Written by **Joe Wolverton, II, J.D.** on May 7, 2013

Missouri Senate Votes to Nullify Federal Gun Grab

On May 2, the Missouri state Senate passed a bill blocking at the borders of their state any attempt to enforce federal actions to infringe upon the right of citizens to keep and bear arms.

By a vote of 26-6, state senators approved an amended version of a bill passed previously by their colleagues in the state House of Representatives.

Using language from James Madison's Virginia Resolution of 1798, HB 436 — the Second Amendment Preservation Act — declares that the Missouri General Assembly is "firmly resolved to support and defend the United States Constitution against every aggression, either foreign or domestic."

Section 2 of the bill goes on to affirm that not only is it the right of the state legislature to check federal overreaching, but that "the general assembly is duty bound to watch over and oppose every infraction of those principles which constitute the basis of the Union of the States, because only a faithful observance of those principles can secure the nation's existence and the public happiness."

Sounding a very sovereign and resolute tone, the bill opens with a brief recitation of the history of the creation of the federal government, a recounting that demonstrates a firm grasp on the proper, constitutional relationship between state and federal governments, as well as the legal basis for nullification:

> Acting through the United States Constitution, the people of the several states created the federal government to be their agent in the exercise of a few defined powers, while reserving to the state governments the power to legislate on matters which concern the lives, liberties, and properties of citizens in the ordinary course of affairs;
>
> The limitation of the federal government's power is affirmed under the Tenth Amendment to the United States Constitution, which defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government, and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively, or to the people themselves;
>
> Whenever the federal government assumes powers that the people did not grant it in the Constitution, its acts are unauthoritative, void, and of no force;
>
> The several states of the United States of America are not united on the principle of unlimited submission to their federal government. If the government created by the compact among the states were the exclusive or final judge of the extent of the powers granted to it by the Constitution, the federal government's discretion, and not the Constitution, would be the measure of those powers.

Specifically, the bill denies to the federal government the authority to enact any statutes, rules, regulations, or executive orders "which restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition exclusively within the borders of Missouri."

Laudably, the bill as amended by the state Senate does not back down from a fight with the federal government over the Second Amendment. Section 3 of the bill boldly asserts:

> All federal acts, laws, orders, rules, and regulations, whether past, present, or future, which infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution and Article I, Section 23 of the Missouri Constitution shall be invalid in this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall be considered null and void and of no effect in this state.

That final phrase echoes a similar statement made by Alexander Hamilton in *The Federalist*, No. 33:

> 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.]

The Missouri senate's passage of the Second Amendment Preservation Act comes at a very tense time in the relationship between the Obama administration and state governments determined to thwart the former's intent to place greater restriction on the individual's right to buy, sell, trade, transfer, or own firearms, ammunition, or component parts of weapons.

As *The New American* has reported, after Governor Sam Brownback signed into law a bill passed by the Kansas legislature excluding Kansas-made and owned weapons from federal regulations, U.S. Attorney General Eric Holder fired off a threatening letter to Brownback warning him that the Obama administration would "take all appropriate actions" to enforce federal gun control laws, calling the Kansas statute "unconstitutional."

To his credit, Governor Brownback told Holder that Kansas was within its rights to protect its citizens' right to keep and bear arms as guaranteed by the Second Amendment.

"The right to keep and bear arms is a right that Kansans hold dear. It is a right enshrined not only in the Second Amendment to the United States Constitution, but also protected by the Kansas Bill of Rights," Brownback correctly informed Holder. "The people of Kansas have repeatedly and overwhelmingly reaffirmed their commitment to protecting this fundamental right. The people of Kansas are likewise committed to defending the sovereignty of the State of Kansas as guaranteed in the Ninth and Tenth Amendments to the United States Constitution."

Of course, there are those who consider nullification nothing more than "political theater." UCLA law professor Adam Winkler described state efforts to resist federal diminution of the Second Amendment as "the ultimate triumph of symbolism over substance."

Winkler and others assert that once the federal government has legislated in an area, the states are prevented from passing contrary laws in that area of the law.

As many readers will understand, preemption (or "occupying the field") is a key concept in cases of

conflict between federal and state law. Once the feds have "occupied the field," so the argument goes, of this or that area of the law or policy, then no other government (state or local) may trespass therein.

State lawmakers in Missouri and Kansas know better.

In fact, the enumeration in the Constitution of specific powers delegated to the federal government is the cornerstone of American political theory and of the constitutional Republic established in 1787.

The basic definition of enumerated powers is that the best limitation on power is to not give it in the first place. Powers, as understood by Madison, Jefferson, et al., were legitimate only if they had been granted to the government by the people and written specifically in the document through which the governed gave life to the government — the Constitution.

Notably, the Second Amendment to the Constitution explicitly forbids the federal government from infringing on the right to keep and bear arms; therefore, the 10th Amendment guarantees that the right to rule in that area is reserved to the states and to the people.

After successfully passing the state Senate, Missouri's federal gun control nullification bill as amended by that body was sent to the state House of Representatives. Should the state House approve the amended measure, it will go to the desk of Missouri Governor Jay Nixon, a Democrat, for his signature or veto.

Joe A. Wolverton, II, J.D. is a correspondent for The New American *and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He can be reached at jwolverton@thenewamerican.com*