



Written by [Steve Byas](#) on April 9, 2018

Huckabee Predicts That a Pro-life Governor Could Defy the Feds

“If these people in California can thumb their nose at a law they don’t like then I guarantee there will be a pro-life governor who will simply say no more abortions in our state and that’s just the way it is,” former Arkansas Governor Mike Huckabee (shown) told Fox News on Friday.



Huckabee was comparing the defiance of cities and states (such as California) over federal immigration law by declaring themselves “sanctuary cities,” or even “sanctuary states,” with a defiance of the Supreme Court decision *Roe v. Wade*, which decreed in 1973 that the right of a woman to have her unborn child aborted was a “constitutionally protected right.”

Most of the time, the same political leaders who support the federal court usurpation of state sovereignty relating to criminal laws concerning abortion stand ready to defy federal authority when it comes to immigration policy, Huckabee noted. “I don’t think you will find people on the Left and the Planned Parenthood supporters saying it’s fine with us. We do sanctuary cities, you ban abortion, all is good,” Huckabee added. “It won’t turn out like that.”

Huckabee was quick to assure Fox News that he was not advocating breaking the law. “If we don’t like the laws we can change them, but we can’t ignore them. This is beyond liberal, conservative, Democrat, Republican. This is not ideology. This is a foundational principle of our constitutional form of government.”

Besides calling attention to liberal hypocrisy, which is not really news, Huckabee’s comments raise several questions.

First, despite it being repeated *ad nauseam*, decisions of the Supreme Court are not “the law of the land,” if the clear wording of the U.S. Constitution means anything at all. In Article I, Section 1 of the Constitution reads, “All legislative powers herein granted shall be vested in a Congress of the United States.” Notice that it does not say *most*, but rather *all* legislative power, or the power to make law, is granted to Congress. That leaves no power to make federal law for any court, including the Supreme Court.

It should be added, however, that even the power of Congress to make law is limited by the phrase “herein granted.” In other words, all power to make law that belongs to the federal government is held by Congress. It does not mean that Congress can make just any law, but only laws concerning matters that are granted to the federal government by the Constitution itself. This “grant” of power is found mostly in Article I, Section 8 of the Constitution.

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Far too many Americans have also bought the line that the “Supremacy Clause” of the Constitution states that the federal government is supreme over the states. That is most certainly not what is said in Article VI of the Constitution! Rather, the supremacy clause of the Constitution states that the Constitution is the supreme law of the land. A law passed by Congress that is not “in pursuance” of the Constitution is therefore no law at all — and neither is a decision of the Supreme Court that does not follow the Constitution.

While the wording of the Constitution is quite clear — the Congress makes all laws under the supremacy of the Constitution — it is still far too common to hear the misinformed remark that Supreme Court decisions are “the law of the land.” On the contrary, a Supreme Court decision is “the law of the case,” and is binding only on the parties involved in that case.

But what about Huckabee’s contention that some day a pro-life governor will follow the example of defying the federal government on immigration, and defy the federal government on abortion?

This brings to mind the “nullification doctrine,” in which states may refuse to enforce federal actions deemed unconstitutional. Founding Fathers Thomas Jefferson and James Madison, in the Kentucky and Virginia resolutions of 1798, argued that the Sedition Act of 1798 was unconstitutional in that it was a clear violation of the First Amendment’s protections from government interference of free speech and free press. They therefore concluded that states did not have to obey the Sedition Act.

In the case of “sanctuary cities,” or even “sanctuary states,” “nullification” is fairly easy to do. The city or the state simply refuses to enforce a law of the federal government, or otherwise fails to cooperate with federal immigration officials. With abortion, however, it would be more problematic. While it is clear that the Supreme Court acted beyond its constitutional jurisdiction with the infamous *Roe v. Wade* ruling, state governors would not be stopping a federal *law* from being implemented. They would rather be stopping private action (an abortionist killing an unborn child) from taking place. In contrast to the passive role states and cities can take with sanctuary cities, a state would need to take an active role by shutting down abortion clinics, and arresting abortion “doctors.”

No one knows how the federal government would react if a state’s governor directed legal authorities to enforce homicide laws against clinics and abortionists. But, as Huckabee told Fox News, it might happen. In Oklahoma, a former state representative, Dan Fisher, is running for governor, and is vowing to do just that. Right now, Fisher is running far behind in public opinion polls for the Republican nomination. He is not expected to win the governorship.

But at some point, a pro-life governor may decide it is time to test the federal government on this point. If the federal courts and the rest of the federal government would actually follow the Constitution instead of a rogue decision by the Supreme Court, the federal government’s reaction would be meek acquiescence. Hopefully, that is what would occur, though no one can predict what the outcome would be. Other scenarios could involve a violent invasion of the defiant state (not likely) or cutting off federal grants and funds to the state to force compliance (quite possible). Furthermore, while a state could end legalized abortion within its borders, public opinion, shaped by the liberal pro-abortion mainstream media, could be made to swing against the pro-life governor, making any such efforts short-lived.

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