

24. SUPREMACY CLAUSE OF THE CONSTITUTION

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For Immediate Release

Past Releases neglected to deal with the “Supremacy Clause” of Article VI of the Constitution.
This Release corrects that oversight.

Former Senator Schmitt Discusses the Limit to Federal Constitutional Supremacy Over State Law

States’ Attorneys General and Governors challenging the Federal Government’s constitutional power to legislate, regulate, or order executive action on healthcare, education, or other issues of clear 10th Amendment State responsibility should not concede constitutional ground on the basis of the Constitution’s Supremacy Clause (Article VI, Clause 2). This Clause does not mean or imply that “federal law trumps state law when there is a direct conflict between laws” as stated by Virginia’s Attorney General Kenneth Cuccinelli in an otherwise excellent Wall Street Journal Opinion Editorial (The Constitution Sets Real Limits, *WSJ* April 19, 2010).

The relevant portions of Clause 2 read: “This Constitution, and *the Laws* of the United States which shall be *made in Pursuance thereof*...shall be the supreme Law of the Land...” As the underlined phrases clearly indicate, the Founders only intended that federal legal supremacy apply relative to *enumerated* powers, particularly those given to Congress in Article I. Those specifically enumerated powers do not include healthcare or education to name just

two of many areas of current federal constitutional overreach. If the Founders intention for the Supremacy Clause had been otherwise, the 10th Amendment would have been rendered meaningless, leaving the States and the people subject to any Congressional legislative whim or Executive Order.

Relative to powers reserved to the States by the 10th Amendment, State laws stand supreme so long as they adhere to the rights of the people specified by other Amendments, particularly the far-reaching 9th. Specifically related to healthcare, on the other hand, under the Article 1, Section 8, Commerce Clause, Congress could and should require that States permit the “commerce” of health insurance to be conducted across state lines as a major means for competition to lower insurance costs.

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