Written by **Joe Wolverton, II, J.D.** on May 17, 2013

South Carolina ObamaCare Nullification Bill Being Held Up in Committee

Since May 2, the bill prohibiting South Carolina's participation in ObamaCare has been held up in the state Senate Finance Committee.

Seems constitutionalists in the Palmetto State aren't content to sit idly by while the legislation is held up by a powerful state lawmaker.

In an interview with *The New American*, one of the leaders of the effort to pass a bill in South Carolina to nullify the president's healthcare behemoth announced that groups of grassroots activists will demonstrate Friday (May 17) at the workplace of the chairman of the Senate Finance Committee — State Senator Hugh Leatherman. The same group plans to hand out pamphlets exposing the dangers of ObamaCare in Senator Leatherman's neighborhood on Saturday.

The people are fired up, but so are many of Leatherman's colleagues who have worked hard to get the bill passed through the state House of Representatives.

Tom Davis is such a senator. Davis, who cosponsors a bill criminalizing participation in the indefinite detention of citizens under the National Defense Authorization Act (NDAA), posted a message on his Facebook page announcing that "heads will roll" if the state senate fails to pass the ObamaCare nullification bill already passed by the state House of Representatives.

Davis doesn't identify the owners of those possibly ill-fated noggins.

On May 1, by a vote of 65-39, the South Carolina state House of Representatives passed HB 3101. The bill prohibits state officers and agents from carrying out the myriad mandates contained in President Obama's medical care morass.

Although passage of the bill by the state House is praiseworthy and a positive move toward resisting the tyranny of the federal government, the bill as passed 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, the bill as passed by the House 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 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.

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 policy purchased in violation of the provisions of the South Carolina bill is declared void and unenforceable in state courts.

Despite attempts to weaken the bill, it remains a forceful and formidable nullification of the federal healthcare act soon to be imposed on states, despite its obvious unconstitutionality.

While Senator Leatherman sits on this important bill, there is word that South Carolina's Republican governor, Nikki Haley, is herself sitting on the fence.

During an appearance on the Bob McLain radio show, Governor Haley was asked by a listener if she would sign the ObamaCare bill into law if it ever got to her desk. Haley responded that she wasn't sure and that she'd have to read the bill more closely.

Opponents of South Carolina's effort to thwart the president's tyrannical carrying out of the mandates of his pet project (and of nullification in general) point to the so-called Supremacy Clause of Article VI of the Constitution to portray the state's tack as an example of illegal aggression toward federal law.

This argument is easily dismissed.

The Supremacy Clause does not declare that all 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.

Alexander Hamilton promoted this interpretation of Article VI when he wrote in *The 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.]

Supporters of South Carolina's nullification bill understand that the states retain numerous rights under the Constitution, including the obligation to block unconstitutional federal usurpation of state sovereignty.

Senator Davis, his colleagues in the South Carolina state legislature, and their legion of liberty-minded grassroots activists stand on firm constitutional and legal ground in their opposition to acts of the federal government that exceed its constitutional authority.

This understanding married to the fact that time is of the essence if ObamaCare is to be stopped at the state border is perhaps what has compelled these concerned citizens to take the show on the road and peacefully and lawfully demonstrate in areas where they know the Finance Committee chairman will hear them.

All state legislatures have an obligation to liberty and to their citizens to follow the example of South Carolina (and Oklahoma) by exercising their rights protected by the 10th Amendment and their natural right to rule as sovereign entities and refusing to enforce the myriad unconstitutional mandates of ObamaCare.

Nullification is a concept of constitutional law that recognizes the right of each state to nullify, or invalidate, any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the Constitution.

This power is founded on the assertion 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 the central government to enact laws that are applicable to the states and the citizens thereof.

In the wake of the Supreme Court's ObamaCare decision, supporters of American federalism are encouraged to see state legislators boldly asserting their right to restrain the federal government through application of the very powerful and very constitutional principle of nullification.

Photo is of South Carolina Senate Chamber

Joe A. Wolverton, II, J.D. is a correspondent for The New American *and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He can be reached at jwolverton@thenewamerican.com*