AS ADOPTED BY THE SENATE

January 19, 2010

**S. 424**

Introduced by Senators Bright, S. Martin, Alexander, Campbell, Fair, Knotts, Cromer, Mulvaney, Verdin, L. Martin, Shoopman, Rose, McConnell, Thomas, Cleary, Courson, Coleman, Davis, Reese, Campsen, Grooms, Ryberg, Peeler, O’Dell, Bryant and Massey

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Read the first time February 12, 2009.

**A** **CONCURRENT RESOLUTION**

TO AFFIRM THE RIGHTS OF SOUTH CAROLINA BASED ON THE PROVISIONS OF THE NINTH AND TENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Whereas, the United States Constitution and the Bill of Rights established a federal government limited in scope and guarantee of personal liberty so that our citizens will be free to pursue their inalienable rights of life, liberty, and the pursuit of happiness as recognized in the Declaration of Independence; and

Whereas, the Ninth Amendment to the United States Constitution provides that “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”; and

Whereas, pursuant to the Ninth Amendment, the people are guaranteed the right to privacy as a basic human right; and

Whereas, the delivery, administration, and receipt of medical care affects personal privacy and involves the most intimate and personal of choices; and

Whereas, the Tenth Amendment to the United States Constitution provides that “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”; and

Whereas, the Tenth Amendment defines the limited scope of federal power as being that specifically granted by the United States Constitution; and

Whereas, pursuant to the Tenth Amendment, by limiting the scope of federal power to only those specifically enumerated in the United States Constitution, the states retain plenary power to govern; and

Whereas, despite the clear limitations placed upon it by the United States Constitution, the federal government has steadily expanded its reach into the lives of our citizens and, in so doing, violates the very principles upon which this nation was founded; and

Whereas, the United States Supreme Court has said that states have great latitude in regulating medical care and standards, which have historically and constitutionally been primary state responsibilities and affect areas of core state responsibility, yet Congress and the President are reaching agreement over legislation that will result in the federal government absorbing the regulation of medical care, stripping the states of most responsibility, and taking away the free choice of the citizens of the states; and

Whereas, the federal government has spent trillions of dollars of borrowed money to run deficits, to bail out financial institutions, to prop-up auto makers, and to keep afloat other private enterprises that were mismanaged, took unnecessary risks, or were unresponsive to market demands, thus amassing a debt that will loom over and burden our country for generations to come; and

Whereas, the federal government habitually responds to its annual budget shortfalls by burdening the states with unfunded mandates, shifting costs for programs to the states, limiting state flexibility, and interfering with state revenue systems, undermining the constitutionally created balance between federal and state government; and

Whereas, the United States Supreme Court has ruled that Congress may not simply commandeer the legislative and regulatory processes of the states, and that states may provide their citizens with protections that exceed the protections by the federal government; and

Whereas, the United States Supreme Court has ruled that the United States Constitution allows states to grant rights to their citizens in their state constitutions, beyond rights granted in the federal Constitution; and

Whereas, the United States Supreme Court has recognized that federal law restricting certain rights may be ineffective in denying those rights protected in state Constitutions; and

Whereas, the State recognizes that as an independent sovereign, the State along with the other states of the union took part in an extensive bargaining process through the adoption of the Constitution and the various amendments thereto, and like any other party to any other agreement, the State is bound to uphold the terms and conditions of that agreement. Through this agreement, the states have collectively created the federal government, limiting the scope of its power and authority, as well as ensuring that certain fundamental rights are guaranteed. Also, through this process the federal judiciary has interpreted the Fourteenth Amendment to limit states’ governmental authority by providing that important rights and protections afforded by the United States Constitution to the people as citizens of the United States are also extended to each person as a citizen of an individual state. Pursuant to that interpretation, this State is bound to uphold the principles and protections afforded by the Fourteenth Amendment which guarantees the privileges and immunities of the United States, due process of law, and equal protection under the law; and

Whereas, the federal government is considering legislation that may, among other things, obligate residents in South Carolina and other states to purchase health insurance; and

Whereas, the federal government is considering legislation that may, among other things, mandate that this State and other states increase its spending for Medicaid; and

Whereas, the General Assembly of this State reaffirms that the people of this State, have collectively, through the exercise of their authority as citizens of a sovereign state determined the constitutional balance of power in this State; and

Whereas, the citizens of this State have exercised their sovereign authority both directly through the passage of this state’s constitution and the amendments thereto and representatively through their duly elected representatives in the General Assembly, and the General Assembly exercises the power of the people without limitation except as provided by the State Constitution; and

Whereas, one of the most fundamental powers of any state in the exercise of its sovereignty is through the power of appropriation and under our state’s constitutional balance of power, the power of appropriation is firmly placed within the province of the General Assembly; and

Whereas, the General Assembly rejects any attempt by the federal government, either through the actions of the Congress or the federal courts, to limit, alter, or otherwise affect in any manner whatsoever the General Assembly’s sovereign exercise of the power of appropriation; and

Whereas, there is concern that the federal government will also overstep its authority and violate the Tenth and the Second Amendments of the United States Constitution by enacting far-reaching restrictions or even a ban on gun purchases and ownership; and

Whereas, the Second Amendment to the United States Constitution provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed”; and

Whereas, intervention by an armed South Carolina militia may prove to be the sole means for this State to protect the Liberties guaranteed it and all other states under the Tenth Amendment to the United States Constitution; and

Whereas, due to the potential need for intervention by an armed South Carolina militia, the protections afforded under the Second Amendment to the United States Constitution are of upmost importance to the Citizens of South Carolina and the State of South Carolina; and

Whereas, it is vitally important for the future of our nation that the states stand against the relentless expansion of the federal government and restore the proper balance to our federal system. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the General Assembly of the State of South Carolina, by this resolution, claims for the State of South Carolina sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the United States Constitution.

Be it further resolved that it is the policy of the State of South Carolina that:

No law shall interfere with the right of a person to be treated by or receive services from a health care provider of that person’s choice;

No law shall restrict a person’s freedom of choice of private health care systems or private health care plans of any type;

No law shall interfere with a person’s or an entity’s right to pay directly for lawful medical services; and

No law shall impose a tax, penalty, or fine, of any type, for choosing a health care provider, to obtain or decline health care coverage or for participation in any particular health care system or plan.

Be it further resolved that it is the policy of the State of South Carolina that the Attorney General will challenge the constitutionality of any provision enacted by the United States Congress that would violate any of the policies established by this resolution and join with other states that are like-minded to make such a challenge.

Be it further resolved that no state agency, agent, department, instrumentality, or subdivision shall cooperate or participate in any way with any mandate passed by Congress upon notification by the Attorney General that the mandate has been successfully challenged in a court of competent jurisdiction, and further provided that there is not an order to the contrary by a court of competent jurisdiction.

Be it further resolved that the General Assembly of the State of South Carolina, by this resolution, claims for the citizens of South Carolina and the State of South Carolina freedom from all laws and mandates that violate the rights granted under the Second Amendment to the United States Constitution.

Be it further resolved that this resolution serves as notice and demand to the federal government, as South Carolina’s agent, to cease and desist immediately all mandates that are beyond the scope of the federal government’s constitutionally delegated powers.

Be it further resolved that the General Assembly of the State of South Carolina, by this resolution, affirms its support of the Ninth and Tenth Amendments to the United States Constitution.

Be it further resolved that copies of this resolution be forwarded to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and each member of South Carolina’s Congressional Delegation, all at Washington, D.C., and to the Speaker of the House of Representatives and the President of the Senate of the legislatures of the other forty-nine states.

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