

House Resolution 1045

By: Representatives Spencer of the 180th, Stover of the 71st, Turner of the 21st, Caldwell of the 20th, Cooke of the 18th, and others

A RESOLUTION

1 Urging the Attorney General of Georgia to initiate or join a lawsuit to overturn the decision
2 of the United States Supreme Court to uphold the constitutionality of the individual mandate
3 of the Patient Protection and Affordable Care Act of 2010; and for other purposes.

4 WHEREAS, the Georgia House of Representatives expresses a firm commitment to the
5 philosophy of the United States Constitution and the Constitution of this State that the
6 highest goal of the state is to make men and women free to develop their faculties and to be
7 morally accountable for their destinies, not to enable a majority to cram down the throats of
8 a minority what the majority pontificates is progressive or socially enlightened; and

9 WHEREAS, this House declares an unwavering attachment to the precept that liberty is the
10 mother of virtue, and that government coercion or dependency – even for benevolent motives
11 – stunts individual growth and enervates ambition; and

12 WHEREAS, this House insists that the powers of the federal government are limited, and
13 concurs with the understanding of James Madison, father of the Constitution, writing in
14 Federalist 45:

15 "The powers delegated by the proposed Constitution to the federal government, are few and
16 defined. Those which are to remain in the State governments are numerous and indefinite.
17 The former will be exercised principally on external objects, as war, peace, negotiation, and
18 foreign commerce; with which last the power of taxation will, for the most part, be
19 connected. The powers reserved to the several States will extend to all the objects which,
20 in the ordinary course of affairs, concern the lives, liberties, and properties of the people,
21 and the internal order, improvement, and prosperity of the State"; and

22 WHEREAS, the Georgia House of Representatives also asserts that whenever the federal
23 government exceeds the bounds of its limited powers and encroaches on the authorities
24 reserved to the states under the Tenth Amendment, the latter are obliged to interpose

25 objections to arrest the progress of the evil and to sound the alarm against future
26 encroachments threatened by the federal precedent; and

27 WHEREAS, the House thus protests against the palpable violation of the limited powers of
28 Congress conferred by the Constitution effectuated by the individual mandate to purchase
29 a threshold of health insurance under the Patient Protection and Affordable Care Act
30 ("ACA") of 2010; and

31 WHEREAS, federal government coercion to purchase health insurance is not a regulation
32 of "Commerce...among the several States..." within the meaning of Article I, Section 8,
33 Clause 3 of the United States Constitution as the United States Supreme Court held in
34 National Federation of Independent Business v. Sebelius, 567 U.S. ___ (June 28, 2012); and

35 WHEREAS, an individual choice to refrain from commerce is not commerce, and may not
36 be penalized by Congress; and

37 WHEREAS, the Georgia House further declares that the individual mandate of the ACA
38 cannot be sustained as an exercise of the congressional power to "tax" in Article I, Section 8,
39 Clause 1, notwithstanding the opposite view held by a narrow 5-4 Supreme Court majority
40 in NFIB v. Sebelius; and

41 WHEREAS, the ACA does not describe the fine or penalty for failure to purchase health
42 insurance as a "tax"; not a single Member of Congress characterized the fine or penalty as
43 a "tax" during the legislative process; and, in signing the ACA, President Barack Obama did
44 not characterize the fine or penalty as a "tax"; and

45 WHEREAS, the ACA text refers to the exaction imposed for failure to purchase required
46 health insurance as a "penalty", not a tax, 18 times; and

47 WHEREAS, as the dissenting opinion of Associate Justice Antonin Scalia recognized,
48 empowering Congress to widely regulate public conduct under the Commerce Clause
49 destroys the clear constitutional intent to limit federal power: "[The individual mandate]
50 threatens [the constitutional order] because it gives such an expansive reading to the
51 Commerce Clause that all private conduct (including failure to act) becomes subject to
52 federal control, effectively destroying the Constitution's division of governmental powers";
53 and

54 WHEREAS, the House urges that the individual mandate was nevertheless unconstitutional
55 even if conceived as a "tax" to raise revenues since Article I, Section 7 of the United States
56 Constitution provides, "All Bills for raising Revenue shall originate in the House of
57 Representatives," and the ACA, for all practical purposes, originated in the Senate since the
58 House bill was re-written in toto by the Senate; and

59 WHEREAS, James Madison elaborated on the importance of the Origination Clause in
60 Federalist 58:

61 "The House of Representatives cannot only refuse, but they alone can propose, the supplies
62 requisite for the support of the government This power over the purse may, in fact, be
63 regarded as the most complete and effectual weapon with which any constitution can arm
64 the immediate representatives of the people, for obtaining a redress of every grievance, and
65 for carrying into effect, every just and salutary measure"; and

66 WHEREAS, the United States Supreme Court is not infallible and it has overruled
67 ill-conceived precedents like NFIB v. Sebelius on hundreds of occasions and, moreover, a
68 decree of the Supreme Court is binding only on the parties to the case and does not establish
69 a policy for a government that did not participate; and

70 WHEREAS, President Abraham Lincoln explained the seminal distinction in his First
71 Inaugural Address in refusing to accept the United States Supreme Court decision in Dred
72 Scott v. Sanford, 60 U.S. 393 (1857), as conclusive on whether the Constitution prohibited
73 black citizenship and whether Congress was empowered to prohibit slavery in territories of
74 the United States, stating:

75 "I do not forget the position assumed by some that constitutional questions are to be
76 decided by the Supreme Court, nor do I deny that such decisions must be binding in any
77 case upon the parties to a suit as to the object of that suit ... And while it is obviously
78 possible that such decisions may be erroneous in any given case, still the evil effect
79 following it, being limited to that particular case, with the chance that it may be overruled
80 and never become a precedent for other cases, can be better borne than could evils of a
81 different practice. At the same time, the candid citizen must confess that if the policy of
82 the government upon vital questions affecting the whole people is to be irrevocably fixed
83 by the Supreme Court, the instant they are made in ordinary litigation between parties in
84 personal actions the people will have ceased to be their own rulers, having to that extent
85 practically resigned their government into the hands of that eminent tribunal"; and

86 WHEREAS, the Georgia House of Representatives notes that state sovereignty protected by
87 the Tenth Amendment serves invaluable good government objectives; and

88 WHEREAS, the science of government is the science of experiment and state government
89 abuses are deterred by competition among states to attract citizens and business from sister
90 jurisdictions, whereas congressional follies offer no escape for the victims, as Associate
91 Justice Louis D. Brandeis observed in New State Ice Company v. Liebmann, 285 U.S 262
92 (1932) (dissenting opinion): "It is one of the happy incidents of the federal system that a
93 single courageous state may, if its citizens choose, serve as a laboratory; and try novel social
94 and economic experiments without risk to the rest of the country"; and

95 WHEREAS, this House's remonstrance against the ACA as unconstitutionally encroaching
96 on state sovereignty follows the best traditions of the nation's checks and balances and
97 separation of powers; and

98 WHEREAS, early on in the nation's history, James Madison and Thomas Jefferson authored
99 the Virginia and Kentucky Resolutions, respectively, which protested the unconstitutionality
100 of the Alien and Sedition Acts of 1798, and pledged to oppose in a constitutional manner
101 every attempt to violate constitutional boundaries; and

102 WHEREAS, the Resolutions proved effective, and the Sedition Act expired after two years;
103 and

104 WHEREAS, the Kentucky Resolution of 1799 declared in part:

105 "That the several states who formed [the United States Constitution], being sovereign and
106 independent, have the unquestionable right to judge of its infraction; and that a
107 nullification, by those sovereignties, of all unauthorized acts done under colour of that
108 instrument, is the rightful remedy: That this commonwealth does upon the most deliberate
109 reconsideration declare, that the said alien and sedition laws, are in their opinion, palpable
110 violations of the said constitution; and however cheerfully it may be disposed to surrender
111 its opinion to a majority of its sister states in matters of ordinary or doubtful policy; yet, in
112 momentous regulations like the present, which so vitally wound the best rights of the
113 citizen, it would consider a silent acquiescence as highly criminal: That although this
114 commonwealth as a party to the federal compact; will bow to the laws of the Union, yet it
115 does at the same time declare, that it will not now, nor ever hereafter, cease to oppose in
116 a constitutional manner, every attempt from what quarter soever offered, to violate that
117 compact".

118 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES that
119 the members of this House urge the Attorney General of Georgia directly or through
120 appointment of a special counsel to initiate or join a lawsuit seeking to overturn the decision
121 of the United States Supreme Court upholding the constitutionality of the individual mandate
122 of the ACA.

123 BE IT FURTHER RESOLVED that the members of this House appeal to sister states to
124 concur in this House's judgment that the ACA's individual mandate unconstitutionally
125 trespasses on state sovereignty and violates the Origination Clause, and to take necessary and
126 proper action, singly or collectively, to remedy the alarming precedent for limitless federal
127 government authority by exhorting members of the United States Congress to repeal the
128 individual mandate, by filing lawsuits seeking to overturn NFIB v. Sebelius, or otherwise.

129 BE IT FURTHER RESOLVED that the Clerk of the House of Representatives is authorized
130 and directed to transmit an appropriate copy of this resolution to the executive authority of
131 each of the other states, with a request that the same may be communicated to the legislature
132 thereof; and that a copy be furnished to each of the Senators and Representatives representing
133 this state in the Congress of the United States, with an invitation to meet with the General
134 Assembly at a mutually agreed time and place to discuss strategies for nullifying the
135 individual mandate of the ACA.