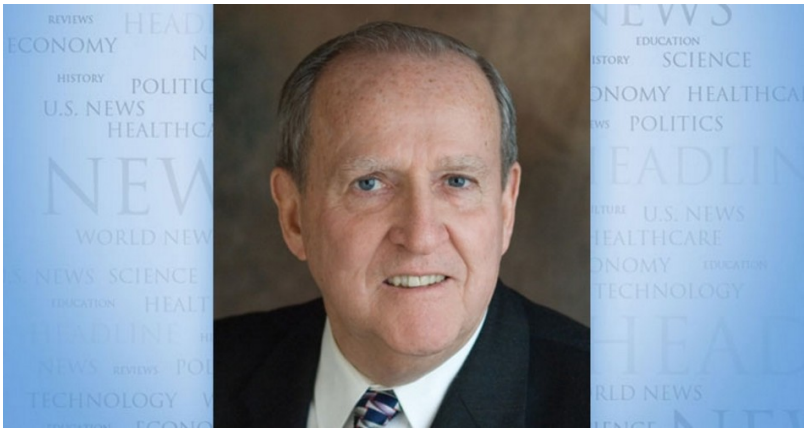
Written by **John F. McManus** on July 14, 2014

Nullification of Oppressive Federal Laws Is Catching On



Earlier in 2014, the Kansas state legislature enacted a law stating that some federal gun control regulations would not be obeyed in Kansas. U.S. Attorney General Eric Holder immediately notified Governor Sam Brownback that this new state law was unconstitutional. He cited Article VI of the U.S. Constitution, specifically its "Supremacy Clause," to support his stand.

As is customary among federal officials, Holder relied on only a portion of this clause, the part stating that laws of the United States "shall be the supreme law of the land" binding all the states. But a more complete look at this clause shows that federal laws are legitimate only if "made in pursuance thereof" of the Constitution. In other words, if a federal law is not in keeping with, or exceeds, the powers granted in the Constitution, it can rightly be declared illegitimate and not obeyed.

Though not employing the word, Kansas actually issued a decree of nullification regarding the pertinent gun control regulations issued by the federal government.

Is nullification of a federal law permissible? Thomas Jefferson thought so. In the 1798 Kentucky Resolutions he penned to help the Kentuckians gain statehood, he wrote:

> That a nullification, by those sovereignties [states] of all unauthorized acts done under the color of that instrument [the Constitution] is a rightful remedy.

After he served as president, James Madison offered his view about a state's power to nullify a federal law in 1834:

> Nullification of a law can … belong rightfully to a single state as one of the parties of the Constitution; the state not ceasing to avow its adherence to the Constitution.

Though Attorney General Holder expressed his objection to the Kansas law, he hasn't taken any action. But the Brady Campaign to Prevent Gun Violence, a private organization, has filed a lawsuit seeking to overturn what Kansas has done. In keeping with the Holder view, this anti-gun ownership group is relying on only a portion of the Supremacy Clause while ignoring the requirement that a federal law must be "in pursuance thereof" of the Constitution.

The actual Kansas law being challenged calls for prosecution of any law enforcement official (federal, state or even local) who seeks to enforce federal regulations over firearms made, sold and owned in Kansas. Attorney General Holder will surely watch this case from the sidelines. But so too will millions

of Americans who value the private ownership of weapons, a right protected by the Second Amendment.

A related matter may become an issue in this case. It is who shall determine the meaning of constitutional clauses. America has long relied on a belief that the federal judiciary alone has the power to state what any portion of the Constitution actually means. But nowhere in the document itself can any such attitude be found. Leaving such an important matter to the federal judiciary has resulted in judicial mischief.

State nullification of unconstitutional federal laws and regulations is based on the recognition that sovereign states created the national government and delegated to that government only those few powers enumerated in the Constitution. It would surely be helpful for the cause of liberty for this intent to be reinforced along with acceptance of a state's right to nullify a bad federal law. We can hope that the Brady Campaign's suit against Kansas will lead to a reaffirmation of state power and a diminution of federal overreach. Like Eric Holder, we shall be watching this very important case.

Learn more about nullification by reading Thomas E Woods Jr.'s book Nullification.

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