HB

83

<TARGET><BILL>HB 83</BILL><SUBJECT>HB 83</SUBJECT><COMM>SJUD28</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 3/15/13

FURTHER:

DATE TURNED IN TO OFFICE: 4/3/2013

Judiciary Committee considered CS FOR HOUSE BILL NO. 83(JUD)

HB 83-FEDERAL REGULATIONS & EXECUTIVE ORDERS

"An Act relating to certain federal statutes, regulations, presidential executive orders and actions, and secretarial orders and actions; relating to the duties of the attorney general; and providing for an effective date."

and recommends:

[ ] be **replaced** with **SCS** _____ (_____) *[ ] Same Title* *[ ] Technical Title Change* *[ ] New Title/SCR No._____*

[ ] adopt **previous SCS** _____ (_____) *[ ] Same Title* *[ ] Technical Title Change* *[ ] New Title/SCR No._____*

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
LAW			✓	1

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Wielechowski			✓	
Fred Dyson	Dyson	✓			
CHAIR: John Coghill	Coghill	✓			

ALASKA STATE LEGISLATURE

Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 373-1842
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Session:
State Capitol Building
Juneau, Alaska 99801-1182
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REPRESENTATIVE WES KELLER
DISTRICT 7

MEMO

To: Senator John Coghill, Chair
Senate Judiciary Committee

Fm: Representative Wes Keller

Date: March 15, 2013

Re: Request for scheduling of CSHB 83 (28-LS0328\O)

Please consider this as a request for you to review and schedule CSHB 83-- FEDERAL REGULATIONS & EXECUTIVE ORDERS for consideration by the Senate Judiciary Committee. The bill in fact goes beyond the short title and includes various actions as well as secretarial orders and certain statutes.

CSHB 83 is a procedural bill that sets up an opportunity for the legislature to review and consider if federal statutes, regulations, executive orders or actions, or secretarial orders or actions are constitutional or adopted correctly. This review may result in legislation that declares those "laws" not enforceable in Alaska. I have included a packet of information. A similar packet has been sent to the committee aide in a .pdf format.

Thank you for your consideration of this request. If you have any questions please feel free to contact my office.

The information contained in this memo is **CONFIDENTIAL** and/or privileged. This memo is intended to be reviewed initially by only the individual named above. If the reader of this page is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this memo or the information contained herein is prohibited. If you have received this memo in error, please immediately notify the sender by telephone and return this memo to the sender at the above address.

Thank you

E-Mail: Representative.Wes.Keller@akleg.gov
Call Juneau Toll free: (800) 468-2186
Website: www.akrepublicans.org/keller/

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REPRESENTATIVE WES KELLER
DISTRICT 14

Committee Substitute for House Bill 83
Sponsor Statement

"An Act relating to certain federal statutes, regulations, presidential executive orders abd actions, and secretarial orders and actions; relating to the duties of the attorney general; and providing for an effective date."

CS for HB 83 clarifies in Alaska Statute that a federal statute, regulation, presidential executive orders, or secretarial orders or actions that are not properly adopted or are unconstitutional do not preempt state law. The Attorney General will continue to review and report federal statute, regulation, presidential executive orders, or secretarial orders or actions that appear to have not been properly adopted. Under CSHB 83 those reports will be forwarded to the legislature for consideration.

CSHB 83 presumes Alaska Legislative interest in an important legal process known as nullification". It opens the opportunity for the state to consider proclaiming a federal law or rule to be void and inoperative, or 'non-effective' within the boundaries of that state. In CSHB 83 a negative review by the Attorney General would generate an alert to our Judiciary Committees so nullification legislation can be considered.

There has been disagreement regarding nullification going back to the late eighteenth century. Not surprisingly, federal courts have often leaned toward favoring federal power over state sovereignty in spite of the fact that our founding fathers clearly intended otherwise. Federalism is our historically unique and profound arrangement where sovereign and separate states got together and carefully designed a central government with limited powers. It is an illogical perversion of one of our most important founding principles to presume states must comply with unconstitutional federal language. CSHB 83 presumes a proper State responsibility to uphold and protect our constitution.

CSHB 83 is intended to provide important information to the Alaska State Legislature by tapping the expertise and evaluation of our Attorney General. Certainly the legislature has a responsibility to consider its response whenever there is question of constitutionality of a federal statute, or the process involved in regulation, presidential executive order, or secretarial order or actions.

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REPRESENTATIVE WES KELLER
DISTRICT 7

MEMO

To: Members of the Alaska Legislature

Date: March 4, 2013

Re: Sectional for Committee Substitute House Bill 83 (28-LS0328\O)

Committee Substitute for House Bill 83 is broken into five sections:

1. Legislative findings that establish an understanding of the Supremacy Clause in relationship to state statute. It also recognizes that the U.S. Supreme Court has ruled that federal regulations, provided they are properly adopted, may also apply in Supremacy rules. The section also indicates that some executive orders and federal regulations do not always meet the constitutional or properly adopted criteria and therefore may not preempt state law.

2. Directs the Judiciary committee's in each house upon receipt of a report from the Attorney General that a statute, regulation, executive order or action, or secretarial order or action that preempts state statute and does not meet stated criteria to consider a response to the findings.

3. Directs the Attorney General in his or her regular review of C.F.R's, E.O's or actions, and S.O's or actions to submit reports of potential preemptive executive orders or regulations or Secretarial Orders that are unconstitutional or improperly adopted to the appropriate committees and establishes what documents need to be included in that report. Also included is an update requirement for litigation that might be taking place regarding Statute, regulations, C.F.R.'s, E.O.'s or actions or S.O's or actions.

4. Effective date

Please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

E-Mail: Representative_Wes_Keller@legis.state.ak.us
Call Juneau Toll free: (800) 468-2186
Website: www.akrepublicans.org/keller/

CS FOR HOUSE BILL NO. 83(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLER, Stoltze, Saddler

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain federal statutes, regulations, presidential executive orders**
2 **and actions, and secretarial orders and actions; relating to the duties of the attorney**
3 **general; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:
7 LEGISLATIVE FINDINGS. The legislature finds that
8 (1) under the Supremacy Clause of the Constitution of the United States, laws
9 of the United States are the supreme law of the land; however, there may be federal statutes,
10 regulations, presidential executive orders and actions, and secretarial orders and actions that
11 exceed the constitutional authority of the United States Congress, and that are unlawfully and
12 unfairly preempting state laws, depriving the legislature and Alaskans of the right to address
13 social issues, develop the state's economy, and manage natural resources as Alaskans; and
14 (2) establishing a process, by providing for an annual report from the attorney

general, will assist the legislature in reviewing federal statutes, regulations, presidential executive orders and actions, and secretarial orders and actions that may exceed the constitutional authority of the United States Congress, so that the legislature may take appropriate action.

*** Sec. 2.** AS 24.05 is amended by adding a new section to article 4 to read:

Sec. 24.05.188. Federal statutes, regulations, presidential executive orders and actions, and secretarial orders and actions. After receiving a report from the attorney general under AS 44.23.020(h) that a state law is in conflict with a federal statute, regulation, presidential executive order or action, or secretarial order or action that is unconstitutional or was not properly adopted in accordance with federal statutory authority, the house and senate committees having jurisdiction over judicial matters may each consider whether legislative action is necessary in response to the findings by the attorney general.

*** Sec. 3.** AS 44.23.020 is amended by adding a new subsection to read:

(h) The attorney general shall continue to review federal statutes, regulations, presidential executive orders and actions, and secretarial orders and actions that may be in conflict with and that may preempt state law. If, after review, the attorney general believes that a federal statute, regulation, presidential executive order or action, or secretarial order or action would preempt a state law if constitutional and properly adopted in accordance with federal statutory authority but also believes that the federal statute, regulation, presidential executive order or action, or secretarial order or action is unconstitutional or was not properly adopted in accordance with federal statutory authority, the attorney general shall report the findings to the chairs of the house and senate committees having jurisdiction over judicial matters. The report shall be submitted to the legislature on or before January 15th of each year and must include

(1) a copy of the federal statute, regulation, presidential executive order or action, or secretarial order or action that the attorney general finds was not properly adopted in accordance with federal statutory authority or is unconstitutional;

(2) a citation to the state law that is in conflict with the federal statute, regulation, presidential executive order or action, or secretarial order or action

identified in (1) of this subsection;

(3) a written opinion explaining

(A) the basis for finding that the federal statute, regulation, presidential executive order or action, or secretarial order or action is unconstitutional or was not properly adopted in accordance with federal statutory authority;

(B) the conflict between the federal statute, regulation, presidential executive order or action, or secretarial order or action identified in (1) of this subsection and the state law identified in (2) of this subsection and why, if properly adopted, the federal statute, regulation, presidential executive order or action, or secretarial order or action would preempt the state law;

(C) the effect on the state if the state law identified in (2) of this subsection is found by a court to be preempted by the federal statute, regulation, presidential executive order or action, or secretarial order or action identified in (1) of this subsection; and

(D) litigation the attorney general is party to or aware of concerning a conflict between a federal statute, regulation, presidential executive order or action, or secretarial order or action that would preempt state law if constitutional, but that the attorney general or another party claims is unconstitutional; and

(4) other information relevant to the findings by the attorney general.

*** Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

HOUSE BILL NO. 83

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KELLER

Introduced: 1/22/13
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act relating to certain federal statutes, regulations, presidential executive orders, and secretarial orders; relating to the duties of the attorney general; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS. The legislature finds that

(1) the Supremacy Clause of art. VI, clause 2, Constitution of the United States, provides that the Constitution of the United States and the laws of the United States made under and in conformity with the Constitution of the United States are the supreme law of the land;

(2) the United States Supreme Court, in City of New York v. Federal Communications Commission, 486 U.S. 57 (1988), stated that "[t]he phrase, 'Laws of the United States' encompasses both federal statutes themselves and federal regulations that are

properly adopted in accordance with statutory authorization";

(3) federal statutes, regulations, presidential executive orders, and secretarial orders that are unconstitutional or not properly adopted in accordance with constitutional and statutory authority are not laws of the United States for the purposes of the Supremacy Clause; and

(4) federal regulations, presidential executive orders, and secretarial orders that are not properly adopted in accordance with statutory authority may not preempt state laws that are not in conflict with federal statutory authority, regulations, and secretarial orders properly adopted in accordance with that statutory authority.

* **Sec. 2.** AS 01.10 is amended by adding a new section to read:

Article 5. Laws of the United States.

Sec. 01.10.200. Federal preemption; effect of certain federal statutes, regulations, presidential executive orders, and secretarial orders. A federal statute, regulation, presidential executive order, or secretarial order that is unconstitutional or was not properly adopted in accordance with federal statutory authority may not be considered to preempt a state law.

* **Sec. 3.** AS 24.05 is amended by adding a new section to article 4 to read:

Sec. 24.05.188. Federal statutes, regulations, presidential executive orders, and secretarial orders. After receiving a report from the attorney general under AS 44.23.020(h) that a state law is in conflict with a federal statute, regulation, presidential executive order, or secretarial order that is unconstitutional or was not properly adopted in accordance with federal statutory authority, the house and senate committees having jurisdiction over judicial matters may each consider whether legislative action is necessary in response to the findings by the attorney general.

* **Sec. 4.** AS 44.23.020 is amended by adding a new subsection to read:

(h) The attorney general shall continue to review federal statutes, regulations, presidential executive orders, and secretarial orders that may be in conflict with and that may preempt state law. If the attorney general finds that a federal statute, regulation, presidential executive order, or secretarial order would preempt a state law if constitutional and properly adopted in accordance with federal statutory authority but also finds that the federal statute, regulation, presidential executive order, or

1 secretarial order is unconstitutional or was not properly adopted in accordance with
2 federal statutory authority, the attorney general shall report the findings to the chairs
3 of the house and senate committees having jurisdiction over judicial matters. The
4 report must include
5 (1) a copy of the federal statute, regulation, presidential executive
6 order, or secretarial order that the attorney general finds was not properly adopted in
7 accordance with federal statutory authority or is unconstitutional;
8 (2) a citation to the state law that is in conflict with the federal statute,
9 regulation, presidential executive order, or secretarial order identified in (1) of this
10 subsection;
11 (3) a written opinion explaining
12 (A) the basis for finding that the federal statute, regulation,
13 presidential executive order, or secretarial order is unconstitutional or was not
14 properly adopted in accordance with federal statutory authority;
15 (B) the conflict between the federal statute, regulation,
16 presidential executive order, or secretarial order identified in (1) of this
17 subsection and the state law identified in (2) of this subsection and why, if
18 properly adopted, the federal statute, regulation, presidential executive order,
19 or secretarial order would preempt the state law; and
20 (C) the effect on the state if the state law identified in (2) of this
21 subsection is found by a court to be preempted by the federal statute,
22 regulation, presidential executive order, or secretarial order identified in (1) of
23 this subsection; and
24 (4) other information relevant to the findings by the attorney general.
25 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 83 (U)
Fiscal Note Number:
() Publish Date:

Identifier: HB083-LAW-CIV-02-01-13
Title: FEDERAL REGULATIONS & EXECUTIVE ORDERS
Sponsor: KELLER
Requester: (H) Judiciary

Department: Department of Law
Appropriation: Civil Division
Allocation: Opinions, Appeals and Ethics
OMB Component Number: 2716

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2014**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Fund Source (Operating Only)

None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Loretta Withington, Division Operations Manager — Phone: (907)465-5427
Division: Administrative Services Division — Date: 02/01/2013 12:00 AM
Approved By: Michael C. Geraghty, Attorney General — Date: 02/01/13
Department of Law

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 83

Analysis

The bill would amend Alaska's statutes to provide that a federal statute, regulation, Presidential executive order, or secretarial order that is unconstitutional or improperly adopted may not be considered to preempt a state law.

The bill provides that "[t]he attorney general shall continue to review federal statutes, regulations, presidential executive orders, and secretarial orders that may be in conflict with and that may preempt state law." If the attorney general finds that any (1) preempt a state law and (2) are unconstitutional or were improperly adopted, the bill would require the attorney general to report that to the house and senate committees with jurisdiction over judicial matters. The bill would require that the report include (1) a copy of the offending federal provision; (2) a copy of the conflicting state law; (3) an opinion explaining the federal provision's constitutional flaw or adoption problem, the conflict with the state law, the preemptive effect that the federal provision would have if it were properly adopted, and the consequences if the state law were preempted; and (4) other relevant information.

The bill provides that, in response to the attorney general's report, the legislative committees may consider whether to take legislative action.

HB 83

The Judiciary Committee considered:

HOUSE BILL NO. 83

"An Act relating to certain federal statutes, regulations, presidential executive orders, and secretarial orders; relating to the duties of the attorney general; and providing for an effective date."

and recommends it be replaced with:

CS FOR HOUSE BILL NO. 83(JUD)

"An Act relating to certain federal statutes, regulations, presidential executive orders and actions, and secretarial orders and actions; relating to the duties of the attorney general; and providing for an effective date."

The report was signed by Representative Keller, Chair, with the following individual recommendations:

Do pass (5): Millett, Gruenberg, Pruitt, Foster, Keller

The following fiscal note(s) apply to CSHB 83(JUD):

1. Zero, Dept. of Law

HB 83 was referred to the Rules Committee for placement on the calendar.

The question being: "Shall CSHB 83(JUD) pass the House?" The roll was taken with the following result:

CSHB 83(JUD)
Third Reading
Final Passage

YEAS: 36 NAYS: 0 EXCUSED: 3 ABSENT: 1

Yeas: Austerman, Chenault, Costello, Edgmon, Feige, Foster, Gara, Gattis, Gruenberg, Hawker, Herron, Higgins, Holmes, Hughes, Isaacson, Johnson, Josephson, Kawasaki, Keller, Kreiss-Tomkins, LeDoux, Lynn, Munoz, Nageak, Neuman, Olson, Pruitt, Reinbold, Saddler, Seaton, Stoltze, Tarr, Thompson, Tuck, P.Wilson, T.Wilson

Excused: Guttenberg, Kerttula, Millett
Absent: Drummond
And so, CSHB 83(JUD) passed the House.

Representative Pruitt moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

Representative Pruitt later gave notice of reconsideration of the vote on CSHB 83(JUD), and reconsideration was taken up then.

Representative Pruitt moved and asked unanimous consent that reconsideration of CSHB 83(JUD) be taken up on the same day. There being no objection, it was so ordered.

The following was before the House in third reading:

CS FOR HOUSE BILL NO. 83(JUD)
"An Act relating to certain federal statutes, regulations, presidential executive orders and actions, and secretarial orders and actions; relating to the duties of the attorney general; and providing for an effective date."

The question to be reconsidered: "Shall CSHB 83(JUD) pass the House?" The roll was taken with the following result:

CSHB 83(JUD)
Third Reading
Final Passage
Reconsideration

YEAS: 30 NAYS: 0 EXCUSED: 4 ABSENT: 6

Yeas: Austerman, Chenault, Costello, Feige, Gara, Gruenberg, Hawker, Herron, Higgins, Holmes, Hughes, Isaacson, Johnson, Josephson, Keller, Kreiss-Tomkins, LeDoux, Lynn, Munoz, Nageak, Neuman, Olson, Pruitt, Reinbold, Saddler, Stoltze, Tarr, Thompson, Tuck, P.Wilson

Excused: Drummond, Guttenberg, Kerttula, Millett
Absent: Edgmon, Foster, Gattis, Kawasaki, Seaton, T.Wilson

And so, CSHB 83(JUD) passed the House on reconsideration.

Representative Pruitt moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 83(JUD) and was referred to the Chief Clerk for engrossment.

Tenth Amendment to the United States Constitution

The **Tenth Amendment** (**Amendment X**) to the United States Constitution, which is part of the Bill of Rights, was ratified on December 15, 1791.[1] The Tenth Amendment states the Constitution's principle of federalism by providing that powers not granted to the federal government by the Constitution, nor prohibited to the States, are reserved to the States or the people.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Court backs Idaho couple in battle with EPA

By Valerie Richardson

The Washington Times

Wednesday, March 21, 2012

An Idaho couple facing ruinous fines for attempting to build a home on private property that the federal government considered protected wetlands may challenge an order from the Environmental Protection Agency, the Supreme Court ruled Wednesday in a unanimous decision.

The case was considered the most significant property rights case on the high court's docket this year, with the potential to change the balance of power between landowners and the EPA in disputes over land use, development and the enforcement of environmental regulations.

Critics called the EPA action a clear example of overreach, as the property in question was a small vacant lot in the middle of an established residential subdivision in the Idaho Panhandle. The government argued that allowing EPA compliance orders to be challenged in court could severely delay actions needed to prevent imminent ecological disasters.

Justice Antonin Scalia, writing for the court, said that Michael and Chantell Sackett are entitled to appeal the EPA order, rejecting the agency's argument that allowing landowners timely challenges to its decisions would undermine its ability to protect sensitive wetlands.

"The [law's] presumption of judicial review is a repudiation of the principle that efficiency of regulation conquers all," Mr. Scalia said in the decision. "And there is no reason to think that the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into 'voluntary compliance' without the opportunity for judicial review - even judicial review of the question whether the regulated party is within the EPA's jurisdiction."

The EPA issues nearly 3,000 administrative compliance orders a year that call on suspected violators of environmental laws to stop what they're doing and repair the harm they've caused. Major business groups, homebuilders, road builders and agricultural interests all came out against the EPA in the case.

Mr. Sackett said the Supreme Court ruling affirmed his belief that "the EPA is not a law unto itself."

"The EPA used bullying and threats of terrifying fines, and has made our life hell for the past five years," Mr. Sackett said in a statement. “As this nightmare went on, we rubbed our eyes and started to wonder if we were living in some totalitarian country. Now the Supreme Court has come to our rescue and reminded the EPA - and everyone - that this is still America."

Congressional Republicans, who had rallied to the Sacketts' cause, called the Supreme Court ruling a clear rebuke to President Obama and his environmental agenda.

"This decision delivers a devastating blow to the Obama administration's 'War on Western Jobs,'" said Sen. John Barrasso, Wyoming Republican and chairman of the Senate Western Caucus. "This victory by one Western couple against a massive Washington bureaucracy will inspire others to challenge this administration's regulatory overreach."

Building on a 'wetland'

The case stemmed from the couple's purchase of a 0.63-acre lot for $23,000 near Priest Lake, Idaho, in 2005. The Sacketts had begun to lay gravel on the land, located in a residential neighborhood, when they were hit by an EPA compliance order informing them that the property had been designated a wetland under the Clean Water Act.

The Sacketts were ordered to stop grading their property and were told that they would face fines of up to $75,000 per day if they did not return the parcel to its original state. When the Sacketts attempted to contest the order, the agency denied their request for a hearing.

Justice Scalia noted that the Sacketts' property bore little resemblance to any popular conception of a wetland, protected or not.

Reading a summary of his opinion in court, he noted that the Sacketts have never "seen a ship or other vessel cross their yard."

The 9th U.S. Circuit Court of Appeals, which rejected the couple's appeal in September, said the Sacketts had other avenues of relief, such as undergoing a wetlands permitting process - the cost of which would be as much as 12 times the value of the land.

The government also argued that couple had the option of engaging in "informal discussion of the terms and requirements" of the EPA order, including "any allegations - believe[d] to be inaccurate."

Such an option hardly constitutes adequate recourse, Justice Scalia wrote.

"The mere possibility that an agency might reconsider in light of 'informal discussion' and invited contentions of inaccuracy does not suffice to make an otherwise final agency action nonfinal," he wrote in his 16-page opinion.

The Pacific Legal Foundation in Sacramento, which represented the Sacketts without charge, called it "a precedent-setting victory for the rights of all property owners."

"This is a great day for Mike and Chantell Sackett, because it confirms that EPA can't deny them access to justice," said the foundation's principal attorney, Damien Schiff, who represented the couple in court. "EPA can't repeal the Sacketts' fundamental right to their day in court."

The Supreme Court's ruling makes it clear that "EPA bureaucrats are answerable to the law and the courts just like the rest of us," Mr. Schiff said in a statement.

Green fears

Several environmental groups opposed the Sacketts' challenge, arguing that a ruling in the couple's favor would make it more difficult to protect wetlands and noting that the lawsuit was supported by industry groups such as the American Petroleum Institute.

Larry Levine, senior attorney with for the Natural Resources Defense Council, said in a January blog post that a ruling in favor of the Sacketts would "make it harder for the EPA to take action to promptly correct ongoing environmental harms."

The EPA will be "bogged down in court, using limited resources to fight lawsuits instead of enforcing the Clean Water Act," Mr. Levine predicted. "Or, more likely, EPA will cut down on the use of such orders to avoid getting bogged down in court."

Justice Samuel Anthony Alito Jr. added in a concurring opinion that Congress needs to clarify confusion over the scope of the Clean Water Act. He said the opinion issued Wednesday is "better than nothing, but only clarification of the reach of the Clean Water Act can rectify the underlying problem."

While agreeing with the decision, Justice Ruth Bader Ginsburg said in her own opinion that she agreed only with the narrower finding that the Sacketts have the right to contest the EPA finding that their property is subject to the Clean Water Act. The court did not decide larger issues, Justice Ginsburg said.

Rep. Raul R. Labrador, the Idaho Republican who represents the Priest Lake area, congratulated the Sacketts for their "unwavering courage and selfless sacrifice."

"The federal government is an intimidating force against ordinary citizens, and standing up to its bureaucracy requires extraordinary bravery," Mr. Labrador said in a statement. "The EPA is one of the many federal government agencies whose overreach jeopardizes our civil liberties and obstructs our pursuit of prosperity."

• *This article is based in part on wire service reports.*

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ZIP code or keyv

Topix

Null. Void. Of No Effect.

Michael Boldin Tenth Amendment Center
January 21, 2011

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.

The Washington Times By Tom Howell Jr.

Tuesday, February 26, 2013

Newsmaker: Republican attorneys general see Obama misuse of power

Top Republican legal officials say the Obama administration is reneging on key duties such as border security while overstepping its role through health care mandates and tight regulation of the energy industry, a trend that has led states to heighten their defenses against federal intrusion.

As states brace for cutbacks from the sequester standoff between President Obama and congressional Republicans, several of their elected attorneys general contrast that gridlock — and not in a good way — with Mr. Obama's precedent-setting use of executive orders and federal rule-making.

"You just see it all over the place. You see it in land management, you see it in energy development, " Colorado Attorney General John W. Suthers told The Washington Times on Tuesday in a wide-ranging interview with editors and reporters. "It's a pretty significant trend, I think."

The state officials, who are in Washington for the winter meeting of the Republican Attorneys General Association, bemoaned an administration that they say has failed to lead on issues that require the states to cede to federal supremacy, such as border security and immigration, while making it difficult for them to wield any influence with federal lawmakers who represent their states.

"We are seeing, I believe, an administration at the White House [that is] increasingly going around Congress and attempting to implement laws through the regulatory agencies, most particularly the [Environmental Protection Agency], in executive orders designed to shut down the traditional areas in which we create jobs and enhance our economy in Montana," Montana Attorney General Tim Fox told The Times. "Oil and gas. Coal, for instance."

West Virginia Attorney General Patrick Morrisey said the Obama administration's attempts to scale back coal production make his residents "very concerned."

Buoyed by his re-election in November, Mr. Obama set out an ambitious second-term agenda on climate change, saying in his inaugural address that the country must not "betray" its children and warning that "the path toward sustainable energy sources will be long and sometimes difficult."

Texas Attorney General Greg Abbott scoffed at assurances this month by Homeland Security Secretary Janet A. Napolitano that the southwestern border is more secure than ever. He pointed to the bullet-ridden buildings along his state's border with Mexico, which is wracked by drug-cartel violence.

The White House and the EPA did not respond to requests for comment Tuesday on the Republican attorneys general statements.

The Republican attorneys general also homed in on Mr. Obama's signature accomplishment, the Affordable Care Act, as Exhibit A among the list of federally imposed burdens. Among other things, Mr. Obama wanted the states to implement a substantial part of the act by expanding Medicaid, but promising to cover all the costs for only a short period. He also wanted the states to set and run statewide insurance markets.

Mr. Obama's health care reforms also attracted legal challenges from Republican-led states across the country, until the Supreme Court upheld the individual mandate to buy insurance. The justices also made the expansion of Medicaid enrollment optional for the states by saying the federal government could not yank existing funding from those that declined to expand the entitlement program.

Mr. Morrisey said states are grappling with "the pause before the big storm," arguing that the administration is behind in its rule-making for a law that is "doomed to fail."

Mr. Abbott said Texas is holding firm in its opposition to the Medicaid expansion, noting that it may be difficult to sustain its budgets if the federal government does not uphold its share of contributions to the program, which are supposed to scale down to 100 percent during 2014 to 2016 and to 90 percent by 2020.

"It's akin to the line of 'Hotel California' — once you check in, you really can't check out," he said. "So if states opt in, they probably are not going to be able to extricate themselves from it in years going forward."

The attorneys general said patients who show up at emergency rooms cannot be turned away and will cost the states anyway. But they remain skeptical of the law's costs.

"When does the hemorrhaging stop?" Mr. Fox said. "At what point do we say that every federal program that might come down the road is not something we should embrace, because we don't have the money to do it?"

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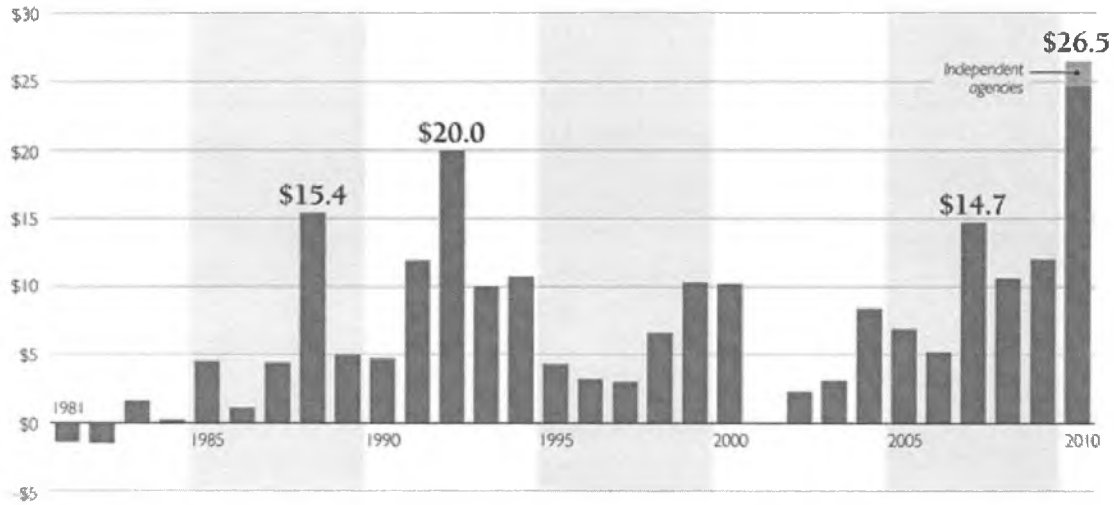
Cost of Major New Regulations

In Billions of 2009 Dollars, by Fiscal Year



Sources: Figures for 1981–2009: U.S. Office of Management and Budget; 2010 figures: Heritage Foundation calculations based on reports from individual agencies.

Chart 1 • B 2482 heritage.org

Among the most costly of the FY 2010 crop are:

- Fuel economy and emission standards[6] for passenger cars, light-duty trucks, and medium-duty passenger vehicles imposed jointly by the EPA and NHTSA. Annual cost: $10.8 billion (for model years 2012 to 2016). For automakers to recover these increased outlays, NHTSA estimates the standards will lead to increases in average new vehicle prices ranging from $457 per vehicle in FY 2012 to $985 per vehicle in FY 2016.[7]
- Mandated quotas for renewable fuels. Annual cost: $7.8 billion (for 15 years). Utilizing farmland to grow corn and other crops used in renewable fuels will displace food crops, leading food costs to increase by $10 per person per year—or $40 for a family of four, according to the EPA.[8]
- Efficiency standards for residential water heaters, heating equipment, and pool heaters. Annual cost: $1.3 billion. The appliance upgrades necessary to comply with the new standards will raise the price of a typical gas storage water heater by $120.[9]
- Limits on "effluent" discharges from construction sites imposed by the EPA. Annual cost: $810.8 million. The cost of the requirements will force the closure of 147 construction firms and the loss of 7,257 jobs, according to the EPA. Homebuyers also will bear some of the costs, with an increase in mortgage costs of about $1,953.

Regulatory Reductions Missing in Action

Measures to reduce regulatory burdens, by contrast, were few and far between in FY 2010. Only five significant rulemakings adopted last year reduced burdens. Of these, cost reductions were quantified for only two, for reported savings of $1.5 billion. This leaves a net increase in the regulatory burden of $26.5 billion.

Moreover, one of the five measures—though technically deregulatory in nature—relates to an unparalleled *expansion* of EPA powers. Due to its determination last year that greenhouse gases are pollutants, the agency is moving to set emissions limits for such gases. To follow the standards in the Clean Air Act would corral millions of currently unregulated "facilities," including offices and apartment buildings, shopping malls, restaurants, hotels, hospitals, schools, houses of worship, theaters, and sports arenas into the EPA regulatory regime. In hopes of quieting political outrage over so sweeping a dictate, the EPA's "Tailoring Rule"[10] set a minimum threshold level for regulation. Therefore, fewer facilities would be subject to permit requirements, making imposition of the emissions limits more feasible. Rather than reduce overall burdens, this action actually facilitated increased burdens.[11]

Actual Costs Likely Higher

The actual cost of regulations adopted in FY 2010 is almost certainly much higher than $26.5 billion. As a first matter, the cost of non-economically significant rules—rules deemed not likely to have an annual impact of $100 million or more—is not calculated (although such rules are believed to constitute only a small portion of total regulatory costs). Moreover, costs were not quantified for 12 of the economically significant rules adopted in FY 2010.

Many of the rules lacking quantified costs involve financial regulation. The Federal Reserve Board, for instance, did not quantify any costs for its new "Truth in Lending"[12] regulations—which impose fee and disclosure requirements for credit card accounts—although the new rules are generally expected to be costly. Similarly, costs were not calculated for new Federal Reserve Board regulations on prepaid electronic gift cards.[13]

It should also be noted that reported costs are likely minimized by allowing agencies to make the initial calculations, thereby casting their proposals in the best light. This could have a substantial impact: Overall, there is evidence that agencies systematically understate regulatory costs. In its 2005 report to Congress, the OMB's Office of Information and Regulatory Affairs conducted *ex ante* analyses of regulations to test the accuracy of cost-benefit estimates. The study determined that regulators overestimated benefits 40 percent of the time and underestimated costs 34 percent of the time.[14]

Even a finding that costs exceed benefits does not necessarily stop a new rule from going into effect. For instance, in evaluating new regulations for train-control systems, the Department of Transportation identified costs of $477.4 million, and benefits of a mere $22 million. Nevertheless, due to a statutory mandate, the regulations were adopted.

The EPA is prohibited by law from considering costs in devising regulations under the Clean Air Act and other major environmental statutes. Thus, the agency recently set new, more stringent standards on emissions of nitrogen dioxide without formally considering the economic or technical feasibility of compliance.[15] While the EPA did prepare a cost-benefit analysis—concluding that the costs exceed the benefits—agency officials conceded they had no way of determining the number of localities that would be out of compliance under the new rule.

Lastly, it should be noted that annual compliance costs constitute only part of the economic burden of regulation. New rules also entail start-up costs for new equipment, conversions of industrial processes, and devising data collection and reporting procedures. These "first-year" costs exceed $3.1 billion for the 43 new FY 2010 regulations. For example, new restrictions on "short sales"[16] imposed by the Securities and Exchange Commission will require initial costs of more than $1 billion[17] for modifications to computer systems and surveillance mechanisms, and for information-gathering, management, and recordkeeping systems. Likewise, the EPA estimates one-time implementation costs of nearly $745 million for new limits on emissions from diesel engines used in energy production.[18]

More Rules on the Way

Many, many more regulations are in the pipeline. According to one estimate, financial regulation legislation recently adopted by Congress, known as the Dodd–Frank bill, will require 243 new formal rule-makings by 11 different federal agencies.[19] So wide-ranging are regulators' new powers, in fact, that the Department of Health and Human Services has failed to meet one-third of the deadlines mandated by the new federal health care law, according to a report by the Congressional Research Service.[20]

Meanwhile, the new Consumer Financial Protection Bureau created under the Dodd–Frank measure will wield vaguely defined powers to regulate financial products and services, including mortgages, credit cards, even student loans. And, the Federal Communications Commission is mulling new regulations to limit how Internet service providers manage their networks. Such "net neutrality" rules, if enacted, would undermine investment incentives, thereby robbing the nation of much-needed broadband upgrades.[21]

Taken together, these initiatives embody a stunningly full regulatory agenda—indicating that this year's record for regulatory increases will not stand for long.

Conclusion

The regulatory burden increased at an unprecedented rate during FY 2010, as measured by both the number of new major rules as well as their reported costs. Even more are on the way in 2011.

A number of steps have been proposed to stem this growth, ranging from automatic sunsetting of rules[22] to requiring congressional approval of all new major rules.[23]

Mere procedural reforms will not be enough to stem this regulatory tide. Regulatory costs will rise until policymakers appreciate the burdens that regulations are imposing on Americans and the economy, and exercise the political will necessary to limit—and reduce—those burdens.

*—**James L. Gattuso** is Senior Research Fellow in Regulatory Policy, **Diane Katz** is Research Fellow in Regulatory Policy, and **Stephen A. Keen** is a Research Assistant, in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.*

Appendix

Executive Orders

Dateline: 12/18/97

Executive Orders Defined
An Executive Order (EO) is a directive issued to executive-level agencies, department heads, or other employees from the President under the President's statutory, or constitutional powers. In many ways, the EO is similar to written orders, or instructions the president of a corporation might send to department heads or directors.Thirty days after it is officially published in the Federal Register, an EO becomes law. While the EO does bypass the U.S. Congress and the standard legislative law making process, no part of an EO may be illegal or unconstitutional. The first EO was issued in 1789 by none other than George Washington. Not until 1907 were EOs given official numbers.

Reasons for Issuing an Executive Order
Presidents typically issue an EO for one of these purposes:
1. Operational management of the executive branch
2. Operational management of federal agencies or officials
3. To carry out statutory presidential responsibilities

- - In 1970, President Nixon used this 398 word Executive Order establishing NOAA.

How Executive Orders May be Vacated
The President can retract an EO at any time. The President may also issue an EO that supersedes an existing one. New incoming Presidents may choose to follow the EOs of their predecessors, replace them with new ones of their own, or revoke the old ones completely. In extreme cases, Congress may pass a law that alters an EO, and the Supreme Court can declare them unconstitutional.

Executive Orders vs. Proclamations
Presidential Proclamations differ from EOs in that they are either ceremonial in nature or deal with issues of trade and may or may not carry legal effect. All EOs become law.

Constitutional Authority for Executive Orders
Article II, section 1 of the Constitution reads, in part, *"The executive power shall be vested in a president of the United States of America."* And, Article II, section 3 asserts that, *"The President shall take care that the laws be faithfully executed..."* Since the Constitution does not specifically define executive power, critics of Executive Orders argue that these two passages do not imply Constitutional authority. But, Presidents of the United States since George Washington have argued that they do.

Modern Use of Executive Orders
Until World War I, the Executive Order was used for relatively minor, usually unnoticed acts of state. A trend that changed drastically with passage of the War Powers Act of 1917. This act passed during WWI granted the President temporary powers to immediately enact laws regulating trade, economy, and other aspects of policy as they pertained to enemies of America. A key section of the War Powers act also contained language specifically excluding American citizens from its effects.

The War Powers Act remained in effect and unchanged until 1933 when a freshly elected President Franklin D. Roosevelt found America in the panic stage of the Great Depression. The first thing FDR did was to convene a special session of Congress where he introduced a bill amending the War Powers Act to remove the clause excluding American citizens from being bound by its effects. This would allow the President to declare "national emergencies" and unilaterally intact laws to deal with them. This massive amendment was approved by both houses of Congress in under 40 minutes without debate.

Hours later, FDR officially declared the depression a "national emergency" and stared issuing a string of Executive Orders that effectively were the "New Deal."

While some of FDR's actions were, perhaps, constitutionally questionable, history recognizes them as averting the growing panic and starting our economy on its way to recovery.

All Those Opposed
Many people strongly oppose the Executive Order as being an unconstitutional, even potentially dictatorial application of power. While the purpose of this article is not to state an opinion, or editorialize either way, I feel it only fair that this alternative point of view be represented.

The WINDS.org - Presidential Executive Orders

The opinions expressed in the web sites linked above are those of their authors, contributors, and representatives only and in no way represent the opinions of this Web site, your Guide, or the Mining Company, Inc.

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WorldNetDaily wnd commentary
Friday, February 11, 2011

The perversion of the U.S. Constitution

Posted: July 08, 1998
1:00 am Eastern

By Joseph Farah
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"Stroke of the pen. Law of the land. Kinda cool."
--Clinton presidential aide Paul Begala, July 1998

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."
--Article 1, U.S. Constitution, 1789

The greatest fear of the Founding Fathers was the establishment of a strong central government and an ambitious, power-hungry political leader at the center of that government. They had had their fill of kings and dictators. They believed the best assurance against centralized authority was a loose association of sovereign states, which maintained most governmental power at the local level.

President Clinton's glib announcement that he will issue a barrage of executive orders to further his legislative agenda while bypassing Congress is the ultimate fulfillment of those fears. More chilling yet is the timing of the ominous announcement. It comes less than two months after Clinton issued, while on foreign soil, Executive Order 13083, which annihilates the principles of federalism that have guided the nation for the last 200 years.

The 10th Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." Under EO 13083, Clinton has effectively tacked on to that clear, forthright, inspired, unambiguous statement a list of exceptions. He has done it single-handedly, with the stroke of a pen. And, no Mr. Begala, there is nothing cool about totalitarianism.

Say what you will about him, Bill Clinton is a bright and educated man. His actions and his words are carefully considered. He knows what he is doing. That's what makes this trend so frightening. Where does he want to take the nation? How far from its founding principles are we to stray? Is America about to transform itself from a nation governed by laws to a nation ruled by men?

How far we've come from the days of statesmen like James Madison, who believed "That all power is originally vested in, and consequently derived from, the people. That government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty and the right of acquiring property, and generally of pursuing and obtaining happiness and safety. That the people have an indubitable, unalienable, and indefeasible right to reform or change their government whenever it be found adverse or inadequate to the purpose of its institution."

Note that Madison said "the people" -- not the government -- have a right to change their government. Bill Clinton has taken on this mission as his own God-given responsibility. He is acting like a strongman, an ayatollah, a czar, a potentate, a Fuhrer.

Even before Clinton abused his office so egregiously, the United States was in grave danger of concentrating too much power in Washington and too much power in the Oval Office. Clinton, ever the opportunist, has taken full advantage of Americans' ignorance of their constitutional heritage and usurped much of the remaining congressional legislative authority.

Potentially, the worst abuse of all is the executive order. For 30 years, Americans have lived under the shadow of executive orders that could -- as Mr. Begala inelegantly stated it -- with "the stroke of a pen," turn America into just another fascist dictatorship. Fortunately, America has been blessed with leaders -- some good, some bad -- who have restrained themselves from signing away our freedoms.

Without congressional approval, the president has the power to relocate whole populations of Americans, the power to shut down the free press, to force a national registration of all people. There doesn't need to be a war to justify such an action -- just a crisis, be it domestic or foreign, violent or merely economic.

I count at least a dozen executive orders, today standing as the law of the land, which would suspend the Constitution and the Bill of Rights in their entirety with such a stroke of the pen. Such power should not be in the hands of any one man -- particularly one as ambitious, driven and morally contemptible as Bill Clinton.

Oh, what a delicate thread from which our liberty is suspended.

The States Can Stop Obama

By Sheriff Richard Mack (Ret.)

By now we have all heard the cliches and seen the posters from the "Tea Parties" espousing freedom, less government, and perhaps most of all, how the federal government had better back off trying to shove their national healthcare down our otherwise healthy throats. The truth of the matter is all the slogans of "Don't Tread On Me" or "Give Me Liberty Or Give Me Death" or "We're Mad As Hell And We're Not Taking It Anymore," don't mean a thing when compared to reality; the real and actual answer to all the protests, marches, and outrage. The answer is in our own backyards! *The States can stop every bit of it!* That's right, the individual States can stop "Obamacare" and all other forms of out-of-control federal government mandates and "big brother" tactics. If Arizona, Hawaii, New Hamshire, Texas, etc. want nothing to do with National Healthcare as proposed by Barack Obama or Congress, then all they have to do is say "No!"

For you skeptics who think the States could no more do this than fly to the moon, let's look at the law. First, the U.S. Constitution is the ultimate and supreme law of the land. More specifically, the Bill of Rights was established, because some of our Founding Fathers, feared that the Constitution did not go far enough in restricting or limiting the central government. Hamilton was one of a select few who wanted a bigger and powerful federal government. However, several key states and powerful delegates such as Patrick Henry, said they would not support the formation of a new government if the Constitution did not contain a Bill of Rights, a supreme law to establish basic and fundamental human rights that could never, for all future American generations, be violated, altered or encroached upon by *government*. So the Framers of our Constitution came up with ten; ten God-given freedoms that would forever be held inviolable by our own governments.

The last of these basic foundational principles was the one to protect the power, sovereignty, and the autonomy of the States; the Tenth Amendment. This amendment and law underscores the entire purpose of the Constitution **to limit** government and forbids the federal government from becoming more powerful than the "creator." Let's be very clear here; the States in this case were the creator. They formed the federal government, not the other way around. Does anyone believe rationally that the States intended to form a new central government to control and command the States at will? Nothing could be further from the truth. Article 1, Section 8 of the Constitution details what duties the federal government will be responsible for under our new system of "balanced power." Anything not mentioned in Article 1, Sec. 8, is "reserved to the States respectively, or to the people." (Tenth Amendment) Hence, the federal government was not allowed creativity or carte blanche to expand or assume power wherever and whenever they felt like it. The feds had only discrete and enumerated and very limited powers. Omnipotency was the last thing the Founding Fathers intended to award the newly formed federal government. They had just fought the Revolutionary War to stop such from Britain and their main concern was to prevent a recurrence here in America.

In perhaps the most recent and powerful Tenth Amendment decision in modern history, the U.S. Supreme Court ruled in Mack/Printz v U.S. that "States are not subject to federal direction." But today's federal Tories argue that the "supremecy clause" of the U.S. Constitution says that the federal government is supreme and thus, trumps the States in all

matters. Wrong! The supremacy clause is dealt with in Mack/Printz, in which the Supreme Court stated once and for all that the only thing "supreme" is the constitution itself. Our constitutional system of checks and balances certainly did not make the federal government king over the states, counties, and cities. Justice Scalia opined for the majority in Mack/Printz, that "Our citizens would have two political capacities, one state and one federal, each protected from incursion by the other." So yes, it is the duty of the State to stop the Obamacare "incursion." To emphasize this principle Scalia quotes James Madison, "The local or municipal authorities form distinct and independent portions of the *Supremacy,* no more subject within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere." The point to remember here is; where do we define the "sphere" of the federal government? That's right; in Article 1, Section 8 of the Constitution and anything not found within this section belongs to the States or to the People. So where does health care belong? The last place it belongs is with the President or Congress. It is NOT their responsiblity and the States need to make sure that Obama does not overstep his authority.

Just in case there is any doubt as to what the Supreme Court meant, let's take one more look at Mack/Printz. "This separation of the two spheres is one of the Constitution's structural protections of liberty. Hence, a double security arises to the rights of the people. The different governments will control each other..." What? The Constitution, the supreme law of the land, has as a "structural protection of liberty" that States will keep the federal government in check? No wonder it was called a system of "checks and balances." The States (and Counties) are to maintain the balance of power by keeping the feds within their proper sphere.

So do the States have to take the bullying of the federal government? Not hardly! The States do not have to take or support or pay for Obamacare or anything else from Washington DC. The States are not subject to federal direction. They are sovereign and "The Constitution protects us from our own best intentions." (Mack/Printz) Which means the States can tell national healthcare proposals or laws to take a flying leap off the Washington monument. We are not subject to federal direction!

In the final order pursuant to the Mack/Printz ruling Scalia warned, "The federal government may neither, issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. Such commands are fundamentally incompatible with our constitutional system of dual sovereignty." It is rather obvious that nationalized healthcare definitely qualifies as a "federal regulatory program."

Thus, the marching on Washington and pleas and protests to our DC politicians are misdirected. Such actions are "pie in the sky" dreaming that somehow expects the tyrants who created the tyranny, will miraculously put a stop to it. Throughout the history of the world such has never been the case. Tyrants have never stopped their own corrupt ways. However, in our system of "dual sovereignty," the States *can* do it. If we are to take back America and keep this process peaceful, then state and local officials will have to step up to the plate. Doing so is what States' Rights and State Sovereignty are all about.

28-LS0328\O.1
Gardner
4/1/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI

TO: CSHB 83(JUD)

Page 2, following line 13:

Insert a new bill section to read:

"* **Sec. 3.** AS 44.23.020(b) is amended to read:

(b) The attorney general shall

(1) defend the Constitution of the State of Alaska and the Constitution of the United States of America;

(2) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;

(3) represent the state in all civil actions in which the state is a party;

(4) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(5) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;

(6) draft legal instruments for the state;

(7) make available a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office; [AND]

(B) on needed legislation or amendments to existing law; **and**

(C) summarizing litigation between the state and a department or agency of the federal government, including, for each case,

1 **a discussion of the legal issues presented to the court, the cost of the case,**
2 **and the final disposition of the case, if available;**
3 (8) prepare, publish, and revise as it becomes useful or necessary to do
4 so an information pamphlet on landlord and tenant rights and the means of making
5 complaints to appropriate public agencies concerning landlord and tenant rights; the
6 contents of the pamphlet and any revision shall be approved by the Department of
7 Law before publication; and
8 (9) perform all other duties required by law or which usually pertain to
9 the office of attorney general in a state."
10
11 Renumber the following bill sections accordingly.