



Written by [Joe Wolverton, II, J.D.](#) on May 15, 2014

Missouri Gun Grab Nullification at Critical Crossroads

The effort to nullify federal gun laws within state boundaries may have hit an insuperable stumbling block in Missouri. Although the state House of Representatives approved a compromise bill drafted to protect the right to keep and bear arms, it seems that disagreement among lawmakers over a provision stripped from the House-passed version threatens to scuttle the measure.



Happily, among legislators who approve the bill, there is no debate regarding the act's declaring unconstitutional all federal attempts to infringe upon the rights guaranteed by the Second Amendment.

In very clear terms, the "Second Amendment Preservation Act" declares that all acts of the federal government that exceed the powers granted to it by the states in the Constitution are "unauthoritative, void, and of no force."

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This pronouncement is in perfect harmony with the explanation of federalism and the proper boundaries of federal law given by Thomas Jefferson and James Madison in the Kentucky and Virginia Resolutions. The Resolutions plainly set forth Jefferson's and Madison's understanding of the source of all federal power. Those landmark documents clearly demonstrate what these two agile-minded champions of liberty considered the constitutional delegation of power. Jefferson summed it up very economically in the Kentucky Resolutions:

... The several states who formed that instrument [the federal government], being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under colour [sic] of that instrument, is the rightful remedy.

In his speech on the bank bill delivered in 1791, Madison said, "In controverted cases, the meaning of the parties to the instrument, if collected by reasonable evidence, is a proper guide."

Jefferson similarly argued that the Constitution should be interpreted "according to the true sense in which it was adopted by the states, that in which it was advocated by its friends, and not that which its enemies apprehended."

If one were to assume that the Constitution is not an agreement among equals, then one must also accept the corollary that the states are mere subordinates of the federal government without the right to seek a remedy to the wrongs perpetrated by the plutocrats on the Potomac. The states, as dissatisfied children, would have to submit to their parent government, with no more morally acceptable remedy than to complain and to bristle.

However, sovereignty is not an either/or proposition. The states are the possessors of original governing sovereignty (as an aggregation of the popular political will) and they created another government with powers derived from their own. The government of the United States was not created ex nihilo.



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Understanding the facts of its formation demonstrates that although the government of the United States is a separate entity, it is not, indeed cannot be, superior to the states. Such a suggestion is illogical and there is not a single sentence of support for this supposition in all the annals of the history of the creation of the federal government.

The compromise Missouri bill understands this relationship, declaring:

Acting through the United States Constitution, the people of the several states created the federal government to be their agent in the exercise of a few defined powers, while reserving to the state governments the power to legislate on matters which concern the lives, liberties, and properties of citizens in the ordinary course of affairs....

Although the several states have granted supremacy to laws and treaties made pursuant to the powers granted in the Constitution, such supremacy does not extend to various federal statutes, executive orders, administrative orders, court orders, rules, regulations, or other actions which restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition exclusively within the borders of Missouri; such statutes, executive orders, administrative orders, court orders, rules, regulations, and other actions exceed the powers granted to the federal government.

As I wrote above, not one of these commendable restatements of the facts of federalism seems to be tripping up those lawmakers who agree with the broad strokes of the bill. The problem is one particular provision stripped by House leadership from the original language.

State representative Doug Funderburk, the sponsor on the House side, informed his colleagues in the Senate that he deleted from the House-approved version of the bill a provision that would have prevented any state law enforcement officer who participated in the federal gun grab from working as a law enforcement officer in the Show Me State ever again.

"I don't want to risk a good law enforcement officer's career on the potential that they may have made a one-time mistake in the carrying-out of their duties," Funderburk explained.

That change could prove fatal for the future of the bill in the state Senate.

State senator Brian Nieves, the bill's primary sponsor in the Senate, wants that provision put back in or he will refuse to bring the compromise measure to the senate floor. In fact, he was so opposed to the revision that he refused to sign off on the compromise language when presented to the compromise committee on which he sat.

Nieves reportedly said that the removal of that penalty changed the bill into something "too different" from the one he advocated, leaving it "toothless."

"There's nothing in the bill now that would create the healthy pause we were looking for," Nieves said. "Once I saw there were no more teeth I knew I wasn't going to bring it up."

A story on the controversy published in the *St. Louis Post-Dispatch* reports on Representative Funderburk's response to the ultimatum of Nieves:

Funderburk said he would not back down on removing the penalties for police officers. He said he'd made a commitment to law enforcement officers that he would do nothing to make it harder for them to do their jobs or partner with federal authorities. On the House floor, he said the penalty could deny a life-long calling to someone who just made a mistake.



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This disagreement among otherwise like-minded legislators has given the anti-firearm faction the space they need to sneak in and scuttle the legislation.

State Representative Judy Morgan, for example, demonstrated her lamentable lack of understanding of the role of states in our Republic and her own constitutionally mandated oath to support the Constitution, when she said that any state attempt to nullify federal gun laws was “unconstitutional.”

She warned that the nullification laws would be effectively nullified themselves by the federal judiciary.

Nowhere in the Constitution are the federal courts authorized to strike down state laws. As constitutional scholar Von Holtz wrote, “That our national government, in any branch of it, is beyond the reach of the people; or has any sort of ‘supremacy’ except a limited measure of power granted by the supreme people is an error.”

Out of legislative necessity, the battle that is brewing will be brief. The current session of the legislature ends Friday evening and any bill must be agreed to before that deadline if it is to be sent to the governor.

Getting the governor to go along with a bill protecting the right of Missourians to keep and bear arms [is another hurdle](#), but unless erstwhile allies can come together and agree on language, the issue may never get that far.

Image: Missouri state flag

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