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HOUSE JOINT RESOLUTION NO. 685

Offered January 11, 2017
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Authorizing the Speaker of the House of Delegates to employ legal counsel to represent the General Assembly to redress any federal authority's unconstitutional violation of the sovereign rights and general police powers of the Commonwealth of Virginia.

Patron—Marshall, R.G.

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's 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

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

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

WHEREAS, the Attorney General of Virginia, despite taking an Oath to defend the Constitution of Virginia, failed to defend the Constitution of Virginia, and even attacked the validity of the Constriction of Virginia, when a legal challenge was undertaken to redefine marriage in federal courts by members of the federal judiciary as against the sovereign People of Virginia who approved by Referendum a one-man, one-woman Marriage Amendment to the Virginia Constitution in 2006; and

WHEREAS, the General Assembly has a strong and independent interest and obligation in defending the constitutional sovereign rights and police powers of the Commonwealth; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That if any federal authority unconstitutionally violates the sovereign rights of the Commonwealth or its agencies or the Commonwealth's local governments or their agencies, and the Attorney General of Virginia fails to take legal action against such violations, or if the Attorney General fails to defend the statutes of the Commonwealth or the Constitution of Virginia, the Speaker of the House hereby be authorized to employ legal counsel to represent the General Assembly in instituting legal action against the federal authority or the Attorney General.