Written by **Joe Wolverton, II, J.D.** on March 15, 2014

Idaho Latest State to Stand Against Federal Assault on Gun Rights

Idaho may soon become the latest state to stand up to the Obama administration's attempt to infringe on the right to keep and bear arms.

Earlier this week, the state House of Representatives approved a pro-gun-rights bill already passed by the state Senate. The measure now awaits action by Governor Butch Otter.

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 executive 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.

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."

Speaking during the War of 1812, Daniel Webster said:

> The operation of measures thus unconstitutional and illegal ought to be prevented by a resort to other measures which are both constitutional and legal. It will be the solemn duty of the State governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State governments exist.

In the Kentucky Resolution of 1798, Thomas Jefferson wrote:

> That the several States composing the United States of America, are not united on the principle of unlimited submission to their general government; but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes — delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force.

Finally, founding era jurist Joseph Story described the Second Amendment's critical check on tyranny:

> The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.

Recently, three states have recently passed Second Amendment-protecting bills: Arizona, Missouri, and Idaho. Last year, Kansas passed a bill nullifying the federal assault on gun ownership and the action drew the ire of U.S. Attorney General Eric Holder.

Kansas Governor Sam Brownback signed the bill in April 2013 and Holder immediately called him to the carpet, or at least tried to.

Holder sent a letter to Brownback informing him that the Obama administration would ignore a new Kansas law nullifying federal gun control laws. Furthermore, Holder warned the governor that federal agents would "take all appropriate actions" to enforce federal gun control laws, calling the Kansas statute "unconstitutional."

In a response to Holder's letter sent on May 2 of last year, Brownback defended his state's right to protect its citizens' right to keep and bear arms as guaranteed by the Second Amendment.

"The right to keep and bear arms is a right that Kansans hold dear. It is a right enshrined not only in the Second Amendment to the United States Constitution, but also protected by the Kansas Bill of Rights," Brownback wrote. "The people of Kansas have repeatedly and overwhelmingly reaffirmed their commitment to protecting this fundamental right. The people of Kansas are likewise committed to defending the sovereignty of the State of Kansas as guaranteed in the Ninth and Tenth Amendments to the United States Constitution."

In spite of Holder's tough talk and threats of federal invasion, Judge Andrew Napolitano reckons federal gun control laws and regulations would be "nearly impossible to enforce" if states would stand their ground.

Idaho is trying and activists are noticing. The Tenth Amendment Center's national communication director Mike Maherry praised the Gem State legislature in a blog post:

> This is an important first step for Idaho. Getting this law passed will ensure that any new plans or executive orders that might be coming our way will not be enforced in Idaho. Then, once this method is established and shown to be effective, legislators can circle back and start doing the same for federal gun control already on the books. SB1332 is an important building block for protecting the 2nd Amendment in Idaho.

To Idaho's credit, on April 11, 2013, Governor Otter signed into law the "Preserving Freedom From Unwanted Surveillance Act," an act reinforcing the Fourth Amendment's guarantee of "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

The law amended the Idaho code, placing new restrictions on the use of drones by government or law enforcement, particularly when it comes to the gathering of evidence and surveillance of private property.

Such laudable legislative acts are critical and urgent, particularly in the case of the fundamental liberties protected by the Second and Fourth Amendments.

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