THE STATE OF THE NULLIFICATION MOVEMENT 2014

TENTH Amendment CENTER

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I. INTRODUCTION

OVERVIEW

The modern nullification movement is alive and well in 2014.

From its early days as a rejection of federal power on a single-issue, it grew organically into a loose coalition of disparate groups doing the same on issues across the political spectrum.

This report connects the dots between efforts that might seem wholly independent of each other to the casual observer. But, when viewed as a whole, it reveals a thriving movement that has developed into a revolutionary political force.

Some of these efforts are not self-identified as "nullification" per se by advocates, and often-times, various players are at odds with each other when it comes to their overall political goals.

As political theorist Murray Rothbard wrote in his seminal work, *Conceived in Liberty*, this is often common of revolutionary movements. He noted that, "the tendency of historians of every revolution... has been to present a simplistic and black-and-white version of the drives behind the revolutionary forces," and he pointed out that doing so "betrays an unrealistic naivete."

True revolutionary movements rarely have a single, narrow impetus or focus. They are, as Rothbard wrote, "made by mass of people, people who are willing to rupture the settled habits of a lifetime, including especially the habit of obedience to an existing government."

As this report shows, the motives behind the various actors in the modern nullification movement vary as much as any group of people when it comes to political goals. Rothbard considered this "dynamism" one of the "major characteristics" of a revolution, as it creates an "unfreezing of the political and social order" for people, whatever their motivations may be.

By revolution, or revolutionary, the nullification movement is not one of the stereotypical types - that is, one characterized by a physical upheaval against the established order. Instead, it is a deeper, more philosophical revolution - a revolution in thought.

"The Revolution was in the minds and hearts of the people; a change in their religious sentiments of their duties and obligations."

– John Adams

John Adams, Founding Father and second president of the United States, described the American revolution in much the same way. In his 1818 letter to Hezekiah Niles, he wrote:

But what do we mean by the American Revolution? Do we mean the American war? The Revolution was effected before the war commenced. The Revolution was in the minds and hearts of the people; a change in their religious sentiments of their duties and obligations. ... This radical change in the principles, opinions, sentiments, and affections of the people, was the real American Revolution.

Today's nullification movement is revolutionary because it offers the hope of smashing the established political order; one of "voting the bums out" only to see new "bums" violate the Constitution in more costly and dangerous ways each year.

NULLIFICATION: TWO DEFINITIONS

In order to understand the nullification movement of today, one must first understand what nullification *is*.

Nullification can be defined in two primary ways; a *legal* way and a *practical* way. Merriam-Webster dictionary, for example, defines nullify in this way:

1. **to make null; especially: to make legally null and void**
2. **to make of no value or consequence**

The first definition is the *legal* one, ending the force of something *in law*. For example, a court might nullify, or invalidate, a contract between two people.

The second definition is the *practical* one, ending the the *actual effect* of something. Merriam-Webster gives an example of a penalty nullifying a goal.

This is not far different from the way nullification was understood at the time of the founding. Evidence from contemporary dictionaries of the day indicate that there were two primary definitions of the word; one legal and one practical.

The *New Law Dictionary* by Giles Jacob was one of the leading legal dictionaries of the 18th century and defined a *nullity* as that which renders something of no legal force. On the other hand, a number of 18th century popular dictionaries defined words like *nullify*, *nullity* and *null* as something rendered "ineffectual."

IN THE POLITICAL SPHERE

In the political sphere, one might be tempted to think that there can be no practical nullification without a legal nullification. In other words, without a legislative body repealing the law, or a judge striking it down, a law must necessarily remain in force. But the opposite is often the case.

We find one of the most absurd examples in Virginia where sex is completely banned except for married couples. No matter your age or your partner's, breaking this law is a Class 4 misdemeanor. In Feb. 2014, an effort to repeal this law failed. It is certain, however, that while the law is not *legally* null and void, it is nullified in practice.

From 1920 to 1933, there was a nationwide ban on the sale, production, importation, and transportation of alcoholic beverages. That ban didn't work, and not because there was a competing law repealing it. It was reduced to unenforceable in much of the country for many reasons, including mass individual disregard along with a refusal by states to assist in its enforcement.

Most commentators today focus solely on the legal and completely ignore the practical definition of nullification, indicating that they believe there are a lot more people in Virginia with misdemeanor convictions than there are. They become so focused on the law in the strict sense of the word that their narrow vision prevents them from seeing the bigger picture.

For the purpose of this study, we take a more expansive view of nullification. We think beyond just the legal and into the practical. Thus, nullification can be defined as "any act or set of acts which has as its result a particular law being rendered legally null and void, or unenforceable in practice."

PATHS TO NULLIFICATION

From this results-oriented understanding and definition of nullification, we can see that there are various avenues to nullify beyond the classic, narrow path most famously espoused by John C. Calhoun in the 19th century.

Calhoun held that since each state is a party to the legal compact - the Constitution - each constituent part of that compact had constitutional authority to make a determination as to whether or not that compact had been exceeded or violated.

This tracked closely to the general principle Thomas Jefferson wrote about in the Kentucky Resolutions of 1798, asserting that a part of the federal government (the Supreme Court that is) could not serve as the final arbiter in determining the extent of federal power. Jefferson wrote:

"The government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

From there, as Mike Maharrey has noted in his handbook *Smashing Myths: Understanding Madison's Notes on Nullification*, Calhoun appears to have created a constitutional nullification process out of thin air.

The South Carolina plan for nullification proposed that if a single state should declare a federal act unconstitutional, it would have the effect of legally repealing the law. And from there, this position would be assumed correct and true unless and until ¾ of the other states, in convention, overruled the single state overturning of the federal act.

James Madison was asked to share his opinion on the proposal and came down strongly against it. And rightly so, based primarily on the "peculiar" (his word) process that Calhoun and South Carolina proposed. Madison's views are covered in more detail in the *Smashing Myths* handbook.

Pundits, the media, and legal experts generally discuss Calhoun's nullification. And, since it was soundly rejected by James Madison himself, choosing this path often results in quick failure in state legislatures. More on this later in this report.

This, however, is not the only path to render a federal act null and void or unenforceable in practice. In fact, in Thomas Jefferson mentions no specific path in the Kentucky Resolutions. Jefferson himself never wrote of a specific or sole path to nullify.

At the time of the founding, the federal government did very little in comparison to what it does today. The size, scope and reach of the federal government in the early days of the American republic would barely register as a blip in the 21st Century.

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Because of its massive size and reach, the federal government has become more and more dependent on state and local support to carry out its laws and regulatory programs. We witness this with most federal programs. Some examples:

- **Federal enforcement of laws across the spectrum include a state or local component in a vast majority of situations. Whether the issue is firearms or marijuana, when there is a federal raid, it is almost always supported by state and local law enforcement. In many situations, there are far more state personnel on hand than federal.**
- **Programs like the Affordable Care Act count heavily on states to implement and execute the program. When states refuse to set up exchanges or expand Medicaid, it has a significant impact on the federal government's ability to operate the program as planned.**
- **Some federal laws, like the REAL ID act, rely almost entirely on states to implement them.**

Today, there are very few federal programs that operate on federal resources alone. This holds true whether relating to NSA spying, gun regulations, drone surveillance, prohibition and most everything in between.

During the partial, temporary federal government shutdown of 2013, the National Governor's Association verified this in a statement expressing its concern about the shutdown:

States are partners with the federal government in implementing most federal programs. A lack of certainty at the federal level from a shutdown therefore translates directly into uncertainty and instability at the state level.

Not some federal programs - most of them. Logic dictates that if a lack of participation on the federal side of this "partnership" can cause problems for states, the opposite holds true as well. The "father of the Constitution" knew this in 1787, and it holds true today.

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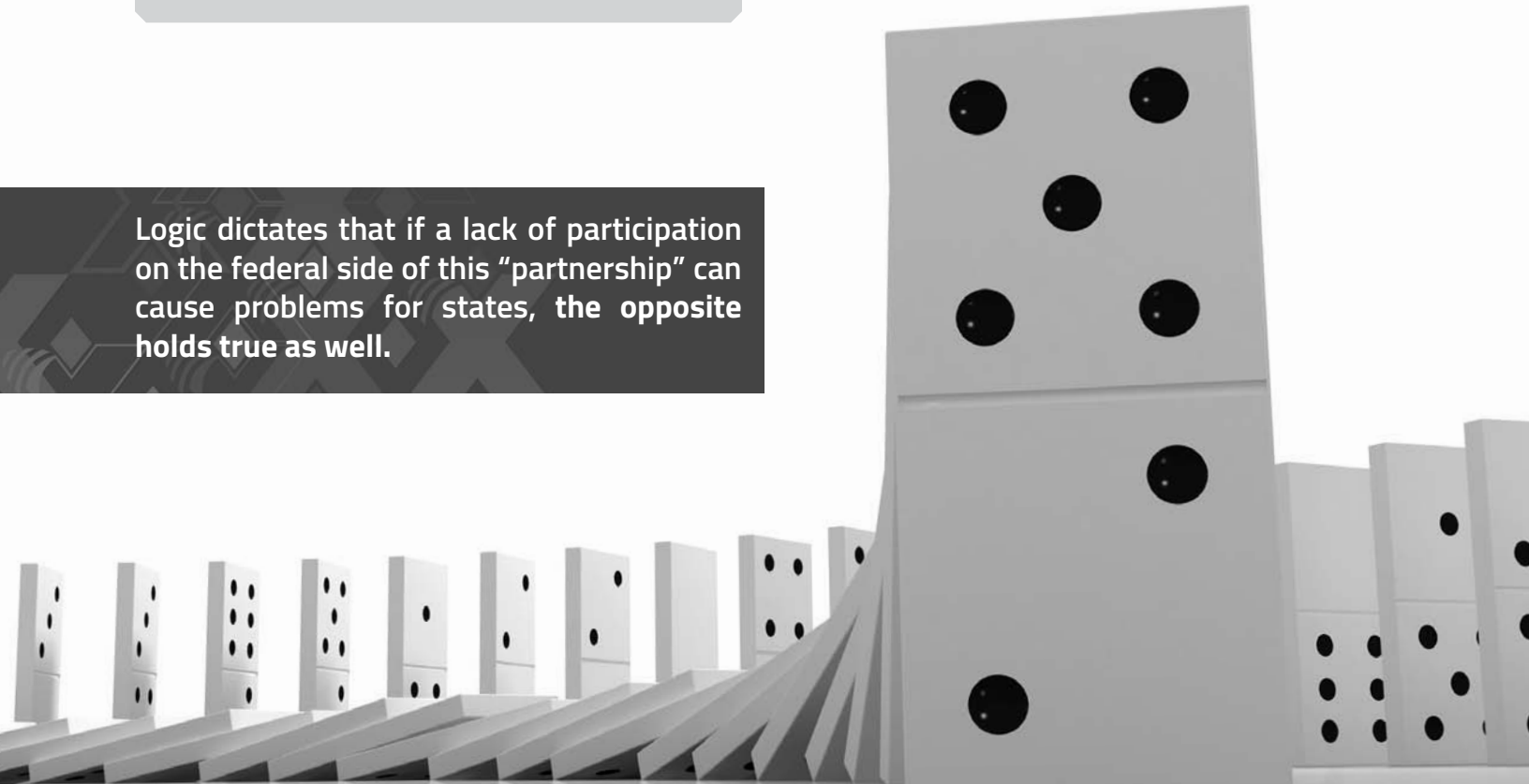


Madison's Advice

In *Federalist* #46, James Madison advised a powerful path to block the enforcement of federal acts. He wrote:

"Should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps refusal to cooperate with officers of the Union, the frowns of the executive magistracy of the State; the embarrassment created by legislative devices, which would often be added on such occasions, would oppose, in any State, very serious impediments; and were the sentiments of several adjoining States happen to be in Union, would present obstructions which the federal government would hardly be willing to encounter."

In other words, whether a federal act or program is considered "unwarrantable" (unconstitutional), or "warrantable" (constitutional but merely "unpopular"), refusing to participate in its enforcement on a large scale can stop that act or program in its tracks.

Madison advised this at a time when the government was conceived as tiny. So, the increased size and reliance on "partners" in "most federal programs" gives his stated strategy even more power today.

Judge Andrew Napolitano agreed recently when he recommended that states refuse to enforce federal gun laws. He said that if a single state would do so, it would make those federal laws "nearly impossible to enforce."

Anti-Commandeering

The Supreme Court validated Madison's advice in four major cases from 1842 to 2012. The Court held that the federal government cannot require states to expend any resources to help the federal government carry out its acts or programs.

This is, of course, the essence of what Madison wrote about in *Federalist #46* - a "refusal to cooperate with officers of the Union."

And since the states "partner" with the federal government to carry out "most federal programs," passing an "anti-commandeering" style bill banning the state from participating in a specific federal act can make those acts "nearly impossible" to enforce.

While Madison's advice should hold weight on its own, the unfortunate truth is that it holds weight among the legal profession, including a significant number of state legislators, simply because the Supreme Court has repeatedly validated it. Even though this is not ideal, this knowledge can be used to a strong strategic advantage.

State legislatures are generally filled with a significant number of lawyers, and they almost always chair key committees, like judiciary. The cold, hard fact is that without validation from the Supreme Court, a vast majority of these lawyer-politicians will do everything in their power to block a nullification bill from moving forward.

This is why this anti-commandeering approach is good strategy. By taking away the claim that a different type nullification (one that includes a physical arrest of federal agents, for example) is unconstitutional and illegal, there is less opposition to passage of the bill. That doesn't mean that this form of nullification bill is easy to pass by any means. But they do have a chance, and states are beginning to pass them. This is an extremely positive development in comparison to bills that have absolutely no chance to move forward in today's political climate.

More on this strategic consideration in a later section.

1996 AND BEYOND

Taking this big picture view, the modern nullification movement started in 1996 when California voters approved Proposition 215, the Compassionate Use Act, authorizing the possession, cultivation and use of cannabis (marijuana) for limited medical purposes.

Federal law makes no exception for medical purposes, and as the November vote was nearing that year, three separate presidents came to the state to campaign against it. Outside the philosophical opposition to the proposition, the constitutional claim was that the supremacy clause of the Constitution didn't allow the people of California to defy federal policy on marijuana.

But defy they did.

The early days of this limited marijuana legalization in California were precarious. The federal government put heavy pressure on anyone trying to violate its prohibition, and the legal market (under state law) barely registered a blip.

From those modest beginnings, Prop 215 grew into something massive, with cannabis now the #1 cash crop in the state. It generates nearly $4 billion in production each year. That's more than other agricultural goods, including grapes, almonds or oranges; all products that California is widely known for.

The growth in the marijuana industry happened in the face of increasingly aggressive federal enforcement measures, rising significantly first under Pres. Bush. Enforcement under Pres. Obama proved even more aggressive, more than doubling the number of attempts and resources spent.

It also happened in the face of a 2005 Supreme Court ruling, *Gonzales v Raich*. The Court took the position that the "interstate commerce clause" of the Constitution authorized the federal government to prohibit the possession, consumption, and production of a plant that never even left someone's back yard.

At the time of that case, there were 10 states with medical marijuana laws on the books, and not one state repealed its law after the court issued its opinion. Today, there are more than double that number, and the federal government is clearly losing the battle against state and local resistance.

More details on this state-level resistance will be covered later in this report. Most importantly, though, it represents an effective, if not yet complete, nullification of federal prohibition of marijuana.

Keep in mind, it's happening in the face of opposition from every branch of the federal government.

Today, similar efforts have taken root on a variety of other issues, crossing the political spectrum. In the sections ahead, we'll cover the more prominent ones.

WHAT WE COVER IN THIS REPORT AND WHAT WE DON'T

This report focuses primarily on state level legislation and referendums that have a nullifying effect on federal power, whether broadly or on a specific issue. The direct rejection of federal power might be the primary focus of the effort, and often is so.

On the other hand, many of these efforts primarily target state and local action, but doing so also thwarts the operation or goals of federal acts or policy.

Both make up extremely important parts of the overall nullification movement and are generally the most prominent forms of activity within the larger movement. They will both be covered in some detail in the sections to follow.

There are, however, actions that could be seen as a significant part of the nullification movement but are not covered in this report. These include the following (with reasons for their exclusion):

Local resolutions and ordinances against specific federal policy.

Resolutions generally do not hold the force of law in directing a state or local government to act or not to act. But, they can form an important starting point to establish intent, build support and create official policy. The Kentucky and Virginia resolutions of 1798, authored by Thomas Jefferson and James Madison respectively, were both non-binding state resolutions. But at the same time, they are considered by many as the the founding documents of the doctrine of state nullification.

Thus, resolutions can play an extremely important role. But the number of resolutions passed each year on a state and local level around the country number in the multiple thousands, with just a small handful that would qualify for this report.

Ordinances passed on the local level hold more weight, as they do carry the force of law, whereas resolutions do not in most communities. Again, however, the number of ordinances passed that have a positive effect on the nullification movement is tiny in comparison to the overall number of local laws passed each year.

In other words, there is simply a lack of resources necessary to sort through the mountains of unrelated resolutions to find the few gems that have the potential to make a positive impact on the nullification movement.

Beyond a handful of brief mentions in the sections ahead, these local resolutions and ordinances will not be covered in this report.

Jury Nullification

The power of a jury to refuse to convict due to a disagreement with the law itself is long-established in American tradition. It could be considered the last line of defense against unconstitutional or unjust laws because even after someone is arrested and likely guilty under the law, a jury votes to acquit because they believe the law itself to be wrong.

One of the most notable instances of jury nullification in American history occurred when Northern States took actions to nullify the Fugitive Slave Act of 1850. In 1851, 26 people in Syracuse, New York were arrested, charged and tried for freeing a runaway slave named William Henry (aka Jerry) who was arrested under the act. Among the 26 people tried was a U.S. Senator and the former Governor of New York. In an act of jury nullification, the trial resulted in just one conviction.

Again, there is a lack of resources necessary to cover this important issue. If you are interested in more information, we encourage you to visit the leading jury nullification organization in the world, the Fully Informed Jury Association (FIJA) at www.fija.org

Individual Noncompliance

Nullification is most effective when the people at large take action to nullify as well. This can include a wide range of actions, and even non-action that renders the federal act unenforceable. Nullification of federal marijuana laws is the best example. While state laws legalizing on a limited or wide scale offer a greater "legitimacy" for the general public, without individuals in large numbers simply defying the federal prohibition the state laws would be meaningless.

There are growing efforts to engage in individual, and large-scale public refusal and nullification on a variety of issues. This includes gun control measures, hemp farming, health mandates and more. In the coming years, we plan on covering this in more detail, focusing on big-picture examples of how communities are helping stop the enforcement of various federal acts.

II. THE ISSUES

2ND AMENDMENT PRESERVATION

There are currently four main processes states can use to protect the 2nd Amendment and the right to keep and bear arms from federal infringement. Three are just getting started, but show good promise. The fourth has the foundation set in a number of states and only awaits further action to have strong effect.

1. Ban enforcement of any future federal gun acts, laws, orders, regulations, or rules (hereinafter, measures).

This legislation would ban a state from taking any action to enforce or assist in the enforcement of future federal gun measures, effectively nullifying them in practice. As federal enforcement relies heavily on state and local law enforcement assistance, passing such a law in a state would, as Judge Andrew Napolitano has said, make them "nearly impossible to enforce."

Idaho was the first state to pass this as law, (S.1332) with Gov. Otter signing it in March 2014.

In 2015, this legislation should serve as the primary focus for states that have yet to take any steps toward nullifying federal gun measures. While it does not impact federal measures already on the books (all of which are unconstitutional in the first place), it has a strong effect on the status quo.

Passage establishes the foundation of a legal and constitutional authority to ban the state from helping in federal enforcement. It generates public awareness and interest in the issue, and process. Most importantly, this type of bill acts as a launch pad for stronger measures in future sessions.

2. Ban the enforcement of significant current federal gun measures

Taking a step forward from the first step, this legislation also includes significant federal measures currently on the books. In Louisiana, for example, a bill which would have authorized the possession of short barrel firearms without federal registration, effectively nullifying a portion of the National Firearms Act of 1934, was introduced in 2014.

In the 2013 state legislative session, nearly two dozen states considered bills at this level, focusing primarily on federal measures that restrict ownership of a semi-automatic firearm or any magazine of a firearm.

While they were effective in bringing the issue of state-level action against federal firearm measures into the public eye, the bulk of these efforts failed quickly. This was due to two primary reasons. First, many of the 2013 bills were poorly drafted with either unclear or superfluous language, or both. Without a clean bill text, the odds of opposition, especially in committees like judiciary (which have a high percentage of lawyers), increases. Second and more importantly, these bills tried to accomplish too much, too soon. Without first establishing the principle and laying the foundation through the passage of introductory legislation in #1 above, the likelihood of garnering the massive grassroots support needed for passage is very low.

Idaho is especially instructive. In 2013, a poorly-written stage-two bill was introduced, moved forward, but ultimately failed. In 2014, taking a small step back, passage of S.1332 had little opposition, and now the path, while still difficult, is set to move forward with additional actions in 2015 and beyond.

Idaho's S.1332 should act as a model first step for states around the country in 2015.

3. Ban the enforcement of all federal gun measures.

Lawmakers in Kansas and Alaska passed bills that set the foundation to ban enforcement of all federal gun control measures.

In Alaska, HB69 was signed into law in April 2013. It establishes the principle that no state or local agency is allowed to use any resources to "implement or aid in the implementation" of any federal acts that infringe on a "person's right, under the Second Amendment to the Constitution of the United States, to keep and bear arms."

Follow up legislation should be introduced in Alaska that specifically clarifies which federal acts qualify as an infringement, and expressly prohibits state and

(cont...)
local assistance or participation in any enforcement action. We recommend including all federal acts.

In Kansas, SB102, the 2nd Amendment Protection Act, was also signed into law in April of 2013. Like the Alaska law, the Kansas legislation establishes the foundation for a ban on state and local assistance or participation in the enforcement of federal gun measures. It reads, in part:

Any act, law, treaty, order, rule or regulation of the government of the United States which violates the second amendment to the constitution of the United States is null, void and unenforceable in the state of Kansas.

A simple follow up measure to expressly state which "acts, laws, treaties, orders, rules and regulations" will be considered "unenforceable" in Kansas, banning state and local assistance or participation in any enforcement actions, is needed to practically effectuate the current law.

In Missouri, the state legislature passed SJR36 in May, 2014. This proposal will go before voters for approval on the Nov. 2014 ballot. If passed, the state constitution would be amended to include an "obligation" for the state to defend the right to keep and bear arms against all infringements. At that point, follow up legislation should be introduced to give practical effect to the measure.

Also in 2014, the Missouri legislature moved a 2nd Amendment Preservation Act through the process, and came close to passage. This was the state legislature's second attempt to pass a bill at the second and third stage of the process before passing anything at the first stage. But unlike other states, the Missouri legislation came remarkably close to passage. In 2013, it passed both houses by a wide margin, only to fail a veto-override by one vote. In 2014, it passed both houses by a larger margin, only to fail to get to the governor's desk due to differences by the sponsor in each chamber over how much "teeth" to include in the bill.

Like Idaho, the Missouri effort is quite instructive.

- **When working on legislation at the second (or higher) stage, do so concurrently with another bill introduced at the first stage. The result is clear - SJR36 was seen as a "moderate" and "reasonable" effort in comparison to the 2nd Amendment Preservation Act, allowing it to easily pass.**
- **Debating over the inclusion of penalties in a bill - for federal or state agents - is a guaranteed path to failure. Get the bill passed, establishing the foundation, and work on follow up legislation in future sessions.**
- **Two years is scratching the surface. In Illinois, the legislature passed a medical marijuana bill in 2013, effectively nullifying a narrow set of unconstitutional federal acts, but only after 10 years working the same legislation through the process.**

In 2015 (and beyond), legislation should be introduced in Alaska, Kansas, and possibly Missouri to expressly prohibit state and local enforcement of federal gun laws, effectuating state bills recently passed into law.

In other states, activists who are interested in working on bills at this stage should recognize that it is a long, multi-year process. And, should they be motivated to try to jump ahead, they should only do so while concurrently working on the first phase, such as the bill already passed in Idaho this year.

4. Effectuate Previously Passed Firearms Freedom Acts

Since 2009, nine states have passed bills known as the "Firearms Freedom Act." First passed into law in Montana, then Tennessee, the laws declare that firearms manufactured in the state, and remaining in the state, are exempt from United States federal firearms regulations under the Commerce Clause (Article I, Section 8, Clause 3) of the Constitution.

No state has taken action to effectuate these laws, instead waiting on the federal court system to give the states permission to do so.

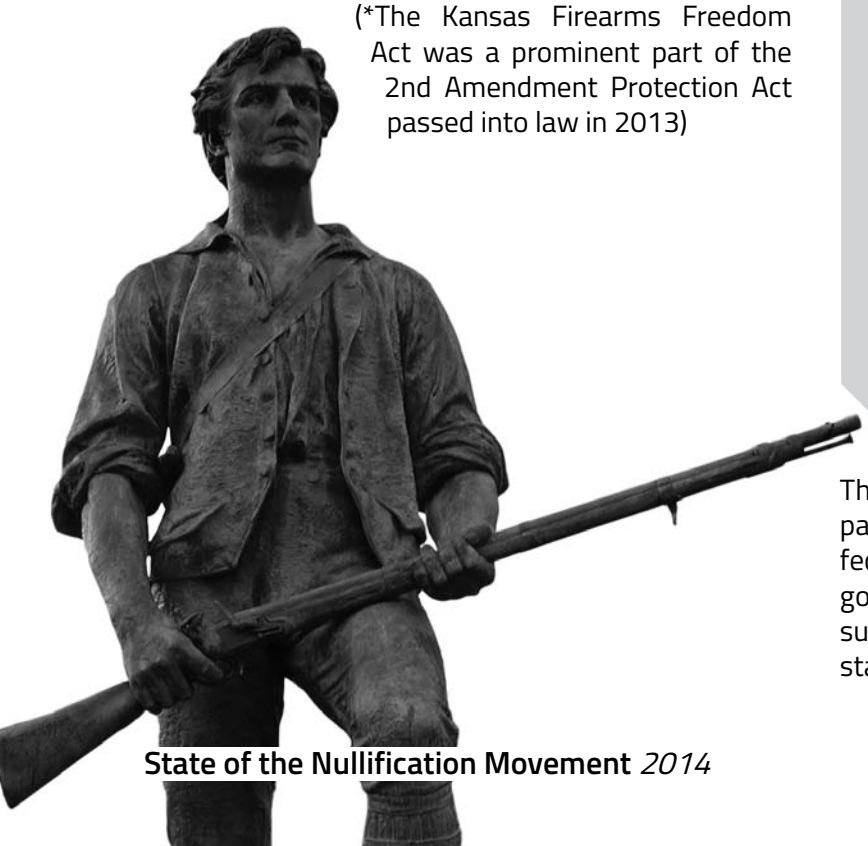
The author of the original Montana law has pursued a lawsuit in federal court. It was first dismissed in US District Court for "lack of subject matter jurisdiction and failure to state a claim." On appeal, the US Court of Appeals for the Ninth Circuit overturned the District Court's determination on lack of standing, but also stated that existing Supreme Court precedent does not favor the legislation.

While an appeal to the Supreme Court is expected, it remains a virtual certainty that the Supreme Court will not reverse its own course and overturn decades of unconstitutional precedent.

As noted above, the 2005 *Gonzales v. Raich* case addressed the issue of medical marijuana on a state level. Even though the Plaintiffs lost the case, state efforts to defy federal prohibitions on the growth, possession, sale and consumption of marijuana did not cease, and no state repealed current laws either.

This is a blueprint that can and should be used to effectuate Firearms Freedom Acts passed into law in recent years. Follow up legislation should be passed in these nine states: Montana, Tennessee, Alaska, Arizona, Idaho, South Dakota, Utah, Kansas*, and Wyoming.

(*The Kansas Firearms Freedom Act was a prominent part of the 2nd Amendment Protection Act passed into law in 2013)



This follow up legislation should include any or all of the following:

- **State-based permitting for businesses engaged in the manufacture and sale of firearms that fall under the Firearms Freedom Act. These "State-based firearms manufacturers" are approved, permitted and/or licensed specifically under state law but considered illegal under federal law. This is akin to marijuana dispensaries in states like California (and many others).**
- **Special permits for the state-based production of firearms for those in medical need by non-profit cooperatives. e.g. The sick, elderly and other individuals who can demonstrate a firearm proficiency and may be at greater risk of attack by predatory criminals.**
- **Other actions that encourage or facilitate the production of state-manufactured firearms outside of federal regulation.**

While it might seem counterintuitive to suggest a licensing or approval process/scheme to advance this cause, two things are certain:

1. **Without additional state legislation, these Firearms Freedom Acts are little more than a good concept on paper. They need additional legislation to be put into action, effectively nullifying various federal acts.**
2. **Passage of additional legislation along these lines, as shown in the case of medical marijuana, has been proven to be an effective method to build and effectuate a practical nullification of a federal prohibition.**

The nine Firearms Freedom Act states have two paths ahead. They can do nothing while waiting for federal approval to effectuate their laws, which is not going to come. Or, they can follow the difficult, but successful path already blazed by nearly two-dozen states effectively nullifying federal laws on marijuana.

NSA

With revelations revealing the extent of mass warrantless surveillance reaching virtually every corner of the globe, efforts to push back against the NSA in the states quickly gained popularity across the political spectrum.

Bolstered by #NullifyNSA tweets from prominent groups like Anonymous and Occupy Wall St., and media coverage from mainstream progressive publications, this campaign also showed that nullification can gain acceptance across traditional political boundaries.

OffNow.org serves as the dedicated website - ground zero for the #NullifyNSA efforts. Led by the Tenth Amendment Center in partnership the Bill of Rights Defense Committee, a transpartisan coalition began working to get legislation introduced on the state-level in late 2013.

The current effort focuses on four types of bills:

...nullification can gain acceptance across traditional political boundaries.

4th Amendment Protection Act

As drafted by the OffNow coalition, this legislation would immediately ban all state and local resources and assistance to the NSA. This includes cutting off water, electricity and other state supplied resources, ending partnerships between public universities and the NSA and prohibiting any type of state or local cooperation with the agency. The legislation would also ban the receipt of warrantless information funnelled from NSA to state and local law enforcement via Special Operations Division (SOD) and Fusion Centers, nullifying a narrow, but important, practical effect of what happens with the data after the federal government collects it without a warrant.

While nine states host official NSA facilities (that the public is aware of), this legislation is intended be introduced in all states. Success will only come with passage in multiple states - both with and without facilities. This is for two primary reasons:

1. **The public is generally unaware of the NSA's intention to build and support a facility until after the contracts are signed, and this often happens in secret. States need to be proactive to prevent further expansion, which is happening at an aggressive pace in recent years.**

2. **Should an NSA facility state pass such a bill, it's essential that neighboring states support their effort by following suit. This makes nullification in the facility state more effective because the federal agency won't be able to easily pick up and move across the border to a neighbor. And while monetary reality makes this difficult already (NSA internal documents reveal that their expansion has often been limited by budgetary considerations in recent years), removing the welcome mat in states where the agency does not yet have a presence creates greater roadblocks. The goal is to box the NSA in and make it difficult, or nearly impossible in practice, to expand.**

In the campaigns first year, this model legislation was introduced in more than a dozen states. Because of the aggressive nature of the approach, including a bill to turn off water to the NSA Data Center in Bluffdale, Utah, the effort quickly garnered national and international media attention.

The Tenth Amendment Center received repeated coverage in mainstream media, including US News and World Report, the Associated Press, ABC News, CBS News, The Guardian, VICE Magazine and several city papers. An elected member of Congress denounced the effort to turn off resources to the NSA in Maryland as "dangerous," and the George Soros-funded ThinkProgress warned that the effort was dangerous as well, particularly because the strategy could prove quite effective.

Here's how they put it in their Jan. 2014 report:

> "Don't doubt for a minute that, if the Tenth Amendment Center succeeds in establishing a precedent for nullification-via-power-outages, they will immediately deploy this and similar tactics to implement other parts of their sweeping libertarian agency."

In Arizona and Oklahoma, this legislation was voted out of committee in full effect. In both states, Republican leadership worked behind the scenes to prevent the legislation from getting full vote on the chamber floor. Bill sponsors have indicated that they plan to introduce the legislation again in 2015.

In Tennessee, a bill failed in committee by a 4-4 vote after the Republican committee chair asked for a recount after the bill had initially passed.

In Washington State, South Carolina, Iowa, and elsewhere, powerful committee chairs did not allow a hearing or vote.

In Maryland, home of the NSA headquarters, pro-surveillance lobbyists, including law enforcement organizations, came out in full force to oppose the bill. Bruce Fein, a leading Constitutional-attorney and top Justice Department official during the Reagan administration, came to testify in favor of the bill.

"I think that this bill is in the finest traditions of a state government opposing federal encroachment," Fein said. "The spirit of the Fourth Amendment bill is about restoring the Fourth Amendment in the state of Maryland and sending a signal to the federal government that the state of Maryland does not want to be complicit in the daily violation of the Fourth Amendment."

In Utah, Rep. Marc Roberts introduced the bill to turn off water to the NSA Data Center. It was given a fair hearing in a state House committee. The committee voted to send the bill to "interim study" for further consideration. The legislation will receive public hearings between now and Dec. 2014 in preparation for reintroduction for the 2015 legislative session in Utah.

Contacts with legislators in each state indicate that bills will be again introduced for the 2015 session. And with grassroots pressure, bills could also be introduced in NSA facility states like Texas, Hawaii, and Georgia, among others.

4th Amendment Protection Act version 2

In California, powerful state senators Ted Lieu (D-Torrance) and Joel Anderson (R-San Diego) introduced OffNow model legislation. But after heavy opposition behind the scenes from law enforcement organizations, the tech industry and others, the senators took a strategic step back to narrow the focus of the bill.

As of this writing, the bill has passed the state senate by a vote of 29-1 and is expected to easily move through the Assembly and to the governor's desk.

Instead of creating an immediate ban on resources and assistance to "any federal agency" engaged in mass, warrantless surveillance, the bill creates a mechanism to do so.

SB828 would ban the state from participating in, or providing material support or resources to any federal agency engaged in the "illegal and unconstitutional collection of electronic data or metadata, without consent, of any person not based on a warrant that particularly describes the person, place, and thing to be searched or seized."

Passage of the bill would serve as the first step in a process to ban resources to the NSA. If signed into law, the state ban on resources would immediately go into effect once an official determination is made that a federal agency is engaging in illegal and unconstitutional collection of electronic data or metadata.

Instead of trying to accomplish the entire task in one fell swoop, the legislation breaks the path down into two, more manageable, bills. First, SB828, establishes the principle that the state can and should refuse resources to such federal surveillance programs. The follow up bill, should the first pass, would be either a) an official determination by the state of which federal programs are considered unconstitutional or b) a simple amendment to the current law to strike the requirement that a determination of unconstitutionality needs to be made.

(*cont...)*
This strategy serves as a model for other states, building support, expanding coalitions, and educating the public.

Electronic Data Privacy Act

For those states with legislators not yet willing or able to get the full 4th Amendment Protection Act (or version 2) passed, the Electronic Data Privacy Act is a powerful first step. By banning the use of warrantless data in court, this state legislation can thwart some of the practical effects of federal spying programs.

This legislation was signed into law by Utah Gov. Herbert in 2014, making it the second state in the country to pass such a measure. In early 2013, Maine got a head start and already passed a similar law.

In Missouri, the legislature passed a proposal for a state constitutional amendment this year. SJR27 will be on the ballot for consideration by voters in November 2014. If passed, it will add electronic data to the state's search and seizure clause, giving it the same protection as papers persons and homes.

Freedom from Location Surveillance Act

A narrow, but important first step against the growing surveillance state, the Freedom From Location Surveillance Act bans state and local law enforcement from obtaining the location information of a person's electronic device without a warrant.

The NSA is tracking the physical location of people through their cellphones. In late 2013, the Washington Post reported that NSA is "gathering nearly 5 billion records a day on the whereabouts of cellphones around the world." This includes location data on "tens of millions" of Americans each year – without a warrant.

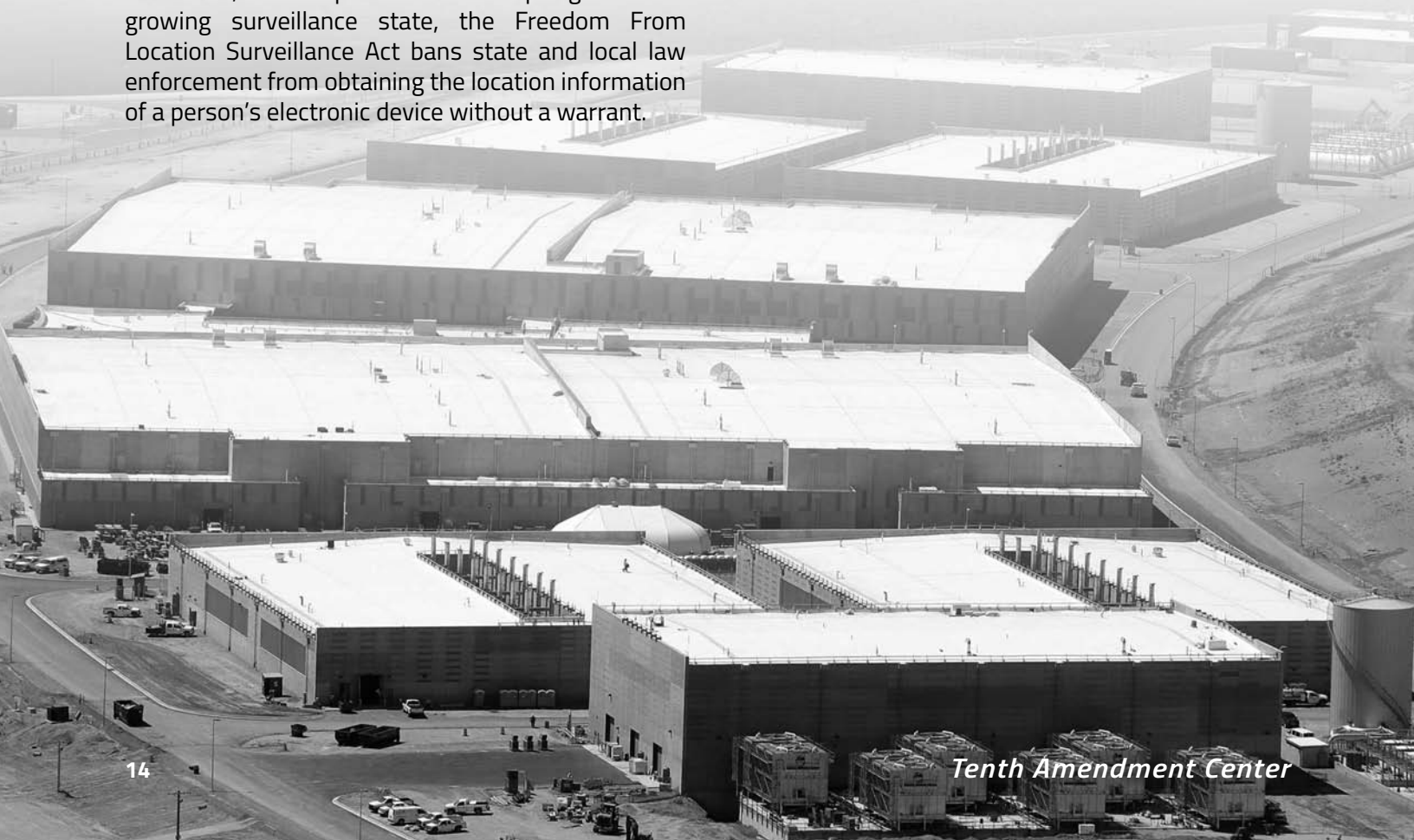
In 2014, this legislation was signed into law in Utah, Minnesota, Wisconsin and Virginia. These states joined Maine and Montana, both of which passed similar measures into law in 2013.

As of this writing, the Illinois legislature a similar bill sits on the Illinois governor's desk waiting for a signature.

#NullifyNSA in 2015

In 2015, the OffNow strategy includes continuing to build the pressure, expanding coalitions in support, and working with state legislators to introduce bills at various levels simultaneously.

States that didn't have legislatures in session in 2014, including Texas, Nevada and Montana, can help bring the effort to the next level.



INDUSTRIAL HEMP

Experts suggest the U.S. market for hemp at around $500 million per year. They count as many as 25,000 uses for industrial hemp, including food, cosmetics, plastics and bio-fuel. Hemp products are currently found in grocery and department stores all across the United States.

During World War II, the United States military relied heavily on hemp products, resulting in the famous campaign and government-produced film, "Hemp for Victory!"

The U.S. currently stands as the world's #1 importer of hemp fiber for various products, with China and Canada acting as the top two exporters in the world. This "trade imbalance" is due to the fact that the US federal government takes extreme measures to prevent American farmers from growing this widely-used plant.

Many hemp supporters feel that major industries competing with hemp use the DEA as an "attack dog" of sorts to prevent competition. These industries include cotton, paper/lumber and petrochemical, among others.

This year, President Barack Obama signed a new farm bill into law that included a provision allowing a handful of states to begin limited research programs growing hemp. The new "hemp amendment" allows State Agriculture Departments, colleges and universities to grow hemp, defined as the non-drug oilseed and fiber varieties of cannabis, for academic or agricultural research purposes, but it applies only to states where industrial hemp farming is already legal under state law.

In short, only research is "allowed" by the federal government today. All other production remains prohibited. But states are taking action to effectively nullify that prohibition.

Farmers in SE Colorado started harvesting the plant in 2013, effectively nullifying federal restrictions on hemp. They took action to plant and harvest crops even before the state legislature passed pass a law effectuating what voters legalized in 2012.

In 2014, Tennessee Gov. Bill Haslam signed a bill that some supporters consider the strongest pro-hemp legislation in the country. House Bill 2445 (HB2445), introduced by Rep. Jeremy Faison (R-Cosby), mandates that the state authorize the growing and production of industrial hemp within Tennessee. According to the new law, the process must start no later than November, 2014.

Also this year, South Carolina Gov. Nikki Haley signed a bill into law authorizing cultivation and production of industrial hemp within the state. While it doesn't include a mandate that the state start issuing licenses to grow and produce like the Tennessee law, it sets the stage for action in the near future.

Like South Carolina, Oregon (2009) and Vermont (2013) also passed laws to legalize the farming and production of industrial hemp. The Oregon Department of Agriculture has appointed a Rules Advisory Committee to assist in developing draft administrative rules for the production of industrial hemp in Oregon. This committee will meet over a period of several months in 2014.

Follow up legislation to create a process for farmers to begin planting in South Carolina and Vermont is strongly recommended.

Other states are encouraged to follow the model created by the new law in Tennessee when feasible. If attempting to accomplish too much too fast will likely result in zero steps forward, then the legislative model should follow the new law in South Carolina.

PATIENT PROTECTION AND AFFORDABLE CARE ACT (AKA "OBAMACARE" OR "ACA")

In 2014, Georgia Gov. Nathan Deal signed a bill that bans the state from participating in significant portions of the Affordable Care Act (ACA). It goes into effect on July 1 of this year.

Introduced by Rep. Jason Spencer, the legislation pushes back against the ACA in four ways and will create serious impediments to the implementation of the federal act in Georgia. Specifically, the legislation:

1. Prohibits any state agencies, departments or political subdivisions from using resources or spending funds to advocate for the expansion of Medicaid. This provision works hand-in-hand with HB990 to make it more difficult to expand Medicaid. HB990 requires legislative approval for expansion of the program, barring the governor from doing it by executive order.

2. Prohibits the state of Georgia from running an insurance exchange.

3. Refuses and federal grant money for the purpose of creating or running a state insurance exchange.

4. Ends the University of Georgia Health Navigator Program. It allows the school to complete the functions under the current grant but would prohibit it from getting a new one.

Each of these provisions creates impediments to the implementation and execution of the ACA in Georgia. We've seen the difficulties created by the number of states simply refusing to set up exchanges. The ACA was predicated on state cooperation.

By refusing to help, passage of the Georgia bill puts the federal government in an almost impossible position. It never intended to run the healthcare system alone, and ultimately, it can't do it without state help.

Judge Andrew Napolitano agreed recently, pointing out that if a number of states were to refuse to participate with the ACA in a wholesale fashion, that multi-state action would "gut Obamacare."

A fifth provision that would have prohibited the Commissioner of Insurance from investigating or enforcing any alleged violation of federal health insurance requirements mandated by the ACA was amended out of the final bill. Spencer has already committed to pursuing that issue as a follow up bill in the 2015 legislative session. If passed into law, this would put the onus of enforcing federal mandates on the federal government, and it lacks any agency to take on that role. The feds expect the state to enforce its mandates. State refusal will create quite the problem.

Second Step

This action by Georgia is actually the second step towards an effective nullification of the ACA. More than a dozen states have already taken the first step with passage of a Health Care Freedom Act or Amendment in the past four years.

These states have already codified in law or their state constitutions that "no governmental entity shall coerce, directly or indirectly, any individual to participate in a healthcare system, nor interfere with an individual's freedom to directly purchase lawful medical services."

These laws or constitutional provisions prohibit those states from supporting the ACA in any way that addresses the mandate. In order to operate an exchange, state employees would have to determine eligibility for ACA's "premium assistance tax credits." Those tax credits trigger penalties against employers (under the employer mandate) and residents (under the individual mandate). In addition, state employees would have to determine whether employers' health benefits are "affordable." A negative determination results in fines against the employer. These are key functions of an exchange.

Ergo, if the state passes a law establishing an exchange, then that law would violate the state's constitution or statute by indirectly compelling

employers and individual residents to participate in a health care system. That sort of law seems precisely what the Health Freedom Act/Amendment exists to prevent.

Follow up legislation

Recommended steps for states in the 2015 legislative session:

1. **For states that have passed Health Freedom Act v.1** - legislation should be introduced and passed to ensure that state officials are expressly prohibited from taking actions supporting the ACA in any way that helps effectuate the mandate.
2. **For all other states** - the Georgia legislation is a good model for a first step. This can and should be introduced concurrently with other legislation in this list.
3. **Health Freedom Act v.2** - This bill prohibits health insurers from accepting federal subsidies under the Affordable Care Act that trigger the employer mandate. Health insurers accepting subsidies shall have their license to issue new business suspended for all business on exchanges established by the Affordable Care Act.
4. **Insurance Commissioner** - A narrow bill to prohibit the state Commissioner of Insurance from investigating or enforcing any alleged violation of federal health insurance requirements mandated by the ACA.
5. **Reject grants** - A bill to expressly reject ACA discretionary grants that aid in the federal takeover of state health insurance regulation.
6. **Stop state executive action** - In order to act as a legislative check on agency and executive branch implementation of the ACA, a bill should be introduced to empower legislators to investigate how much their state is spending on implementation, and ensure that ACA-compliant governors gain legislative approval before taking any further action.
7. **Ban Medicaid expansion** - As envisioned by the ACA's authors, the Medicaid expansion would account for roughly half of the law's $2 trillion of new entitlement spending over the first 10 years. The Supreme Court blocked Congress' attempt to coerce states into implementing and, 25 states refused to do so. As a result, those states have already defunded almost a quarter of the ACA's new entitlement spending. They are also helping to increase dissatisfaction with the law among hospitals and other providers that won't receive the subsidies they were promised in return for their support. Legislation to ban this expansion should be introduced in states that have a) banned it by executive action only and b) not taken any action to prevent the expansion.
8. **Ban the operation of a state-run exchange** 34 states have banned the creation of state-run exchanges under the ACA. Legislation to ban such action should be introduced in states that have a) banned it by executive action only and b) not taken any action to prohibit the operation of an exchange.
9. **Prohibit enforcement of liens** - States can pass legislation to prohibit city/county clerks from enforcing any IRS liens resulting from nonpayment of the ACA fine/tax. They can do the same with state-chartered banks.
10. **Comprehensive anti-commandeering legislation** - In conjunction with narrow bill(s) addressing specific areas from above, an all-encompassing bill to ban state participation in any and all portions of ACA implementation should be considered for introduction.

Recognizing that passage of just one bill in a state session can take every ounce of time and energy that a state legislator has available, introduction by one person of all ten bills listed above is not sound strategy. We recommend that an interested legislator contact state legislative leadership to gauge support for one or more of the narrow steps forward and introduce a bill that is most likely to make progress and pass. Concurrently, to build support for future action, another portion or a comprehensive bill should be introduced and used as a tool to educate the public and other legislators alike.

DRONE SURVEILLANCE

Federal Department of Homeland Security (DHS) grant money is flowing to the states for law enforcement agencies to purchase Unmanned Aerial Vehicles (UAVs), more popularly known as drones. Local/federal information sharing programs are already in place under the Information Sharing Environment (ISE) as a result of the PATRIOT Act of 2001 and the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). Within this environment, a state-operated national spy system in the sky poses a serious threat. Coupled that with the FBI going live with a high-tech facial-recognition program this year and such a network of drones brings a sci-fi nightmare into the realm of possibility.

Currently, the federal government serves as the primary financial engine behind the expansion of drone surveillance carried out by states and local communities. The Department of Homeland Security issues large grants to local governments so they can purchase drones. Those grants, in and of themselves, represent an unconstitutional expansion of power.

Digging deeper, we find that the feds are essentially funding a network of drones around the country and placing the operational burden on the states. Once they create a web over the whole country, DHS steps in with requests for 'information sharing' as provided for by ISE. The FBI could theoretically use the same process to couple its new facial recognition database, which is expected to become "smarter" by leaps and bounds in coming years, with state and local drone networks.

That's why the most effective way to prevent mass-surveillance by drones is to prohibit or restrict how they're used in the states. Without the states and local communities operating the drones today, it will be far more difficult for any future national program to ever get off the ground.

Since early 2013, ten states have passed bills into law that take important first steps to prohibit state and local governments from using drones without a warrant signed by a judge. They include Florida, Idaho, Illinois, Indiana, Oregon, Tennessee, Texas, Utah, Virginia, and Wisconsin.

A bill in California is moving forward towards the governor's desk at the time of this writing. And while it is expected to pass the state legislature, previous actions from Gov. Brown indicate he is likely to veto any bills restricting police surveillance powers.

Each of these state laws create significant hurdles for warrantless drone surveillances by governments on the state and local level.

More complex follow-up legislation should be introduced and supported, taking into account more challenging issues such as the status of information collected incidentally to lawful drone use, how long law enforcement can hold on to drone-collected data, and how to handle government access to information collected by third-party drones.

MARIJUANA

The grand-daddy of the modern nullification movement is marijuana.

On no other issue do we find state-level resistance to federal power so advanced, well-funded, supported and successful as it is with state laws to legalize marijuana in defiance of federal prohibition.

Nullification of federal laws on marijuana include state laws to legalize the plant for production, sale and/or consumption in defiance of the feds. Nullification acts include laws allowing medical use of cannabis only, beginning in California in 1996, and those allowing full legalization for the general public, first authorized by voters in Colorado and Washington State.

Currently, 22 states - nearly half the country - have enacted some form of marijuana legalization law. More are expected this year. Voters in Alaska will decide if they will follow Colorado and Washington to legalize marijuana for the general public, and voters in Florida will decide if they'll legalize marijuana for limited, medical purposes, both through ballot initiatives.

One-by-one, these states have advanced the issue in spite of a 2005 Supreme Court ruling against the efforts, and a relentless year-to-year increase in spending and enforcement efforts by the federal government.

RESOURCES

With federal laws relying heavily on state support for enforcement, twenty-two states in defiance has resulted in an implosion of federal prohibition. Even though each president - Clinton, Bush and Obama - has greatly increased resources and enforcement attempts over his predecessor, the state nullification efforts continue to grow.

In fact, the Obama administration has greatly increased enforcement actions and spending even over that of the Bush administration. But the federal government simply doesn't have the resources to carry out what they'd like to do.

Case study: Denver, Colorado.

Last fall, with six weeks to go before the first retail marijuana outlets officially opened, the federal government - **with an assist from local police officers** - conducted the largest federal raid on Colorado marijuana businesses since medical marijuana became legal.

According to the Denver Post, officers executed search and seizure warrants at multiple dispensaries and cultivation facilities - at least a dozen in Denver alone.

But what was obviously meant as a show of force actually demonstrates the true weakness of the federal government in the face of multi-state resistance and nullification.

This was a massive operation – the largest raids since medical marijuana was legalized in Colorado. They hit about twelve shops in the Denver metro. That might sound pretty impressive until you consider that about 400 such businesses operate in the Denver area alone.

In other words, the the largest federal raid ever in Colorado impacted about 3 percent of the medical marijuana businesses in Denver – one single city in a state of 5.2 million people.

A major snowstorm causes more disruption than that.

And this bears repeating.

"...with an assist from local police officers..."

The federal government couldn't even pull off this "massive" operation on their own. They depended on help from local law enforcement – to disrupt less than 3 percent of the medical marijuana business in one city.

And if history provides any indication, the businesses that the feds raided will likely reopen within days. It happens all the time in California.

The feds spent a vast amount of money and expended tremendous resources to disrupt that paltry 3 percent of currently-operating businesses in Denver.

Americans for Safe Access calculates that a direct raid on a medical marijuana dispensary costs around $300,000, and investigative costs run about $12 million per raid.

That means the DEA spent roughly $3.6 million on these Denver raids themselves – plus investigative costs. Even with a conservative estimate that counts all twelve dispensaries under the same investigative umbrella, that still means the DEA just spent $15.6 million.

Considering the DEA budget, there is simply no way for the federal government to turn back the tide. The annual DEA budget runs about $2.87 billion. It wouldn't take too many investigations and raids to completely wipe that out. In fact, shutting down all the dispensaries in just the single city of Denver would cost more than twice the total DEA budget.

LESSON

There is an important lesson from this "major" DEA crackdown.

Nullification through noncompliance works.

This is proven simply by comparing the significant effort, the reliance on local help, and the massive expense it takes to impact just 3 percent of nullifying businesses in a single major city.

When considering other major cities like Los Angeles, Seattle, Oakland and others - in conjunction with twenty-two states - that's hundreds of cities and millions of people. The federal government simply cannot stop marijuana when states legalize it. They can barely put a 3 percent dent into it. In one city.

By authorizing what the federal government claims to ban, state legalization effectively nullifies the federal prohibition on weed.

More importantly, this is happening with state assistance to federal agencies. Preliminary review of all federal marijuana raids in the last two years indicates that they almost never occur without state or local resources assisting. In a significant number of enforcement actions, the bulk of the manpower is actually provided by state and/or local agencies.

Knowing that under the anti-commandeering doctrine, no requirement for such material support to the federal government exists, the impact would be far greater if state and local law enforcement would simply refuse to cooperate.

This is the primary drive behind our recommendation for a continue advancement of the nullification of federal marijuana laws in 2015 - passage of the Tenth Amendment Center's model legislation, the Cannabis Freedom Act. This is a simple bill that plays an important supporting role to current legalization efforts in the states by banning state and local assistance to federal agencies enforcing federal prohibition on marijuana.

An additional benefit to supporting this legislation is that the nearly 20-year campaign to legalize marijuana in the states, effectively nullifying the federal prohibition on the same, has set a precedent that has carried over to other issues. It acts as a strategic roadmap; a blueprint for the nullification movement.

ADDITIONAL ISSUES

While the six issues discussed above make up the bulk of the nullification movement today, they are far from the only state pushback against federal power.

Indefinite Detention

In response to the National Defense Authorization Act (NDAA) of 2012, a handful of states, led by Virginia and California, have passed laws that represent an important first step towards a nullification of the indefinite detention powers that the federal government has claimed.

People Against the NDAA (P.A.N.D.A) has led the effort, primarily on a local level, working to get resolutions passed in cities, towns and counties. These resolutions declare federal indefinite detention powers without due process illegal. They combine these resolutions with an on-the-ground strategy of educating those who have taken an oath to support and defend the Constitution, teaching that their oath requires them to act to prevent such federal powers from being carried out in their jurisdictions.

Constitutional Tender

The United States Constitution states in Article I, Section 10 that, "No State shall…make any Thing but gold and silver Coin a Tender in Payment of Debts."

Currently all debts and taxes in states around the country are either paid with Federal Reserve Notes (dollars), authorized as legal tender by Congress, or with coins issued by the U.S. Treasury — very few of which have gold or silver in them.

In 2014, Oklahoma became the second state (following Utah) to take the first step towards following the tender requirements of the Constitution and nullifying the federal reserve's near-monopoly on money.

Passage of SB862 in Oklahoma made it law that "Gold and silver coins issued by the United States government are legal tender in the State of Oklahoma." Putting this legislation into practical effect would introduce currency competition with Federal Reserve Notes.

Professor William Greene explained what would happen in his Mises Institute paper, *Ending the Federal Reserve From the Bottom Up: Re-introducing Competitive Currency by State Adherence to Article I, Section 10*:

> "Over time, as residents of the State use both Federal Reserve Notes and silver and gold coins, the fact that the coins hold their value more than Federal Reserve Notes do will lead to a 'reverse Gresham's Law' effect, where good money (gold and silver coins) will drive out bad money (Federal Reserve Notes). As this happens, a cascade of events can begin to occur, including the flow of real wealth toward the State's treasury, an influx of banking business from outside of the State – as people in other States carry out their desire to bank with sound money – and an eventual outcry against the use of Federal Reserve Notes for any transactions."

The Oklahoma legislation is an important step towards that constitutional requirement that has been ignored for a long time in every state of the country. Such a tactic would achieve the desired goal of abolishing the Federal Reserve system by attacking it from the bottom up – pulling the rug out from under it by working to make its functions irrelevant at the state and local level.

Common core

Even though advocates claim that Common Core is a "state led and voluntary" educational program, following the proverbial money trail shows that this is not the case. Through federal vouchers, waivers and incentives, Common Core is effectively a national program, with implementation being fueled by federal money.

States can, however, put a stop to it. But, if efforts to start that process are any indication, the Republican and Democratic establishment in states around the country is fighting hard to keep it.

New laws to "withdraw" from or "nullify" Common Core in Indiana, Oklahoma, and South Carolina are anything but. While the headlines claim that these states are dumping the Core, they are simply replacing them with state-run standards that must meet national requirements to continue receiving federal funding.

Common Core will only go away "when lawmakers learn to turn away federal cash" says The South Carolina Policy Council. All states are still dependent on hundreds of millions of dollars from the federal government since accepting waivers from No Child Left Behind.

Does this mean it's no use fighting Common Core? Surely not. Longtime Tenth Amendment Center supporters can look back with pride on such early successes as non-binding state resolutions expressing support for the 10th Amendment in 2008-9. Symbolic and token actions can lead to real nullification.

On the bright side, at the time of this writing, the Missouri legislature has passed a bill that would actually withdraw the state from Common Core over a three year period should the governor sign it. And a similar bill was passed by a wide margin by the North Carolina House.

Right to Try

In a recent development, legislators in Colorado, Louisiana and Missouri recently approved "Right to Try" legislation, and Arizona voters will consider the measure this November.

"Right to Try" is an initiative designed by the Goldwater Institute. It would give terminal patients access to investigational drugs that have completed basic safety testing.

Under a doctor's supervision, people would have the chance to try promising experimental drugs before they're given final FDA approval, effectively nullifying the federal agency's power on this narrow issue.

III. THE PATH FORWARD

WHAT IS NEEDED TO PASS NULLIFICATION BILLS

While some of these nullification efforts happen organically, the vast majority take serious organization and support to get passed. Most bills introduced in a state never see the light of day, so the primary need is grassroots support for passage.

The Tenth Amendment Center puts significant time, energy and financial resources into moving nullification bills forward to law. The information below gives an overview of what is needed to get a single nullification bill introduced and passed. The following section covers current TAC resources and needs to ensure that the organization is effectively engaged in as many areas as possible.

Steps to Passage of Nullification Bills:

1. **Laying the Foundation**
   Before a bill is introduced, research much be done on a specific state to "locate" a legislator who is friendly to the issue at hand. Contact must be made, with significant time spent on educating the legislator on the process, the talking points, the expected opposition (and answers) and the bill itself. Sometimes this step is skipped when a legislator introduces a bill on their own.

2. **Coalition Building and Support**
   A broad coalition of organizations and individuals is an absolute necessity to build the amount of support (via phone calls, emails and personal visits) necessary to move lawmakers to advance the constitution and reject federal power.

3. **Blogging/Reporting**
   In order to educate the general public, blog posts and news reports must be written and published at every step of the bill process.

4. **Action Alerts**
   Dedicated "action alerts" are published at every important step in the bill process. These alerts inform the public of the status of the bill, and provide contact information for relevant legislators, such as committee members. This allows constituents to engages their lawmakers and move the process forward.

5. **Email Campaigns**
   For both news reports and action alerts, the TAC sends regular email alerts directly to grassroots supporters in a given state where a nullification bill is active.

6. **Regular Conference Calls and Communication**
   Almost constant communication with legislators and grassroots organizations in support of a nullification bill is an absolute necessity. For example, understanding what is happening on the inside of a state house, or objections being raised by party leadership, allows the development of a strategy to move the bill forward. Also, being able to help legislators and grassroots leaders better understand the bill's dynamics and answer questions related to it is the kind of expertise the TAC provides.

7. **Ad Campaigns**
   Whenever financial resources allow, online ad campaigns specifically targeted to people in a narrow interest group within a state are extremely effective in building support. What might start as a few dozen phone calls can turn into thousands of contacts when utilizing paid reach.

8. **Public Testimony**
   Legislators often request experts to testify at public committee hearings in support of a bill. This can make a huge difference because an expert can quickly answer questions as they come up from committee members in the middle of a hearing.

(*cont...)*
While it varies by state, keep in mind that an average bill goes through THIRTEEN steps before it can become law. They are, as follows:

1. **Introduction/1st reading**
2. **Assigned to Committee**
3. **Committee Hearing**
4. **Committee Executive Session/Vote**
5. **2nd reading/House Chamber debate**
6. **3rd reading/House vote**
7. **Senate 1st reading**
8. **Assigned to Committee**
9. **Committee Hearing**
10. **Committee Executive Session/Vote**
11. **2nd reading/Senate Chamber debate**
12. **3rd reading/Senate vote**
13. **Governor Action, law or veto**

An effective campaign takes many of these eight action steps at each phase. That means 13 blogs to report on what's happening. Thirteen action alerts so the public knows what to do and who to call to get the bill passed. Thirteen social media reports. Thirteen email campaigns, and so on.

The TAC has had success in getting nullification bills introduced and passed with extremely limited resources. Our success rate has been high when those resources are dedicated to specific bills, and low when resources are not dedicated.

Limited resources, unfortunately, dictate that most nullification bills introduced have not received the dedicated support needed for passage. Out of 120+ bills introduced in the 2-year period, we estimate that less than 5 percent of them had proper backing. But as we've seen, the Nullification Movement's success rate is still higher, indicating that all that is needed is the funding to take things to the next level.

These needs are covered in the next section.

FINANCIAL STATUS

The Tenth Amendment Center operates on a tiny, shoestring budget. While a financial lightweight, the TAC - "pound for pound" - gives more impact per buck than virtually any other nationally-recognized organization in the country.

Our 2013 yearly total receipts were less than $100,000, barely giving TAC enough funding to have one full-time employee and a handful of part-time employees (who often volunteer dozens of hours more per month), when the needs of the Nullification Movement indicate that a full-time staff of ten or more is actually what's needed.

Monthly Expenses

1 Full Time employee, Michael Boldin:. $2000
3 Part-time freelancers
- $700
- $600
- $440

Website hosting:. . . . . .$350 (avg)
Custom Design Projects: . . . . . .$100 (avg)
Online tools and custom plugins: $100
Website development
(upgrades, code fixes, etc): $300
Advertising: $1200
Email Service Providers:. $150
Apps (CRM, Database, Productivity,
Communication, etc): $225
Misc Fees:. $240
Direct Mail:. . . . . .$450 (avg)
Utilities (phone, supplies, etc): $50

Monthly Total:. $6905
Yearly Total: $82,860

KEEPING THE DOORS OPEN AND GROWING

In order to keep the TAC operation at its current pace, we need to raise $15,000 to cover these basic bills by the end of July. You can contribute to help out and keep track of how much of that total has already been raised at http://tenthamendmentcenter.com/donate

Nullification is catching on as a serious movement, but to effectively grow it into a full-fledged campaign stemming the tide of federal power will require a major push. Instead of passing four or five nullification bills each session, we need to pass an average of 20-30.

In order to accomplish this, it will take dedicated, full-time activists and organizers working to move legislation through all the steps, not just in a single state, but in multiple states simultaniously. We estimate it will take 10 full-time employees and a $10,000/month advertising budget.

This would raise the TAC's yearly budget (along with some incidental increases for additional mailing, more robust apps and hosting and the like) to approximately $894,860.

Looking at the movement from an even broader perspective, with $4.5 million on hand, the TAC would kick off a five year nullification blitz campaign, allowing the organization to build the Nullification Movement to a point where it stops the flow of unconstitutional acts, and effectively turns things significantly towards constitutional fidelity and the limited federal government envisioned by the founders.

While this may seem like a significant number, in comparison to the budgets of other national organizations, it is still quite small.

The Heritage Foundation, for example, has a budget of over $80 million per year. The Center for American Progress received approximately $25 million per year in funding. The Southern Poverty Law Center (SPLC) spends over $38 million per year. And, as of 2008, the CATO Institute was bringing in approximately $25 million per year. Then consider the millions and millions of dollars spent each year on federal elections. The candidate running against Sen. Mitch McConnell in the 2014 Kentucky Republican Senate primary raised and spent $2.5 million. He got trounced.

Whether the Tenth Amendment Center is able to raise the $15,000 needed to keep our current pace, or significant generosity allows us to expand to the levels needed to have an historic impact remains to be seen. Either way, TAC will continue to lead the Nullification Movement into 2015, and beyond.

Your support is appreciated.

CONCORDIA RES PARVAE CRESCUNT

'Small things grow great by concord.'

http://www.tenthamendmentcenter.com