Written by **Joe Wolverton, II, J.D.** on September 19, 2013

LA Times: Nullification Based on "Imaginary Authority"

In an editorial published September 16, the *Los Angeles Times* declared that states attempting to nullify unconstitutional acts of the federal government were "states of denial." The very idea that states can "decide for themselves whether federal laws are unconstitutional" is, the paper insists, "rejected even by many legal scholars who support states' rights."

Articles such as this one are probably what made Thomas Jefferson declare, "I have given up newspapers in exchange for Tacitus and Thucydides, for Newton and Euclid; and I find myself much the happier."

That said, the editorial board of the *Los Angeles Times* not only lacks basic understanding of fundamental principles of constitutional construction, but they hide their ignorance in a cowardly fashion behind the skirts of "scholars," apparently afraid to come out and make statements of supposed constitutional certainty on their own.

To its credit, the article does make a bold statement so incredible and so detached from reality that it deserves reprinting here. The *Times* says, without qualification whatsoever, that state legislators violate [their oath of office] when they attempt to nullify duly enacted federal laws."

With that statement in mind, one wonders if the *Times* will make the same accusation of all those federal lawmakers and President Obama who violate the oaths they have taken to be bound by the Constitution and to protect it from enemies foreign and domestic.

Moreover, will the *Times* call out these elected officials for their disregard of the very clear constitutional limits on their power? It only stands to reason that if an attempt to enforce constitutional limits on power is a violation of the oath of office, then overt acts to exceed those limits are even more unforgivable offenses against it.

While not bothering to quote any of the "many legal scholars" who purportedly advocate for states' rights but reject nullification, the *Times* begins its brief condemnation of nullification by countering the "imaginary authority" asserted by states who take on the federal government with the so-called Supremacy Clause of Article VI of the Constitution.

Despite its misreading of this provision, the Supremacy Clause (as some wrongly call it) of Article VI does not declare that federal laws are the supreme law of the land without qualification. What it says is that the Constitution "and laws of the United States made in pursuance thereof" are the supreme law of the land.

Read that clause again: "*In pursuance* thereof," not in violation thereof. If an act of Congress is not permissible under any enumerated power given to it in the Constitution, it was not made in pursuance of the Constitution and therefore not only is not the supreme law of the land, it is not the law at all.

Constitutionally speaking, then, whenever the federal government passes any measure not provided for

in the limited roster of its enumerated powers, those acts are not awarded any sort of supremacy. Instead, they are "merely acts of usurpation" and do not qualify as the supreme law of the land. In fact, acts of Congress are the supreme law of the land only if they are made in pursuance of its constitutional powers, not in defiance thereof.

Alexander Hamilton put an even finer point on the issue when he wrote in *The Federalist*, 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 highlight the "constitutional defect" of nullification, the *LA Times* points to the recent failure of the Missouri state senate to override the state governor's veto of a bill nullifying the federal government's attempts to unconstitutionally infringe on the right of the people to keep and bear arms as protected by the Second Amendment.

As reported by *The New American*, the state senate fell one vote short of overturning Governor Jay Nixon's veto of the Second Amendment Preservation Act, a measure passed by an overwhelming majority of state legislators in both houses.

The *LA Times* is correct in describing this turn of events as "shocking," although not in the way it meant it. What is shocking is that when their constituents needed them to stand in defense of their constitutionally protected rights, state legislators could not muster the courage to uphold the oath they swore to preserve, protect, and defend the Constitution, choosing instead to bow to the pressure of special interest groups.

Something most, though not enough, Missouri lawmakers understand is that the federal government is the creature of the states, not their creator. The states provisionally delegated a portion of their sovereignty to the federal government and they specifically enumerated that authority in the Constitution.

Federal exercise of power, as understood by James Madison and Thomas Jefferson, is legitimate only if those powers were granted to the federal government by the people and listed specifically in the Constitution.

In the Virginia Resolution, Madison described any attempt by the federal government to act outside the boundaries of its constitutional powers as a "dangerous exercise," and reminded state legislatures that they were "duty bound, to interpose for arresting the progress of the evil."

Considering, then, that the Second Amendment to the Constitution explicitly forbids the federal government from infringing on the right of citizens to keep and bear arms ("shall not infringe"), any movement by Congress or the White House in that direction certainly passes Madisonian muster for state nullification.

Not to mention the fact that the black letter of the Tenth Amendment explicitly reserves to the states (and to the people) the full panoply of all powers "not delegated to the United States by the Constitution."

Emulating the buffet-style approach to the Constitution taken by most organs of the Establishment media, the *LA Times* completely ignores the Tenth Amendment, while decrying the potential for "clear violation of the 1st Amendment" in Missouri's failed gun grab nullification.

The tone of the *Times* editorial suggests that there are no limits on the ability of states to disregard bills

passed by the federal government. This is not so. In fact, the proper application of the principle of nullification prevents a constant clash of powers.

Nullification is not the right of states to nullify any federal act. Rather, it is the right to choose to not enforce any federal act that fails to conform to the constitutionally established limits on its authority. Nullification presupposes that there are myriad (albeit limited) areas over which the Constitution has given purview to the federal government: defense, naturalization, foreign relations, interstate commerce, etc.

When Washington decides to go walkabout, however, and starts legislating (or issuing edicts, in the case of President Obama) in areas not within its constitutional boundaries (healthcare, education, gun ownership), the states retain the right to check that usurpation by refusing to afford such acts the power of law. Conversely, it would be a usurpation on the part of the states should they attempt to disregard federal laws that are constitutionally sound.

Crisis averted.

Those of us engaged in the struggle to force the federal beast back inside its constitutional cage are not nuts, and we are not feverish. Nullification is not based on some "imaginary authority" and it will not fade away, so long as the federal government insists on trampling the rights of the people of the United States.

We, with Jefferson and Madison, declare our "warm attachment to the Union of the States." Our devotion to the Constitution and to the rule of law compel us to "watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness."

Regardless of the opinions of the *Los Angeles Times* and others in the mainstream media, Missouri, Texas, Minnesota, and other states struggling to protect citizens from the ravages of ObamaCare and other unconstitutional federal acts do not stand alone in their efforts to resist the tyranny of the federal government. Millions of Americans — lawmaker and citizen alike — are awakening and realizing that the endurance of our union depends on its being moored once again to the firm and timeless principles of federalism and state sovereignty.

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Joe A. Wolverton, II, J.D. is a correspondent for *The New American* and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He can be reached at jwolverton@thenewamerican.com