Written by **Joe Wolverton, II, J.D.** on March 18, 2015

Arizona Senate Passes Bill to Nullify All Federal Gun Regulations

Arizona was the last of the 48 contiguous states to sign on to join the union and now it is one of the first to join the fight against the federal gun grab.

On March 11, the Arizona Senate by a vote of 17-12 approved a bill that declares all federal acts and regulations that violate the Second Amendment to be "invalid and void" in the Grand Canyon State.

The bill — SB 1330 — not only protects citizens of Arizona from the president's attempts to abridge their right to keep and bear arms, but it explicitly prohibits employees and agents of the state from enforcing or supporting any of the proscribed federal attempts at disarmament.

According to the bill, any officer or agent of the state or one of its political subdivisions (counties and municipalities) who decides to bow to Big Brother and help him seize weapons will be "forever ineligible" from acting on behalf of the state or provide services to it.

Arizona state Senator Kelli Ward understands and appreciates the advice given by Madison. She is the author of SB 1330 and intends to assert the power reserved by the states. "We've sat back and allowed the federal government to trample the Constitution long enough," Ward told reporters at *The Examiner*. "We're going to pass this bill and stop the state of Arizona from helping the feds violate your rights," Ward added.

The bill also cuts off all state funds from being spent in furtherance of any federal gun control program or pronouncement. This provision demonstrates the exercise of a principle known as *anti-commandeering*.

Anti-commandeering is the refusal by states to assist the federal government in its near constant attempts to abridge fundamental liberties. Put simply, anti-commandeering prohibits the federal government from forcing states to participate in any federal program that does not concern "international and interstate matters."

While this expression of federalism ("dual sovereignty" as it was named by Justice Antonin Scalia) was first set forth in the case of *New York v. United States* (1992), most recently it was reaffirmed by the high court in the case of *Mack and Printz v. United States* (1997).

Writing for the majority in the *Mack/Printz* case, Justice Antonin Scalia explained:

> As Madison expressed it: "The local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than

> the general authority is subject to them, within its own sphere." *The Federalist* No. 39, at 245. [n.11]
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> This separation of the two spheres is one of the Constitution's structural protections of liberty. "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."

Or, as James Madison counseled in *The Federalist*, in order to prevent federal abridgment of fundamental liberties, state legislatures should refuse "to co-operate with the officers of the Union."

When the federal government assumes powers not explicitly granted to it in the Constitution, it puts the states on the road toward obliteration and citizens on the road to enslavement.

A companion concept to anti-commandeering is known as *nullification*.

Nullification is founded on the assertion that 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 federal government to enact laws that they expect the people to obey.

That is to say, the Constitution is an agency agreement between the states (the principals) and the federal government (the 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 federal 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, finally, the principals (states) may revoke the agent's (the federal government's) authority at will. It would be unreasonable to force the principals to honor promises of an agent that has acted outside the limits of its authority as set out in the document that created the agency in the first place — the Constitution.

The Founders explained the philosophy behind the principle on several occasions. In *The Federalist*, No. 33, Alexander Hamilton wrote:

> But it will not follow from this doctrine that acts of the large 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.

He restated that principle in a later letter, 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. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

Now that the state senate has signed off on the measure, the bill now awaits consideration by the military affairs and public safety committee of the Arizona House of Representatives. If that body follows the senate's suit, then the bill goes to Governor Doug Ducey for his signature.

Citizens of Arizona committed to protecting their right to keep and bear arms should make sure their representatives in the state legislature share that commitment.