



Written by [Alex Newman](#) on April 11, 2014

On Pot Nullification, AG Holder Admits Limits to Federal Power

Testifying before the House Judiciary Committee this week on the recent [nullification of federal marijuana prohibition in Colorado and Washington State](#), Obama's Attorney General Eric Holder found himself [stuck in a tough spot](#). On one hand, Holder and the Obama administration have been [brazenly threatening governors of states that have nullified unconstitutional federal usurpations](#) on everything from gun rights to ObamaCare. On the other, however, Holder admitted to U.S. lawmakers this week the fact that federal law does not always trump state law.



It is undeniable that [states have the authority to nullify unconstitutional acts of pretended federal "law."](#) According to Thomas Jefferson and James Madison, two of the key framers of the U.S. Constitution, in fact, states actually have a duty to protect the rights of citizens from federal usurpations by interposing themselves between the people and lawless U.S. government schemes. The Constitution itself also makes clear that federal laws 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, of course, is [not among the limited number of powers ceded by the sovereign states to the national government](#) in the Constitution. That is why, for example, the federal ban on alcohol required a properly ratified constitutional amendment rather than a mere unconstitutional statute purporting to criminalize intoxicating drinks.

As such, Colorado and Washington — along with the approximately two dozen states so far that [have ended prohibition on marijuana for medical purposes](#) — are well within their rights to nullify unconstitutional federal statutes and [United Nations mandates](#) claiming to criminalize the controversial plant. When asked by Rep. Jason Smith (R-Mo.) whether federal statutes override state law when there is a conflict between the two, however, Holder waffled. He said that while U.S. statutes are "generally" supreme in many cases, that is "not always true" on all matters.

Whether Washington, D.C., can force state governments to criminalize a particular behavior with a federal statute is "an interesting question," Holder continued. "There is at least an argument that could be made that the federal government could bring a supremacy-clause suit against the state," the attorney general said. "But there is an argument that could be made that a state cannot be forced to criminalize something, so it's actually an interesting question." In fact, even the federal supremacists on the Supreme Court have already ruled that the federal government may not commandeer state and local governments.



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While it may be an “interesting question,” it is also an easy one to answer. If the U.S. Constitution does not grant the federal government a particular power, it may not lawfully, legitimately, or constitutionally exercise that power. In this case, the people and the states never granted the U.S. government any power to ban possession, consumption, or sale of any substance. Therefore, the simple answer is that no, the federal government cannot lawfully ban plants, or coerce any state government to do so. States, on the other hand, do have those powers.

“I am hopeful that as public opinion continues to shift in favor of marijuana reform, the White House will one day have the courage to take a larger role in the push to legalization,” said Executive Director Major Neill Franklin (Ret.) of Law Enforcement Against Prohibition (LEAP), a group of lawmen that advocates an end to drug prohibition, following the Judiciary Committee hearing. “Until then, states remain the innovators, exercising their constitutionally protected police powers to lead the charge toward sensible change that at least the administration has the good sense to follow.”

Indeed, as *The New American* [reported](#) in August of last year, the Obama administration has in fact decided to respect state sovereignty on marijuana prohibition, albeit in a very limited way. In a quiet move, Holder informed state leaders that the U.S. government would not challenge the successful nullification of pot prohibition in Colorado or Washington, as long as those state governments [adhered to a series of decrees](#) on the issue promulgated by the Justice Department. It was not clear where the Obama administration thought it found the supposed authority to issue those regulations, but it did.

Analysts cited different possible reasons for the uncharacteristic decision to respect state sovereignty on at least the issue of marijuana while trampling it in other cases. Among the possibilities: The Obama-allied George Soros-funded movement to legalize and normalize marijuana; or perhaps a fear that the U.S. government would lose in court, thereby setting another precedent that would encourage even more states to nullify unconstitutional federal statutes.

At the very least, though, it is clear that the respect for nullification and state sovereignty in these instances was not motivated by proper constitutional understanding or principled opposition to unconstitutional federal machinations. Instead, Holder promised lawmakers that the DOJ would be “good stewards of the Controlled Substances Act,” the unconstitutional prohibition statute, with the caveat that the federal government does not have the resources to prosecute all violations of supposed federal “law.”

Regardless of the reason for its decision, the administration appears to believe that state-level nullification of unconstitutional U.S. statutes is only acceptable in cases where it agrees. On ObamaCare, for instance, Holder and other top administration officials have already made clear that they do not believe [states or citizens have the right to reject the unconstitutional federal healthcare takeover](#). Rep. Smith, who asked about the supremacy clause, also questioned Holder on whether Missouri could refuse to participate in ObamaCare. The attorney general waffled, but admitted that the IRS would still “tax” those who fail to comply — even in states that reject the scheme.

Consider, as yet another example, Attorney General Holder’s outlandish reaction to a state law in Kansas, which nullified anti-constitutional gun-control schemes in the state by making it a felony to enforce any unconstitutional attacks against Kansas guns within state borders. Holder responded to the nullification law by [sending a threatening letter to Governor Sam Brownback](#) and claiming, citing reasoning that is entirely at odds with his testimony this week, that the state effort to protect citizens’ constitutionally guaranteed rights would be ignored.



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“In purporting to override federal law and to criminalize the official acts of federal officers, S.B. 102 directly conflicts with federal law and is therefore unconstitutional,” Holder wrote, pretending that unconstitutional U.S. statutes that infringe on the unalienable right to keep and bear arms protected in the Second Amendment were somehow “laws” rather than unlawful tyranny. The attorney general, who was held in criminal contempt of Congress over the Fast and Furious coverup involving Obama administration transfers of weapons to Mexican drug cartels, also said he would take “all appropriate action” to ensure that unconstitutional gun control is enforced in Kansas.

In a bizarre turn of events at the Judiciary Committee hearing, some Republican lawmakers — many of whom have been [rightly hammering the Obama administration and the Justice Department for lawlessness and extreme violations of the Constitution](#) — lashed out at Holder over the decision to not wage more war on the plant and its consumers in jurisdictions that have nullified unconstitutional federal prohibition statutes. Democrats in Congress, on the other hand, traditionally defenders of absolute federal supremacy over just about everything, have been encouraging state-level nullification of marijuana prohibition.

During the same hearing, Rep. Steve Cohen (D-Tenn.) even urged Holder to go further, pressuring him to have the administration reschedule marijuana in a way that would ease federal restrictions on the plant. Apparently the unconstitutional Controlled Substances Act allows the attorney general to take such actions without any congressional involvement. Holder had said very recently that he would be “glad” to work with Congress on re-examining the current federal classification of the plant, which holds that it has no legitimate medical purposes and as such, is purportedly banned under virtually all circumstances.

Instead of pressuring Holder to wage war on states and citizens that have nullified unconstitutional federal statutes, GOP lawmakers ought to be holding him accountable for the [wide range of serious crimes he has perpetrated while in office](#). State governments, meanwhile, should [continue using nullification to protect citizens from anti-constitutional federal abuses and usurpations](#) — encouraged by the fact that even top officials in the radical Obama administration have now acknowledged some limits on the U.S. government’s ability to coerce states into becoming administrative units for an all-powerful central regime. Many experts even say nullification may be the last, best hope for preserving freedom and the U.S. Constitution.

Photo of Attorney General Eric Holder: AP Images

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