



Written by [Steve Byas](#) on February 9, 2021

Convention of States Director Opposes Nullification

It was a good idea to Thomas Jefferson, the author of the Declaration of Independence, and James Madison, the Father of the Constitution, and it might have been utilized by many to thwart the re-capture of fugitive slaves, but to a regional director of the Convention of States, nullification would lead to “anarchy.”

David Schneider, a regional director for the Convention of States (COS) organization, opposed a bill that was defeated on Monday in the South Dakota Senate Committee on State Affairs that would set up a practical way for the South Dakota Legislature to block federal laws that are unconstitutional.



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The bill that Schneider opposed was SB 122, which called for the appointment of a legislative committee to rule on the constitutionality of federal laws. Were the committee to find that a law violates the U.S. Constitution, they would refer the issue to the entire Legislature. Then, were two-thirds of each House to find the law unconstitutional, the state would not obey the law.

This hardly seems extreme — the legislature of a state following the Constitution of the United States, rather than a law that does not follow the Constitution. As Chief Justice John Marshall said in *Marbury v. Madison*, “A law repugnant to the Constitution is void.”

While Marshall and his cousin, Thomas Jefferson, disagreed on some matters, on this issue they were in agreement: The Constitution is the supreme law of the land, not laws passed by Congress that do not follow the Constitution.

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In 1798, Congress passed the Sedition Act, a law that provided for criminal penalties for anyone critical of the president, members of his Cabinet, or the leadership of Congress. Incredibly, the Federalist-controlled Congress passed this law only seven years after the First Amendment was added to the Constitution, explicitly denying to Congress the authority to abridge freedom of speech or freedom of the press. When Federalist judges — who were sworn to follow the Constitution — proceeded to apply the law against those accused of violating it, Jefferson and Madison wondered how to protect the citizens of their state of Virginia against this unconstitutional law, considering that federal judges would not do their sworn duty.

Their answer was to anonymously pen the Kentucky and Virginia Resolutions, which asserted that in such a situation, the state governments had a duty to protect their citizens from the unconstitutional law. This they proposed to do with state nullification of unconstitutional laws, interposing the state government between the citizens of their state and the federal government, which was not following the Constitution.

Nullification has been employed at various times in American history, including in modern times. Yet,



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Schneider of COS opposes its use.

The Convention of States organization favors the calling of a national constitutional convention to propose amendments to the Constitution, and often ridicules the use of nullification to rein in an out-of-control federal government.

James Madison, on the other hand, opposed another national convention, saying he feared for the future of the country if one were ever held.

The late Justice Antonin Scalia even told the Federalist Society that the 21st century was a bad century in which to write a Constitution. The COS organization disagrees with Scalia, arguing that the convention could meet, pass some amendments to rein in the federal government, and go home. But the delegates to any such convention would be chosen by the very same electorate that has chosen our present Congress. Sadly, there are few Madisons and Hamiltons in Congress today. Also, such a convention could not be limited in the types of amendments it could propose. In fact, many liberals are openly in favor of such a convention, hoping that they could gut the Second Amendment, essentially ridding our present Constitution of that pesky amendment that protects our right to keep and bear arms.

What is particularly galling is that Schneider of COS, who leads an organization that claims to be a conservative group, attacks the idea of state nullification as dangerous. Schneider claimed that nullification of federal laws by the states was one of the causes of the Civil War!

“Wholesale nullifying leads to anarchy and nullification of the Constitution itself,” Scheider claimed.

What Schneider argued, however, is historically false. Nullification was *not* an issue in the Civil War — at all. Secession was. Contrary to claims otherwise, nullification was never used to defend the institution of slavery. Instead, slavery opponents in states such as Wisconsin and Michigan used nullification to prevent the enforcement of the Fugitive Slave Law of 1850. How? By simply refusing to cooperate with its enforcement.

“This is a state’s rights bill, pure and simple,” said David Johnson, a Republican state senator from Rapid City, South Dakota, speaking of the recent nullification bill. The only federal mandates or laws he wishes to nullify are those that are “unlawful.” Johnson argued that since the election of Joe Biden as president, and the shift in control of both houses of Congress to the Democrats, South Dakotans could expect a proliferation of new federal mandates in the near future.

“It’s a booth review bill, plain and simple,” said Scott Granville, a legislator from Pierre, who used a football analogy to support the bill.

Unfortunately, the committee opted to kill the bill by a vote of 7-1. And this bill, designed to offer some protection of the citizens of South Dakota from an out-of-control federal government, was opposed by a top official with the Convention of States organization. While there no doubt are many patriotic Americans who have been deluded by this organization, those who really desire to save our Constitution need to be aware of how the COS leadership opposed this effort in South Dakota to do just that.



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