Ending the Federal Reserve From the Bottom Up:
Re-introducing Competitive Currency by State Adherence to Article I, Section 10

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Since its inception, the U.S. Federal Reserve's monetary policies have led to a decline of over 95% in the purchasing power of the U.S. dollar.[1] As a result, there have been several attempts to curtail or eliminate the Federal Reserve's powers (e.g., the efforts of Rep. Louis T. McFadden in the 1930s;[2] the efforts of Rep. Wright Patman in the 1970s;[3] the efforts of Rep. Henry Gonzalez in the 1990s;[4] and the efforts of Rep. Ron Paul since the 1990s[5]). However, none have proven successful to date, due mainly to the constraints of strong political opposition at the national level. In contrast to these "top-down" attempts at the national level, this paper proposes an alternative approach to ending the Federal Reserve's monopoly on money: the "Constitutional Tender Act," a bill template that can be introduced in every state legislature in the nation, returning each of them to adherence to the U.S. Constitution's "legal tender" provisions of Article I, Section 10.[6]

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[1] Calculated at usinflationcalculator.com on March 1, 2010, based on the Consumer Price Index provided by the U.S. Bureau of Labor Statistics. CPI data was last updated by BLS on February 19, 2010, and covers up to January 2010.

[2] McFadden introduced a motion for impeachment of the Federal Reserve's Board of Governors on May 23, 1933 (House Resolution No. 158).

[3] Patman introduced several bills calling for a General Accounting Office audit of the Federal Reserve Board, the Federal Advisory Council, the Federal Open Market Committee and Federal Reserve banks and their branches in the 1970s, including HR 7590 (1975), which garnered 21 additional co-sponsors. However, the companion bill in the Senate (S. 2509), introduced by Sen. William Proxmire of Wisconsin, had no co-sponsors at all.

[4] In July 1991, Gonzalez asked the Federal Reserve Board to submit to a congressional audit of its discount-window lending operations, but was refused; in 1993, he again voiced his support for legislation that would audit the Federal Reserve System (as well as make its meetings televised and open to the public, as well as requiring the President to appoint its twelve members).

[5] For example, his latest bills, H.R. 833 (to end the Federal Reserve) and H.R. 1207 (to audit the Federal Reserve).

[6] There are various versions of Constitutional Tender Acts being introduced in the several States. This paper focuses on HB 430 in Georgia. See http://www.ConstitutionalTender.com/ .

This approach would have a greater likelihood of success for a number of reasons. First, it is decentralized: rather than facing concerted political opposition at a single Federal level, it attacks the issue at the State level, where strategies and tactics can be adapted to the types and amount of political opposition they encounter. Second, it is diffused: it can be attempted in any number of States, which can cause the opposition to spread its resources much more thinly than would be necessary at the Federal level. Finally, it is legally sound: it relies on the U.S. Constitution's negative mandate in Article I, Section 10, that "No State shall... make any Thing but gold and silver Coin a Tender in Payment of Debts."[7] Therefore, in contrast to "top-down" attempts to "end the Fed," a "bottom-up" approach using "constitutional tender" laws will find greater success.

Over the course of time, whenever there have been attempts to end, or even to maintain greater oversight, of the Federal Reserve, those efforts have been strongly rebuffed. On June 10, 1932, for example, the former Chairman of the U.S. House Committee on Banking and Currency, Rep. Louis T. McFadden of Pennsylvania, gave an extended speech on the Federal Reserve System, calling it "one of the most corrupt institutions the world has ever known," that "has impoverished and ruined the people of the United States; has bankrupted itself, and has practically bankrupted our Government."[8] He called again for "an audit of the Federal Reserve Board and the Federal reserve banks,"[9] but was ridiculed and

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[8] *Congressional Record,* June 10, 1932, pp. 12595

[9] *Ibid.,* p. 12602. The previous December, McFadden had introduced a resolution "asking for an examination and an audit of the Federal Reserve Board and all the Federal reserve banks and all related matters." The following May, McFadden

dismissed by Rep. James G. Strong of Kansas, who stated that McFadden must have some "violent form" of a "belly ache."[10]

In 1975, Rep. Wright Patman of Texas introduced a bill to have the General Accounting Office audit the Federal Reserve (HR 7590). While the bill had 22 co-sponsors and was reported out to the House from the Committee on Banking, Currency and Housing, it was then stuck in the Rules Committee, which would not allow the bill to come to the floor for a full vote. Patman, who was convinced that the bill "did not receive a fair and impartial hearing before the Rules Committee,"[11] filed a discharge petition (H. Res. 746) to bring it to the floor; however, his resolution received no co-sponsors, and the bill died in committee.

In July 1991, Rep. Henry Gonzalez of Texas, the Chairman of the House Banking Committee, asked the Federal Reserve Board to submit to a congressional audit of its discount-window lending operations, but was refused;[12] in 1993, he again voiced his support for legislation that would audit the Federal Reserve System (as well as make its Open Market Committee meetings televised and open to the public, as well as requiring the President to appoint its twelve bank governors instead of the bankers themselves). This time, not only did Federal Reserve Chairman Alan Greenspan resist him, but President Bill Clinton, who claimed that such a move would "run the risk of undermining market confidence in the Fed", also

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introduced his motion for impeachment of the Federal Reserve's Board of Governors.

[10] *Ibid.,* p. 12603.

[11] *The Panola Watchman,* Carthage, TX, October 23, 1975, p. A-6.

[12] Debra Cope, "Gonzalez asks for GAO audit of Fed loans." *American Banker,* July 30, 1991.

rebuffed him. "There is a general feeling," Clinton insisted, "that the system is functioning well and does not need an overhaul just now."[13]

The latest Congressman to challenge the authority and legality of the Federal Reserve is Rep. Ron Paul of Texas, the ranking minority party member of the House Monetary Policy Subcommittee. Rep. Paul has introduced H.R. 833, "to abolish the Board of Governors of the Federal Reserve System and the Federal reserve banks, [and] to repeal the Federal Reserve Act"; however, there have been no co-sponsors as of March 2010. On the other hand, Rep. Paul also introduced H.R. 1207, the "Federal Reserve Transparency Act," which would give greater auditing capabilities of the Federal Reserve to the Comptroller General; this bill now has 318 co-sponsors, or 73% of the Members of the House (its companion bill in the Senate, S. 604, has 33 total co-sponsors – 1/3 of that body's Members). So with nearly three-fourths of the U.S. House supporting a bill, under normal circumstances the bill would be brought to the floor for a standalone vote by the full House; however, the Democratic leadership has kept the bill from being voted on, although they were unable to keep its supporters from attaching it as an amendment to a larger financial reform package (H.R. 4173) which passed in December 2009.[14] Even with that success, there is a strong push to amend the bill by stripping out the "audit the Fed" language and instead expanding the Federal Reserve's power over banks, lending and money.[15]

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[13] Robert M. Garsson, "Clinton refuses to back overhaul of the Fed." *American Banker,* Sept. 27, 1993.
[14] Ronald Orol, "Panel votes to audit the Fed; cap its spending at $4 trillion." *Market Watch,* November 19, 2009.
[15] Silla Brush, "Bank groups call for stronger Fed Reserve." *The Hill,* March 2, 2010.

Each of these different efforts over the last 80 years – whether by McFadden, Patman, Gonzalez, Paul, or others – have had two features in common: they have all been "top-down" anti-Fed efforts at the national level, and they have all been thwarted by concerted political opposition at that level. Accordingly, a new tactic is needed, which could achieve the desired goal of abolishing the Federal Reserve system by attacking it from the "bottom up" – "pulling the rug out from under it," by working to make its functions irrelevant at the State and local level. That new tactic is the passage of the Constitutional Tender Act in individual States across the country.

The Constitutional Tender Act is a proposed State law, first introduced in 2009 as HB 430 in the Georgia House of Representatives,[16] which re-applies the U.S. Constitution's negative mandate in Article I, Section 10, that "No State shall… make any Thing but gold and silver Coin a Tender in Payment of Debts." Under this Act, the State would be required to only use gold and silver coins (or their equivalents, such as checks or electronic transfers) for payments of any debt owed by or to the State (e.g., taxes, fees, contract payments, etc.). All contracts, tax bills, etc. would be required to be denominated in legal tender gold and silver U.S. coins, including Gold Eagles, Silver Eagles, and pre-1965 90% silver coins. All State-chartered banks, as well as any other bank that is a depository for State funds, would be required to offer accounts denominated in those types of gold and silver coins, and to keep such accounts segregated from other types of accounts such as Federal Reserve Notes.

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[16] Joe Rauch, "Georgians could pay future state taxes in gold." *Atlanta Business Chronicle,* March 6, 2009.

Upon going into effect, the Constitutional Tender Act would introduce currency competition with Federal Reserve Notes, by outlawing their use in transactions with the State. Ordinary citizens of the State, being required to pay their State taxes in gold and silver coins, would find it necessary to open bank accounts in those denominations. Businesses operating within the State, being required to pay their State sales taxes and license fees in gold and silver coins, would need to do the same; and in order to acquire such coins, they would begin to offer their goods and services in "dual currency" denominations, where customers could choose to pay in Federal Reserve Notes (which would still be necessary to pay Federal fees and taxes) or gold and silver coins (including checks and debit cards based on bank accounts denominated in such coins). Customers, having found the need to open such accounts in order to deal with the State, would be able to engage in commerce using those accounts.

Over time, as residents of the State use both Federal Reserve Notes and silver and gold coins, the fact that the coins hold their value more than Federal Reserve Notes do will lead to a "reverse Gresham's Law" effect,[17] where good money (gold and silver coins) will drive out bad money (Federal Reserve Notes). As this happens, a cascade of events can begin to occur, including the flow of real wealth toward the State's treasury, an influx of banking business from outside of the State (as citizens residing in other States carry out their desire to bank with sound

[17] Gresham's law is stated as, "Where legal tender laws exist, bad money drives out good money." A reverse of this would be, "In the absence of legal tender laws, when people are given the free choice between accepting good money or accepting bad money, bad money becomes less popular than good money, and is driven out of the marketplace."

money), and an eventual outcry against the use of Federal Reserve Notes for any transactions. At that point, the Federal Reserve system will have become unwanted and irrelevant, and can be easily abolished by the people's elected Representatives in Washington, D.C.

Because the Constitutional Tender Act plan is decentralized into the States, rather than focused at the federal level, attempts at concerted political action against every bill introduced will be much more difficult to achieve. Such a decentralized approach allows strategies and tactics to be adapted to the types and amount of political opposition they encounter in each State, giving a much greater chance of success against such opposition. For example, one State may face strong opposition from a regional Federal Reserve bank, which it can then ward off by focusing on the Constitutional requirement that the State not use a "Thing" like Federal Reserve Notes as a tender in payment of debts to and by the State. Another State may meet opposition from the banking lobbies, which it can neutralize by highlighting the high rate of bank failures, and the banking industry's subsequent need for new ways of bringing in business, customers, and money.[18]

In much the same way that the Constitutional Tender Act plan is able to counter *concerted* political opposition from many factions, which federal level

[18] For example, in Georgia, more than three out of five banks were unprofitable in 2009, over twice the national average. If banks in Georgia are directed to allow their customers to establish gold and silver accounts, there could be a large influx of customers not only from across Georgia, but from across the nation; this would be the Georgia banking industry's best opportunity to attract the record-breaking legal tender silver and gold coin business, now at over 30 million Silver Eagles and nearly 2 million Gold Eagles per year. That would be an increased reserve of over $2.2 billion in value in Georgia's banks, as presently no other state is offering this service in its banks.

approaches are not due to their easily-targeted central location, it is also able to counter *concentrated* political opposition, as it forces the opposition to spread its resources much more thinly, because it is being attempted in any number of States. As we have seen over nearly a century's time, supporters of the Federal Reserve system are able to concentrate all of their resources at any one time against any challenge to its existence and autonomy. The latest example of this is the Federal Reserve's hiring of a veteran lobbyist (former Enron lobbyist, Linda Robertson) "to counter skepticism in Congress about the central bank's growing power over the U.S. financial system."[19] Such high-powered – and costly – lobbying resources are much easier to apply at a single federal level; as a greater number of States introduce the Constitutional Tender Act, those resources would be spread thin, and the opposition would be more likely to rely on local lobbying associations and organizations over whom they have less control, and with whom they have less coordination of efforts.

Finally, besides the various legislative attempts to abolish the Federal Reserve, one of the main arguments made against its existence is the question of its Constitutionality – specifically, the lack of Congressional authority to delegate its enumerated power in Article I, Section 8 ("The Congress shall have Power To… coin Money, regulate the Value thereof") to a private banking cartel such as the Federal Reserve.[20] Unfortunately, modern courts have consistently ruled in favor of the

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[19] Robert Schmidt, "Fed Intends to Hire Lobbyist in Campaign to Buttress Its Image." *Bloomberg News,* June 5, 2009.

[20] See, for example, Michael S. Rozeff, "The FED's Unsound Theories" (February 8, 2009: LewRockwell.com): "It is not within the enumerated powers of the Constitution to establish a central bank with the FED's powers, nor is the FED

Fed's constitutionality,[21] resting on the precedent of earlier decisions such as *McCulloch v. Maryland,* where the Court ruled that Congress had the power to establish a national bank and issue paper money.[22] So far, there has not been a successful challenge to these decisions.

The Constitutional Tender Act, on the other hand, doesn't rely on claims of unconstitutionality of the Federal Reserve; in fact, it avoids the federal question altogether. Instead, it relies on the U.S. Constitution's negative mandate in Article I, Section 10, forbidding any State from using (making a tender) anything but gold and silver coins to pay, or receive payment for, any debt (any amount owed to or by the State). This is an approach that has never been brought to court, even though the language of the Constitution is clear and direct: "No State shall". In fact, every State *does* use some other "Thing" than gold and silver coins as tender: namely, Federal Reserve Notes, for which there is no longer any claim made that they can even be redeemed in gold or silver.[23] Under this Act, not only would the use of FRNs by the State be made illegal; the use of legal tender U.S. gold and silver coins would be encouraged amongst the general population as well, *along with any other currency that parties mutually consent to using:*

> 50-37-3: Pre-1965 silver coins, silver eagles, and gold eagles shall be the exclusive medium which the state shall use to make any payments whatsoever to any person or entity, whether

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necessary and proper to achieve any of its listed powers… it does not allow government to do anything other than coin money, which the FED does not do."

[21] First National Bank v Fellows, 244 US 416 (1917).

[22] Upheld in *Osborn v. Bank of the United States*, 22 U.S. 738 (1824).

[23] In fact, the direct issuance of notes for gold was prohibited by the Federal Reserve Act as originally passed; see Ray B. Westerfield, "Methods of Redemption and Retirement." *Banking Principles and Practice* (1921: Ronald Press Company).

> private or governmental. Such coins shall be the exclusive medium which the state shall accept from any person or entity as payment of any obligation to the state including, without limitation, the payment of taxes; provided, however, that such coins and other forms of currency may be used in all other transactions within the state upon mutual consent of the parties of any such transaction.

This has three immediate effects: the elimination of Federal Reserve Notes from State transactions; the requirement of individuals and businesses to cease using FRNs in their transactions with the State; and the introduction of *competition in currencies* amongst the general population. With all three effects working in tandem, the use of low-value pieces of paper issued by the Federal Reserve will become irrelevant, and an emaciated Federal Reserve system can be brought to a welcome, if inglorious, end.

In conclusion, as has been demonstrated here, in contrast to "top-down" attempts to "end the Fed" which allow for concerted and concentrated political opposition at the national level, a "bottom-up" approach using "constitutional tender" laws will find greater success due to its decentralized nature, its diffusion to multiple States, and its sound legal basis.

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HB 430:

A BILL TO BE ENTITLED

AN ACT

To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, so as provide a short title; to provide legislative findings; to define certain terms; to require any bank or lending institution serving as a depository for the state or any department or agency of the state to offer and to accept gold and silver coin for deposit; to amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to provide legislative findings; to define certain terms; to require the exclusive use of gold and silver coin as tender in payment of debts by or to the state; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Constitutional Tender Act."

SECTION 2.

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended by adding a new chapter to read as follows:

" CHAPTER 9

7-9-1.

The General Assembly finds and declares that sound, constitutionally based money is essential to the livelihood of the people of this state, to the stability and growth of the economy of this state and region, and vitally affects the public interest. The General Assembly further finds that Article I, Section 10 of the United States Constitution provides that no state shall make anything but gold and silver coin a tender in payment of debts.

7-9-2.

As used in this chapter, the term:

(1) 'Federal Reserve Accounting Unit Dollar accounts' means accounts based on legal tender federal reserve notes created by 12 U.S.C. Section 3, Subchapter XII.

(2) 'Gold eagle accounts' means accounts based on legal tender one ounce, one-half ounce, and one-tenth ounce gold coins minted by the United States Mint since 1986 pursuant to 31 U.S.C. Section 5112(a)(7) through (a)(10) and 31 U.S.C. Section 5112(h).

(3) 'Pre-1965 silver accounts' means accounts based on legal tender silver coins minted by the United States Mint prior to the Coinage Act of 1965 (Pub. L. 89, 81, 79 Stat. 254), having a 90 percent silver composition and containing when minted approximately 0.7234 troy ounces of silver per dollar of face value.

(4) 'Silver eagle accounts' means accounts based on legal tender one ounce silver coins minted by the United States Mint since 1986 pursuant to 31 U.S.C. Section 5112(e) and 31 U.S.C. Section 5112(h).

7-9-3.

Banks and lending institutions chartered by the state pursuant to this title, and any bank or lending institution serving as a depository for the state or any department or agency of the state, shall offer gold and silver coins minted by the United States to, and shall accept them for deposit from, the state and other customers.

7-9-4.

(a) Banks and lending institutions designated in Code Section 7-9-3 shall offer accounts denominated in:

(1) Federal Reserve Accounting Unit Dollar accounts;

(2) Pre-1965 silver accounts;

(3) Silver eagle accounts; and

(4) Gold eagle accounts.

(b) Accounts established as provided in subsection (a) of this Code section shall be segregated from all other types of currency. Withdrawals shall be made in the same currency as deposits; provided, however, that nothing in this Code section shall prevent the conversion from one form of currency to another form of currency."

SECTION 3.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended

by adding a new chapter to read as follows:

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" CHAPTER 37

50-37-1.

The General Assembly finds that, as mandated by Article I, Section 10 of the United States Constitution, the state shall not make anything but gold and silver coins as tender in payment of debts. Federal Reserve Accounting Unit Dollars, having no redeeming value in gold or silver coin, shall not be made a tender in payment of debts by the state.

50-37-2.

As used in this chapter, the term:

(1) 'Federal Reserve Accounting Unit Dollar accounts' means accounts based on legal tender federal reserve notes created by 12 U.S.C. Section 3, Subchapter XII.

(2) 'Gold eagle accounts' means accounts based on legal tender one ounce, one-half ounce, and one-tenth ounce gold coins minted by the United States Mint since 1986 pursuant to 31 U.S.C. Section 5112(a)(7) through (a)(10) and 31 U.S.C. Section 5112(h).

(3) 'Pre-1965 silver accounts' means accounts based on legal tender silver coins minted by the United States Mint prior to the Coinage Act of 1965 (Pub. L. 89, 81, 79 Stat. 254), having a 90 percent silver composition and containing when minted approximately 0.7234 troy ounces of silver per dollar of face value.

(4) 'Silver eagle accounts' means accounts based on legal tender one ounce silver coins minted by the United States Mint since 1986 pursuant to 31 U.S.C. Section 5112(e) and 31 U.S.C. Section 5112(h).

50-37-3.

Pre-1965 silver coins, silver eagles, and gold eagles shall be the exclusive medium which the state shall use to make any payments whatsoever to any person or entity, whether private or governmental. Such coins shall be the exclusive medium which the state shall accept from any person or entity as payment of any obligation to the state including, without limitation, the payment of taxes; provided, however, that such coins and other

forms of currency may be used in all other transactions within the state upon mutual consent of the parties of any such transaction.

50-37-4.

Upon the date of effectiveness of this Act, all obligations owned by and to the state shall be converted from denomination in Federal Reserve Accounting Unit Dollars to denomination in gold and silver coins pursuant to Section 50-37-3. On the date of conversion from the use by the state of Federal Reserve Accounting Unit Dollars to its use of gold and silver coins, the conversion value of each coin used as payment of obligations by and to the state shall not be determined by the nominal face value of each coin itself, but shall be determined as follows:

(1) The current market value of the silver or gold content of each coin at that time of conversion shall be equal to the most recent conversion value to the United States dollar set on that current business day by the London Silver Fixing Price and the London Gold Fixing Price as of 1030 Greenwich Mean Time or 1500 Greenwich Mean Time, whichever is most recent;

(2) The conversion value of gold eagles shall be equal to the current market value in Federal Reserve Accounting Unit Dollars of the gold content of each coin plus the standard United States Mint Authorized Purchasers premium for gold eagle bullion coins as follows:

(A) Three percent premium for one ounce coins;

(B) Five percent premium for one-half ounce coins;

(C) Seven percent premium for one-quarter ounce coins; and

(D) Nine percent premium for one-tenth ounce coins;

(3) The conversion value of pre-1965 silver coins shall be equal to the current market value in Federal Reserve Accounting Unit Dollars of one troy ounce of silver, multiplied times 0.715 of the face value of each coin; and

(4) The conversion value of silver eagles shall be equal to the current market value in Federal Reserve Accounting Unit Dollars of the silver content of each coin plus the

standard United States Mint Authorized Purchasers premium for silver eagle bullion coins of $1.50 per coin.

50-37-5.

The coins used pursuant to Code Section 50-37-3 shall be accepted for deposit by banks and lending institutions chartered by the state under Title 7 and by any bank or lending institution serving as a depository for the state or any department or agency of the state. Any such bank or lending institution may offer such coins to, and accept them for deposit from, other customers. Nothing in Georgia law shall prohibit banks and lending institutions from offering accounts as described in Code Section 7-9-4 prior to the effective date of this chapter.

50-37-6.

Checks or electronic transfers or payments drawn on pre-1965 silver accounts, silver eagle accounts, and gold eagle accounts as such accounts are defined in Code Section 7-9-2 and in accordance with Code Section 7-9-4 shall be deemed to satisfy the United States Constitution's requirement that payment of obligations by the state be made only in gold or silver coin and shall be deemed to satisfy the requirement of Code Section 50-37-3 for payment of obligations owed to the state."

SECTION 4.

This Act shall become effective on July 1, 2011.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.