

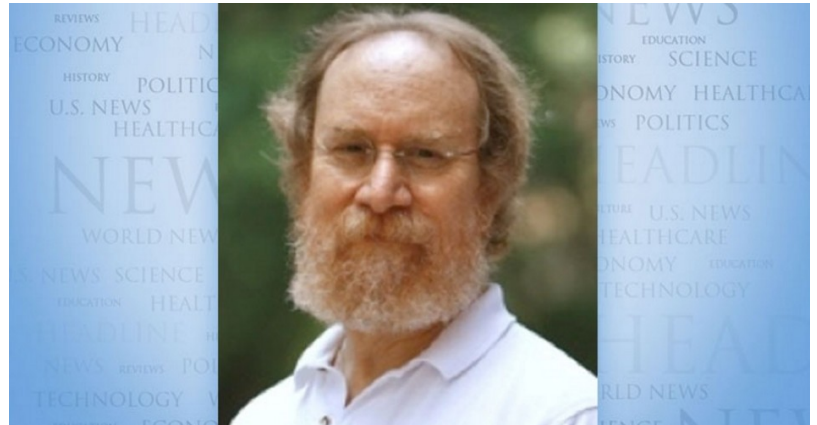


Written by [Sheldon Richman](#) on November 28, 2012

## Nullify the Drug War!

Thomas Jefferson said a revolution every 20 years would be a good thing. Regardless of what one thinks of that, perhaps a little constitutional crisis every now and then would have its benefits.

One such crisis may be brewing now. On election day, solid majorities of voters in Colorado and Washington voted to make marijuana a legal product, not just for people who are certified as ill, but for everyone. Several states already allow marijuana use for medical purposes. These two states, however, are blazing trails by recognizing the freedom of all adults to smoke or otherwise consume the plant.



The problem, of course, is that the federal government forbids the manufacture, sale, and use of marijuana (and many other substances) for any purpose. So what happens now? We already have some idea: 20 states and the District of Columbia currently permit (or refuse to penalize) medical marijuana in defiance of federal law. Despite early assurances to the contrary, the Obama administration has cracked down on legal state-licensed marijuana dispensaries in California to a far greater degree than the Bush administration ever did.

During the Bush years, Californians challenged federal anti-marijuana policy against the state, but the Supreme Court in *Gonzales v. Raich* (2005) sided with the central government, ruling that the Constitution's Commerce Clause empowers the feds to prohibit marijuana manufacturing and consumption even when a state law permits it for medical purposes.

Is the Obama administration going to stand by and permit the recreational use of pot in



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Washington and Colorado when it tries to stop its medical use in California? It hardly seems likely. But does it want to ignite open resistance by cracking down? The feds are in a bind.

So it looks like a conflict is in the offing — maybe even a constitutional crisis. What about the Constitution’s Supremacy Clause? It says, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land.”

That would seem to seal the deal for the feds. But maybe not. What if a law is not “made in pursuance” of the Constitution, at least in the judgment of people in the states? Do they have the authority to nullify it?

Thomas E. Woods Jr. says yes in his book [Nullification: How to Resist Federal Tyranny in the 21st Century](#). As Woods notes, nullification proceeds from the premise that an unconstitutional law is not properly regarded as law, and therefore the states may ignore it. “Nullification provides a shield between the people of a state and an unconstitutional law from the federal government,” Woods writes. Without nullification, the feds would define their own powers, which should be intolerable to people who love liberty.

Nullification has a high pedigree. “It was Thomas Jefferson, in his draft of the Kentucky Resolutions of 1798, who introduced the term ‘nullification’ into American political discourse,” Woods writes. “And ... Jefferson was merely building upon an existing line of political thought dating back to Virginia’s ratifying convention and even into the colonial period. Consequently, an idea that may strike us as radical today was well within the mainstream of Virginian



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political thought when Jefferson introduced it.”

Nullifying the central government’s destructive war on drugs would be appropriate, because in the past Americans used this principle (or something similar) against other laws that violated personal liberty, such as the Alien and Sedition Acts, which suppressed criticism of government officials, and the Fugitive Slave Acts, which required the return of runaway slaves.

Nullification should not be conflated with states’ rights. This issue is about the real rights of individuals, not the alleged rights of state governments. History demonstrates that decentralized power tends to pose less of a threat to freedom, if for no other reason than that the smaller the jurisdiction, the cheaper it is to vote with one’s feet. What possible objection can there be to letting the people of the states decide when to ignore federal laws that violate their liberty?

And what better place to start than with the feds’ abominable war on people who make, sell, and use disapproved substances?

Washington and Colorado may be the new birthplaces of freedom.

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