Written by **Joe Wolverton, II, J.D.** on January 19, 2014

Tennessee Bills Would Stop ObamaCare at the State Line

State legislators in Tennessee are stepping up to be the next in line to take the sting out of ObamaCare for citizens of the Volunteer State.

On January 15, State Senator Mae Beavers and state Representative Mark Pody offered companion bills that would stop enforcement of ObamaCare at the state borders.

Using model anti-ObamaCare legislation drafted by the Tenth Amendment Center as a guide, the Tennessee bills, known as the the Health Care Freedom and ACA Noncompliance Acts, propose to forbid state agents from assisting the federal government in carrying out the myriad mandates of the Patient Protection and Affordable Care Act.

Specifically, the bills say:

> No powers, assets, employees, agents or contractors of the state, including any institution under control of the University of Tennessee or the Tennessee board of regents, or any political subdivision, municipality or other local government entity shall be used to assist in implementing the federal Patient Protection and Affordable Care Act of 2010, or any subsequent federal amendment to such act.

Other sections of the proposed legislation prohibit the state of Tennessee from establishing an ObamaCare "exchange" and disallow the purchase of any insurance policy offered by any non-governmental exchange. The state would be barred, as well, from entering the homes of citizens to conduct ObamaCare-mandated inspections without the homeowners/renters prior approval.

"The federal government does not have constitutional authority to commandeer state and local governments to enforce or implement these federal healthcare mandates," Beavers said, as quoted by the Tenth Amendment Center. "It's time that Tennessee says no to assisting them in the implementation of this disastrous program. This legislation takes a very strong stand to resist this federal overreach of power."

Representative Pody echoed his colleague's sentiment, telling the Tenth Amendment Center, "This action, especially in conjunction with similar steps being taken in other states, has the effect of nullifying ObamaCare," he said. "If the feds cannot even build an appropriate website or keep their promises to consumers, they will be extremely hard-pressed to implement the other provisions for this program within our boundaries."

Another co-sponsor, state Representative Terri Lynn Weaver (R-Lancaster), told local media that the bill would create "a firewall" around Tennessee, shielding the state from the devastation of ObamaCare.

The Tennessee bills rely — as do similar measures that will soon be considered in South Carolina, Georgia, West Virginia, and Missouri — on the anti-commandeering doctrine that has long been a key principle of federalism.

Put simply, 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.
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> 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!
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> The Mack/Printz ruling makes it clear that the states do not have to accept orders from the feds!

Right now, legislators in the handful of states mentioned above are relying, at least in part, on the decision handed down in the Mack/Printz case. Some leaders in the liberty movement believe these are but the first few sparks that will ignite a larger fire of state resistance to federal overreach.

The Tenth Amendment Center's National Communications Director Mike Maherry said, "Our sources tell us to expect at least ten states moving in this direction in the coming months. But that will only come true if people start calling their state representatives and senators right now. State lawmakers need to know they should introduce bills to ban the state from participating in any ObamaCare programs."

In fairness, though, there is no reason to limit lawmakers to one method of fighting the federal menace. One of the most potent weapons — and one of the most constitutionally sound — is nullification.

The states, through the exercise of the Tenth Amendment and their authority to rule as sovereign entities, may stop ObamaCare at the state borders by enacting state statutes nullifying the healthcare law and criminalizing state participation in administering or executing the unconstitutional provisions thereof.

Nullification is the "rightful remedy" and is a much more constitutionally sound method of checking federal usurpation. It is quicker and less complicated than an attempt to have the law repealed by Congress or overturned by a future federal bench more respectful of the Constitution.

Furthermore, the Supreme Court's ratification of ObamaCare's individual mandate can be seen as a mandate of another sort. Americans should now turn their attention to removing from office every congressman who voted in favor of the "law" and electing those candidates for state legislature who will commit themselves to boldly asserting the sovereignty of the states and forcing the raging bull of the

federal government back within the small and well-defined corral built by our Founding Fathers.

As the multitude of unconstitutional mandates contained within the ObamaCare behemoth are now breathing down the necks of Americans, thankfully, there are a few state legislators proposing bills to protect citizens from being subjected to the healthcare law.

This is more than praiseworthy, however. As this reporter wrote recently:

> It would seem that resisting federal trampling of the Constitution is not only a right of state lawmakers, it is a constitutional obligation.
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> Article VI, Clause 3 reads:
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> > The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.
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> This clause puts all state legislators under a legally binding obligation (assuming they've taken their oath of office) to "support the Constitution." There is no better way, it would seem, for these elected state representatives of the people to show support for the Constitution than by demanding that the officers of the federal government adhere to constitutional limits on their power.

Perhaps a greater number of these state legislators, attorneys general, and judges would be more inclined to perform their Article VI duty if the people that put them in office would sue them and hold them legally accountable for any failures to carry this burden.

Imagine, furthermore, the uproar in state assemblies across the country if every day the legislators were in session, process servers showed up at their offices armed with lawsuits charging them with dereliction of their constitutional duty!

According to reports out of Nashville, Tennessee Governor Bill Haslam — not known as fan of nullification — has not "had a chance to review its impact and how it would work."

Perhaps citizens of Tennessee should volunteer to send Governor Haslam a copy of the Constitution, the *Federalist Papers*, and the Kentucky and Virginia Resolutions. Maybe then he would understand how such a bill would work.

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