Written by **Joe Wolverton, II, J.D.** on May 2, 2014

Missouri Legislature Takes Another Step Toward Gun Grab Nullification

With the addition of two minor amendments, the Missouri State Senate passed on April 30 a powerful gun rights protection bill, sending it back to the state House of Representatives where a nearly identical version already passed.

Considered by many to be a weaker version of a Senate bill currently awaiting action in the House, HB 1439 aims to protect the right of Missourians to keep and bear arms from encroachment by the federal government.

The "Second Amendment Preservation Act" begins by making inspiring statements reminiscent of the Kentucky and Virginia Resolutions whose spirit informs the entire legislation. The language of the bill also accurately restates the Founders' intended relationship between the state and federal governments:

> The general assembly of the state of Missouri is firmly resolved to support and defend the United States Constitution against every aggression, either foreign or domestic, and is duty bound to oppose every infraction of those principles which constitute the basis of the Union of the States because only a faithful observance of those principles can secure the nation's existence and the public happiness;
>
> Acting through the United States Constitution, the people of the several states created the federal government to be their agent in the exercise of a few defined powers, while reserving to the state governments the power to legislate on matters which concern the lives, liberties, and properties of citizens in the ordinary course of affairs;
>
> The limitation of the federal government's power is affirmed under the Tenth Amendment to the United States Constitution, which defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government, and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively, or to the people themselves;
>
> Whenever the federal government assumes powers that the people did not grant it in the Constitution, its acts are unauthoritative, void, and of no force;
>
> The several states of the United States of America respect the proper role of the federal government, but reject the proposition that such respect requires unlimited submission.
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> If the government, created by compact among the states, was the exclusive or final judge of the extent of the powers granted to it by the states through the Constitution, the federal government's discretion, and not the Constitution, would necessarily become the measure of those powers. To the contrary, as in all other cases of compacts among powers having no common judge, each party has

> an equal right to judge for itself as to when infractions of the compact have occurred, as well as to determine the mode and measure of redress.

Specifically, the legislation declares:

> Although the several states have granted supremacy to laws and treaties made pursuant to the powers granted in the Constitution, such supremacy does not extend to various federal statutes, executive orders, administrative orders, court orders, rules, regulations, or other actions which restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition exclusively within the borders of Missouri; such statutes, executive orders, administrative orders, court orders, rules, regulations, and other actions exceed the powers granted to the federal government.

That language demonstrates a remarkable understanding of the limitations of the so-called Supremacy Clause of Article VI of the Constitution.

Despite what many in the mainstream press (including many "conservatives") claim, the Supremacy Clause does not declare that federal laws automatically trump state laws without qualification. What it says is that the Constitution "and laws of the United States made in pursuance thereof" are the supreme law of the land.

The supremacy of federal law extends only to those acts made "in pursuance" of enumerated powers. There is no such deference afforded to those acts passed in violation of the federal government's constitutional authority.

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, then, 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.

As Alexander Hamilton 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."

Notably, the bill clearly restates the origins of the federal government, as well, particularly as regards the role states played in the creation of it. As the authors of the bill rightly state in Section 2(2), the states created the federal government to be their agent.

The law of agency applies when one party gives another party legal authority to act on the first party's behalf. The first party is called the principal and the second party is called the agent. The principal may grant the agent as much or as little authority as suits his purpose. That is to say, by simply giving an agent certain powers, that agent is not authorized to act outside of that defined sphere of authority.

Upon its ratification, the states, as principals, gave limited power to the central government to act as their agent in certain matters of common concern: defense, taxation, interstate commerce, etc.

The authority of the agent — in this case the federal government — is derived from the agreement that created the principal/agent relationship. Whether the agent is lawfully acting on behalf of the principal

is a question of fact. The agent may legally bind the principal only insofar as its actions lie within the contractual boundaries of its power.

Should the agent exceed the scope of its authority, not only is the principal not held accountable for those acts, but the breaching agent is legally liable to the principal (and any affected third parties who acted in reliance on the agent's authority) for that breach.

Under the law of agency, the principal may revoke the agent's authority at will. It would be unreasonable to oblige the principals to honor promises of an agent acting outside the boundaries of its authority as set out in the document that created the agency in the first place.

Imagine the chaos that would be created if principals were legally bound by the acts of an agent that "went rogue" and acted prejudicially to the interests of the principals from whom he derived any power in the first place. It is a fundamental tenet of the law of agency that the agent may lawfully act only for the benefit of the principal.

Thankfully, the Missouri state legislature is holding the federal government to that agreement and refusing to let it act outside the scope of its authority without being held accountable.

Assuming the state House of Representatives signs off on the amended bill, it will then proceed to the desk of Governor Jay Nixon where, frankly, it is likely to be vetoed as was a similar bill passed last year.

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