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Null. Void. Of No Effect.

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When Washington D.C. violates the constitution – as it does every single day – the essential question is –“what do we do about it?”

For countless decades, Americans have been responding through protests, lawsuits, and “voting the bums out.” Yet, year in and year out, federal power always grows. And it doesn’t matter which political party is in power, or what person occupies the white house either.

THE RIGHTFUL REMEDY

In 1798, Thomas Jefferson wrote that

“whensoever the general government assumes undelegated powers....a nullification of the act is the rightful remedy.”[emphasis added]

Notice that TJ didn’t advise us to use nullification as a remedy “once in a while.” And he certainly didn’t tell us that a nullification is the rightful remedy after “we vote some bums out” or “we sue the federal government in federal court” or after anything else for that matter. Jefferson was pretty straightforward and recommended that every single time the federal government exercises powers not delegated to it in the constitution (there’s about 30 powers and nothing more), that we’re to reject and nullify those acts on a state level as they happen.

HAPPENING NOW

Already, more than two dozen states have virtually stopped the 2005 Real ID act dead in its tracks. How? By refusing to implement it. Fifteen states – most recently Arizona – are using the principles of the 10th Amendment to actively defy federal laws (and a supreme court ruling, too!) on marijuana. Eight states have passed Firearms Freedom Acts in an attempt to reject some federal gun laws and regulations. And seven states have passed Health Care Freedom Acts to block health care mandates from being enforced.

NULL. VOID. OF NO EFFECT.

Get used to reading these words, because the political climate is starting to swing a new direction. There is a growing number of people in America that are recognizing a simple truth – Asking, demanding, or suing to get the federal government to fix problems caused by the federal government just doesn’t work.

Take, for example, the Federal Health Care Nullification Act, first introduced in Texas as HB297, and now also introduced in Montana (SB161), Wyoming (HB0035), Oregon (SB498) and Maine (LD58). Here’s an excerpt:

“the federal law known as the “Patient Protection and Affordable Care Act,” signed by President Barack Obama on March 23, 2010, is not authorized by the Constitution of the United States and violates its true meaning and intent as given by the Founders and Ratifiers, and is hereby declared to be invalid, shall not be recognized, is specifically rejected, and shall be considered null and void and of no effect.”

But these bills, as introduced in Texas, Maine, Montana, Oregon, and Wyoming are far more than mere declarations or position statements

ENFORCEMENT

Implied in any nullification legislation is enforcement of the state law. In the Virginia Resolution of 1798, James Madison wrote of the principle of interposition:

That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that 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.

In his famous speech during the war of 1812, Daniel Webster said:

“The operation of measures thus unconstitutional and illegal ought to be prevented by a resort to other measures which are both constitutional and legal. It will be the solemn duty of the State governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State governments exist”

Here Madison and Webster assert what is required of nullification laws to be successful – that state governments not only have the right to resist unconstitutional federal acts, but that, in order to protect liberty, they are “duty bound to interpose” or stand between the federal government and the people of the state.

All five bills explicitly include this principle, and if passed, would impose penalties on federal agents for attempting to enforce National Health Care mandates in their state. For example, from Wyoming’s HB35:

Any official, agent, employee or public servant of the state of Wyoming as defined in W.S. 6-5-101, who enforces or attempts to enforce an act, order, law, statute, rule or regulation of the government of the United States in violation of this article shall be guilty of a felony punishable by a fine of not more than five thousand dollars (\$5,000.00), imprisonment in the county jail for not more than two (2) years, or both.

Sources close to the Tenth Amendment Center tell us to expect approximately ten states to introduce such bills in the 2011 legislative session.