South Carolina Freedom of Health Care Protection Act.

Photo of South Carolina House of Representatives chamber in Columbia