Written by **Joe Wolverton, II, J.D.** on March 13, 2014

South Carolina's Fight Over ObamaCare Heats Up in State Senate

Both sides of the legislative attempt to block enforcement of key provisions of ObamaCare in South Carolina are ratcheting up their efforts.

A bill the supporter calls a "blueprint for other states" is pending in the state Senate and, although not as strong a nullification of the president's pet project as some would prefer, it does retain the right of state agents to refuse to execute portions of the Affordable Care Act (ACA).

Some of those very agents aren't taking the threat to so-called federal supremacy lying down. In fact, as reported by MyrtleBeachOnline.com, many state employees and other proponents of the healthcare "law" are protesting the bill that would block its enforcement. The news site reports:

> Activists opposed to the legislative effort to impede the federal health-care law did some blocking of their own.
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> For the second week, the protesters stood in the driveway to the State House parking garage and were issued a dozen citations, mostly for disorderly conduct, when they did not quickly move back to the sidewalk. The tickets followed last week's protest, when 11 protesters were hauled off in Columbia police patrol cars and charged with blocking the roadway.

Despite running afoul of the law, the protesters may have had some influence over State Senator Tom Davis (R-Beaufort), the bill's primary sponsor. As quoted in the same story, 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."

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.

In MedCityNews, Davis's reliance on the anti-commandeering principle was 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).

Sheriff Richard Mack was one of the named plaintiffs in this landmark case, and on the website of his organization, the Constitutional Sheriffs and Peace Officers Association, he recounts the basic facts of the case:

> The *Mack/Printz* case was the case that set Sheriff Mack on a path of nationwide renown as he and Sheriff Printz sued the Clinton administration over unconstitutional gun control measures, were eventually joined by other sheriffs for a total of seven, went all the way to the supreme court and won.
>
> There is much more "ammo" in this historic and liberty-saving Supreme Court ruling. We have been trying to get state and local officials from all over the country to read and study this most amazing ruling for almost two decades. Please get a copy of it today and pass it around to your legislators, county commissioners, city councils, state reps, even governors!
>
> The *Mack/Printz* ruling makes it clear that the states do not have to accept orders from the feds!

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. Read my take on those egregious errors here.

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 states 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 duty bound to nullify.

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."

Nullification is growing in popularity because a quickly multiplying number of concerned citizens of every state are learning the hard way that Congress is unlikely to ever repeal any of the innumerable unconstitutional acts it has passed.

This same frustrated group of citizens also is beginning to realize the futility of filing legal complaints in the hope that the federal courts will strike down offensive measures.

They understand that while there might once have been a day when these tactics were effective, those days are gone and those responses to the federal government's abuses of power are futile.

That said, there is no reason that concerned citizens should not try every avenue toward restoring federalism, including working to convince Congress to repeal this offensive act.

Concerned citizens refuse to wait on Washington to fix a problem Washington caused. Instead, they know 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 usurpations" and deserve to be disregarded, ignored, and denied any legal effect.

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.

So, although it isn't perfect or as powerful as it should be and its sponsor doesn't have as firm a grasp on federalism as one would hope, his bill is a refutation of the federal government's erroneous perception that it has the right to rule over every aspect of the lives of Americans.

Debate on Davis' bill continues in the South Carolina State Senate all this week. Governor Nikki Haley has not indicated whether she would sign the bill were it to find its way to her desk.

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