



Written by [Joe Wolverton, II, J.D.](#) on December 11, 2013

South Carolina State Senate to Consider Bill Blocking ObamaCare

South Carolina is on track to nullify parts of the ObamaCare legislation.

[As reported by the Daily Caller](#), the bill before the state senate of the Palmetto State “renders the Affordable Care Act void or inoperable through a handful of provisions.”

The legislation — [HB 3101](#) — passed the state House of Representatives on May 1 by a vote of 65-39. Upon its arrival in the Senate, the bill stalled due to the machinations of the chairman of the Senate Finance Committee, State Senator Hugh Leatherman.



One of Leatherman’s colleagues — State Senator Tom Davis — declared last May that “heads would roll” if the ObamaCare bill didn’t make it to the floor of the State Senate.

This legislative session, Davis remains determined to shepherd the Senate version of the bill through his chamber and onto the governor’s desk.

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Republicans benefit from a 28-18 majority in the body, an advantage party leaders have already used to fast track consideration of the anti-ObamaCare bill.

Davis commented to the *Daily Caller* on the legality of the bill: “It will essentially have five components to it, all of which in my judgment are legal, effective, and within the state’s power to do,” he said in the interview.

Davis looks to the Supreme Court’s decision in [Printz v. U.S.](#) for support for his state’s rights position. Again, from the *Daily Caller*:

“What the Supreme Court said in *Printz v. United States* is that states are not merely political subdivisions of the federal government to carry out what the federal government does; they are sovereign entities,” Davis said. “Congress can pass laws, but it cannot compel the states to utilize either their treasury or personnel to implement those federal laws.”

The *Daily Caller* claims in its report on the bill that “taken together, the provisions effectively repeal the federal law for the people of South Carolina.” As it stands today, the language of the bill isn’t quite that strong, however.

Furthermore, although Davis’s sponsorship of the measure and the state House’s passage of its version are praiseworthy and appear to be positive moves toward resisting the tyranny of the federal government, the bill as passed by the House and being deliberated by the state Senate is markedly weaker than the bill as originally drafted.

For example, while the original bill was an outright nullification of ObamaCare, imposing criminal



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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.

The financial penalties associated with refusing to participate in the scheme are remedied by the South Carolina bill through “issuing tax deductions to individuals equal to the tax penalties levied by the federal government, and directing the state attorney general to sue over whimsical enforcement of the law.”

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

In fact, 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 pull the teeth from the original version of the bill, the iteration that will soon be taken up by the state Senate remains a forceful and formidable nullification of the federal healthcare act soon to be imposed on states, despite its obvious unconstitutionality.

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.

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](#):



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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 right and obligation to block unconstitutional acts of the federal government.

The best defense of nullification is found in Thomas Jefferson's [Kentucky Resolution of 1798](#). In the Kentucky Resolution, Jefferson plainly pointed to the constitutional source of all federal power. He wrote:

That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour [sic] of that instrument, is the rightful remedy.

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 ObamaCare.

This understanding, combined with the fact that time is of the essence if ObamaCare is to be stopped at the state border, might be enough to compel a majority of state lawmakers to vote for HB 3101.

Of course, Governor Nikki Haley would have to sign the bill for it to become the law.

Unfortunately, there is word that Haley is 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.

She should read the Constitution more closely, as well, and she would find that it is her duty to force the federal government to remain within its constitutional boundaries.

Image of South Carolina flag

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