



Written by [Joe Wolverton, II, J.D.](#) on February 26, 2013

Utah Second Amendment Preservation Act Blocked by Committee Chairman

The Judiciary Committee of the Utah House of Representatives met Tuesday morning and there was one bill that [curiously dropped from the agenda](#): House Bill 114.

[House Bill 114](#) is the Utah Second Amendment Preservation Act and, if enacted, would prosecute “anyone attempting to enforce federal laws” restricting the right of Utahans to keep and bear arms.



Sponsored by Representative [Brian Greene \(R-Pleasant Grove\)](#), HB 114 has been blocked from a hearing by the committee chairman who is unsure whether states have the power to defy the federal government’s unconstitutional attempt to seize weapons from citizens.

Citing concerns over the bill’s constitutionality, House Judiciary Committee chairman [Kay McIff \(R-Richfield\)](#) [told the Deseret News](#), “Sometimes it’s a concern if we spend all of our time and all of our money on matters that don’t look like they have a chance of survival. I’m just going to have to look at it.”

The chairman’s comment begs the question of whether it would be better spending the state’s money on helping the federal government disarm citizens or on defending the right of the people to keep and bear arms from being infringed.

McIff has placed himself, rather than the representatives of the people or the people themselves, as the arbiter of what is constitutional.

The Speaker of the Utah House of Representatives, Becky Lockhart (R-Provo), supported McIff’s position, saying, “I empower committee chairs to make those decisions and will back them,” adding, “when and if Chairman McIff is ready to put that back on the agenda.”

While McIff thwarts the efforts of a dedicated lawmaker to defend the people of Utah from an impending federal gun grab, the people made their opinion known during a public comment session last week.

Last Friday, despite a snow storm, Utahans turned out en masse to express their support for Greene’s bill specifically and for the Second Amendment generally.

For 45 minutes, citizens testified in favor of the bill, reminding committee members of the right to keep and bear arms and the obligation they have to protect that right from the federal government.

A provision of the bill that would have made it a felony for a federal official to attempt to seize a lawfully owned weapon within the state of Utah was stripped during deliberations last Wednesday.

The *Deseret News* quotes Stephanie Kearns of South Salt Lake, testifying that the stiff criminal penalties should have remained in the bill.



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"I think if you're going to break the law, you should be held accountable," Kearns said, according to the *Deseret News* report.

The criminal penalty was one of the most compelling parts of Greene's bill. In an exclusive interview with *The New American* just days before introducing the measure, Greene recognized the obligation of states to forcefully resist intrusions of the federal government on the right of states to govern.

"The federal government has steamrolled state sovereignty on this and many other issues," Greene said. "It's incumbent on states to take action and uphold the Constitution and the rights of citizens."

Patterned after similar measures proposed in a dozen states, the Utah Second Amendment Preservation Act would rebuild the walls of state sovereignty erected by the states in the Constitution.

The preamble of the legislation declares:

This bill affirms that it is the exclusive authority of the Legislature to adopt and enact any and all laws, orders, rules, or regulations regarding the manufacture, transfer, possession, ownership, and use of firearms exclusively within this state; provides that any federal action that attempts to impose limitations on firearms contrary to the Second Amendment of the Constitution of the United States, or the Constitution or laws of the State of Utah, is unenforceable in this state; and creates a penalty for any enforcement of federal laws contrary to Utah laws or the United States or Utah Constitutions.

Until it was defanged by the committee, Greene's bill criminalized participation by a federal agent in any federal disarmament program within Utah. Pre-amendment Section 2 B declared:

Any official, agent or employee of the United States government who enforces or attempts to enforce any act, law, order, rule or regulation of the United States government upon a personal firearm, a firearm accessory or ammunition that is owned or manufactured commercially or privately in Utah and while the same remains exclusively within the borders of Utah shall be guilty of a third degree felony, and subject to imprisonment not to exceed five (5) years and/or a fine not to exceed five thousand dollars (\$5,000.00).

Greene's bill and those being considered in other states are examples of an expression of the states' right to prevent the federal government from overstepping the constitutional boundaries of its power. This state action is known as nullification.

Nullification is a concept of constitutional law recognizing the right of each state to nullify, or invalidate, any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the Constitution.

Nullification exists as a right of the states because 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 central government to enact laws that are applicable to the states and the citizens thereof.

Greene told *The New American* that federal disregard for state sovereignty is obvious given the fact that no single state lawmaker or governor was invited to the gun control roundtable recently held at the White House.

The federal government's apparent goal of effecting a de facto repeal of the Second Amendment is not about safety, though, Greene insists. It's aimed at the abolition of freedom itself.

"It's not about protecting the public. It's about depriving Americans of the right to bear arms because



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that is the right that protects all the other rights.”

Greene has good company in that opinion. Illustrious juror of the founding era [St. George Tucker](#) wrote in his commentaries on Blackstone:

This may be considered as the true palladium of liberty.... The right of self defence [sic] is the first law of nature: in most governments it has been the study of rulers to confine this right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction.

For now, Representative Greene is unsure of the fate of his measure. He told the *Deseret News*, “It’s not dead. I don’t fully understand what’s happening yet, so I’m not commenting.”

While Greene’s bill may not be dead, the right of the people to keep and bear arms as protected by the Second Amendment may be on life support if committee chairmen are able to prevent gun control nullification bills like Greene’s from getting a fair hearing by the representatives of the people.

Requests for comment from Representative McIff went unanswered.

Photo of Utah State Capitol in Salt Lake City, Utah

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