Written by **Joe Wolverton, II, J.D.** on March 13, 2014

Missouri Moves Closer to Nullifying Federal Gun Grab

U.S. Attorney General Eric Holder better warn his agents that soon they could be arrested and jailed if they try to enforce certain federal gun restrictions in the state of Missouri.

On March 6, that happy possibility took one step closer to reality when the Missouri House of Representatives General Laws Committee approved a bill to thwart the Obama administration's gun grab.

Then, another leap forward when the Missouri House Rules Committee passed the measure, as well, sending it to the floor of the House for a third and final reading. The bill was already passed by the state senate.

As *The New American* has reported, on February 20, by a vote of 20-3, senators in the Show Me state lived up to the role the Founders intended them to play by shielding citizens of Missouri from suffering federal overreach and abrogation of the rights guaranteed by the Second Amendment.

Described by one observer as perhaps "the strongest defense against federal encroachments on the right to keep and bear arms ever considered at the state level," SB 613 reads in part:

> All federal acts, laws, executive orders, administrative orders, court 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.

Senator Brian Nieves, sponsor of the bill, said that if enacted, his legislation would preserve the protections of the Second Amendment in Missouri. "This is primarily purposed to protect liberties of Missourians," said Nieves.

Citing the Missouri state constitution and the 10th Amendment to the U.S. Constitution, the measure restates the scope of federal authority as intended by our Founders. The bill further declares that federal supremacy does not apply to federal laws that restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition within the state "because such laws exceed the scope of the federal government's authority.

Any and all federal laws attempting to infringe on the right to bear arms under the Second Amendment to the U.S. Constitution and Article I, Section 23 of the Missouri Constitution are invalid according to relevant provisions in the legislation. Specifically, the bill nullifies "certain taxes, certain registration and tracking laws, certain prohibitions on the possession, ownership, use, or transfer of a specific type of firearm, and confiscation orders."

Furthermore, the bill states that "it is the duty of the courts and law enforcement agencies to protect the rights of law-abiding citizens to keep and bear arms."

Should the bill be passed by the House and signed by the governor, all public officers and state employees would be stripped of any authority to enforce firearms laws declared invalid by the act.

With regard to penalties for violation of this legislation, the bill declares:

> Any person who acts under the color of law to deprive a Missouri citizen of rights or privileges ensured by the federal and state constitutions shall be liable for redress. In such an action attorney's fees and costs may be awarded, and official or qualified immunity shall not be available to the defendant as a defense.

And, the provision of the bill that should concern AG Holder and his gun-grabbing boss in the White House subjects federal agents to civil and criminal penalties for knowingly enforcing federal gun laws. Agents could face up to one year in prison and a $1,000 fine.

The Founders were universally agreed that state governments have the power to take this tack with regard to unconstitutional acts of the federal government.

In *Federalist* No. 78, Alexander Hamilton explained the philosophy behind the principle:

> 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.

Curiously, despite the weight of the authorities' advocacy of nullification as a constitutionally sound means of keeping the federal beast inside its constitutional cage, the Associated Press published a story in the Dexter (Missouri) *Daily Statesman* claiming that "Courts have consistently ruled that states cannot nullify federal laws."

Sadly, a reporter for Glenn Beck's website The Blaze made the same mistake, writing that "courts have

generally ruled that states can't nullify federal laws."

That is not so. Although the Missouri bill (and others like it) rely generally on the 10th Amendment and the companion constitutional principle of nullification, the narrower concept of anti-commandeering supports their position, as well.

Anti-commandeering prohibits the federal government from forcing states to participate in any federal program that does not concern "international and interstate matters."

While this expression of federalism ("dual sovereignty," as it was named by Justice Antonin Scalia) was first set forth in the case of *New York v. United States* (1992), most recently it was reaffirmed by the high court in the case of *Mack and Printz v. United States* (1997). Sheriff Richard Mack was one of the named plaintiffs in this landmark case, and on the website of his organization, the Constitutional Sheriffs and Peace Officers Association, he recounts the basic facts of the case:

> The Mack/Printz case was the case that set Sheriff Mack on a path of nationwide renown as he and Sheriff Printz sued the Clinton administration over unconstitutional gun control measures, were eventually joined by other sheriffs for a total of seven, went all the way to the supreme court and won.
>
> There is much more "ammo" in this historic and liberty-saving Supreme Court ruling. We have been trying to get state and local officials from all over the country to read and study this most amazing ruling for almost two decades. Please get a copy of it today and pass it around to your legislators, county commissioners, city councils, state reps, even governors!
>
> The Mack/Printz ruling makes it clear that the states do not have to accept orders from the feds!

Right now, legislators in Missouri and a handful of sister states are relying, at least in part, on the decision handed down in the Mack/Printz case.

Missouri's measure protecting the right of citizens to keep and bear arms is now scheduled to go to the floor of the state House of Representatives, where it must be passed by the entire body before sending it along to the state governor for his signature.

If the legislature successfully passes this important bill, perhaps they will have the strength of their commitment to overcome a veto that will almost certainly follow. Last year, the legislature fell one vote short of overriding Democratic Governor Jay Nixon's veto of a similar Second Amendment-protecting bill.

Image: Missouri state flag

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