

Why States Must Nullify Unconstitutional Acts of Congress: Instructions from Hamilton, Madison, & Jefferson.

Why Nullification is Legal.

By Publius Huldah.

During August 2010, the People of The State of Missouri approved **Proposition C** and nullified key parts of “obamacare”. As a matter of constitutional principle, may the People of the States lawfully do this? Or must they submit to every law made by Congress whether it is constitutional or not? Are federal judges the final authority?

I will prove that the States have the Right and the Duty to nullify unconstitutional acts of Congress. The only real question is whether Americans have the Will to reclaim our Constitutional Republic & the Rule of Law, or whether they will submit to **the rulership of men who “don’t care” what the Constitution says, and who see Obamacare as a way “to control the people”**.

Congress’ Powers are Enumerated

1. The U.S. Constitution, which **created** the federal government, permits Congress to make laws **only** on those few objects which are listed in the Constitution. The objects on which Congress has authority to make laws applicable throughout our Country are itemized at **Art. I, Sec. 8, clauses 1-16** (and in a few of the Amendments).

Since the Federalist Papers are the most authoritative commentary on the true meaning of the Constitution, ¹ let us see what those Papers say about the extent of Congress’ legislative powers. In **Federalist No. 83** (7th para), Alexander Hamilton says:

The plan of the convention declares that the power of Congress ...shall extend **to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general authority was intended.**
[boldface mine]

In **Federalist No. 39** (3rd para from end), James Madison says:

...the proposed government cannot be deemed a national one; since its **jurisdiction**

extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects...[emphasis added]

Our Framers were emphatic that ours is a Constitution of enumerated powers only. In **Federalist No. 45** (9th para), Madison says:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. **The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce;** with which last the power of taxation will, for the most part, be connected. *The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people...*[emphasis mine] ³

Do you see? If the Constitution doesn't delegate a power to Congress by listing it in the Constitution, Congress doesn't have that power. It is reserved by the States or the People.

Congress Usurps Power when it makes Laws outside its Enumerated Powers – and such pretended Laws are VOID & NOT VALID.

2. Our Framers understood that civil governments seek to expand power at the expense of the People. And when they do so, their acts are **VOID** and **INVALID!** Thus, in **Federalist No. 33** (next to last para), Hamilton says:

...But it will not follow ...that acts of the large society [the federal government] which are NOT PURSUANT to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies [the States], will become the supreme law of the land. **These will be merely acts of usurpation, and will deserve to be treated as such...** [caps are Hamilton's; other emphasis mine]

In the last paragraph of No. 33, Hamilton says a law made by Congress which is not authorized by the Constitution,

...would not be the supreme law of the land, but a usurpation of power not granted by the Constitution... [emphasis mine]

In **Federalist No. 78** (10th para), Hamilton says:

...every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, **is void**. **No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm**, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; **that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid**. [emphasis mine]

Nothing in Art. I, Sec. 8, or elsewhere in the Constitution, authorizes Congress to pass obamacare! “Medical care” is not an enumerated power. **Obamacare is unconstitutional** as outside the scope of the legislative powers granted to Congress. ⁴

Furthermore, the Tenth Amendment **forbids** Congress to pass obamacare: When a power is not delegated to the federal government by the Constitution, that power is reserved to the States or to the People. *Only the States or the People have power over medical care!*

So! Congress passed obamacare without any constitutional authority to do so, and in violation of the Tenth Amendment. Hence, as Hamilton shows us, **obamacare is “void” and not “valid”. It is an act “of usurpation, and will deserve to be treated as such.”**

Hamilton, Madison & Thomas Jefferson show us that Nullification is the Answer.

3. Hamilton shows in **Federalist No. 28** (7th para) that if the federal government invades the rights of the People, they can use the State government as the instrument of redress:

...in a confederacy the people ... may be said to be ... the masters of their own fate. Power being almost always the rival of power, the general [federal] government will ... stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government. **The people**, by throwing themselves into either scale, will infallibly make it preponderate. **If their rights are invaded by either, they can make use of the other as the instrument of redress....** [emphasis added]

So! When the People of the State of Missouri approved Proposition C nullifying obamacare, they properly made use of their State government as “the instrument of redress” against the usurpations of Congress & the Executive Branch.

And since State officials and many Citizens have taken the Oath to support the U.S. Constitution (Art. VI, clause 2), it is their SWORN DUTY to nullify – to refuse to obey – unconstitutional and pretended federal

“laws”, such as obamacare.

Nullification by States of unconstitutional federal laws is not new. Our beloved Thomas Jefferson (Author of the Declaration of Independence) & James Madison (Father of the U.S. Constitution) show us ***precisely*** what States are honor bound to do when Congress makes an unconstitutional law. During 1798, in response to Congress' passage of the Alien and Sedition Acts, the Kentucky and Virginia Legislatures passed Resolutions declaring those Acts unconstitutional as outside the enumerated powers granted to Congress, and as in violation of the Tenth Amendment. In these Resolutions, Kentucky and Virginia resolved not to abide by the federal acts. Jefferson wrote **The Kentucky Resolutions**, and Madison wrote **The Virginia Resolution**.⁵

The Kentucky & Virginia Resolutions are *masterpieces of constitutional analysis*. Study them! States may use them as models for their own Resolutions nullifying the myriad of unconstitutional “laws” which have spewed forth from Congress in recent decades.

The Framers did NOT say States should file Lawsuits and let Federal Judges decide!

4. **Think:** Why would the States, which formed a Federation for the limited purposes enumerated in Art. I, Sec. 8; ask one branch of the federal government (judiciary) to opine on whether a “law” approved by the two other branches (legislative & executive), exceeds the enumerated powers of Congress and encroaches on the reserved powers of the States and the People (10th Amendment)? All three branches of the federal government have been unified against The Constitution, the States, and the People for a very long time! Why would States put themselves in the position of supplicants to a Court which has already shown itself to be contemptuous of the Constitution, and of the States' and The Peoples' reserved powers?

And further: Can we not see for ourselves that obamacare is outside the scope of the Legislative Powers granted to Congress in the Constitution, and that it violates the Tenth Amendment? Our Framers certainly did not advocate running to federal judges to let them decide such issues! **No, our Framers were men who had guts & backbone and *understood the Constitution!* So they nullified unconstitutional acts of Congress.**⁶

Will the American People pass the Test?

5. Will the States and the People surrender to the likes of former DNC Chairman Howard Dean who “doesn't care” if the stuff passed by Congress is unconstitutional? To Democrat Congressman John Dingle who sees obamacare as a means “to control the people”? Or will The People and the States man up and

defend our Constitution?

We have instructions from the Author of the Declaration of Independence, the Father of the Constitution, and the Author of most of the Federalist Papers. They explain what our Constitution really means, and tell us what we need to do when the federal government usurps powers. *Listen to them! They are the highest Authority on the true meaning of our Constitution.*

And do not be swept away by rage and lust for revenge. Do not become the murderous, unthinking red-capped mob of the French Revolution.

Let us pray that our eyes be opened, **that we listen to the words of wisdom from our Framers**, that our spines be stiffened, and that we work for **a peaceful political resolution** of the dreadful problems facing us. PH

Endnotes:

¹ At a meeting attended by Thomas Jefferson & James Madison of the **Board of Visitors of the University of Virginia** on March 4, 1825, the following resolution selecting texts for the Law school, was passed:

...on the distinctive principles of the government of our own state, and of that of the US. the best guides are to be found in 1. the Declaration of Independence, as the fundamental act of union of these states. 2. **the book known by the title of 'The Federalist', being an authority to which appeal is habitually made by all, and rarely declined or denied by any as evidence of the general opinion of those who framed, and of those who accepted the Constitution of the US. on questions as to it's genuine meaning....** (page 83) [emphasis added]

² See also **Federalist No. 14** (8th para) "...the general [federal] government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects..."

Federalist No. 27 (last para) "...It merits particular attention in this place, that the laws of the Confederacy [the federal government], as to the ENUMERATED and LEGITIMATE objects of its jurisdiction, will become the SUPREME LAW of the land...Thus the legislatures, courts, and magistrates, of the respective members, will be incorporated into the operations of the national government AS FAR AS ITS JUST AND CONSTITUTIONAL AUTHORITY EXTENDS..." [caps in original]

³ Medicare, Medicaid, social security, etc., are also unconstitutional as outside the scope of the legislative powers granted to Congress. And the programs can't work! As more & more people seek to live at other peoples' expense, the system eventually collapses. That collapse is upon us.

⁴ Jefferson calls it “nullification”; Madison calls it “interposition”. In “interposition”, the State “interposes” – steps in between – an usurping federal government and The People. (Webster's 1828 Dictionary.) The result is really the same.

⁵ Furthermore, the supreme Court is NOT the ultimate authority on the meaning of the Constitution! Hamilton says federal judges may be impeached for usurpations (**Federalist No. 81**, 8th para); the People are “the natural guardians of the Constitution” as against federal judges “embarked in a conspiracy with the legislature”; and **the People are to become “enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority.”**(**Federalist No.16**, next to last para).

The federal courts have refused to enforce the Constitution. Congress has failed to impeach & remove usurping federal judges – it has failed to be the “check” on the federal courts. Therefore, **WE** must enforce the Constitution by means of nullification. **WE** must be the final “check” on the courts. Study & Learn so that you are qualified to do this. PH

January 24, 2011



January 24, 2011 - Posted by **Publius Huldah** | **Nullification by States, Nullification of unconstitutional acts, Resistance to tyranny, States Retained Powers, States Rights**