



Written by [Joe Wolverton, II, J.D.](#) on February 22, 2023

Sen. Ron Wyden Calling for Nullification of Anticipated Federal Abortion Drug Ban

Senator Ron Wyden (D-Ore.) urged the current regime to ignore an anticipated federal court opinion that would bar the Food and Drug Administration (FDA) from distributing an abortion drug.

Federal Judge Matthew Kacsmaryk is hearing a case in which plaintiffs claim the FDA wrongly approved the abortion drug mifepristone. Observers expect Kacsmaryk's opinion to be handed down before a February 24 filing deadline.

In a speech delivered from the Senate floor on Friday, Wyden called on Joe Biden to ignore the court's order, should it include the ban on the abortion drug.

"In the coming days a lawless Trump-appointed judge is expected to ban access to abortion medication nationwide." Wyden tweeted. "I'm calling on the FDA to protect the safety of every woman in America by keeping the drug on the market no matter the ruling."

Funny how the Left considers it nigh unto treason when folks on the Right advocate for the ignoring of this or that federal overreach, but when the overreach affects their pet policies, then suddenly the federal government must be kept within its bounds!

In fact, there is often a need and always a justification for states to disregard the despotic acts of the federal government. This act of refusing to enact unconstitutional edicts of the federal government is known as nullification.

A brief recitation of some historical facts of the founding of this country will not only support Senator Wyden in his effort to force the federal beast back inside its constitutional cage, but will provide a philosophical foundation upon which the sovereignty of the states can be rebuilt.

The irrefutable historical fact is that the states created the federal government, set the boundaries of its power, and reserved to themselves all other rights not specifically delegated to the new national authority. The document containing the rights and responsibilities of the parties to this contract that created the federal government is called the Constitution. This act of collective consenting is called a compact.

This element of the creation of the union is precisely whence the states derive their power to negate acts of the federal government that exceed its constitutional authority. It is a thread woven inextricably in every strand of sovereignty. It was the sovereign states that ceded the territory of authority which the federal government occupies.

Once we realize that state governments are the collective expression of popular sovereignty and that the Constitution is a compact entered into by these duly empowered representatives of the people, the



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inquiry moves on to the scope of the new central government's power as contained within the four corners of that agreement. A sound understanding of those enumerated powers is key to knowing when and why states are justified in ignoring (or nullifying) acts of the federal government.

Nullification, whether through acts passed by the legislatures or the simple refusal to obey unconstitutional directives, is the "rightful remedy" for the ill of federal usurpation of authority. Americans committed to the Constitution must walk the fences separating the federal and state governments, and must keep the former from crossing into the territory of the latter.

The Virginia and Kentucky Resolutions plainly set forth James Madison's and Thomas Jefferson's understanding of the source of all federal power. Those landmark documents clearly demonstrate what these two agile-minded champions of liberty considered the constitutional delegation of power. Jefferson summed it up very economically in the Kentucky Resolutions:

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....

And, in its companion bill presented to the Virginia state government, James Madison wrote:

The powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

No serious debate should be entertained as to whether the national authority has repeatedly attempted to break down the boundaries placed by the Constitution around its power. From the beginning, our elected representatives have overstepped the limits drawn around their rightful authority and have passed laws retracting, reversing, and redefining the scope of American liberty and state sovereignty. Our sacred duty is to tirelessly resist such advances and exercise all our natural rights to restrain government and keep it within the limits set by the Constitution.

So, when Senator Wyden denounces the FDA or a federal court opinion as being beyond the powers of the federal government, he's correct! When he advocates for the ignoring of any unconstitutional edict handed down by a bureaucrat or a federal judge, he's standing on solid historical and constitutional ground!

Even if one recognizes, as does this author, that abortion is a horrendous evil and one for which its proponents will be held accountable, the idea that the federal government is the proper authority to prohibit its practice is unconstitutional and unwise.

The states and the people, under the plain language of the Tenth Amendment, retain any authority not granted by them to the federal government in the U.S. Constitution.

And, since the power to regulate abortion is not granted to the federal government in the U.S.



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Constitution, then that right is retained by the creators of the federal government — the states — or by the creators of the state governments — the people.

Now, since I've joined Senator Wyden is his call to refuse to enact an unconstitutional act of the federal government with which he disagrees, perhaps he'll have the intellectual integrity to join me in my call to refuse to enact an unconstitutional act of the federal government with which I disagree, maybe gun control?

What do you say, Senator Wyden? Nullification for you and for me?



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