



Written by [Joe Wolverton, II, J.D.](#) on April 22, 2013

Missouri House of Reps Passes Powerful Nullification of Federal Gun Grab

The Missouri House of Representatives passed a nullification bill April 18 prohibiting the enforcement of federal gun grabs within the sovereign borders of the Show Me State.

[By a vote of 115-41](#), state lawmakers approved the [Second Amendment Preservation Act \(HB 436\)](#), with nine Democrats crossing the aisle and voting “aye.”



A nearly identical companion bill is currently working its way through the state Senate. It’s sponsored by a reliable friend of the Constitution, state Senator Brian Nieves.

HB 436, which is sponsored by State Representative Doug Funderburk, was approved by the entire House fewer than 24 hours after passing the first round of approval by the same body. “I think this bill removes the noose the federal government has been gradually putting around the necks of its citizens and pulling it tighter, and tighter, and tighter,” Funderburk said immediately before his bill was voted on by his colleagues.

While their elected representatives debated the matter inside the House chamber, 300 Missourians gathered inside the rotunda of the state capitol building to demonstrate support for the measure.

During the deliberations, a handful of pro-Second Amendment representatives ducked out of the chamber to speak to the crowd. “I was part of the Republican majority that gave Missourians the right to carry-conceal by overriding Governor [Bob] Holden’s veto,” Senate President Pro-tem Tom Dempsey (R-St. Charles) informed the throng. “I’m part of the Republican majority that’s gonna protect that right from federal overreach and an apathetic [Governor Jay] Nixon administration.”

The bill, in very plain terms, does just that: It informs Washington that Missouri will not surrender her sovereign right to reject unconstitutional federal acts and will guard her citizens’ right to keep and bear arms as protected by the Second Amendment. Quoting the fathers of nullification — Thomas Jefferson ([Kentucky Resolution](#)) and James Madison ([The Federalist, No. 45](#)) — Section 2 of the bill ably and accurately lays out the legal and constitutional case supporting Missouri’s position:

- (1) The general assembly of the state of Missouri is firmly resolved to support and defend the United States Constitution against every aggression, either foreign or domestic, and the general assembly is duty bound to watch over and oppose every infraction of those principles which constitute the basis of the Union of the States, because only a faithful observance of those principles can secure the nation’s existence and the public happiness;
- (2) 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;



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(3) The limitation of the federal government's power is affirmed under the Tenth Amendment to the United States Constitution, which defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government, and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively, or to the people themselves;

(4) Whenever the federal government assumes powers that the people did not grant it in the Constitution, its acts are unauthoritative, void, and of no force....

The fourth sentiment is taken directly from the writing of another Founding Father, Alexander Hamilton in [The Federalist, No. 33](#):

If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the larger 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. [Emphasis in original.]

The next section of the bill adds impenetrable bricks to Missouri's wall of resistance, enumerating specific acts of the federal government that will be disregarded within the state borders. Section 3 of HB 436 declares:

(1) All federal acts, laws, orders, rules, and regulations, whether past, present, or future, which infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution and Article I, Section 23 of the Missouri Constitution shall be invalid in this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall be considered null and void and of no effect in this state.

(2) Such federal acts, laws, orders, rules, and regulations include, but are not limited to:

(a) The provisions of the federal Gun Control Act of 1934;

(b) The provisions of the federal Gun Control Act of 1968;

(c) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;

(d) Any registering or tracking of firearms, firearm accessories, or ammunition which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;

(e) Any registering or tracking of the owners of firearms, firearm accessories, or ammunition which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;

(f) Any act forbidding the possession, ownership, or use or transfer of any type of firearm, firearm accessory, or ammunition by law-abiding citizens; and

(g) Any act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens.

Missouri's Second Amendment Preservation Act seems to cover all the bases when it comes to



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guaranteeing the right of citizens of the state to keep and bear arms, federal attempts to infringe upon this right notwithstanding. Witness the legal acuity demonstrated in Section 7 (1) and (2) of the bill:

1. The general assembly hereby occupies and preempts the entire field of legislation touching in any way firearms, components, ammunition and supplies to the complete exclusion of any order, ordinance or regulation by any political subdivision of this state. Any existing or future orders, ordinances or regulations in this field are hereby and shall be null and void except as provided in subsection 3 of this section.
2. No county, city, town, village, municipality, or other political subdivision of this state shall adopt any order, ordinance or regulation concerning in any way the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permit, registration, taxation other than sales and compensating use taxes or other controls on firearms, components, ammunition, and supplies except as provided in subsection 3 of this section.

As many readers will understand, pre-emption (or “occupying the field”) is a key concept in cases of conflict between federal and state law. Once the feds have “occupied the field,” so the argument goes, of this or that area of the law or policy, then no other government (state or local) may trespass therein. State lawmakers of Missouri know better.

In fact, the enumeration in the Constitution of specific powers delegated to the federal government is the cornerstone of American political theory and of the constitutional Republic established in 1787.

The basic definition of enumerated powers is that the best limitation on power is to not give it in the first place. Powers, as understood by Madison, Jefferson, et al., were legitimate only if they had been granted to the government by the people and written specifically in the document through which the governed gave life to the government — the Constitution.

Notably, the Second Amendment to the Constitution explicitly forbids the federal government from infringing on the right to keep and bear arms; therefore, [the Tenth Amendment](#) guarantees that the right to rule in that area is reserved to the states and to the people.

The House measure will now be sent to the state Senate where the companion bill is already working its way through the legislative process.

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Photo: Missouri State Capitol Building



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