Written by **Joe Wolverton, II, J.D.** on September 12, 2013

Missouri State Senate One Vote Short of Overriding Gov's Veto of Pro-Gun Bill

On the day that voters in Colorado stood up for their right to keep and bear arms, some Missouri state senators failed to do likewise.

By a tally of 22-12, the vote in the state senate fell one short of the two-thirds necessary to override Governor Jay Nixon's veto of a bill that would have nullified federal attempts to infringe on the rights guaranteed by the Second Amendment.

On the House side of the state legislature, representatives just crossed the constitutional threshold for a veto override by a vote of 109-49.

In July, Governor Nixon vetoed a bill passed overwhelmingly by both houses of the legislature.

With the issuing of a terse, constitutionally confused letter, Nixon notified the secretary of state of Missouri that he refused his assent to HB 436 and why he made that decision. HB 436 was entitled the "Second Amendment Preservation Act" and would have denied to the federal government the authority to enact any statutes, rules, regulations, or executive orders "which restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition exclusively within the borders of Missouri."

Now, with the state senate's failure to override Nixon's veto, one supposes, the federal government is free to impose its unconstitutional control of the God-given right to keep and bear arms within the formerly sovereign borders of the Show Me State.

In the letter accompanying his veto notification letter, Governor Nixon lists his objections under two headings: Supremacy Clause violation and First Amendment free speech clause violations. The explanation given under the second section is such a stretch as to obviate any need to deconstruct. As to the first, it demonstrates a common constitutional misunderstanding and thus merits correction.

A statement made by the governor just before the senate's unsuccessful effort to override his veto reveals he hasn't learned much about the Constitution since he refused to sign the Second Amendment Preservation Act.

"It's unconstitutional, it's unsafe and it's unnecessary," Nixon told the press gathered at the state capitol to record the vote.

In an article reporting on the events published on Wednesday, the Associated Press demonstrated the same lack of constitutional competency, writing, "the supremacy clause of the U.S. Constitution … gives precedence to federal laws over conflicting state ones."

Governor Nixon and the AP need a quick refresher course on the basics of constitutional interpretation.

The Supremacy Clause (as some wrongly call it) of Article VI does not declare that federal laws are the

supreme law of the land 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.

Read that clause again: "In pursuance thereof," not in violation thereof. 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.

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."

Once there are more legislators, governors, citizens, and law professors who realize this fact, they will more readily and fearlessly accept that the states are uniquely situated to perform the function described by Madison above and reiterated in a speech to Congress delivered by him in 1789. "The state legislatures will jealously and closely watch the operation of this government, and be able to resist with more effect every assumption of power than any other power on earth can do; and the greatest opponents to a federal government admit the state legislatures to be sure guardians of the people's liberty," Madison declared.

To the credit of the authors of HB 436, the bill, though now dead, contained an accurate recitation of the history of the creation of the federal government and the crucial role nullification plays in the check on federal usurpation. The bill reads:

> 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;
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> 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;
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> 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 are not united on the principle of unlimited submission to their federal government. If the government created by the compact among the states were the exclusive or final judge of the extent of the powers granted to it by the Constitution, the federal government's discretion, and not the Constitution, would be the measure of those powers.

Something most, though not enough, Missouri lawmakers understand is that the federal government is

the creature of the states, not their creator. The states provisionally delegated a portion of their sovereignty to the federal government and they specifically enumerated that authority in the Constitution.

Federal exercise of power, as understood by James Madison and Thomas Jefferson, is legitimate only if those powers were granted to the federal government by the people and listed specifically in the Constitution.

In the Virginia Resolution, Madison described any attempt by the federal government to act outside the boundaries of its constitutional powers as a "dangerous exercise," and reminded state legislatures that they were "duty bound, to interpose for arresting the progress of the evil."

Considering, then, that the Second Amendment to the Constitution explicitly forbids the federal government from infringing on the right of citizens to keep and bear arms ("shall not infringe"), any movement by Congress or the White House in that direction certainly passes Madisonian muster for state nullification.

In Missouri, however, the feds just got a green light to go ahead and take away the rights given to citizens by God.

It's all but certain now that Attorney General Eric Holder will keep his promise to send federal agents to enforce President Obama's gun restrictions in states foolish enough to try to stand in the way of their federal overlords.

The scuppering of the state senate's attempt to uphold this fundamental aspect of freedom was apparently aided by the state attorney general's scare tactics. The AP reports:

> Attorney General Chris Koster, a Democrat, also raised concerns last week about the ramifications of a potential veto override. He said a court likely would strike down the nullification provision but could leave intact other sections of the bill that could potentially prevent local police from cooperating with federal authorities on crimes involving guns. He said the bill also could open Missouri police to potential lawsuits from criminals if they refer gun-related cases to federal authorities.

Brian Nieves, a gun rights and nullification advocate, attributes much of his colleagues' failure to support the Second Amendment to Koster's propaganda. Koster, Nieves reportedly said, "literally scares the bejesus out of our great law enforcement community."

It remains to be seen how legislators in other states will react to the contradictory events in Colorado and Missouri. Citizens jealous of their liberty should make sure they contact their representatives and let them know they will hold them accountable for their votes, particularly those directly impacting their ability to enjoy constitutionally protected rights.

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