



Written by [Joe Wolverton, II, J.D.](#) on November 3, 2014

States Assert Sovereignty in Defense of Second Amendment

As the federal government's disregard of the Constitution and the principle of federalism at its core continues to increase, there yet remain state legislators and governors willing to push back against the central government's move toward the consolidation of all power.

Of particular interest to the forces behind federal usurpation is the ability of the people to resist such tyranny, specifically the right of the people to keep and bear arms as protected by the Second Amendment.



Understanding that the “shot heard ‘round the world” was fired to protect patriot stores of powder and ammunition, state lawmakers are shoring up the political defenses placed around those very objects by passing laws nullifying federal attempts to unconstitutionally infringe on the right to possess this materiel. Three such state efforts will be highlighted here.

First up, Idaho. Earlier this year, Governor Butch Otter signed into law SB 1332, the Idaho Federal Firearm, Magazine and Register Ban Enforcement Act. The purpose of the act, as described by the state Senate, takes direct aim at those who would unconstitutionally compel the confiscation of firearms and ammunition in the Gem State:

This legislation is to protect Idaho law enforcement officers from being directed, through federal orders, laws, rules, or regulations enacted or promulgated on or after January 1, 2014, to violate their oath of office and Idaho citizens' rights under the Idaho Constitution, Article 1, Section 11. This Constitutional provision disallows confiscation of firearms except those actually used in commission of a felony, and disallows other restrictions on a lawful citizen's right to own firearms and ammunition.

Before being signed by the governor, the bill was passed unanimously by the state house and senate.

A similar story took place recently in Alaska. Lawmakers in the Last Frontier passed a bill protecting the right of their citizens to keep and bear arms from federal infringement and late last year, Governor Sean Parnell signed HB 69 into law.

Although part of the measure was amended somewhat by the state Senate — a provision that would have charged federal agents with a felony if they attempted to enforce federal gun grabs within state borders — the version of the legislation signed into law remains a bold statement of state sovereignty and resistance to federal plans to disarm civilians.

Specifically, the act forbids “state and municipal agencies from using assets to implement or aid in the implementation of the requirements of certain federal statutes, regulations, rules, and orders that are applied to infringe on a person's right to bear arms.”

State officials are expressly forbidden from trying to enforce any act of Congress or any presidential



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executive order that would reduce the scope of the right to keep and bear arms as protected by the Second Amendment.

Apart from those guaranteed by the Second Amendment, the Alaska act shields other fundamental rights from federal encroachment, as well.

For example, the law safeguards citizens' rights to due process and to be free from unreasonable searches and seizures. The latter is accomplished by the act's prohibition on the implementation of the REAL ID Act passed by Congress in 2005.

Furthermore, all unconstitutional "federal statutes, regulations, rules, and orders" are declared "unenforceable" in Alaska. Should any such measure be attempted to be imposed upon citizens, the state attorney general is ordered to mount a legal challenge to the "federal statute, regulation, rule, or order that violates the rights of a resident of the state."

With the enactment of HB 69, Alaska's state legislators and governor have taken the right tack in trying to force the federal beast back within the confines of its constitutional cage.

Finally, there is the state of Kansas, a state that for a couple of years set the pace for restoring the sovereignty of states and restraining the federal government's attempts to abbreviate the right to keep and bear arms.

Earlier this year, Kansas Governor Sam Brownback demonstrated his resolve to protect the right to keep and bear arms from infringement by government at any level. On April 23, Brownback signed HB 2578, a bill prohibiting cities or counties in Kansas from adopting or enforcing "any ordinance, resolution or regulation ... governing the purchase, transfer, ownership, storage, carrying or transporting of firearms or ammunition, or any component or combination thereof."

The law also mandates: "No city or county shall adopt or enforce any ordinance, resolution or regulation relating to the sale of a firearm by an individual, who holds a federal firearms license, that is more restrictive than any ordinance, resolution or regulation relating to the sale of any other commercial good."

Fortunately for Kansans, Governor Brownback is an old hand at standing up to government gun grabs, even if it is being attempted by federal officials.

Last April, U.S. Attorney General Eric Holder was threatening Governor Brownback with enforcement by federal agents of gun control laws nullified by another Kansas law.

In a response to Holder's letter sent on May 2, 2013, Brownback defended his state's right to protect its citizens' right to keep and bear arms as guaranteed by the Second Amendment, writing, "The right to keep and bear arms is a right that Kansans hold dear. It is a right enshrined not only in the Second Amendment to the United States Constitution, but also protected by the Kansas Bill of Rights. The people of Kansas have repeatedly and overwhelmingly reaffirmed their commitment to protecting this fundamental right."

The people of Kansas are likewise committed to defending the sovereignty of the State of Kansas as guaranteed in the Ninth and Tenth Amendments to the U.S. Constitution.

The Ninth Amendment states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," while the Tenth Amendment expressly reserves to the states and to the people all powers not specifically granted to the federal government in the Constitution.



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In 2013, the Second Amendment Protection Act was passed by the Kansas State Legislature by an overwhelming majority and signed into law by the governor on April 16 of that year. Although the final version of the law was not as potent as originally drafted, it remains a laudable example of a state exercising its constitutional prerogative to resist — nullify — unconstitutional federal acts.

As the foregoing evinces, the first step in thwarting the federal government's goal of consolidating all power in Washington is to remember that any federal act, regulation, or order that exceeds the constitutional limits on federal power has no legal effect. States can — must — courageously refuse to enforce those acts using the historically, legally, and constitutionally sound principle of nullification.

Nullification recognizes the right of states to invalidate any federal measure that a state deems unconstitutional. Nullification is founded on the fact that the *sovereign states formed the union*, and as creators of the compact, they hold ultimate authority as to the limits of the power of the federal government to enact laws that are applicable to states and their citizens.

That our Founders understood this principle is demonstrated by Alexander Hamilton 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. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

James Madison, also writing in *The Federalist*, recommended that state legislators, in order to prevent federal abridgment of fundamental liberties, should refuse “to co-operate with the officers of the Union.”

Finally, founding era jurist Joseph Story described the Second Amendment's critical check on tyranny:

The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.

The laws passed in these three states and those proposed in the few other states that are trying to follow their example are critical and urgent, particularly in the case of the fundamental liberties protected by the Second and Fourth Amendments.

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