



Written by [Joe Wolverton, II, J.D.](#) on July 11, 2014

Senators Write EPA to Stop Abuse; Idaho Considers Nullification

The New American reported yesterday on the effort by the Environmental Protection Agency (EPA) to [seize power to garnish taxpayer wages without a court order](#). The same day, three Republican senators, including a member of the Senate's Environment and Public Works Committee, stood up to stop the abuse.

In an e-mail sent to this reporter shortly after his earlier article was published, Senators David Vitter (R-La.), Mike Enzi (R-Wyo.), and John Barrasso (R-Wyo.) announced they had sent a letter to EPA Administrator Gina McCarthy. In the July 10 letter, the senators request that the agency withdraw its direct final rule on administrative wage garnishment, which would allow the EPA to deny citizens their due process rights by collecting money without first obtaining a court order.

"While we recognize the government's legitimate interest in efficiently and effectively pursuing delinquent debt, EPA's new wage garnishment procedures provide an agency prone to regulatory abuses with even more power over Americans. Individuals who face threats of ruinous fines from the agency may now have to think twice before challenging EPA over its regulatory jurisdiction," wrote the senators.

"Given the agency's repeated failure to manage its own personnel, it makes little sense for EPA to have the authority to garnish wages of private citizens without a court order, when the agency is apparently unable to properly oversee wage payments to its own employees or otherwise restrict the distribution of unearned pension benefits," they added.

"It's ironic that as we were preparing to celebrate Independence Day and our freedoms, the EPA was quietly seeking another way to take away some of those freedoms," said Enzi in a press release about the letter he and two of his colleagues signed. "I appreciate Senator Vitter's leadership in the effort to rein in this abuse."

Senator Enzi's reference to Independence Day is particularly apropos, as one of the royal abuses of power in the "long train" listed by Thomas Jefferson in the Declaration of Independence seems to accurately describe the EPA's autocratic agenda.

"He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance," Jefferson wrote.





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There is little argument that under the authority granted itself in the proposed regulation, the EPA will consume millions of dollars from citizens accused of harming the environment. Should the alleged polluter receive the EPA's permission to challenge the fine, the judge in the case will be someone chosen by the EPA.

"The EPA's latest regulatory overreach is another one-two punch to responsible Americans who are trying to provide for their families. First, this out of control agency can fine you hundreds of thousands of dollars for simply building a pond on your own land. Now, the EPA is trying to bypass the courts and force your employers to garnish your wages to cover their expensive fines," said Senator Barrasso in the press release referenced above.

"Our letter makes it clear that the agency should not move forward with this rule. Americans across the country need to join us in contacting the EPA immediately and telling them that their rule is dead on arrival. We will work together to do everything possible to make sure this rule never takes effect."

The rule is currently only a proposal, but will go into automatic effect on September 2 unless it receives sufficient negative comment by the time the comment period closes on August 1.

In the letter, the senators note the case of a private landowner in Wyoming who received an EPA compliance order with terms threatening fines of up to \$187,500 per day for building a pond on his property. The senators also cite that case of a West Virginia poultry farmer whom the EPA threatened with civil penalties of up to \$37,500 per day because storm water, which had flowed across her property, ended up in a "water of the United States." The senators note the EPA's new garnishment rule could "chill challenges to similar regulatory abuses."

The New American has chronicled [several](#) such [devastating assaults](#) on the rights of landowners perpetrated by the Obama administration's environmental gestapo.

While the attempt by the trio of senators to stop the EPA's unprecedented usurpation of the power to seize property of Americans is praiseworthy, there is another weapon in the arsenal of liberty and constitutional limited government that can be deployed to fight this despotism.

First, it is the duty of state governors and legislators to protect citizens from the enforcement of any act of the federal government not specifically authorized in the Constitution.

As James Madison explained in the Virginia Resolution of 1798:

In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

Alexander Hamilton added in *The Federalist*, No. 78, "There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid."

Nullification occurs when a state, county, city, or other local entity holds as null, void, and of no legal effect any federal act that exceeds the boundaries of its constitutional powers.

Nullification recognizes that states possess the right to invalidate any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the U.S. Constitution.

States (and their legal subdivisions) retain the right to act as arbiters of the constitutionality of federal



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acts because they formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

Despite criticism by those who advocate for a more powerful federal government, nullification would not lead to anarchy, as it is only unconstitutional federal acts that will be subject to state invalidation.

One state is currently taking this tack, considering a bill that would nullify the EPA's overreach inside its sovereign borders. House Bill 473 is the Idaho legislature's effort to prevent the EPA from enforcing its authoritarian edicts inside the Gem State.

State Representative Paul Shepherd is the primary sponsor of the nullification measure in the state House of Representatives. "All over the United States, people are concerned with EPA overreach," he said. "The purpose of this legislation is to protect citizens of Idaho from EPA regulations that are not authorized by the Constitution of the United States and that violate the Constitution's true meaning of intent."

"EPA just wants control, they want power," state senator Sheryl Nuxoll told the Idaho House Resources Committee during a hearing in March.

Meanwhile, the battle rages on in Washington, D.C.

As of press time, the EPA has made no comment on the letter sent by Senators Vitter, Enzi, and Barrasso.

Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels nationwide speaking on nullification, the Second Amendment, the surveillance state, and other constitutional issues. Follow him on Twitter @TNAJoeWolverton and he can be reached at jwolverton@thenewamerican.com.



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