



Written by [Joe Wolverton, II, J.D.](#) on May 20, 2014

Missouri Legislature Fails to Nullify Federal Gun Grab

What began with a bang ended with a whimper.

The Missouri legislature failed to pass a bill nullifying the federal gun grab, leaving residents of the Show Me State vulnerable to the Obama administration's assault on this fundamental right.

With 20 minutes left on the last day of the state's annual legislative session, two Democratic state senators effectively "filibustered" a bill passed just half an hour earlier by the state House that would have repaired constitutional barriers around the right to keep and bear arms. As reported by [missouri.net](#):



Senators Jolie Justus of Kansas City and Paul Levota of Independence led the brief debate that ran out the clock.

Justus noted during the debate that, "We know that Missouri is not filled with extremists. Missouri is filled with folks (who) are worried about things like making sure they get food on their table and getting their kids to a school where they can get a quality education.

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And these continual sort of news-making type things with the nullification and this and that, it's just not where we are as a state."

Levota says the nullification bills "just go too far."

Constitutionalists may argue that there is no such thing as going "too far" in the fight to fend off the radical forces of civilian disarmament currently in charge of the White House.

Nonetheless, infighting among Republicans scuttled the bill and it cannot come up again until next year. This is especially bad news considering the fact that the same hope was held out after the legislature's failure last year to override the governor's veto of similar pro-Second Amendment legislation.

In the end, though, it was the watering down of the bill's penalty provisions that contributed to its defeat. As *The New American* reported last week:

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 Missouri 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 proved fatal.



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State senator Brian Nieves, the bill's primary sponsor in the Senate, wanted that provision put back in or he threatened not 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."

Ultimately, Nieves relented, but the bill was brought up too late and the Democratic delay gambit worked to torpedo the measure.

It seems Nieves — a consistent sponsor of bills aimed at restoring the sovereignty of his state — may have grown tired of the Sisyphean task of forcing the federal beast back inside its constitutional cage. Nieves has announced that he will not run for reelection to the state senate and will seek a position in the Franklin County, Missouri, government.

The question remains whether it was wise for the Missouri legislature to have adopted the "all or nothing" attitude which ultimately proved fatal or whether they should have opted to "move the ball" of nullification a little closer to the goal line. The debate is all academic now as the issue is moot until 2015, giving the Obama administration and the international forces of civilian disarmament another year to return the ball toward the other end of the field.

Finally, in the Associated Press's account of the events of last Friday, the reporter made what is becoming a common mistake regarding the constitutionality of nullification. The AP claimed that "Courts have routinely ruled that states cannot nullify federal laws."

It is not within the authority of the federal court to rule on the power of the states to nullify unconstitutional acts of the federal government. In fact, it would make no sense to believe that the Founding Fathers would have given the Supreme Court (much less any lower federal court) power preeminent to the other branches.

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."

Furthermore, unless the Tenth Amendment has been repealed, the Bill of Rights explicitly defines the border between the federal and state governments.

In fact, Supreme Court Justice Antonin Scalia — writing for the majority — explained the proper relationship in the case of *Mack and Printz v. United States*:

As Madison expressed it: "The local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere." *The Federalist* No. 39, at 245. [n.11]

This separation of the two spheres is one of the Constitution's structural protections of liberty. "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power



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between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.”

When the federal government assumes powers not explicitly granted to it in the Constitution, it puts the states on the road toward obliteration and citizens on the road to enslavement.

The government in Washington, D.C., is out of control and it is time for every citizen to demand that every state legislator perform his constitutionally imposed duty to protect the Constitution.

The best way to do this is to reverence our founding document by educating ourselves as to the legitimate relationship between the states and the feds and then insisting that the limits on power established in the Constitution are respected and enforced.

Nullification is the “rightful remedy” to federal overreach and can help restore the borders protecting the full panoply of individual liberties — liberties under near constant assault by the forces of statism in Washington, D.C., and state capitals around the country.

Although the battle was lost in Missouri, the war rages on.

Bills thwarting the president’s efforts to consolidate control over all guns and ammunition in the hands of federal agencies are being debated all over the country.

Citizens of these states are encouraged to contact their state representatives, congratulate them if they are currently involved in the fight to restore federalism and, if they are sitting on the fence, remind them of their oath to protect the Constitution.

Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels nationwide speaking on nullification, the Second Amendment, the surveillance state, and other constitutional issues. Follow him on Twitter @TNAJoeWolverton and he can be reached at jwolverton@thenewamerican.com.



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