SENATE BILL 2450

By Summerville

AN ACT to amend Tennessee Code Annotated, Title 3; Title 4; Title 5; Title 6; Title 7; Title 8 and Title 9, relative to enacting a State Interposition Act relative to the federal Patient Protection and Affordable Care Act.

WHEREAS, state rights and powers are sovereign, a unique culture, heritage, and history with liberties requiring neither permission or approval by the federal government, because the powers of the federal government are enumerated, limited, and defined by the United States Constitution and subsequent federal law of the land; and

WHEREAS, James Madison, in his Virginia Resolution of 1798, asserted 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 their state; and

WHEREAS, in *Printz v. United States*, 521 U.S. 898 (1997), the Supreme Court of the United States ruled:

> We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State’s officers directly. 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. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty; and

and,

WHEREAS, the majority opinion by Justice Scalia refers to the "dual sovereignty" established by the United States Constitution that federalism is built upon, and his opinion clearly states that the framers designed the Constitution to allow federal regulation of international and interstate matters, not internal matters reserved to the state legislatures, which would increase its powers far beyond what the constitution intends; and

WHEREAS, state citizen rights are not subject to federal wishes, laws, orders, restrictions or limitations that impede or restrict the rights of state citizens; and

WHEREAS, Chief Justice John Roberts' ruling by the Supreme Court of the United States affirmed State interposition rights in great detail, setting new precedent in *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566 (2011); now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding Sections 2 through 5 as a new, appropriately designated chapter.

SECTION 2. This act shall be known and may be cited as the "State Interposition Act relative to the Federal Affordable Care Act".

SECTION 3. It is the intent of the general assembly that this act codify the sworn duty and process of this state to interpose to prevent usurpation or encroachment upon this sovereign state and its citizens by the federal government with respect to the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, in violation of state rights in intrastate commerce, culture, federalism, and the constitutional rights of this state's citizens.

SECTION 4. Pursuant to United States supreme court rulings defining "dual sovereignty", legal encroachment issues resulting from the specific encroachment on state and citizen rights guaranteed by the United States Constitution include the following specified issues as an official list of grievances for the purpose of state interposition:

(1) The Affordable Care Act's tortious interference with existing contracts, considering:

(A) Existing state health care is a collective product comprised of decades of market driven, complex networks of implied and written contracts between consumers, physicians, hospitals, employers, insurance companies, medical industry suppliers, pharmaceutical industry suppliers, and their respective employees, vendors and investors, with state departments supervising, monitoring, and licensing all concerns in order to protect the quality of the state health care system quality for legal state residents;

(B) Existing contracts vary widely in longevity, but the intent expressed, implied and documented in contracts is the intent of consumers and their doctors to build and share a long-term mutual trust relationship which enhances the quality of care. Without such mutual trust relationship covenants, which only achieve the highest quality care with mutual maturity over time, there can be no confidence in care delivered or received in terms of quality, cost, price, and the availability of services at a mutually agreeable cost; and

(C) The Affordable Care Act's interference with, and irreparable harms inflicted upon countless long-term existing contracts, grants, investments and other implied and written contracts are illegal, including the interference with medical research by removing the incentive of an open marketplace where years of private or state investment for excellence in research produce new, vital innovation in every area of medical and mental health care;

(2) The usurpation of intrastate commerce, considering:

(A) State commerce is unique with wide variations in the numerous geographic areas, such that state-wide companies have a different sets of rules, forms, criteria, processes, procedures, styles, and costs or pricing based on local

market conditions, available local resources and providers, and other local factors;

(B) Each local area market is different, as rural locations have different issues than cities or suburbs;

(C) Commerce inside state borders is a state right specifically, as only the power to regulate interstate commerce channels is enumerated for the federal government, and the Affordable Care Act system expanded to all state areas, local employers and legal residents, usurps intrastate commerce; and

(D) Local areas have civil liberties and established intrastate commerce to meet their needs that the state must protect by interposition and any additional legal remedies that are required;

(3) The usurpation of state culture and heritage, considering:

(A) State employers and legal residents enjoy a shared, yet unique, culture and heritage in each locality, developed over centuries and many generations, that binds them with purpose in the pursuit of happiness that only pride and contentment in the past and present makes possible; and

(B) Local doctors in many areas know patients not just by a fifteen (15) minute office visit each year, but also through implied contracts made in mutual trust by local social interaction, in church activities, ball games, civic events, recreation activities, where people know each other and each other's parents, children, friends and relatives;

(4) The forcing of an unlimited, unfunded mandate on the state, considering:

(A) The Affordable Care Act is a blank check for an unlimited, unknown amount, based on the federal assumption the government can continue to

borrow forty-six cents (46¢) or more of every dollar or implement an inflation tax by creating money out of blank paper;

(B) State residents will pay this bill or pass it along to children, grandchildren and great-grandchildren to pay off in perpetuity, creating an illegal, immoral economic condition that denies future generations' civil rights;

(C) The Affordable Care Act requires states to pay ten percent (10%) of the total cost after the first two (2) years; and

(D) This unfunded mandate is illegal and certain to cause a financial catastrophe that will bankrupt the state, as proven by this state's failed TennCare efforts to provide unlimited health care for all residents;

(5) The usurpation of the medical industry and the health insurance industry, considering:

(A) The Affordable Care Act imposes new layers of political bureaucracy that dictates all aspects of health care and health insurance, which are unique operations under distinct state authority and responsibility, led by the commissioners of health and commerce and insurance and the director of the bureau of TennCare;

(B) The federal government, serving as fiduciary, has mismanaged funds for social security, medicare, and medicaid, covering a total of seventy-seven trillion dollars ($77,000,000,000,000) in known, current obligations due as of year end 2012, with no ability to honor current obligations;

(C) The Affordable Care Act illegally requires states to relinquish supervision and control over state health insurance company trust funds created from citizen premiums paid into trust for future health care expenses; and

(D) Disqualifying federal requirements out of common sense, fairness, justice, and self-defense through state interposition is required and fully warranted;

(6) Civil rights violations of legal state residents, considering:

(A) The Affordable Care Act literally denies the fundamental rights to life, liberty, and the pursuit of happiness guaranteed by the United States Constitution and the Constitution of Tennessee;

(B) The Affordable Care Act neuters state commissioners and directors charged with oversight of health care, which endangers state residents, as states closely monitor health care providers to ensure the maintaining of proper credentials and the integrity of the licensing and renewal process for providers, with the goal of maintaining the highest quality care possible;

(C) The Affordable Care Act's public mission of creating a single-payer provider will inevitably destroy the existing state systems enjoyed as state-of-the-art for many decades;

(D) The removal of health care options is not liberty, and the Affordable Care Act destroys established, trusted doctor-patient relationships and removes all options for a majority of state residents for the expressed purpose of forcing health care for all Americans by requiring residents to pay taxes or fines if a preferred doctor does not participate in the Affordable Care Act or accept wages dictated by the Affordable Care Act; and

(E) For more than fifty (50) years, state residents have had the personal civil right to select what health care plan is best for them, and not be limited to a one-size-fits-all product deemed essential by a political process. With the Affordable Care Act's mandate that certain benefits be provided in all insurance

plans, the price of premiums will increase, leaving an individual unable to continue the coverage the individual likes, wants or needs, with a price the individual can afford or budget;

(7) Origination Clause violations, considering:

(A) The United States supreme court decision in *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566 (2011), made it clear that the individual mandate is a tax, not a penalty as claimed by the administration;

(B) The Affordable Care Act originated in the United States senate;

(C) The United States Constitution, Article 1, § 7, Clause 1, is clear that all taxes are to originate in the United States house of representatives, and, as a result, the individual mandate is contested as an unconstitutional tax; and

(D) The Affordable Care Act has been amended by a measure that also did not originate in the United States house of representatives, with a new tax of five dollars and twenty-five cents ($5.25) per month levied on every employee in an employer provided group plan;

(8) Independent payment advisory board violations, considering:

(A) Sections 3403 and 10320 of the Affordable Care Act created a fifteen-member federal board that is granted the authority to make payment changes for the medicare program without approval from Congress;

(B) There are no administrative or judicial reviews of the decisions of the board regarding payments; and

(C) Material changes to existing law without congressional review and approval are illegal ab initio, and therefore have no standing in this state;

(9) Material changes made though rulemaking or guidance violations, considering:

(A) For many of the provisions of the Affordable Care Act, formal rules and regulations have been delayed or do not exist; and

(B) The delay and lack of formal rules and regulations, in addition to the possibility of an infinite number of future material changes circumventing Congress, violate the Administrative Procedure Act, compiled in 5 U.S.C. § 501 et seq., the Congressional Review Act, compiled in 5 U.S.C. § 801 et seq., and the law regarding dual sovereignty, which govern these issues; and

(10) Destruction of state systems violations, considering:

(A) The Affordable Care Act employer mandate, a tax on employers with fifty (50) or more employees who decide not to provide adequate health insurance coverage to their employees, disincentivizes providing market-driven coverage to provide instead a coverage that does not consider the cost to impose; and

(B) The Affordable Care Act destroys the historical success of state systems that have produced this state's existing state-of-the-art medical, mental health, and pharmaceutical innovations which are the envy of the world.

SECTION 5.

(a) A person who knowingly interferes or conspires to interfere with the state interposition of the federal Patient Protection and Affordable Care Act commits a Class E felony, punishable by confinement of not less than one (1) year nor more than three (3) years.

(b) In addition to criminal prosecution pursuant to subsection (a), the attorney general and reporter shall bring a civil action against such person to recover all compensatory damages and punitive damages, calculated as treble damages, in a court of competent jurisdiction.

SECTION 6. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect July 1, 2014, the public welfare requiring it.