Written by **Joe Wolverton, II, J.D.** on November 19, 2016

Texas Bill Would Block Federal Gun Control Efforts at State Border

A bill soon to be working its way through the Texas State Legislature would halt the enforcement of all past, present, and future federal attempts to infringe on the right of citizens of the Lone Star State to keep and bear arms as protected by the Second Amendment.

According to the text of HB 110, state resources and personnel are prohibited from participating with the federal government in the carrying out of any attempt to disarm Texans, whether it be through an act of Congress or a regulation written by some bureaucrat. The measure, authored by state representative Matthew Krause, reads in relevant part:

> An agency of this state or a political subdivision of this state, and a law enforcement officer or other person employed by an agency of this state or a political subdivision of this state, may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation purporting to regulate a firearm, a firearm accessory, or firearm ammunition if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation, such as a capacity or size limitation or a registration requirement, that does not exist under the laws of this state.

"If the federal government has a more onerous or restrictive firearm regulation than the state does, then the state is not going to use any time, personnel, or energy to enforce those laws," Krause explained last year when he filed a similar measure in the state house of representatives.

State lawmakers are not left defenseless in the battle to fight the cancer of consolidation. 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 very 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.

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."

Representative Krause's proposed legislation's provision prohibiting Texas state agents from cooperating with the federal forces of disarmament is a sound constitutional strategy 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 *Printz v. United States* (1997).

The Printz ruling makes it clear that the states do not have to accept orders from the feds.

Writing for the majority, 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. [n.11]
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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."

While not strictly a nullification of federal gun control efforts, HB 110 in Texas does create a constitutional base from which state imposition between the federal forces of disarmament and the men and women of Texas could be launched.

About 10 years after he wrote *Federalist* No. 46, James Madison explained that states have not only the right to resist encroachments of the federal government, but also an obligation to do so.

"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," Madison wrote in the Virginia Resolution of 1798.

Constitutionally speaking, then, whenever the federal government passes any measure not provided for in the limited roster of its enumerated powers, those acts are not the final word. Instead, they are "merely acts of usurpation" and do not qualify as the supreme law of the land. In fact, acts of Congress are the supreme law of the land only if they are made *in pursuance of* its constitutional powers, not in defiance thereof.

It is undeniable that the Constitution contains no grant of enumerated authority to seize firearms or ammunition from civilians. This lack of power protects the right of all people to protect and defend themselves with weapons, regardless of whatever "reasonable" regulation the federal government might promulgate.

As the Texas state representative Matthew Krause seems to understand, the government in Washington, D.C. is out of control and it is time for every citizen to demand that all state legislators perform their constitutionally imposed duty to protect the Constitution.

The best way to do this is to reverence our founding document by educating ourselves as to the legitimate relationship between the states and the feds and then insisting that the limits on power established in the Constitution be respected and enforced by those elected on a state and local level to represent us.

A bill nearly identical to Krause's was prefiled in the Texas State Senate by Senator Bob Hall. Both these important measures will be assigned to committees in January when state lawmakers return to Austin.