



Written by [Joe Wolverton, II, J.D.](#) on April 25, 2014

## Missouri House of Reps Considers Impeaching State Governor

On Wednesday, April 23, the Judiciary Committee of the Missouri state House of Representatives began consideration of three articles of impeachment filed against state Governor Jay Nixon (shown).



Although the *Kansas City Star* describes the likelihood of Nixon's ultimate impeachment as "minuscule," three members of the Republican-dominated House of Representatives believe the executive has betrayed his oath of office.

The first article of impeachment was offered by state Representative Nick Marshall. Marshall alleges that Nixon's issuance of an executive order directing state revenue officials to accept tax returns filed by homosexual couples is an impeachable offense. "This is such a blatant and serious violation of Missouri's constitution and Missouri law that the governor should be removed from office," Marshall said, as reported in the *Kansas City Star*.

In a strained application of the so-called Supremacy Clause of Article VI of the U.S. Constitution, Governor Nixon insists that as Missouri's tax code is an expression of the federal tax code and mirrors it, homosexual couples whose tax returns are accepted by the IRS must also be accepted by the Missouri Department of Revenue.

As *The New American* has explained previously, the Supremacy Clause does not endow federal laws with unassailable, unqualified supremacy. What it says is that the Constitution "and laws of the United States made in pursuance thereof" are the supreme law of the land.

Clearly, that clause exalts federal acts made "in pursuance" of its enumerated powers, not those made in violation of them. If an act of Congress is not permissible under any enumerated power given to it in the Constitution, it was not made in pursuance of the Constitution and therefore not only is not the supreme law of the land, it is not the law at all.

Constitutionally speaking, whenever the federal government passes any measure not provided for in the limited roster of its enumerated powers, those acts are not awarded any sort of supremacy. Instead, they are "merely acts of usurpation" and do not qualify as the supreme law of the land. In fact, acts of Congress are the supreme law of the land only if they are made in pursuance of its constitutional powers, not in defiance thereof.

Alexander Hamilton put an even finer point on the issue when he wrote in *The Federalist*, No. 78, "There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid."

The second article of impeachment against Governor Nixon was filed by state Representative Mike Moon. Moon's complaint focuses on the governor's failure to call for special elections of vacant



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legislative seats in a timely manner, as required by Articles III and IV of the Missouri Constitution.

State Representative Rick Brattin filed the final article of impeachment. Brattin points to the governor's failure to hold accountable those state officials who in November 2011 and January 2013 "released the full list of the more than 163,000 Missourians who have concealed carry endorsements to the federal Social Security Administration (SSA) Office of Inspector General based only on a verbal request for such information."

That information was released by the Missouri Highway Patrol, which received the list of concealed carry permit holders from the Division of Motor Vehicle and Driver Licensing within the Department of Revenue.

Handing that database over to the federal government was, Brattin alleges, a violation of applicable Missouri law declaring "a concealed carry endorsement shall not be public information and shall be considered personal protected information."

One Democratic lawmaker quoted in the *Kansas City Star* dismisses the charges as mere "disagreement over legal theory and legal philosophy."

"That shouldn't be an impeachable offense," said state Representative Mike Colona.

Not everyone sees it that way, though. State Senator Brian Nieves said during the hearings on the handing to the feds of the concealed carry permit holder database that this revelation was not a partisan issue, noting that the situation would be just as grave were the governor a Republican. "All that matters is that the executive branch of the Missouri state government is thumbing its nose at the law," Nieves said.

Last year, *The New American* reported on an effort by Nieves to [nullify in Missouri](#) all acts of the federal government that exceed its constitutionally prescribed authority.

According to information provided to *The New American* by a source at the Missouri legislature, the conspiracy to collect, catalog, and share the private information of Missourians was discovered when citizens applying for driver's license renewals or renewals of concealed carry weapon permits were required to resubmit all original qualifying documents such as birth certificates, marriage licenses, etc.

These documents were already on file when the licenses were originally granted, so citizens of Missouri were perplexed as to why the state Department of Revenue was suddenly demanding that they "Show Me" these papers and why they were scanning them into a new database.

In Fiscal Year 2011, the Department of Homeland Security awarded nearly \$45 million to states as part of the Driver's License Security Grant Program (DLSGP). DHS lists the following as the way states are intended to use the federal funds:

These solutions should improve business processes, IT, infrastructure and DL/ID document and issuance security. Grant award recipients may use grant dollars to meet the minimum issuance standards of Federal law in one of two ways:

1. Begin or continue State-specific process, security, infrastructure and IT improvements consistent with the Federal law and DHS regulations; and
2. Develop and implement policies, procedures, and protocols, following the uniform set of standards established by the States to capture, manage, and verify applicant data under the provisions of Federal law.



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That seems to belie the story told to Senator Schaefer by Missouri Department of Revenue deputy director John Mollenkamp. During the various hearings Schaefer held last March to investigate this important issue, Mollenkamp claimed at different times that the DHS grant money would be used for “hole punchers to void old licenses.”

At another hearing, Mollenkamp testified that the money was used to “verify identity and prevent fraud.”

Nixon apparently sees himself as subservient to the federal government, a puppet of the rulers on the Potomac. Last year, he also vetoed legislation that would have protected the right of Missourians to keep and bear arms as guaranteed by the Second Amendment.

For his part, Nixon considers the effort to remove him from office a mere “publicity stunt.”

His accusers do have a long row to hoe, in fairness. The procedure is set out in Article VII, Section 2 of the Missouri Constitution. That provision mandates that impeachment charges against a governor “shall be tried by a special commission of seven eminent jurists to be elected by the senate. The supreme court or special commission shall take an oath to try impartially the person impeached, and no person shall be convicted without the concurrence of five-sevenths of the court or special commission.”

The difficulty of the process is demonstrated in an article published in the *Washington Post* that points out that “only one statewide officeholder in Missouri’s history has been removed from office. That official, Secretary of State Judith Moriarty, was removed in 1994 after being accused of tampering with documents that allowed her son to run for office.”

On Wednesday, the Judiciary Committee hearing focused solely on the charges filed by state Representative Marshall related to the acceptance of tax returns filed by homosexual couples. The proceeding reportedly lasted for about an hour.

Deliberations will resume next Wednesday, April 30.

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