



Written by [Alex Newman](#) on January 2, 2015

Oklahoma Lawmakers Seek to Stop Pot Lawsuit Against Colorado

Citing the 10th Amendment, states' rights, and even threats to national sovereignty, a coalition of some of Oklahoma's most conservative lawmakers sent a letter to state Attorney General Scott Pruitt this week asking him to drop [the federal lawsuit against Colorado voters' 2012 decision to end marijuana prohibition](#). The group of state legislators, while making clear that they do not support pot, warned that the implications of the recently filed case would extend far beyond the controversial substance — potentially even threatening nullification efforts in Oklahoma and other states if successful at the Supreme Court. If the attorney general decides to pursue the case anyway, constituents of the Oklahoma lawmakers are urging them to file a brief defending Colorado's right to self-government in the Supreme Court.



As *The New American* has documented extensively in recent years, four states' decisions to nullify federal statutes and United Nations agreements purporting to criminalize marijuana have produced unusual political coalitions on both sides. Anti-drug conservative proponents of states' rights across the country have now found themselves, in many cases, on the same side of the 10th Amendment issue as anti-prohibition liberals and libertarians. While their motivations vary widely, members of the loose but increasingly powerful alliance say the U.S. Constitution protects the right of states to decide on prohibition themselves — without interference from the UN or Washington, D.C., in the matter. Unless the lawsuit by Nebraska and Oklahoma against Colorado voters goes nowhere, which remains a very real possibility, the Supreme Court may end up weighing in on the matter.

“We write to you today to respectfully express a range of concerns we have about the lawsuit against the State of Colorado,” reads the letter to Oklahoma's attorney general, signed by more than half a dozen state representatives and senators. “Our primary concerns surround the implications of this lawsuit for states' rights, the Tenth Amendment, and the ability of states and citizens to govern themselves as they see fit. As you know, Oklahoma has been a pioneer and a leader in standing up to federal usurpations of power on everything from gun control to Obamacare and beyond. We believe this lawsuit against our sister state has the potential, if it were to be successful at the Supreme Court, to undermine all of those efforts to protect our own state's right to govern itself under the Tenth Amendment to the U.S. Constitution.”

In the letter, the Oklahoma legislators make clear that they do not support marijuana and that they appreciate the attorney general's efforts to protect Oklahomans and uphold the criminal laws of their



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state. However, the lawmakers also indicated that — for the same reason federal alcohol prohibition required a constitutional amendment to be valid — a “strong argument” can be made that criminalizing and prosecuting drug crimes must be decided at the state level. “While it may be open to interpretation, we also do not believe the commerce clause grants the federal government any power to regulate intrastate trade or marijuana,” the letter continues. “If the commerce clause could be interpreted so broadly, there is virtually nothing the federal government could not regulate or control under the guise of ‘commerce.’”

Another point raised in the letter is that criminal law is, has been, and should remain a function of state governments — not Washington, D.C., or UN prohibition treaties. The Founding Fathers, the Oklahoma lawmakers continued, “wisely left the police power and criminal justice matters primarily in the hands of states.” With that in mind, the legislators said they were concerned about the attorney general’s invocation of the U.S. Constitution’s so-called “supremacy” clause to claim that federal prohibition statutes enacted under the guise of “commerce” and extra-constitutional UN treaties somehow trump states’ 10th Amendment reservations of authority over powers not specifically granted to the federal government.

“As the Constitution states very clearly and the Supreme Court has reiterated on numerous occasions, federal laws and treaties must be made ‘in pursuance’ of the Constitution to be considered valid,” they wrote in the letter. “If the federal government can force Colorado to criminalize marijuana, using the exact same arguments, it could also force Oklahoma to criminalize a wide range of goods and activities that would be anathema to the citizens of Oklahoma that we are sworn to serve.” Oklahoma, for example, has led the way in efforts to nullify everything from UN Agenda 21 and ObamaCare to unconstitutional federal gun controls. If the lawsuit against Colorado were to succeed in the Supreme Court, much of that progress could potentially become moot.

Also of “deep concern,” the lawmakers continued, are the potential implications for the national sovereignty and independence of the United States. “The suit against Colorado contains multiple references to a series of three United Nations drug conventions,” they said. “It even argues flatly that these international agreements are the equivalent of constitutional federal laws. We disagree with this for a number of reasons.” First of all, the Founders, the U.S. Constitution, and even Supreme Court rulings in recent decades have pointed out that international treaties cannot confer any additional powers on the federal government beyond those granted in the Constitution. “As such, we do not believe that, merely by ratifying a UN treaty, the federal government may expand its lawful powers outside of those delegated to it,” the letter states.

“Secondly, the broader implications of the argument are an extremely serious concern,” continued the lawmakers. “If the argument in the lawsuit were successful, the federal government could, in theory, adopt any UN treaty, then force the states, including Oklahoma, to help impose it. With the UN Arms Trade Treaty, the UN Convention on the Rights of the Child, and many other troubling instruments emerging from this international body, we believe Oklahoma would be better served by arguing against the validity of these extra-constitutional treaties.” Indeed, just this year, the UN [lambasted Oklahoma specifically for allegedly violating what it calls “international law”](#) by executing convicted murderer and rapist Clayton Lockett. It [said the same thing when Colorado and three other states ended pot prohibition](#). If the Oklahoma attorney general’s lawsuit against Colorado succeeds, he may inadvertently end up condemning his own state’s criminal justice system.

Finally, the letter to Pruitt, which sources say will also be forwarded to Nebraska’s attorney general,



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takes aim at the lawsuit's apparent endorsement of federal commandeering of state and local resources to enforce U.S. statutes and UN treaties. "We believe the Supreme Court made a wise decision in *Printz v. United States* when it articulated the anti-commandeering doctrine prohibiting the federal government from forcing state and local governments to participate in the enforcement of federal statutes," they said. "It would be a tragedy to see this precedent overturned, as it provides the states a just and powerful mechanism to help keep federal authority within constitutional bounds."

"We think the best move at this point would be to quietly drop the action against Colorado, and if necessary, defend the state's right to set its own policies, as we would hope other states would defend our right to govern ourselves within constitutional confines," the lawmakers concluded. "We also do not feel that attempting to undermine the sovereignty of a neighboring state using the federal courts, even if inadvertently, is a wise use of Oklahoma's limited state resources. If the lawsuit is eventually heard by the Supreme Court, many of our Constituents want us to consider filing an amicus brief on behalf of Colorado — not because they do not believe dangerous drugs should be considered a crime, but because our own states' rights would be put in jeopardy by an unfavorable ruling."

Led by State Representative Mike Ritze (R-Broken Arrow), a constitutional conservative, the letter to Attorney General Pruitt was also signed by two state senators and four other state representatives. "This is not about marijuana at its core — it is about the U.S. Constitution, the Tenth Amendment, and the right of states to govern themselves as they see fit," said Ritze in a statement about the letter. "If the Supreme Court can force Colorado to criminalize a substance or activity and commandeer state resources to enforce extra-constitutional federal statutes and UN agreements, then it can essentially do anything, and states become mere administrative units for Washington, D.C."

"That is not what our Founding Fathers had in mind and that is not what the people of Oklahoma stand for," he added. "The Constitution reserved the police power to the states, therefore states are the proper venue for determining what their own civil and criminal codes should be, not the federal government or the UN. Our Founding Fathers intended the states to be laboratories of self-government, free to tinker and experiment with different ideas. The founders, from Jefferson to Madison, were also strong proponents of states nullifying unconstitutional federal actions."

"If the people of Colorado want to end prohibition of marijuana, while I may personally disagree with the decision, constitutionally speaking, they are entitled to do so," concluded the statement by Representative Ritze. "Neither the commerce clause nor the supremacy clause grants the federal government the power to regulate intrastate trade or commandeer state and local resources in pursuit of a policy. If citizens of that state don't like it, they are free to use the process to change the laws or move to another state. The last thing we need is the federal government and the UN trying to dictate our criminal codes and control our commercial activities."

However, Representative Ritze and his colleagues are hardly alone among supporters of the Constitution and federalism in hoping for a resolution to the situation that does not end up trampling on states' rights. Georgetown University law professor Randy Barnett, a liberty-minded lawyer who teaches constitutional law and played a key role in the Supreme Court ruling that ObamaCare was unconstitutional under the commerce clause, spoke out strongly against the suit as well. "I see no other way to interpret Nebraska and Oklahoma's lawsuits than as an example of 'fair weather federalism,'" he explained in an opinion column about the effort.

Ironically, as the attorneys general for two of the most conservative states in the union were arguing against states' rights, even some typically far-left voices suddenly found themselves supporting the 10th



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Amendment. “If Nebraska and Oklahoma prevail on their claim — if they convince five justices that federal law forces states to ban weed, and that such a law is constitutional — states’ rights would take a brutal blow,” observed Mark Joseph Stern with the rabidly pro-Big Government online outlet Slate. “A Congress that can force states to criminalize marijuana can also force states to do just about anything — like, say, expand Medicaid, or perform background checks on gun buyers, or regulate polluting waste. This expansion of federal power would be a catastrophe for federalists, a near-total reversal of their recent triumphs.”

The Oklahoma attorney general did not respond last week to a request for comment about the lawsuit.

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