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Oklahoma and Nebraska Join UN in Attack on Tenth Amendment

In a bid to impose [unconstitutional federal statutes](#) and [United Nations schemes](#) on the people of a neighboring state, top officials in Oklahoma and Nebraska launched a [federal lawsuit](#) last week against Colorado. They argued in court that [nullifying](#) UN and U.S. government mandates purporting to require the criminalization of marijuana was unacceptable and should be quashed. The two conservative-leaning states, both of which have nullified or sought to nullify multiple unconstitutional federal usurpations of power, are asking the Supreme Court to declare the decision of Colorado voters “unconstitutional.”



The attorneys general for Oklahoma and Nebraska, who filed the complaint, are relying on the widely abused and deliberately misinterpreted “supremacy clause” of the U.S. Constitution to make their case. According to the filing at the Supreme Court, top officials in both states are bringing the suit to “enforce their rights under the Supremacy Clause.” The nullification of pot prohibition in Colorado is burdening the criminal justice systems in their states because more marijuana is coming in from their neighbor, the officials argued.

Oklahoma and Nebraska have both been among the many states, liberal and conservative, that have sought to [nullify unconstitutional federal statutes](#). However, in the latest lawsuit, the two attorneys general argued that Washington, D.C., does indeed have the power to force states to criminalize marijuana and other substances. The alleged power to prohibit the controversial plant is supposedly derived from “acts of Congress, including the Controlled Substances Act, ..., and international treaties, conventions, and protocols to which the United States is signatory.” The UN has [made similar arguments](#) in recent years.

In the filing, the attorneys general claimed that “a state may not establish its own policy that is directly counter to federal policy.” The two chief law enforcement officers for their respective states also pointed to the commerce clause — abuse of which has long been lambasted by conservatives — to argue that the federal government indeed has the power to ban substances. No explanation was offered for why alcohol prohibition required a constitutional amendment while a federal marijuana ban could supposedly be imposed by congressional statute alone.

“Because [Colorado’s anti-prohibition measure] Amendment 64 attempts to set state-specific drug regulation and use policy, it legislates in an area constitutionally reserved to the federal government,” the filing claimed. It also cited a series of three UN agreements purporting to mandate global marijuana prohibition. “These treaties are adopted by Congress and carry the same authority as federal law,” the attorneys general claimed about the UN prohibition schemes.



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In recent years, numerous UN bureaucrats have attacked state sovereignty in the United States by employing some of the same arguments. “I don’t see how [ending marijuana prohibition] can be compatible with existing [UN drug] conventions,” [complained](#) former Soviet diplomat Yury Fedotov, who currently serves as executive director of the UN Office on Drugs and Crime (UNODC). “Of course, such laws fall out of line with the demands of these conventions.”

The U.S. Supreme Court and the Founding Fathers, however, have repeatedly pointed out that the U.S. government [cannot expand its powers beyond those delegated in the Constitution merely by signing on to an international treaty](#). “I say the same as to the opinion of those who consider the grant of the treaty-making power as boundless,” noted Thomas Jefferson, one of the most important Founding Fathers behind the U.S. Constitution, in 1803. “If it is, then we have no Constitution.” As such, claims that UN prohibition regimes or agreements confer some sort of extra-constitutional power on the federal government have been widely criticized — especially by conservatives and constitutionalists.

Similarly, the notion that the federal government can prohibit or regulate virtually anything inside a state under the guise of the “commerce clause,” which authorizes congressional regulation of interstate and foreign trade rather than *intrastate* commerce, has also been widely condemned by constitutional experts. Even more alarming, perhaps, is the notion put forth in the lawsuit that the federal government can even commandeer state and local governments to enforce its extra-constitutional bans, regulations, and decrees. In fact, the [Supreme Court has already ruled that Congress may not coerce state and local authorities](#) into enforcing federal schemes after sheriffs challenged a federal gun-control plot.

Indeed, the view on absolute federal power expressed in the lawsuit is so extreme that even Obama’s Attorney General, Eric Holder — a vehement proponent of virtually unchecked federal power — [rejected the argument during congressional testimony](#). When asked whether federal statutes override state law when there is a conflict between the two, Holder conceded that, while U.S. statutes are “generally” supreme in many cases, that is “not always true” on all matters. “There is an argument that could be made that a state cannot be forced to criminalize something,” he added.

The Constitution itself also makes clear that federal laws and international treaties are superior to state law only if they are “made in pursuance” of the Supreme Law of the Land — not in defiance thereof. The 10th Amendment makes those facts even more explicit, saying that all powers not specifically delegated to the federal government in the Constitution are reserved to the states and the people. Prohibition of substances is not among the limited number of powers ceded by the sovereign states to the federal government in the Constitution.

Ironically, Oklahoma’s legislature has been at the forefront of the fast-growing movement across America to use nullification as a means of protecting citizens of a state from unconstitutional federal statutes. In fact, in recent years, Oklahoma lawmakers have passed various resolutions and bills enshrining the same principles of state sovereignty and nullification while attacking UN and federal power grabs. In 2008, as just one example, the Oklahoma House passed House Joint Resolution 1003 by a vote of 83 to 13.

According to the resolution, “the State of Oklahoma hereby claims sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States.” The measure also states “that this serves as Notice and Demand to the federal government, as our agent, to cease and desist, effective immediately, mandates that are beyond the scope of these constitutionally delegated powers.” More recently, lawmakers have worked to nullify everything from [UN Agenda 21](#) and unconstitutional



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federal gun control to [federal land grabs](#) and [ObamaCare's healthcare takeover](#).

At least some conservative state lawmakers, though, are concerned about the implications of the bid to sue Colorado in federal court. "This lawsuit raises a number of concerns when it comes to states' rights, nullification, and the Tenth Amendment to the U.S. Constitution," Oklahoma Rep. Mike Ritze told *The New American*. "Invoking UN treaties and the supremacy clause to have the federal government force a state to do something has implications that extend far beyond marijuana."

"Oklahoma has been a national leader when it comes to standing up for state sovereignty under the Tenth Amendment in the face of accelerating federal efforts to centralize power," he added. "The UN and its agreements should have no role in domestic policy making. And regardless of whether we feel Colorado has made a bad decision when it comes to this drug, we must be cautious when it comes to potentially expanding the power of the federal government and the UN over the liberties and policies of our state."

"Nullification of unconstitutional federal statutes is an important and viable tool that citizens and states have to keep Washington, D.C., in check," concluded Rep. Ritze, who is also a doctor. "This must be recognized."

Indeed, if the Supreme Court were to agree with the arguments made by officials in Oklahoma and Nebraska, it could open up a veritable Pandora's Box of unintended consequences. Could Congress pass any law or treaty whatsoever — even one in direct defiance of the U.S. Constitution, [such as the looming UN gun-control plot](#) — and force states to aid in its enforcement by commandeering state and local resources? The implications of such a ruling, for conservatives and liberals alike, would be very far-reaching, to put it mildly.

However, a broad range of legal analysts all across the political spectrum have suggested that the lawsuit is likely to fail — in the unlikely event that it is even heard. "It seems like a political document. It doesn't make a whole lot of sense," said Inge Fryklund, former Assistant State's Attorney in Cook County, Illinois, who has argued cases at the Supreme Court and now serves as a board member for Law Enforcement Against Prohibition (LEAP). "It doesn't really compute that Oklahoma should say that the Tenth Amendment prohibits the federal government from interfering with them, but now they want to use the federal government to force this on another state."

Fryklund told *The New American* that she would be "very surprised" if the Supreme Court were even interested in looking at the case. "The relief that they are asking for here from the federal government — to come down on Colorado — that doesn't make sense, especially when Colorado is the only defendant in the lawsuit," Fryklund said, noting that Alaska, Oregon, and Washington State have also ended marijuana prohibition in recent years. Plus, she added, the federal government cannot really force states to criminalize something due to the federalist system in place in the United States.

"I don't see anywhere that the federal government can tell a state that it must criminalize something, so I think they're suing the wrong party," Fryklund explained, adding that at least suing the federal government might make more legal sense. "This effort just seems more like a political statement for local consumption rather than any expectation that anyone can force Colorado to change its laws.... Anyway, do we really have the resources to go after the 23 states where marijuana is legal at least for medical purposes? The federal government has better things to do with its time and money."

After the announcement by officials in Oklahoma and Nebraska, Colorado Attorney General John Suthers said he was "not entirely surprised" by the action. However, he vowed to support the 2012



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decision made by voters in his state to dump marijuana prohibition. “We believe this suit is without merit and we will vigorously defend against it in the U.S. Supreme Court,” Suthers [explained](#).

Legal experts widely expect the lawsuit to flop, but more than a few have warned about the consequences of success. “Like most other federalism scholars, I highly doubt that Nebraska and Oklahoma will win their case,” argued Ilya Somin, a professor of law at George Mason University who focuses on constitutional law. “But if they do somehow prevail, the biggest losers will be advocates of constitutional limits on federal power.”

When the United Nations [demanded that the federal government quash the will of voters in the states that ended marijuana prohibition](#), few would have expected two conservative states trying to protect their own sovereignty and liberties to join in the controversial attack. However, as public pressure grows for states to defend their citizens from escalating federal and UN abuses, the trend toward nullification is likely to continue gathering steam — regardless of what the UN or certain state officials think about it.

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