



## Rhode Island Uses Nullification in Hemp Debate

Rhode Island has joined several other states in authorizing and regulating the growth and production of industrial hemp. This in effect nullifies federal laws against the domestic cultivation of the plant.



Although industrial hemp is technically legal under U.S. law, a farmer must first secure a permit from the Drug Enforcement Agency (DEA), which is almost never granted. The Controlled Substances Act of 1970 has made the domestic cultivation of industrial hemp practically impossible, thus denying American farmers the enormous profits it earns.

There are about 25,000 uses for industrial hemp, including oil, cloth, cordage, fiber, food, fuel, paint, paper, construction materials, and plastics. The Hemp Industries Association estimates the value of hemp products in 2014 at over \$600 million.

The United States is the world's leading importer of hemp, obtaining most of it from Canada and China. Since hemp has so much economic potential, why are states such as Rhode Island, Connecticut, Kentucky, and Tennessee forced to defy the federal government with the use of nullification? And what is nullification?

The doctrine of nullification is based upon states *nullifying*, or ignoring any federal law that violates the Constitution of the United States. It rests upon the idea that the Constitution gave the federal government only certain enumerated powers, which were, in the words of James Madison, "few and defined." The 10th Amendment reinforces this concept, clearly stating that all powers not given to the federal government are reserved to the *states* and the people.

In 1798, Congress, controlled by the Federalist Party, enacted the odious Sedition Act, which made it a crime to write or say anything "false, scandalous, or malicious" about the president of the United States, members of his Cabinet, and congressional leaders. These were all Federalists at the time, and the law did not afford any protection to Vice President Thomas Jefferson, who was the leader of the opposition Republican Party.

While the law is a clear violation of the First Amendment, which bars Congress from enacting any law infringing upon freedom of speech or the press, federal judges, all belonging to the ruling Federalist Party, saw no problem in applying the law to numerous Republicans charged under its provisions.

This raised a question for Jefferson and Madison. If federal judges would not follow the Constitution they were sworn to uphold, and recognize the Sedition Act as clearly unconstitutional, just how would the Constitution's protections of free speech and free press have any meaning? Accordingly, the two anonymously authored the Kentucky and Virginia Resolutions, adopted by those two states' legislatures, which developed the doctrine of nullification. Under this doctrine, a state could refuse to enforce within its borders any unconstitutional federal action.



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In recent years, federal officials have so routinely gone beyond the enumerated powers given them in the Constitution that states have dusted off the nullification doctrine and wielded it in an effort to assert their constitutional role in America's federal system.

"What this gets down to is the power of the people," declared Mike Maharrey of the Tenth Amendment Center. "When enough people tell the feds to pound sand, there's not much D.C. can do to continue their unconstitutional prohibition of this productive plant."

In regard to the hemp issue, however, some have expressed concern about promoting recreational drug use by legalizing industrial hemp.

Hemp contains traces amounts of tetrahydrocannabinol (THC), the hallucinogen found in marijuana, which is what led the federal government to classify it as an illegal drug.

In fact, hemp and marijuana are the same *species* of plant, but of a different *variety* — just as dogs are all of the canine *species* but of widely different *breeds*.

Sometimes, the term cannabis is used for both hemp and marijuana. Cannabis plants, grown since prehistoric times, have been used for food, and to make things such as fabrics and ropes. But some cannabis plants were bred selectively to produce the psychoactive plant we know as marijuana. Dan Sutton of Tantalus Labs in Canada explained that the difference is largely in "genetic parentage and cultivation environment." While marijuana plants contain high levels of THC (tetrahydrocannabinol, the chemical responsible for most of marijuana's psychological effects), hemp contains only about one-tenth as much.

Despite the obvious differences in the two varieties, marijuana advocates often claim that some of the leading Founding Fathers smoked marijuana. Since the word marijuana did not come into usage until almost the 20th century, Founders such as Thomas Jefferson and George Washington never used the word, instead referring to the plant as hemp.

But, since Washington and Jefferson *did* grow hemp on their plantations, some have assumed that they must have grown it to get high, or at least used some of it for "recreational" purposes.

There is no record that either man actually smoked hemp; however, even if they had, getting "high" on the plant would have been virtually impossible.

Some pro-pot users have even insisted that Jefferson said, "Some of my finest hours have been spent on my back veranda, smoking hemp and observing as far as my eye can see."

Like many other quotations attributed to the Founders, this one cannot be supported in the historical record. The Monticello website commented, "This statement has not been found in any of the writings of Thomas Jefferson." While Jefferson did grow hemp, there is "no evidence to suggest that [he] was a habitual smoker of hemp, tobacco, or any other substance."

In the end, the important political and constitutional question is simple. Does the Constitution give any power to the federal government to regulate agricultural products within the borders of a state? One can search in vain for such a grant of power in the U.S. Constitution.

The logical conclusion, therefore, is that the federal government needs to get out of the way in the hemp issue and let the free market work its magic, generating profits to American farmers.

Fortunately, a beneficial by-product of the hemp debate is the growing use and acceptance of the doctrine of nullification to rein in the power of the federal government. Hopefully, the hemp issue will



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lead to the use of nullification in other areas in which the federal government has refused to be bound down by what Jefferson termed “the chains of the Constitution.”

And that is something Jefferson *did* say.



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