The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL:	SB 358
INTRODUCER:	Senator Evers
SUBJECT:	Exercise of Federal Power
DATE:	February 7, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	**Pre-meeting**
2.			GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

This Senate Memorial urges the United States Congress to honor the provisions of the United States Constitution and federal case law which limit the scope and exercise of federal power.

More specifically, the memorial demands that Congress cease and desist from issuing mandates that are beyond the scope of its constitutionally delegated powers. The memorial also provides that all compulsory federal legislation that directs states to comply under threat of civil or criminal penalties or sanctions or requires states to pass legislation or lose federal funding should be prohibited or repealed.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the presiding officers of each state legislature of the United States, and each member of the Florida delegation to the United States Congress.

II. Present Situation:

Tenth Amendment and State Sovereignty

By the provisions of the United States Constitution, certain powers are entrusted solely to the federal government alone, while others are reserved to the states, and still others may be exercised concurrently by both the federal and state governments.[1] All attributes of government that have not been relinquished by the adoption of the United States Constitution and its

[1] 48A FLA. JUR 2D, *State of Florida* s. 13 (2010).

amendments have been reserved to the states.[2] The Tenth Amendment to the United States Constitution provides: "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." As noted by one Supreme Court Justice:

> [t]his amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the state authorities.[3]

Therefore, courts have consistently interpreted the Tenth Amendment to mean that "'[t]he States unquestionably do retai[n] a significant measure of sovereign authority. . . to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government.'"[4] Under the federalist system of government in the United States, states may enact more rigorous restraints on government intrusion than the federal charter imposes.[5] However, a state may not adopt more restrictions on the fundamental rights of a citizen than the United States Constitution allows.[6]

The United States Supreme Court has recognized that the framers of the Constitution explicitly chose a constitution that affords to Congress the power to regulate individuals, not states.[7] Therefore, the Court has consistently held that the Tenth Amendment does not afford Congress the power to require states to enact particular laws or require that states regulate in a particular manner.[8] For example, in *New York v. United States*, the Court, in interpreting the Tenth Amendment, ruled that the Constitution does not confer upon Congress the power to compel states to provide for disposal of radioactive waste generated within their borders, though Congress has substantial power under the Constitution to encourage states to do so.[9]

State Sovereignty Movement

A state sovereignty movement has emerged in the United States over the past couple of years. The premise of this movement is the belief that the balance of power has tilted too far in favor of the federal government. Proponents of this movement urge legislators and citizens to support resolutions or state constitutional amendments declaring the sovereignty of the state over all matters not delegated by limited enumeration of powers in the United States Constitution to the federal government. The resolutions often mandate that the state government will hold the federal government accountable to the United States Constitution to protect state residents from federal abuse.

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[2] *Id.*
[3] *New York v. United States*, 505 U.S. 144, 156 (1992) (quoting 3 J. Story, *Commentaries on the Constitution of the United States* 752 (1833)).
[4] *Id.*
[5] 48A FLA. JUR 2D, *State of Florida* s. 13 (2010).
[6] *Id*. (quoting *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 549 (1985)).
[7] *New York v. United States*, 505 U.S. at 156.
[8] *Id.; see also Baggs v. City of South Pasadena*, 947 F. Supp. 1580 (M.D. Fla. 1996).
[9] *New York v. United States*, 505 U.S. at 156.

In late June 2009, the Tennessee governor became the first governor to sign such a resolution.[10] Following Tennessee, Alaska's governor signed a similar resolution passed by the Alaska House and Senate in July 2009.[11] An advocacy organization supporting state sovereignty reports that 21 states introduced similar resolutions asserting state sovereignty in 2010.[12] Of those joint resolutions filed, three were signed by the governors of Alabama, Utah, and Wyoming.[13]

In lieu of a resolution asserting state sovereignty, some state legislators have filed bills proposing binding legislation supporting state sovereignty. For example, a New Hampshire legislator has filed a bill to create a "joint committee on the constitutionality of acts, orders, laws, statutes, regulations, and rules of the government of the United States of America in order to protect state sovereignty."[14] Some state legislators have filed legislation for a constitutional amendment asserting state sovereignty.[15] To date, it does not appear that a state constitutional amendment has been adopted.

Challenges to The Patient Protection and Affordable Care Act

Federal health care reform legislation titled "The Patient Protection and Affordable Care Act" is one of the focuses of the state sovereignty movement. Following the enactment of the legislation in 2010, the attorneys general, including the attorney general of Florida, or governors of 26 states, two private citizens, and the National Federation of Independent Business filed suit in the United States District Court for the Northern District of Florida challenging the constitutionality of the Act.[16] Plaintiffs alleged that the individual mandate set forth in the Act requiring everyone to purchase federally approved health insurance violates the Commerce Clause of the United States Constitution. In addition, plaintiffs alleged that the provisions in the Act expanding Medicaid violate the Spending Clause, as well as the Ninth and Tenth Amendments of the United States Constitution. On January 31, 2011, the court concluded that:

> Congress exceeded the bounds of its authority in passing the Act with the individual mandate. . . . Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void.[17]

This ruling is consistent with the United States District Court for the Eastern District of Virginia's ruling that provisions of the Act exceed the constitutional boundaries of congressional

[10] Tennessee HJR 108 (2009).
[11] Alaska HJR 27 (2009).
[12] Tenth Amendment Center, *2010 Resolutions*, *available at* http://www.tenthamendmentcenter.com/nullification/10th-amendment-resolutions/ (last visited Jan. 31, 2011).
[13] Alabama SJR 27 (2010); Utah SCR 3 (2010); and Wyoming HJ 0002 (2010).
[14] New Hampshire HB 1343 (2010). A Missouri legislator has filed a bill creating a "Tenth Amendment Commission." The commission refers cases to the Attorney General when the federal government enacts laws requiring the state or a state officer to enact or enforce a provision of federal law believed to be unconstitutional. See Missouri SB 587 (2010).
[15] *See* Oklahoma HJR 1063 (2010).
[16] *State of Florida v. United States Department of Health and Human Services*, Case No. 3:10-CV-91-RV/EMT (N.D. Fla. 2010).
[17] *State of Florida v. United States Department of Health and Human Services*, *Order Granting Summary Judgment*, Case No. 3:10-CV-91-RV/EMT, 76 (N.D. Fla. 2011).

power.[18] However, two district courts have upheld the constitutionality of the provisions of the Act.[19]

III. Effect of Proposed Changes:

This Senate Memorial urges the United States Congress to honor the provisions of the United States Constitution and federal case law which limit the scope and exercise of federal power.

The memorial recognizes Florida's sovereignty under the Tenth Amendment to the United States Constitution over all powers not otherwise enumerated and granted to the federal government and demands that the federal government, as an agent of the State of Florida, cease and desist from issuing mandates that are beyond the scope of those constitutionally delegated powers.

The memorial provides that all compulsory federal legislation that directs states to comply under threat of civil or criminal penalties or sanctions or that requires states to pass legislation or lose federal funding should be prohibited or repealed.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the presiding officers of each state legislature of the United States, and each member of the Florida delegation to the United States Congress.

The memorial is not subject to approval or veto by the Governor. The presiding officers of each house sign the memorial.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[18] *Commonwealth of Virginia v. Kathleen Sebelius, Secretary of the Department of Health and Human Services*, *Memorandum Opinion (Cross Motions for Summary Judgment)*, Case No. 3:10CV188-HEH (E.D. Va. 2011).
[19] *Thomas More Law Center v. Obama*, 720 F.Supp.2d 882 (E.D. Mich. 2010); *Liberty University, Inc. v. Geithner*, 2010 WL 4860299 (W.D. Va. 2010).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.