Written by **Joe Wolverton, II, J.D.** on March 25, 2014

Declaring an Emergency, Idaho Governor Signs Gun Grab Nullification

On Wednesday, March 19, Idaho Governor Butch Otter signed a powerful protection against the federal gun grab into law in the Gem State.

The bill, SB 1332, came to Otter's desk after being passed unanimously (with three abstentions) by the state House and Senate.

The published purpose of SB 1332, the Idaho Federal Firearm, Magazine and Register Ban Enforcement Act, makes clear the intent of state lawmakers:

> This legislation is to protect Idaho law enforcement officers from being directed, through federal orders, laws, rules, or regulations enacted or promulgated on or after January 1, 2014, to violate their oath of office and Idaho citizens' rights under the Idaho Constitution, Article 1, Section 11. This Constitutional provision disallows confiscation of firearms except those actually used in commission of a felony, and disallows other restrictions on a lawful citizen's right to own firearms and ammunition.

The State Affairs Committee,the listed author of the bill, was right to point out the state's right to refuse to execute unconstitutional demands of the federal government. The authors understood that states are constitutionally, legally, and historically on solid ground when they hold these usurpations as null, void, and of no legal effect. That state governments have the power to take this tack with regard to unconstitutional acts of the federal government, the Founders were universally agreed, as I have explained in earlier articles.

Nullification is a concept of constitutional law that recognizes the authority 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 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.

James Madison, also writing in *The Federalist Papers*, recommended that state legislators, in order to prevent federal abridgment of fundamental liberties, should refuse "to co-operate with the officers of the Union."

This refusal to assist in the abridgment of fundamental liberties is also part of a principle of federalism known as anti-commandeering.

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).

Sheriff Richard Mack was one of the named plaintiffs in the latter landmark case, and on the website of his organization the Constitutional Sheriffs and Peace Officers Association, he recounts the basic facts of the case:

> The *Mack/Printz* case was the case that set Sheriff Mack on a path of nationwide renown as he and Sheriff Printz sued the Clinton administration over unconstitutional gun control measures, were eventually joined by other sheriffs for a total of seven, went all the way to the supreme court and

won.

There is much more "ammo" in this historic and liberty-saving Supreme Court ruling. We have been trying to get state and local officials from all over the country to read and study this most amazing ruling for almost two decades. Please get a copy of it today and pass it around to your legislators, county commissioners, city councils, state reps, even governors!

The *Mack/Printz* ruling makes it clear that the states do not have to accept orders from the feds!

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."

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.

One of the most important sections of the new Idaho law is the final one which declares that an "emergency is hereby declared to exist" and thus the law goes into immediate effect.

Recently, the legislatures of Missouri and Arizona have approved similar legislation, flying in the face of those who would deny the ability and will of states to nullify any and all federal acts that violate the limits placed on that power placed in the Constitution. By enforcing the boundaries states protect their citizens from federal tyranny and obviate the need for a dangerous constitutional convention to "fix" the Constitution.

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