



Written by [Joe Wolverton, II, J.D.](#) on April 24, 2014

Missouri Lawmaker Asks Anti-Nullification AG to Rule on Pro-Gun Bills

The Missouri legislature's progress on protecting the right of its citizens to keep and bear arms has hit a roadblock.

On April 22, the *Kansas City Star* reported, "Sen. Will Kraus, a Republican, on Monday said he was seeking an opinion from Attorney General Chris Koster on the legality of a pair of bills lawmakers are now considering."

As *The New American* [reported earlier this month](#):



Two separate bills are working their way through the two houses of the Missouri state legislature, both of which are aimed at protecting citizens of the Show Me State from the impending federal gun grab.

Senate Bill 613, the Second Amendment Preservation Act, explicitly nullifies all federal actions infringing on the right to keep and bear arms as protected by the Second Amendment, declaring:

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.

For its part, that state Senate will soon vote on HB 1439, a similar bill already passed by the House and also called the Second Amendment Preservation Act.

Considered by most to be a weaker version of the Senate measure, HB 1439 likewise aims to protect the right of Missourians to keep and bear arms, guarding this right from the near constant assault of the federal government.

The measure begins by accurately rehearsing the boundary between state and federal authority as drawn by the Constitution:

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;

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 several states of the United States of America respect the proper role of the federal government, but reject the proposition that such respect requires unlimited submission.



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If the government, created by compact among the states, was the exclusive or final judge of the extent of the powers granted to it by the states through the Constitution, the federal government's discretion, and not the Constitution, would necessarily become the measure of those powers. To the contrary, as in all other cases of compacts among powers having no common judge, each party has an equal right to judge for itself as to when infractions of the compact have occurred, as well as to determine the mode and measure of redress.

Specifically, the legislation declares:

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.

Although state Senator Kraus says he supports both bills, he's asking for the state attorney general's opinion on their legality. "Nullification is a rarely used concept," he said in a statement printed in the *Kansas City Star*. "An official opinion would be helpful to those of us in the General Assembly who will be voting on these bills. While I am fully supportive of SB 613 and HB 1439, I am also interested in the legal opinion of General Koster on the issue."

"General Koster will be called upon to defend any laws the General Assembly passes," Kraus explained. "It is important to know where he stands on the issue legally."

With all due respect to the senator, Koster's opinion of state nullification of unconstitutional federal attempts to infringe on the right to own weapons is no secret. Last year the state senate passed gun control nullification legislation, but ultimately failed to override a gubernatorial veto. Koster seems to have played a key role in the senate's retreat.

The scuppering of the state senate's attempt to uphold this fundamental aspect of freedom was apparently aided by the state attorney general's scare tactics. The AP reported last September:

Attorney General Chris Koster, a Democrat, also raised concerns last week about the ramifications of a potential veto override. He said a court likely would strike down the nullification provision but could leave intact other sections of the bill that could potentially prevent local police from cooperating with federal authorities on crimes involving guns. He said the bill also could open Missouri police to potential lawsuits from criminals if they refer gun-related cases to federal authorities.

Brian Nieves, a gun rights and nullification advocate and sponsor of the senate bill currently awaiting deliberation by the state House of Representatives, attributes much of his colleagues' failure to support the Second Amendment to Koster's propaganda. Koster, Nieves reportedly said, "literally scares the bejesus out of our great law enforcement community."

Kraus's consultation with Koster may also be prompted by his lack of confidence in the authority of a state to nullify unconstitutional federal acts.

A story in the *St. Louis Post-Dispatch* demonstrates a similar misunderstanding of federalism and the proper relationship between states and the federal government. "If the Legislature approved such a



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law, it likely would be challenged in court. Courts have consistently ruled that federal laws can't be nullified by states," the story in the *Post-Dispatch* claims.

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 start legislating (or issuing edicts, in the case of President Obama) in areas not within its constitutional boundaries (healthcare, education, gun ownership), the states reserve 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.

In the Kentucky and Virginia Resolutions, Thomas Jefferson and James Madison reminded state lawmakers of the boundaries between states and the federal government established by the Constitution. In those seminal statements they also declared their "warm attachment to the Union of the States."

They believed, as do many of us involved in the struggle to force the federal beast back inside its constitutional cage, that devotion to the Constitution and to the rule of law compels one 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."

State legislators have not only a duty, but an oath-bound obligation "to support this Constitution," that must of necessity include requiring the federal government to restrain itself by the chains of the Constitution.

Attorney General Koster has yet to act on the request of Senator Kraus. Meanwhile, Senate Bill 613 is awaiting debate by the state House of Representatives. House Bill 1439 is expected to be taken up by the state Senate within a month.

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