



Written by [Joe Wolverton, II, J.D.](#) on April 5, 2013

## Opponents Label Nullification “Nuts” and a “Bizarre Fad”

Nationalists are filling newspapers and websites with attacks on nullification.

A post on the Maddow Blog on MSNBC.com published April 4 argues that “[Nullification Must Never Be on the Table](#).” The author, Steven Benen, aims to disarm state legislators standing up to federal excesses by declaring, “Not to put too fine a point on this, but there’s nothing to discuss — state lawmakers can’t pick and choose which federal laws they’ll honor.”



With respect, Mr. Benen, they can — and must — do just that, if the union is to endure.

Perhaps Benen is well-meaning and simply believes, as many do, that state nullification statutes will lead to chaos. If that is the case, here is something to soothe his worried mind.

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.

Crisis averted.

Speaking of crisis, on March 28, several newspapers in South Carolina published [an article penned by Phil Noble](#). In the piece, Noble relies more on sarcasm than scholarship, describing advocates of nullification as “nuts” and portraying them as redneck racists whose opposition to federal overreach has less to do with their love of the Constitution than with their hatred for the color of the president’s skin. Doubt it? Consider this selection from Noble’s article:

Here’s what has happened to date in our most recent “nullification crisis.” The fact that lots of South Carolina Republicans don’t like President Barack Obama is not exactly news to anyone. What is news is that one of their own, Rep. Kris Crawford of Florence, recently committed the unpardonable political sin of telling the truth in public when he said that his fellow Republicans were trying to nullify Obamacare not because they think it would be bad for our state, but because “it is good politics to oppose the black guy in the White House right now, especially for the Republican Party.”

The black guy in the White House? In 2013? Seriously?

The impetus for Crawford’s comments was a bill introduced by one of Crawford’s Republican



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colleagues, Rep Bill Chumley. Chumley's bill and related legislation would nullify the Affordable Care Act and mandate that any federal employee in South Carolina that acted to carry it out would be in felony violation of South Carolina state law.

Yes, you read that right — they want to make doing your job as a federal employee here in South Carolina a felony offense, with legal penalties of a \$5,000 fine and five years in prison, or both. That's nuts.

Not to be outdone in their zeal for "nullifyin' against the gub'ment," the state Senate actually passed another bill, Senate Bill 92, by a vote of 25 to 15 — a bill to nullify parts of the National Defense Authorization Act.

That's right; the South Carolina Senate is actually challenging the U.S. government on national defense issues. That's nuts.

What's nuts is that Noble's understanding of the formation of the union is so shallow and lacking that he has to turn to ad hominem attacks and stacking the deck with the race card.

What he lacks in education, he makes up for in sloppy journalism. Rather than pointing to specific verifiable episodes in the history of the formation of the union and the drafting of the Constitution, Noble synthesizes the 19th-century Nullification Crisis and thinks the battle is won. Noble explains:

Now, some may say that Calhoun and company were nuts when they started all this nullification and secession stuff the first time. I'll leave it to others to characterize their mental condition. But this I do know: They put in motion a chain of events that led to the death of more than 650,000 of their fellow Americans, and untold suffering for the people of our state — suffering that we haven't fully overcome yet.

This article won't wade into the deep water of Civil War causation, for unlike Noble, I admit my lack of proper education when it comes to that complicated issue.

A field I am competent in, however, is the drafting of the Constitution, the federal government established by that document, and the process that led to ratification of the Constitution.

Despite the example set by Noble, there is no need to question the sanity of anyone advocating for the reaffirmation of the right of states to hold as [null, void, and of no legal effect](#) any federal act that exceeds the scope of powers granted to it by the states in the Constitution.

Noble believes that the Union victory in the Civil War settled the conflict between states' rights and federal "supremacy." Did it?

In a word: No. The Civil War made one thing clear: The federal government believes (and the Confederacy was forced to concede) that might makes right. The Union army defeated the army of the Confederacy, therefore, so the thinking goes, secession is no longer a constitutional remedy available to states. Might makes right.

Only it doesn't. Think of it this way. Assume my neighbor and I disagree over the exact location of the boundary line between our properties. One day, while I'm out building a shed that my neighbor believes encroaches on his property, we start arguing and the argument escalates to a full-fledged fist fight, and I knock out my neighbor. Does that mean that the legally binding location of our mutual property line has been settled? Does the pummeling of my neighbor make my opinion of the location of that line the rightful boundary? Of course not. Might, it seems, does not make right, neither in boundary disputes regarding land nor in similar disagreements over states' constitutional authority.



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Back to Beren's blog post. Fearing that a wave of nullification is washing over state legislatures, he writes:

It's my sincere hope that this is just a bizarre fad among radicalized Republicans, and to borrow a phrase, the "fever" gripping GOP politics will soon fade without incident. Chances are, cooler heads will prevail and these various nullification efforts will fade away, left to become a punch-line among future historians marveling at the far-right hysteria of the Obama era.

Those of us engaged in the struggle to force the federal beast back inside its constitutional cage are not nuts, and we are not feverish. Nullification is no fad and will not fade away.

We, with Jefferson and Madison, declare our "[warm attachment to the Union of the States](#)." Our devotion to the Constitution and to the rule of law compel us 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 it's existence and the public happiness."

South Carolina does not stand alone in [her efforts to resist the tyranny of the federal government](#). Millions of Americans — lawmaker and citizen alike — are awakening and realizing that the endurance of our union depends on its being moored once again to the firm and timeless principles of federalism and state sovereignty.

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