



Written by [Joe Wolverton, II, J.D.](#) on May 2, 2013

## AG Holder: Feds Will Ignore State Laws and Enforce Gun Grab

Attorney General Eric Holder (shown) has [written to Kansas Governor Sam Brownback](#), informing him that the Obama administration considers state attempts to protect the Second Amendment “unconstitutional” and that federal agents will “continue to execute their duties,” regardless of state statutes to the contrary.



The letter, dated April 26, specifically references [a Kansas statute recently signed into law by Brownback](#) that criminalizes any attempt by federal officers or agents to infringe upon the Second Amendment rights of citizens of the Sunflower State. Section 7 of the new law declares:

It is unlawful for any official, agent or employee of the government of the United States, or employee of a corporation providing services to the government of the United States to enforce or attempt to enforce any act, law, treaty, order, rule or regulation of the government of the United States regarding a firearm, a firearm accessory, or ammunition that is manufactured commercially or privately and owned in the state of Kansas and that remains within the borders of Kansas. Violation of this section is a severity level 10 nonperson felony.

The right of states to refuse to enforce unconstitutional federal acts is known as nullification.

Nullification is a concept of constitutional law recognizing the right of each state to nullify, or invalidate, any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the Constitution.

Nullification exists as a right of the states because the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

As President Obama and [the United Nations accelerate their plan to disarm Americans](#), the need for nullification is urgent, and liberty-minded citizens are encouraged at the sight of state legislators boldly asserting their right to restrain the federal government through application of that very powerful and very constitutional principle.

Both Attorney General Holder and President Obama are trained lawyers, so one would expect that they have read the *Federalist Papers*. In fairness, they probably have, but perhaps they overlooked [Federalist, No. 33](#), where Alexander Hamilton explained the legal validity of federal acts that exceed the powers granted to it by the Constitution. Hamilton wrote:

If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme



Written by [Joe Wolverton, II, J.D.](#) on May 2, 2013

---

over those societies and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the larger society which are not pursuant to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such.  
[Emphasis in original.]

Holder denies that states have the right to withstand federal tyranny and argues that the Constitution declares federal acts to be the “supreme law of the land.”

His comments echo a common misreading and misunderstanding of Article VI of the Constitution, the so-called Supremacy Clause.

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 usurpations” 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 [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 more legislators, governors, citizens, and law professors 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.

State lawmakers in Kansas and several other states are catching on, and nullification bills stopping federal overstepping of constitutional boundaries are being considered. These measures nullify not only the impending federal gun grab, but the mandates of ObamaCare and the indefinite detention provisions of the National Defense Authorization Act (NDAA), as well.

In light of Holder’s letter, it appears that we have arrived at a time in the history of our Republic when the author of the Declaration of Independence (Thomas Jefferson) and the “Father of the Constitution” (James Madison) are considered enemies of liberty.

In the [Kentucky and Virginia Resolutions](#), Jefferson and Madison declared their allegiance to the union, but insisted that states have the right — the duty — to interpose themselves between citizens and federal despotism.



Written by [Joe Wolverton, II, J.D.](#) on May 2, 2013

---

What Holder fails to appreciate is that the consent of the states created the Constitution and thus created the federal government. This act of collective consenting is called a compact. In this compact (or contract), the states selected delegates who met in Philadelphia in 1787 and conferred some of the powers of the states to a federal government. These powers were enumerated in the Constitution drafted at that convention and the Constitution became the written record of the compact.

This element of the creation of the union is precisely where the states derive their power to nullify acts of the federal government that exceed its constitutional authority. It is a trait woven inextricably within every strand of sovereignty, and it was the sovereign states that ceded the territory of authority that the federal government occupies.

In his letter to Governor Brownback, Attorney General Holder demonstrates that he is as ignorant as his boss as to the proper, constitutional relationship between state governments and the federal government. Accordingly, when Holder threatens to use “all appropriate action” to “prevent the State of Kansas from interfering with the activities of federal officials enforcing federal law,” what he is saying is that he will use any means necessary to prevent the sovereign state of Kansas (and any other state brave enough to take a stand against the federal government) from exercising its right to protect its citizens from federal disarmament.

And, more importantly, by disregarding a legally enacted Kansas statute preserving the right of its citizens to keep and bear arms, the Obama administration is not only ignoring the Second Amendment, but it is also ignoring the 10th Amendment and its restrictions on federal power.

*Photo of U.S. Attorney General Eric Holder: AP Images*

*Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He can be reached at [jwolverton@thenewamerican.com](mailto:jwolverton@thenewamerican.com).*



## Subscribe to the New American

Get exclusive digital access to the most informative,  
non-partisan truthful news source for patriotic Americans!

Discover a refreshing blend of time-honored values, principles and insightful perspectives within the pages of "The New American" magazine. Delve into a world where tradition is the foundation, and exploration knows no bounds.

From politics and finance to foreign affairs, environment, culture, and technology, we bring you an unparalleled array of topics that matter most.



**Subscribe**

### What's Included?

- 24 Issues Per Year
- Optional Print Edition
- Digital Edition Access
- Exclusive Subscriber Content
- Audio provided for all articles
- Unlimited access to past issues
- Coming Soon! Ad FREE
- 60-Day money back guarantee!
- Cancel anytime.