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Gun Bill in Missouri Would Test Limits in Nullifying U.S. Law

By [JOHN SCHWARTZ](#)

JEFFERSON CITY, Mo. — Unless a handful of wavering Democrats change their minds, the Republican-controlled Missouri legislature is expected to enact a statute next month nullifying all federal gun laws in the state and making it a crime for federal agents to enforce them here. A Missourian arrested under federal firearm statutes would even be able to sue the arresting officer.

The law amounts to the most far-reaching states' rights endeavor in the country, the far edge of a growing movement known as "nullification" in which a state defies federal power.

The Missouri Republican Party thinks linking guns to nullification works well, said Matt Wills, the party's director of communications, thanks in part to the push by President Obama for tougher gun laws. "It's probably one of the best states' rights issues that the country's got going right now," he said.

The measure was vetoed last month by Gov. Jay Nixon, a Democrat, as unconstitutional. But when the legislature gathers again on Sept. 11, it will seek to override his veto, even though most experts say the courts will strike down the measure. Nearly every Republican and a dozen Democrats appear likely to vote for the override.

Richard G. Callahan, the United States attorney for the Eastern District of Missouri, is concerned. He cited a recent [joint operation](#) of federal, state and local law enforcement officials that led to 159 arrests and the seizing of 267 weapons, and noted that the measure “would have outlawed such operations, and would have made criminals out of the law enforcement officers.”

In a [letter](#) explaining his veto, Mr. Nixon said the federal government’s supremacy over the states’ “is as logically sound as it is legally well established.” He said that another provision of the measure, which makes it a crime to publish the name of any gun owner, violates the First Amendment and could make a crime out of local newspapers’ traditional publication of “photos of proud young Missourians who harvest their first turkey or deer.”

But the votes for the measure were overwhelming. In the House, all but one of the 109 Republicans voted for the bill, joined by 11 Democrats. In the Senate, all 24 Republicans supported it, along with 2 Democrats. Overriding the governor’s veto would require 23 votes in the Senate and 109 in the House, where at least one Democrat would have to come on board.

The National Rifle Association, which has praised Mr. Nixon in the past for signing pro-gun legislation, has been silent about the new bill. Repeated calls to the organization were not returned.

Historically used by civil rights opponents, nullification has bloomed in recent years around a host of other issues, broadly including medical marijuana by liberals and the new health care law by conservatives.

State Representative T. J. McKenna, a Democrat from Festus, voted for the bill despite saying it was unconstitutional and raised a firestorm of protest against himself. “If you just Google my name, it’s all over the place about what a big coward I am,” he said with consternation, and “how big of a ‘craven’ I was. I had to look that up.”

The voters in his largely rural district have voiced overwhelming support for the bill, he said. “I can’t be Mr. Liberal, St. Louis wannabe,” he said. “What am I supposed to do? Just go against all my constituents?”

As for the veto override vote, he said, “I don’t know how I’m going to vote yet.”

State Representative Doug Funderburk, a Republican from St. Peters and the author of the bill, said he expected to have more than enough votes when the veto override came up for consideration.

Adam Winkler, a professor of law at the University of California, Los Angeles, who follows nullification efforts nationally, said that nearly two dozen states had passed medical marijuana laws in defiance of federal restrictions. Richard Cauchi, who tracks such health legislation for the National Conference of State Legislatures, said: “Since January 2011, at least 23 states have considered bills seeking to nullify the health care law; as of mid-2013 only one state, North Dakota, had a signed law. Its language states, however, that the nullification provisions ‘likely are not authorized by the United States Constitution.’ ”

What distinguishes the Missouri gun measure from the marijuana initiatives is its attempt to actually block federal enforcement by setting criminal penalties for federal agents, and prohibiting state officials from cooperating with federal efforts. That crosses the constitutional line, said Robert A. Levy, chairman of the libertarian Cato Institute’s board of directors — a state cannot frustrate the federal government’s attempts to enforce its laws.

Mr. Levy, whose organization has taken a leading role in fighting for gun rights, said, “With the exception of a few really radical self-proclaimed constitutional authorities, state nullification of federal law is not on the radar scope.”

Still, other states have passed gun laws that challenge federal power; a recent wave began with a Firearms Freedom Act in Montana that exempts from federal regulations guns manufactured there that have not left the state.

Gary Marbut, a gun rights advocate in Montana who wrote the Firearms Freedom Act, said that such laws were “a vehicle to challenge commerce clause power,” the constitutional provision that has historically granted broad authority to Washington to regulate activities that have an impact on interstate commerce. His measure has served as a [model](#) that is spreading to other states. Recently, the United States Court of Appeals for the Ninth Circuit struck down Montana’s law, calling it “pre-empted and invalid.”

A law passed this year in Kansas has also been compared to the Missouri law. But Kris W. Kobach, the Kansas secretary of state, disagreed, saying it had been drafted “very carefully to ensure that there would be no situation where a state official would be trying to arrest a federal official.”

In Missouri, State Representative Jacob Hummel, a St. Louis Democrat and the minority floor leader, said that he was working to get Democrats who voted for the bill to vote against overriding the veto. “I think some cooler heads will prevail in the end,” he said, “but we will see.”

Taking up legislative time to vote for unconstitutional bills that are destined to end up failing in the courts is “a waste of taxpayers’ money,” Mr. Hummel said, adding that more and more, the legislature passes largely symbolic resolutions directed at Congress.

“We’re elected to serve the citizens of the state of Missouri, at the state level,” he said. “We were not elected to tell the federal government what to do — that’s why we have Congressional elections.”

The lone Republican opponent of the bill in the House, State Representative Jay Barnes, said, “Our Constitution is not some cheap Chinese buffet where we get to pick the parts we like and ignore the rest.” He added, “Two centuries of constitutional jurisprudence shows that this bill is plainly unconstitutional, and I’m not going to violate my oath of office.”

Mr. Funderburk, the bill’s author, clearly disagrees. And, he said, Missouri is only the beginning. “I’ve got five different states that want a copy” of the bill, he said.

