



Gun Rights Attorney: Missouri Law Illustrates Limits, Excesses of Nullification

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Since 2009, legislation to nullify federal gun regulations has been introduced in 37 states and approved, in one shape or another, in at least 12, including 10 states that have adopted Montana's Firearms Freedom Act.

Kansas lawmakers, declaring the federal government does not have the constitutional authority to regulate firearms in their state, were the latest to join the nullification movement with their May adoption of the Second Amendment Protection Act. This states' rights movement is called "nullification," and while enjoying a recent spike in popularity, is actually a procedural tool as old as the Constitution. It is based on one simple theory: The federal government exists by the will of the states. States, according to this thinking, have the right to decide which federal laws are constitutionally valid within their borders. A long history of court decisions—and the federal government's triumph in the Civil War—say otherwise.

Nevertheless, in addition to the 37 states pondering laws to nullify federal firearms oversight, the National Conference of State Legislatures says nullification is now being used in many other federal-state disputes. For instance, the NCSL says, at least 23 states have considered bills to nullify the Affordable Care Act of 2010 (Obamacare), and more than two dozen states have passed laws decriminalizing or legalizing marijuana in defiance of federal law, most notably Colorado and Washington.

However, many legal scholars, including at least one prominent pro-Second Amendment attorney, say it is debatable how effective nullification can be as a legislative and legal tool for subverting the subversion of the Constitution, especially in the wake of the Ninth Circuit Court's August ruling invalidating Montana's FFA.

According to renowned gun rights attorney Robert A. Levy, chairman of the Cato Institute and co-counsel to plaintiff Dick Heller in the landmark 2008 *Heller v Washington DC* ruling, a proposed Missouri law underscores the limits and excesses of nullification.

The Missouri General Assembly is expected on Sept. 11 to adopt the proposed Second Amendment Preservation Act, which declares invalid in Missouri any federal measures "which infringe on the people's right to keep and bear arms" and allows state misdemeanor charges to be brought against federal authorities who attempt to enforce those laws.

That, Levy writes in a Sept. 4 New York Times column, crosses "the constitutional line" from trying to legally void an existing law to actively frustrating enforcement of an existing law. States cannot impede federal enforcement of a federal law "merely because the state deems it unconstitutional," Levy writes, noting nullification could prove to be a double-edged sword used against the Second Amendment.

"If nullification proponents had their way," he writes, "Chicago's gun ban, which the Supreme Court invalidated in 2010, might still be in effect."