



Written by [Bruce Walker](#) on August 10, 2010

States Join to Protect Citizens from Federal Government

Twenty states have joined in a lawsuit in Florida asking a federal court to enjoin the implementation of Obamacare. These states are alleging irreparable harm if the federal bench does not act.

One interesting feature of this litigation is that state governments are becoming the defenders of individual liberties against the growing encroachment of the federal government. Brian Kennedy, a senior trial lawyer in the United States Justice Department, has stated that state governments lack standing to act to protect their own citizens from federal overreaching: "A state may not sue to immunize its citizens from a federal statute." The legal reasoning behind that position appears to be that while states may act to protect their own rights, as separate governments within our federal system, these states cannot act to protect citizens from the federal government.



This particular legal issue has not often been presented to federal courts. The provisions of the Constitution and the Bill of Rights which rein in rogue federal power — the enumerated powers in Article I, the Ninth and Tenth amendments, and so on — have been presented as self-executing or as protected by the federal bench in lawsuits brought by individuals directly against the federal government.

But there is no reason to believe that state governments were not intended to be another check of governmental power against the excesses of government, including the federal government. The whole structure of the Constitution and our federal system amounts to checks of government power upon liberty. The recent Missouri ballot vote rejecting the specific provision of Obamacare which requires Americans to obtain medical insurance suggests that if Missourians are going to have their constitutional rights preserved, that those rights will have to be protected by state governments against the federal government.

Actually, the notion that when Congress oversteps its power the states can, and should, act is very old in our constitutional system. When the Alien & Sedition Acts were passed during the Administration of John Adams these laws, which obviously violated the express language of the First Amendment, were not stopped by the president or by the Supreme Court, but by the robust action of state legislatures — notably Virginia and Kentucky — which rejected that Congress could exercise this unconstitutional power upon the citizens of those states.

Are states a real and a logical defender of the rights of citizens against an overbearing federal



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government? Can state officials read the plain language of the Constitution as easily as congressmen or federal judges? That issue is percolating through the federal judiciary, and however it is resolved, the constitutional idea that states, as well as well as Washington, have a role in protecting our liberties is bound to become a serious part of political debate.

Photo: Florida's Old Capitol in the foreground with the new Capitol in the background: AP Images



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