



## Frustrated States Fight Federal Overreach

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States frustrated by federal overreach have been taking action to nullify laws coming from Washington, D.C. — but the efforts may prove futile given long-standing court precedents dictating that states can't overturn federal law.

The federal actions under fire range from Obamacare and gun control laws to a controversial detention measure contained in a defense authorization bill.

In one example, the South Carolina House passed the "Freedom of Health Care Protection Act" to exempt state residents from Obamacare requirements. The bill went to the state Senate in mid-February.

If approved and signed by the Republican governor, the law would prohibit state dollars from going toward implementation of the federal healthcare reform.

West Virginia in January considered a bill in its House of Delegates to void key facets of Obamacare. And in 2011, Idaho mulled legislation to declare the healthcare reform "void and of no effect" in the state. Arizona, Kansas, Oklahoma, and Georgia are among the other dozen or so states that have considered similar opt-out bills.

Obamacare is not the only perceived federal overreach. Missouri's Senate in February passed a bill to nullify federal gun control laws and imprison any federal agent who tries to enforce them in the state.

The bill, which has backing in the state House, was brought forward last year after President Barack Obama took to the national stage seeking an expanded background-checks law as well as a ban on assault weapons.

Missouri's bill likely won't pass the governor's desk — Democratic Gov. Jay Nixon has vowed to veto it — but lawmakers pressured by pro-Second Amendment constituents decided to try the nullification route anyway.

"I am proud to say that we have passed arguably one of the strongest Second Amendment protections in the country," the bill's sponsor, state Sen. Brian Nieves, told The Associated Press.

Kansas passed its own nullification gun law a few months earlier, via its "Second Amendment Protection Act" asserting that guns that are made and owned in Kansas, including semi-automatics, are not subject to federal firearms regulations and that federal agents who try to enforce their laws can be penalized.

Dozens of other states have considered similar measures, a ProPublica investigation found.

Michigan, Virginia, California, and Alaska have enacted laws that nullify a measure contained in the National Defense Authorization Act (NDAA) that gives the federal government the power to indefinitely detain individuals without due process.

Similar bills on the detention issue have been introduced in 10 states, while in two states — South Carolina and New Hampshire — bills nullifying the federal law have been passed in at least one legislative chamber.

In New Hampshire, the state House approved a measure in February that labels the federal government's power to indefinitely detain someone under the NDAA as unconstitutional. The measure has gone to the state Senate for further action.

Some state lawmakers are fighting against Environmental Protection Agency regulations.

An Idaho lawmaker in early February introduced a bill to prevent nearly every EPA regulation from taking root in the state.

The bill sponsor, state Rep. Paul Shepherd, told the Lewiston Tribune that he introduced the proposal at the request of suction dredge miners who were sick and tired of the federal oversight trouncing on their right to work and earn a living.

"It appears the EPA bureaucracy has an agenda in its interpretation of what pollution is," Shepherd said to the paper, adding that the "bill pertains to any regulations not approved by the people."

Karen Lugo, director of the Center for Tenth Amendment Action at the Texas Public Policy Foundation, said "the Tenth Amendment, or state sovereignty, is a ghost of what our Founding Fathers intended it to be."

The 10th Amendment stipulates that powers not granted to the federal government by the Constitution nor prohibited to the states are reserved for the states and the people.

Lugo said: "Many of us are doing all in our power to breathe life back into the vital principle that is federalism. Due to Commerce Clause, Spending Clause, Necessary and Proper Clause interpretations that eclipsed state authority, there has been much whittling away of state sovereignty."

But the tide is turning as states take action, she said. "There is now a resurgence of state dynamism and autonomy. Exemplary states are running budget surpluses, reining in public pension excesses, refusing entitlement creep by declining Medicaid expansion, opting out of Obamacare state exchanges, offering school choice models, and demonstrating interest in food stamp reform."

But the chances that any of the nullification measures will withstand court scrutiny are slim.

"Nullification represents overt negation of Constitutional federal supremacy," Lugo told Newsmax.

"While it is true that some of the administrative and agency dictates coming from Washington do not comply with Constitutional separation of powers, or the proper balance of power with the states, outright defiance of federal law in an ad hoc or reactionary fashion could lead to the breakdown of the constitutional order," Lugo said.

Robert Levy, chairman of the Cato Institute, said, "States cannot prevent federal authorities from enforcing federal law. States can't nullify federal law."

That's not to say states are powerless, Levy told Newsmax.

But states have limits that have been created by the courts over what they can do to overturn or opt out of regulations they oppose, but that were nonetheless constitutionally enacted, Levy stated.

Levy said states already have at their disposal the authority to ignore federal law — as some did by passing recreational marijuana laws and opening pot shops.

Levy said that the caveat on the pot issue is that the federal government can always enforce its own laws.

And states are powerless to stop that, leading to possible situations where pot shops are legal by state standards but where buyers could be arrested and prosecuted by federal authorities, he said.

Lugo said states have another option to fight federal overreach — interstate compacts that unite smaller states into one larger legal voice.

"Interstate compacts are not the solution in all cases, but they are one way that states with similar interests — or grievances — can band together," she said.

According to Lugo, several states are currently joining forces to fight the federal government as a single united voice on "returning healthcare to state management, for restoring federal land management to states with significant acreage, and possibly for retention of highway funds while phasing down the federal gas tax."