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States seek to nullify Obama efforts

By Tal Kopan – July 27th, 2013

Infuriated by what they see as the long arm of Washington reaching into their business, states are increasingly telling the feds: Keep out!

Bills that would negate a variety of federal laws have popped up this year in the vast majority of states — with the amount of anti-federal legislation sharply on the rise during the Obama administration, according to experts.

The nullification trend in recent years has largely focused on three areas: gun control, health care and national standards for driver's licenses. It has touched off fierce fights within the states and between the states and the feds, as well as raising questions and court battles over whether any of the activity is legal.

In at least 37 states, legislation has been introduced that in some way would gut federal gun regulations, according to the Brady Center to Prevent Gun Violence. The bills were signed into law this spring in two states, Kansas and Alaska, and in two others lawmakers hope to override gubernatorial vetoes. Twenty states since 2010 have passed laws that either opt out of or challenge mandatory parts of Obamacare, the National Conference of State Legislatures says. And half the states have approved measures aimed knocking back the Real ID Act of 2005, which dictates Washington's requirements for issuing driver's licenses.

“Rosa Parks is the beacon of light: If you say no to something, you can change the world,” Michael Boldin, founder of the Tenth Amendment Center, which favors states' rights, told POLITICO.

“Isn't that what it's supposed to be, ‘We, the people?’” he added. “Over the past few years, you've seen this growing. ... People are getting sick and tired of federal power.”

In fact, the state-level anger at the nation's capital has reached such a fever pitch that many of the bills do not even address specific federal laws but rather amount to what is in effect pre-emptive nullification, wiping out, for instance, any federal law that may exist in the future that a state determines violates gun rights. The flurry of such efforts was spurred by fear on the part of states that in the wake of the tragic shooting at Sandy Hook Elementary in Newtown, Conn., that Congress would pass restrictive gun control legislation.

Supporters of nullification say it's the best tool they have to try to beat back an intrusive federal government that they say is more and more trampling on the rights of states.

But critics respond that the flood of legislation to override the feds is folly that won't stand up in court and amounts to a transparent display of the political and personal distaste for President Barack Obama. And in some cases, the moves in the states have provoked an administration counteroffensive: Attorney General Eric Holder sent a letter to Kansas after it passed the Second Amendment Protection Act threatening legal action if necessary to enforce federal laws.

Even some conservatives — certainly no lovers of the Obama administration — warn that the states are going down the wrong path with nullification — distracted by what lawmakers think is a silver-bullet solution, but one that likely won't stand up in the courts — when in fact there are much better (and legal) ways for the states to resist.

While most states have wrapped their legislative sessions for the year, the fight on these bills is taking only a brief pause. In Missouri, for example, lawmakers are preparing for a veto session in September in which supporters of a gun measure that would eviscerate any future congressional attempts to regulate gun ownership plan to attempt to override the governor's veto. The nullification battle has also spilled over into the courts, with more challenges and rulings expected during the year.

In Kansas, state Rep. John Rubin sponsored successful legislation dictating that federal gun laws do not apply to firearms and accessories made in Kansas and that never leave its borders as well as making it a felony for any federal agent to enforce those laws within the state.

The Republican lawmaker told POLITICO his bill is about states' rights — not gun rights.

“The federal government doesn't have the authority to do a lot of what it's trying to do these days, from regulating guns within state borders, as my bill deals with, or telling us what kinds of light bulbs to put in our lamps,” Rubin said.

He noted a rise in the number nullification bills.

“We have the Obama administration to thank for that.” Rubin said. “The more federal overreach in Obamacare and elsewhere, the more [the administration] chooses to act in ways we believe are unconstitutional, the more we're going to push back. I would encourage any state to assert to the strongest possible extent against the Obama administration, or any federal administration, rights clearly reserved to the states.”

But opponents of sweeping nullification measures paint them as misguided, often politically motivated and likely unconstitutional attempts to zero out reasonable and well-intended federal initiatives.

And that's not just coming from the left. The Heritage Foundation, a conservative think tank, argues that nullification is not the answer to states' concerns.

“There are a rising number of people who are frustrated with what Washington is doing, which is a perfectly legitimate and, in my opinion, correct view of ‘how do we push back?’” Matthew Spalding, vice president of American Studies for Heritage, told POLITICO. “Unfortunately, there's a minority in that group that thinks nullification is the answer, by which they mean good old-fashioned, South Carolina, John C. Calhoun nullification. That's deeply mistaken and unfortunate.”

Spalding said states' better options include legal challenges, not funding federal laws or even refusing to enforce them — but not overruling federal laws with state ones.

“Ironically, the people who say they are trying to defend the Constitution are doing something to undermine it,” he added. “This is sort of a Hail Mary pass. These are in most cases state legislators who are very frustrated. They’re figuring out how to stop these things, how to turn the course of the nation, in my opinion, for good reason, and they’re being told the Supreme Court just upheld [Obamacare]; this guy has been reelected; what can we do? And someone comes around and says, ‘Ah, you can nullify law.’”

Another nullification opponent, the Brady Center to Prevent Gun Violence, said it’s prepared to fight the recent crop of state gun bills in the courts.

“They are outrageous,” said Brady Center legal director Jon Lowy. “It’s disturbing that there are [state] legislators who are so willing to violate the [U.S.] Constitution but also that they have so little concern for public safety. [Nullification measures] would greatly threaten public safety if they weren’t so patently unconstitutional, so we expect that courts will rather quickly wipe them off the books.”

Robert Levy, chairman of the libertarian Cato Institute, told POLITICO that the wave of nullification bids is the result of a “highly polarized” political atmosphere in the country.

“When you get that polarization, you’re going to get these sort of radical proposals,” he said. “So you’re seeing an increase in these sorts of things. A state, or a city, for that matter can refuse to enforce a federal law and even refuse to expend any money to help the feds enforce any law, but that doesn’t mean that they can stop the feds from enforcing their own laws.”

Looking ahead, the next skirmish over nullification will most likely be in the Midwest this fall. Missouri lawmakers are gearing up for a contentious September veto session with opponents of the state’s gun nullification bill hoping to keep it off the books and proponents saying they have enough votes to override the governor’s veto.

The bill’s sponsor, state Rep. Doug Funderburk, predicted a bipartisan override and said the law was needed to push back against the long arm of the federal government encroaching on Americans’ rights.

“It’s time for the states to assert their authority ... as the parent in the relationship with the federal government, to take back that role,” Funderburk said.

On the other side, state Rep. Jill Schupp, a vocal opponent of the bill, said, “If we overturn the governor’s veto, I think what we’re saying is Missouri is its own sort of Wild West state. When extremists get involved and put forward legislation like this, it makes all of us come to a grinding halt in terms of reasoned discussion. To make a move that precludes us from having reasoned gun legislation and is an attempt to nullify federal law certainly makes us look like a laughingstock on this issue.”

