



Written by [Joe Wolverton, II, J.D.](#) on August 25, 2023

Convention of States Says D.C. Will Never Fix Itself, but Their Cure Is Worse Than the Disease

“It is not to be expected, that criminals will destroy their own handiwork; that they will either reform or punish themselves; or, that men, who have brought our misfortunes upon us, will go about in good earnest to redress them, or even own that there are any such.” — Cato’s Letter No. 69 (March 10, 1722)



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“Government will never fix itself.” This is the shocking revelation published recently as the headline to a Convention of States (COS) [blog post](#). Parenthetically, I think it may also be the cover story of this month’s edition of “Duh!” magazine.

In announcing the endorsement of Representative Eric Burlison (R-Mo.), COS printed this statement released by Burlison on the issue of federal overreach:

It is clear, Washington, D.C., will never fix itself. The States must act to save the country through a convention of states. It was an honor to carry the Convention of States’ resolution during my time in the Missouri Legislature.

Well, Rep. Burlison, you started out strong — but then you got to the end of that second sentence. You see, you admit that “Washington, D.C., will never fix itself,” and you and I (and pretty much every one of the Founding Fathers) agree on that.

But, Sir, here’s the problem I see in your solution: You rightly regard the state governments as the proper prescription to treat the disease of federal despotism, yet it is a mechanism of the *federal government* that you insist will work! Do you see what I’m saying? You say it should be the states that must “act to save the country,” and you’re right; but you are asking the states to use the federal government to *fix the federal government*, something you and all men of sound men recognize will never happen!

Take heart, though, Congressman. There is a remedy for this disease, a “rightful remedy” as Thomas Jefferson called it. The tonic with the only hope of curing us of the absurdity and enslavement of federal tyranny is nullification.

Put very simply, nullification is the exercise of a basic principle of the law of agency (a subset of contract law) holding that the principal may nullify (refuse to recognize or ratify) the act of his agent when that agent acts outside the scope of his contractual authority. That’s it. How does it apply to the need for states to “save our country?” Also, simple.



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The states created the federal government, set the boundaries of its power, and reserved to themselves all other rights not specifically delegated to the new national authority. The contract containing the rights and responsibilities of the parties to this contract that created the federal government is called the Constitution. This act of collective consenting is called a compact.

This element of the creation of the union is precisely where the states derive their power to negate acts of the federal government that exceed its constitutional authority. It is a thread woven inextricably through every strand of sovereignty. It was the sovereign states that ceded the territory of authority which the federal government occupies.

Despite the frequent violations of the terms of the contract by the federal government, states are not left with the only option of voiding the contract. In fact, those state lawmakers and governors committed to forcing the federal beast back into its constitutional cage are better served by simply nullifying each and every congressional act or presidential decree that violates the agreed upon terms in the Constitution.

There are several benefits of this attitude: It preserves the union, and demonstrates state allegiance to the principles of freedom that undergird the Constitution, and by extension, to our Founders whose lives, fortunes, and sacred honor were offered in defense of liberty.

Nullification is also preferable because it is a less radical reaction than a convention of states. Don't forget, Sir, the last constitutional convention (in Philadelphia in 1787) ended up [abolishing the Constitution \(the Articles of Confederation\) and creating an entirely new form of government](#) — all of which was kept hidden from the people and which violated the pre-determined rules and limits of their purpose for assembling. If that happened with men like James Madison and George Washington in attendance, can you imagine what would happen with men like Bill Gates and Gavin Newsom as delegates?

We don't have to run that risk, though, because nullification rests safely on a sound constitutional foundation when it is exercised by people in their collective political expression as states, as expressed so clearly in the [Virginia and Kentucky Resolutions](#) written by James Madison and Thomas Jefferson, respectively.

If nullification is to be successfully deployed and defended, state lawmakers must remember that the Constitution is a creature of the states and that the federal government was given very few and very limited powers over objects of national importance. Any act of Congress, the courts, or the president that exceeds that small scope is null, void, and of no legal effect. No exceptions.

James Madison said it best in *Federalist* 45: "The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite."

The federal deprivations of our fundamental rights are nothing less than patricide by a thousand paper cuts. That is what the constant wounds inflicted by the federal government on the Constitution amount to.

Until the states reassert the sovereignty they theoretically retain, there will be no end to the demands, which will get more and more difficult to comply with and will thus justify increasing federal control over the apparatuses of state government. The trajectory is easy to see and follow into the future. The federal government will — mandate by mandate, regulation by regulation, grant program by grant program — devolve into a central government after the model of the so-called European democracies.



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Once we realize that state governments are the collective expression of popular sovereignty and that the Constitution is a compact entered into by these duly empowered representatives of the people, the inquiry moves on to the scope of the new central government's power as contained within the four corners of that agreement. A sound understanding of those enumerated powers is key to knowing when and why states are justified in ignoring (or, if they so choose, nullifying) acts of the federal government.

Every day, Congress, the president, and the judiciary will encroach further and further into the sovereign territory of the states. If the states appeal to the central government to police itself and restrain itself, then they must accept the response, which undoubtedly will constantly be for the states to mind their own business, the scope of which is continually shrinking.

Admittedly, there will be clashes when a state legislature begins the process of nullifying a federal act. Don't believe for a second that the feds will just sit, roll over, or heel when they are commanded to do so.

However, when properly performed, nullification of unconstitutional federal acts is not necessarily confrontational. There can be a preexisting understanding between states and the federal government that states will *not* set in motion measures of secession or threaten revolution if the federal government, in turn, demonstrates its understanding that no act exceeding its constitutional boundaries will be given even the slightest, most perfunctory legal recognition by the states.

Additionally, if done right, nullification is a surgical, sparing way to remove malignant tumors of tyranny, not a chainsaw brutally butchering healthy and diseased tissue indiscriminately.

So, to conclude, Congressman Burlison, nullification, whether through active acts passed by the legislatures or the simple refusal to obey unconstitutional directives, is the "rightful remedy" for the ill of federal usurpation of authority.

The failure of the people to force the states to flex the muscle of nullification has led to atrophy, leaving them too weak to put up a good fight against the federal assault on the sovereignty of the states and the liberty of the people.

As a result, Washington, D.C., considers the states nothing more than administrative subordinates whose continued existence is tolerated only so long as they faithfully facilitate the execution of the millions of mandates of the multitude of federal programs.

The checks and balances of the Constitution and the separation of powers provided therein are meant to be the first layers of defense against tyranny, not the last or the only, as the statists would have you believe. The people acting through their state governments are the final levee protecting the people as individuals from drowning under the flood of unconstitutional federal laws, regulations, and mandates.

States unwilling to be reduced to subordinates, subjects, and slaves must take as their motto: Sovereignty is not secession, rejection is not revolution, and nullification is not negation of the union.



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