Written by **Joe Wolverton, II, J.D.** on December 14, 2015

Virginia Legislator Offers Bill Nullifying All Federal Gun Control Efforts

A bill scheduled to be on the slate in 2016 in Virginia's state legislature would effectively block federal gun-control efforts within the Old Dominion's sovereign borders.

On December 10, Delegate Bob Marshall (shown) — a consistent constitutionalist — prefiled legislation that would stop at the state line federal designs on disarmament.

The text of HB 83 makes it clear that if it becomes law, no Virginia resource would be used to violate its citizens' natural right to self-protection, specifically as it pertains to the right to keep and bear arms as protected by the U.S. Constitution's Second Amendment:

> Notwithstanding any provision of law to the contrary, no agency or political subdivision of the Commonwealth, as those terms are defined in § 8.01-385, or any employee or agent thereof acting in his official capacity, shall knowingly aid any employee or entity of the federal government of the United States (i) in any investigation, prosecution, detention, or arrest or participate in any search or seizure relating to any criminal, civil, or administrative restrictions on firearms, firearm magazines, ammunition, or components thereof based on any federal statute enacted or any executive order or regulation issued on or after December 1, 2015, or (ii) in the conduct of, or the enforcement of any requirement for, any background check related to any intrastate sale, loan, gift, or other transfer of a firearm between citizens of the Commonwealth who do not possess a federal firearms license under 18 U.S.C. § 923.

In an exclusive statement to *The New American*, Delegate Marshall explained the purpose behind his proposal:

> Just as state legislatures in the 1850's passed Personal Liberty Laws because they refused to assist the federal government's effort to steal the Liberty of others under the Fugitive Slave Act, I refuse to be silent as this president, independent of Congress, seeks to make it more difficult for citizens to protect themselves in the face of threats to Americans here and abroad which have increased under this inept president.

Given President Obama's recent promise to use executive fiats to disarm civilians (in the name of safety, of course), Marshall is wise to include executive orders among the acts of the federal government that would be void in Virginia.

Another admirable feature of the proposal is its conformity with the counsel given to states by James Madison in *The Federalist*, No. 46. In that essay, Madison says that as a "means of opposition" to federal overreach, states should show "refusal to cooperate with the officers of the Union."

About 10 years later, Madison said 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.

This process is known as nullification. Nullification recognizes the residual authority 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.

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.

Alexander Hamilton put an even finer point on the issue when he wrote 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."

The philosophy behind the bill rests on another solid constitutional foundation — 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).

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.
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> This separation of the two spheres is one of the U.S. 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." *Gregory*, *supra*, at 458.

When the federal government assumes powers not explicitly granted to it in the Constitution, it puts the states on the road toward obliteration and citizens on the road to enslavement.

The Founding Fathers understood this. For example, speaking at the convention considering ratification of the new Constitution in New York, Hamilton said:

> I maintain that the word supreme imports no more than this — that the Constitution, and laws made in pursuance thereof, cannot be controlled or defeated by any other law. The acts of the

> United States, therefore, will be absolutely obligatory as to all the proper objects and powers of the general government … but the laws of Congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding.

As Bob Marshall seems to recognize, the government in Washington, D.C. is out of control and it is time for every citizen to demand that every state legislator perform his constitutionally imposed duty to protect the Constitution, as set out in Article VI: "The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution."

The surest way to secure our weapons and to protect the Second Amendment from executive abolition is to learn the legitimate relationship between the states and the feds and demand that the limits on power established in the Constitution be respected and enforced by our elected representatives.

Then, we must insist that those representatives reject any and every attempt by the federal government to venture outside the boundaries of its authority.

According to the Virginia Legislature's website, HB 83 will be officially offered for consideration on January 13, 2016.

Photo: AP Images