HOUSE JOINT RESOLUTION NO. 20

INTRODUCED BY D. SKEES

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RESOLVING THAT THE PATIENT PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW 111-148, AND THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, AND PUBLIC LAW 111-152, ARE UNCONSTITUTIONAL, NULL AND VOID, AND UNENFORCEABLE; AND URGING EACH STATE LEGISLATURE TO ADOPT A SIMILAR RESOLUTION.

WHEREAS, the members of the Montana Senate and Montana House of Representatives have taken an oath of office to support, protect, and defend the United States Constitution; and

WHEREAS, while the American legal and political system does not draw exclusively from a single tradition, the American system draws heavily on the English system with certain principles dating back to the Magna Carta; and

WHEREAS, in the era when the Magna Carta was drafted, King John was unjustly accumulating powers to himself deemed to be beyond the proper scope of his office; and

WHEREAS, the English barons checked the unjust exercise of power by King John by obtaining his assent to the terms of the Magna Carta; and

WHEREAS, the 18th century American colonials protested the overreaching of British authority through lesser magistrates after the fashion of the barons at Runnymede; and

WHEREAS, with the success of the American Revolution, the claim of temporal sovereignty being unified within the British crown was cast off; and

WHEREAS, it follows that the former American colonies were populated by residents possessing individual sovereignty; and

WHEREAS, the signers of the Declaration of Independence recognized that liberty and other human rights were the grant of God, the eternal creator; and

WHEREAS, to secure to themselves and posterity the blessing of divinely bestowed sovereignty and liberty, well-limited, specific grants of individual sovereignty were contracted to government through compact for specifically limited exercise; and

WHEREAS, the limitation of the grant of sovereignty is memorialized in the 10th Amendment to the

United States Constitution; and

WHEREAS, for the sake of the preservation of liberty, the drafters of the United States Constitution sought to thwart the accumulation and concentration of power and the resulting despotism by diffusing governmental power at the federal level among three separate but equal branches of government; and

WHEREAS, the United States Constitution was designed to very narrowly limit the purview of the federal government and preserve to individual citizens first and then to state and local governments those powers not specifically granted to the federal government; and

WHEREAS, such 18th century luminaries as James Madison and Thomas Jefferson readily discerned the unconstitutional nature of the Alien and Sedition Acts of 1798; and

WHEREAS, the Commonwealth of Virginia and the State of Kentucky, with the aid of James Madison and Thomas Jefferson, respectively, reviewed and declared unconstitutional the Alien and Sedition Acts by means of resolutions in the legislatures of Virginia and Kentucky passed in 1798 and 1799; and

WHEREAS, the resolutions regarding the Alien and Sedition Acts of 1798 that were passed in Virginia and Kentucky predated Marbury v. Madison, 5 U.S. 137 (1803); and

WHEREAS, in 1809 the General Court of Massachusetts passed a resolution concerning the Embargo Act and stated "the act of the Congress of the United States . . . for enforcing the act laying an embargo . . . is, in the opinion of the legislature, in many respects, unjust, oppressive and unconstitutional, and not legally binding on the citizens of the state"; and

WHEREAS, in 1820 when Ohio was fighting against the unconstitutional Bank of the United States, it recognized and approved "the doctrines asserted by the legislatures of Virginia and Kentucky, in their resolutions of November and December, 1798 and January 1800 . . . and do consider that their principles have been recognized and adopted by a majority of the American people"; and

WHEREAS, courts are not infallible arbiters of justice and constitutionality as notoriously evidenced by Dred Scott v. Sandford, 60 U.S. 393 (1857); and

WHEREAS, for preservation of liberty, constitutional review must not be confined to a horizontal course that is solely among the three branches of government at the federal level because such confinement would tempt toward the accumulation of power by the federal government; and

WHEREAS, there is need for a vertical course that is a review conducted by discourse between the federal government and the states to prevent an unjust accumulation of power to the federal judicial branch with respect to the federal executive and legislative branches; and

WHEREAS, the appropriation of power at the federal level must be thwarted by the just exercise of power by the individual states, including Montana, on the basis of sound principles tracing their course in history through the Virginia and Kentucky resolutions and the Magna Carta; and

WHEREAS, Governor Brian Schweitzer provided a clear and excellent example of opposition to the unjust and unconstitutional federal overreach of power when, in his television advertising promoting his election to his second term as Governor of Montana, he rightly and proudly proclaimed that he stood up and said no to Public Law 109-13 known as the REAL ID Act of 2005; and

WHEREAS, as of October of 2009, 25 states have approved resolutions or legislation against participation in the requirements of the REAL ID Act of 2005; and

WHEREAS, the Sedition Act of Montana was passed during a special session of the Legislature in 1918 and became the basis of the federal Sedition Act of 1918; and

WHEREAS, the United States Supreme Court erred in its decision in Abrams v. United States, 250 U.S. 616 (1919); and

WHEREAS, within the great State of Montana, Governor Brian Schweitzer has given a clear and excellent example of opposition to unjust laws in his posthumous pardons of those convicted under the World War I era Sedition Act of Montana (and by logical extension the federal Sedition Act of 1918) memorialized in the television program "Jailed for Their Words" aired on Montana Public Television; and

WHEREAS, the pardons by Governor Brian Schweitzer are also discussed on the internet site for the Montana Sedition Project; and

WHEREAS, the Montana House of Representatives and the Senate of Montana have ~~reviewed~~ DETERMINED Public Law 111-148 and Public Law 111-152 ~~and have found these laws~~ to be grossly deficient by any test by which they could be judged to be in compliance with the United States Constitution; and

WHEREAS, these deficiencies include an overly broad application of Article I, section 8, clause 3, of the United States Constitution, known as the Commerce Clause, by affecting commerce in such a way as to exceed the breadth and scope of the Commerce Clause; and

WHEREAS, the drafters of the United States Constitution intended the document to place strict limitations on the federal government by granting only narrow and limited areas of authority; and

WHEREAS, the strict limitations upon the federal government are plainly evident in the 10th Amendment to the United States Constitution; and

WHEREAS, within Montana the Legislature is given authority to recognize relations with other

governmental agencies under legislative Joint Rule 40-60; and

WHEREAS, the United States constitution does not specifically grant the federal government authority to compel people to purchase a particular product or service; and

WHEREAS, because the federal government does not have the grant of authority to compel the purchase of a particular product or service, Public Law 111-148 and Public Law 111-152 violate the United States Constitution, and Public Law 111-148 and Public Law 111-152 were enacted in defiance of the United States Constitution; and

WHEREAS, Article VI, clause 2, of the United States Constitution containing the Supremacy clause only applies to those laws that are consistent with the United States Constitution as a whole; and

WHEREAS, by simple and self-evident logic, Article VI, clause 2, of the United States Constitution containing the Supremacy Clause does not trump the 9th and 10th Amendments to the United States Constitution because an amendment to the United States Constitution that does not restrict the federal government would have been empty, vain, and meaningless and thus, would not have been proposed and adopted.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Public Law 111-148 and Public Law 111-152 are unconstitutional, and therefore the 62nd Session of the Montana Legislature finds that Public Law 111-148 and Public Law 111-152 are null and void and unenforceable under the United States Constitution and the compact of the state of Montana with the United States.

BE IT FURTHER RESOLVED, that Public Law 111-148 and Public Law 111-152 cannot be implemented or enforced in the state of Montana.

BE IT FURTHER RESOLVED, that the 62nd Session of the Montana Legislature urges each of the legislatures of the other 49 states of the United States to adopt similar resolutions.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the legislature of each of the other 49 states of the United States, to the Governor of Montana, and to the Chief Justice of the Montana Supreme Court.

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