Written by **Joe Wolverton, II, J.D.** on January 14, 2018

Tennessee Bill Would Create Second Amendment Sanctuary

A bill pending in the Tennessee State House of Representatives would forbid funds from the state being used to enforce federal restrictions on the right to keep and bear arms.

Proposed as an amendment to current state law, the legislation (House Bill 1407) "prohibits the expenditure of state or local funds or employees to implement, regulate, or enforce any federal law or executive order regulating the ownership or possession of firearms or firearm ammunition regardless of whether the expenditure of funds or use of employees would violate a state law or the state constitution."

That's the sort of next-level legislative levee against federal infringement on the Second Amendment that we need.

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If state lawmakers can be counted on to approve this amendment, then laws passed over the past couple of years would go into effect and essentially turn Tennessee into a sanctuary for gun owners, users, and manufacturers.

Particularly praiseworthy is the fact that the proposed statute similarly prohibits state agents, funds, and other resources from contributing to the carrying out of any aspect of an international treaty or agreement that would impede the right of Americans to keep and bear arms, as protected by the Second Amendment to the U.S. Constitution.

This author knows personally of the pernicious threat to the Second Amendment posed by international treaties and agreements.

In March 2013, I sat in the belly of the beast as ambassadors from the United Nations' member states negotiated and approved the Arms Trade Treaty.

This agreement, if ratified by the U.S. Senate, would be nothing less than an absolute repeal of the Second Amendment.

Fortunately, Tennessee may soon show her sister states that lawmakers are not left defenseless in the battle against civilian disarmament.

There is a remedy — a "rightful remedy" — that can immediately retrench the federal government's constant overreaching. This antidote can stop the poison of all unconstitutional federal acts and executive orders at the state borders and prevent them from working on the people.

The remedy for federal tyranny is *nullification*, and applying it liberally will leave our states and our nation healthier and happier.

In fact, if nullification is to be successfully deployed and defended, states must remember that the Constitution is a creature of the states and that the federal government was given very few and limited powers over objects of national importance. Any act of Congress, the courts, or the president that exceeds that small scope is null, void, and of no legal effect. No exceptions.

James Madison said it best in *The Federalist* No. 45: "The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite."

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.

Representative Edward Livingston of New York, speaking during the deliberations on the Alien and Sedition Acts, described the urgent need for popular opposition to federal usurpation, as well as the danger posed by the failure to do so.

"If we are ready to violate the Constitution, will the people submit to our unauthorized acts? Sir, they ought not to submit[;] they would deserve the chains that our measures are forging for them, if they did not resist."

During those same debates, Albert Gallatin declared that the doctrine of state defiance of federal despotism is "strictly correct and neither seditious nor treasonable."

This is in line with Madison's recommendation in *The Federalist* that state legislators, in order to prevent federal abridgment of fundamental liberties, should refuse "to co-operate with the officers of the Union."

Tennessee's measure not only nullifies unconstitutional acts (past, present, and future) of the federal government in the arena of gun control, but it prohibits state agents from cooperating with the federal forces of disarmament. This constitutionally sound strategy is known as anti-commandeering.

Put simply, anti-commandeering prohibits the federal government from forcing states to participate in any federal program that does not concern "international and interstate matters."

While this expression of federalism ("dual sovereignty," as it was named by Justice Antonin Scalia) was first set forth in the case of *New York v. United States* (1992); most recently it was reaffirmed by the high court in the case of *Mack and Printz v. United States* (1997).

Writing for the majority in the *Printz* decision, Justice Antonin Scalia explained:

> As Madison expressed it: "The local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere." *The Federalist* No. 39, at 245.

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This separation of the two spheres is one of the Constitution's structural protections of liberty.

"Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."

Next up for the Tennessee bill is a hearing on January 17 by the House Civil Justice Subcommittee. If a majority of members of that committee approve the bill, it will move along the constitutionally created path to becoming law.

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