New American

Written by **Joe Wolverton, II, J.D.** on March 9, 2023

Federal Judge Declares Missouri Nullification of Federal Gun Regs "Unconstitutional"

A federal judge has declared a Missouri law nullifying federal gun regulations "unconstitutional."

12963734/iStock/Getty Images Plus

The statute in controversy is the Missouri Second Amendment Protection Act (SAPA), which declares as invalid

> all federal laws that infringe on the right to bear arms under the Second Amendment to the U.S. Constitution and Article I, Section 23 of the Missouri Constitution. Some laws declared invalid under this act include certain taxes, certain registration and tracking laws, certain prohibitions on the possession, ownership, use, or transfer of a specific type of firearm, and confiscation orders as provided in the act.

The act declares that it is the duty of the courts and law-enforcement agencies to protect the rights of law-abiding citizens to keep and bear arms:

> Under this act, no public officer or state or local employee has the authority to enforce firearms laws declared invalid by the act. However, state employees may accept aid from federal officials in an effort to enforce Missouri laws. Sovereign immunity shall not be an affirmative defense under this act.
>
> Any public officer or state or local employee who tries to enforce the firearms law declared invalid by the act or any person who acts under the color of law to deprive a Missouri citizen of rights or privileges ensured by the federal and state constitutions shall be subject to a civil penalty of $50,000 per employee hired by the law enforcement agency. In such an action attorney's fees and costs may be awarded.

On March 7, U.S. District Court Judge Brian C. Wimes refused to dismiss a lawsuit against the Missouri law, and issued a summary judgment declaring the law "unconstitutional."

Wimes wrote that Missouri's Second Amendment Protection Act violates the so-called Supremacy Clause in Article VI of the U.S. Constitution, which, Judge Wimes writes in his decision, requires that in the case of conflicting federal and state law, federal laws take priority.

Judge Wimes is wrong for many reasons, but let's discuss the Supremacy Clause element of the judge's decision first.

The "Supremacy Clause" (as the judge and most everyone else incorrectly call it) of Article VI does not declare that *all* federal laws are the supreme law of the land. It states that the Constitution "and laws of the United States *made in pursuance thereof*" are the supreme law of the land. (Emphases added.)

The phrase that pays is "In pursuance thereof." If an act of Congress is not permissible under any enumerated power, it is not made *in pursuance* of the Constitution and therefore not only is it *not* the supreme law of the land, it is not the law at all.

Alexander Hamilton put a fine point on the matter in *The Federalist*, No. 33:

> 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.

Acts not authorized under the enumerated powers of the Constitution are "merely acts of usurpations" and deserve to be disregarded, ignored, and denied any legal effect.

The next erroneous reading of the Constitution masquerading as a judicial opinion is the statement by Wimes in his decision that:

> SAPA exposes citizens to greater harm by interfering with the Federal Government's ability to enforce lawfully enacted firearms regulations designed by Congress for the purpose of protecting citizens within the limits of the Constitution.

Which clause of the U.S. Constitution grants to Congress — or any branch or agency or officer of the federal government — the authority to enact "firearms regulations designed … for the purpose protecting citizens?"

There isn't such a clause.

In fact, our Founding Fathers were not concerned about keeping people safe from "danger." They explicitly protected the individual's right to keep and bear arms because they knew that such was the only way to avoid being enslaved by tyrants.

They knew from their study of history that a tyrant's first move was always to disarm the people, and generally to claim it was for their safety, and to establish a standing army so as to convince the people that they didn't need arms to protect themselves, for the tyrant and his professional soldiers would do it for them.

Consider this gem from Sir William Blackstone, a man of immense and undeniable influence on the Founders and their understanding of rights, civil and natural. In Volume I of his *Commentaries on the Laws of England*, Blackstone states that there is a "natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression."

Would anyone in America — or the world, for that matter — argue that the "sanctions of society and laws" are sufficient to "restrain violence" or oppression?

Thus, the people must be armed.

Commenting on Blackstone's *Commentaries*, eminent founding era jurist and constitutional scholar St.

George Tucker put a finer point on the purpose of protecting the natural right of all people to keep and bear arms. He wrote:

> This may be considered as the true palladium of liberty…. The right of self defense 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.

Readers of *The New American* do not need to be convinced that the men who founded our union believed that the right of the people to be armed was an essential expression of a person's God-given right to defend his life, liberty, and property.

Finally, despite Judge Wimes's decree, federal law does not trump state law. To declare such betrays an inexcusable ignorance in one who wears the robe of a jurist.

The states created the federal government and reserve the right to resist the exercise by Congress of any powers not specifically granted to it by the states in the Constitution.

States are not left defenseless in the battle to fight the cancer of federal despotism. There is a remedy — a "rightful remedy" — that can immediately retrench the federal government's constant overreaching. This antidote can stop at the state border the poison of all unconstitutional federal restrictions on the right of the people to keep and bear arms, as well as similarly aimed executive orders. The remedy for federal tyranny is called nullification, and applying it liberally will leave our states and our nation healthier and happier.

Missouri was right — morally, historically, and constitutionally — to pass a law outlawing any state agency's or officer's participation in federal gun regulations, as such a power was not granted by the states to the federal government in the U.S. Constitution, and thus is retained by the states and the people.

Lawmakers in Missouri must now double-down on their defiance of federal tyrannical edicts and refuse to retreat in the face of this latest judicial attack on the Second Amendment.