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HOUSE RESOLUTION NO. 192

Offered January 14, 2015

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Authorizing the Speaker of the House of Delegates to employ legal counsel to represent the House of Delegates to redress any federal authority's unconstitutional violation of the sovereign rights and general police powers of the Commonwealth of Virginia.

Patrons—Marshall, R.G., Berg and Cole

Referred to Committee on Rules

WHEREAS, the sovereign rights of the Commonwealth of Virginia, and of all other states, are guaranteed by the Tenth Amendment to the United States Constitution; and

WHEREAS, in Federalist Paper No. 33 Alexander Hamilton, discussing the Supremacy Clause of the Constitution, stated: "[I]t will not follow from this doctrine that acts of the [federal government] which are not pursuant to its constitutional powers, but which are invasions of the residuary authorities of the [states], will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such"; and

WHEREAS, in Federalist Paper No. 26 Alexander Hamilton stated that "the State legislatures, who will always be not only vigilant but suspicious and jealous guardians of the rights of the citizens against encroachments from the federal government, will constantly have their attention awake to the conduct of the national rulers, and will be ready enough, if any thing improper appears, to sound the alarm to the people, and not only to be the VOICE, but, if necessary, the ARM of their discontent"; and

WHEREAS, the police power extends over all subjects within the territorial limits of the states and has never been conceded to the United States; see *Prigg v. Pennsylvania*, 41 U.S. 539 (1842); and

WHEREAS, it is incontestable that the Constitution established a dual sovereignty in which the states retained a residuary and inviolable sovereignty; see *Mack and Printz v. United States*, 521 U.S. 898 (1997); and

WHEREAS, this dual sovereignty is one of the Constitution's structural protections of liberty because it reduces the risk of tyranny and abuse; see *Mack and Printz v. United States*, 521 U.S. 898 (1997); and

WHEREAS, under the Constitution, the states retain general police powers to protect the health, safety, morals, and general welfare of their citizens and territory; the federal government has no such general police powers; see *Hamilton v. Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146 (1919); *United States v. Lopez*, 514 U.S. 549 (1995), holding that a federal law governing firearms in states is not within the powers of Congress; and *New York v. United States*, 488 U.S. 1041 (1992), striking down a federal law requiring states to take care of privately owned nuclear waste as not within the powers of Congress; and

WHEREAS, the Constitution has never been understood to confer upon Congress the ability to require the states to govern according to Congress' instructions; see *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012), holding that congressional coercion on states to accept Medicaid expansion is unconstitutional and likened to putting a gun to states' heads; and

WHEREAS, through federalism the framers ensured that powers that "in the ordinary course of affairs, concern the lives, liberties, and properties of the people" were held by governments more local and more accountable than a distant federal bureaucracy; see *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012); and

WHEREAS, each state has a solemn duty to protect its citizens from infectious and contagious diseases, as well as to protect its inhabitants from criminal, moral, or terrorist threats, and in carrying out this duty the states may act on the mere supposition of a threat to public safety; see *Smith v. Wm. Turner of the Port of New York*, 48 U.S. 283 (1894) and *Norris v. The City of Boston*, 48 U.S. 283 (1894); and

WHEREAS, a state does not unconstitutionally usurp the powers of Congress by making national purposes its own purposes in the exercise of its police powers over its citizens; see *Gilbert v. State of Minnesota*, 254 U.S. 325 (1920), holding that a Minnesota statute making it unlawful to interfere with or discourage people from enlisting in the military does not infringe upon the powers of Congress just because it related to the sole power of Congress to raise armies; and *Halter v. Nebraska*, 205 U.S. 34 (1907), holding that a Nebraska statute making it unlawful to desecrate the official flag of the United States does not infringe upon the powers of Congress just because the flag is a national emblem; and

WHEREAS, the federal government's reach into every facet of life encroaches upon the

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59 Commonwealth's sovereign rights and police powers and far exceeds the intent of the framers of the
60 Constitution to limit the authority of Congress to certain enumerated powers; and

61 WHEREAS, the President of the United States and his executive branch of government have further
62 encroached upon the Commonwealth's sovereign rights and police powers; and

63 WHEREAS, the House of Delegates has a strong and independent interest and obligation in
64 defending the constitutional sovereign rights and police powers of the Commonwealth; now, therefore,
65 be it

66 RESOLVED by the House of Delegates, That if any federal authority unconstitutionally violates the
67 sovereign rights of the Commonwealth or its agencies or the Commonwealth's local governments or their
68 agencies, and the Attorney General of Virginia fails to take legal action against such violations, the
69 Speaker of the House hereby be authorized to employ legal counsel to represent the House of Delegates
70 in instituting legal action against the federal authority; and, be it

71 RESOLVED FURTHER, That the Clerk of the House of Delegates transmit a copy of this resolution
72 to William J. Howell, the Speaker of the House.