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West Virginia Bill Disarms Federal Gun Control Regulations

West Virginia state lawmakers are doing their part to keep the federal beast inside its constitutional cage. First, state delegate Eric Householder took on ObamaCare, and now Cindy Frich, his colleague in the House of Delegates, is setting her sights on protecting the Second Amendment.

On January 9, Frich and five cosponsors (the same bill was offered last legislative session and had nine cosponsors) introduced HB 2832, the Firearm Protection Act.

If it were enacted, the bill would render unenforceable any "federal law which attempts to ban semiautomatic firearm[s] or to limit the size of a magazine of a firearm or other limitation on firearms in this state…"

There are two forces at work in Frich's effort to thwart the federal government's constant attempt to unconstitutionally infringe on the right of the people to keep and bear arms.

First, there is a well-established principle of federalism called 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).

Sheriff Richard Mack was one of the named plaintiffs in the latter landmark case, and on the website of his organization the Constitutional Sheriffs and Peace Officers Association, he recounts the basic facts of the case:

> The Mack/Printz case was the case that set Sheriff Mack on a path of nationwide renown as he and Sheriff Printz sued the Clinton administration over unconstitutional gun control measures, were eventually joined by other sheriffs for a total of seven, went all the way to the supreme court and won.
>
> There is much more "ammo" in this historic and liberty-saving Supreme Court ruling. We have been trying to get state and local officials from all over the country to read and study this most amazing ruling for almost two decades. Please get a copy of it today and pass it around to your legislators, county commissioners, city councils, state reps, even governors!
>
> The Mack/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]
>
> 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."

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 next principle on display in Delegate Frich's bill is known as nullification — Thomas Jefferson's "rightful remedy."

Nullification is a concept of constitutional law that recognizes the authority 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 is founded on the assertion 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 they expect the people to obey.

That is to say, the Constitution is an agency agreement between the states (the principals) and the federal government (the agent).

The law of agency applies when one party gives another party legal authority to act on the first party's behalf. The first party is called the principal and the second party is called the agent. The principal may grant the agent as much or as little authority as suits his purpose. That is to say, by simply giving an agent certain powers, that agent is not authorized to act outside of that defined sphere of authority.

Upon its ratification, the states, as principals, gave limited power to the federal government to act as their agent in certain matters of common concern: defense, taxation, interstate commerce, etc.

The authority of the agent — in this case the federal government — is derived from the agreement that created the principal/agent relationship. Whether the agent is lawfully acting on behalf of the principal is a question of fact. The agent may legally bind the principal only insofar as its actions lie within the contractual boundaries of its power.

Should the agent exceed the scope of its authority, not only is the principal not held accountable for those acts, but the breaching agent is legally liable to the principal (and any affected third parties who acted in reliance on the agent's authority) for that breach.

Under the law of agency, finally, the principals (states) may revoke the agent's (the federal government's) authority at will. It would be unreasonable to force the principals to honor promises of an agent that has acted outside the limits of its authority as set out in the document that created the agency in the first place — the Constitution.

Thomas Jefferson provided perhaps the best defense of nullification in the Kentucky Resolutions of 1798 where he wrote:

> That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all

> unauthorized acts done under colour [sic] of that instrument, is the rightful remedy.

Even Alexander Hamilton, not exactly a champion of strong state governments, explained that an act of Congress is a law only when it is enacted lawfully. In *Federalist* 33 he wrote:

> If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. [Emphasis in original.]

As Cindy Frich, Eric Householder, and the cosponsors of their respective bills apparently understand, state legislators have not only the authority, but the obligation to stand in defense of liberty and prevent the federal government from using them as mere administrative subdivisions, good for nothing more than executing their unconstitutional edicts.

As of Friday, January 18, West Virginia's Firearm Protection Act was waiting with scores of other recently proposed legislation to be heard by the state's House Judiciary Committee.

Photo shows West Virginia State Capitol dome.

Joe A. Wolverton, II, J.D. is a correspondent for The New American *and travels frequently nationwide speaking on topics of nullification, the NDAA, the Second Amendment, and the surveillance state. He is the co-founder of Liberty Rising, an educational endeavor aimed at promoting and preserving the Constitution. Follow him on Twitter @TNAJoeWolverton and he can be reached at jwolverton@thenewamerican.com.*