

NULLIFICATION

What State Legislatures Are Doing

When the federal government oversteps its constitutional bounds, states can intercede and declare such actions unenforceable in their states. And many states are doing just that.



AP Images

Earning his spurs: Texas State Representative Cecil Bell is the primary sponsor of the Texas Sovereignty Act, one of the most comprehensive nullification bills. State legislators across the country are advancing bills to enforce the Constitution against federal infringements.

by **Peter Rykowski**

If Joe Biden can be considered a master at anything, it is irony. For someone who made “unity” and “normalcy” his campaign themes, no president has done more in his first month to break norms and further divide the country. In addition to signing a record number of executive orders — advancing far-left priorities on topics ranging from energy to migration

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— he has gone farther than any other president to decimate U.S. national sovereignty, slander American history, and remove federal officials for purely political reasons.

Not surprisingly, many of Biden’s executive decrees are unlawful and unconstitutional. They also are an omen of what the remainder of his presidency will bring. However, this is not a new problem; the federal government has long been overstepping its constitutionally imposed constraints and infringing upon both individual liberties and state sovereignty.

Fortunately, the Constitution contains the tools necessary to push back against these federal overreaches. For example, Article VI states: “This Constitution, and the Laws of the United States which *shall be made in Pursuance thereof* . . . shall be the supreme Law of the Land.” (Emphasis added.) That is, laws *not* “made in Pursuance” of the Constitution are *not* the law of the land. In fact, they are unconstitutional and should be declared “null and void” for the simple reason that the federal government may only exercise those powers delegated to it. This is made crystal clear by the 10th Amendment, which states that all powers not granted by the Constitution to the federal government are reserved to the states and to the people.

When states try to curtail unconstitutional federal laws, they are said to be *nullifying* the laws. All that’s needed is for state legislators to take action and enforce the Constitution. Thankfully, a number of bills in state legislatures that would enforce Article VI have already been introduced in the current legislative sessions of multiple states. If any of these bills become law, they will go a long way toward protecting Americans’ rights from federal overreach.

Comprehensive Nullification

The introduced nullification bills are not identical; they come in multiple forms and cover different topics. Arguably the most comprehensive bill is the Texas Sovereignty Act, or HB 1215. Sponsored by State Representative Cecil Bell (R) and three other representatives, its preface

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Much patriots can do: Joe Biden occupies the White House and the far Left controls Congress and the federal bureaucracy. However, the Constitution contains powerful tools for state legislatures to counter radical and unconstitutional federal policies.

explains the proper constitutional balance of power between the federal government and the states, even noting the importance of Article VI.

If passed, HB 1215 would create a Joint Legislative Committee on Constitutional Enforcement, which would “review federal actions that challenge the sovereignty of the state and of the people for the purpose of determining if the federal action is unconstitutional.”

The Texas Sovereignty Act creates clear criteria for determining whether a federal action is unconstitutional, including “consider[ing] the plain reading and reasoning of the text of the United States Constitution and the understood definitions at the time of [its] framing and construction.”

If the committee determines that a federal action is unconstitutional, the Texas Legislature must vote on whether to accept the committee’s conclusion. If ma-

majorities of both the State House and Senate accept its findings, and if the governor approves the motion, that federal action would be formally declared unconstitutional. HB 1215 does not end there. The bill would require Texas courts — rather than depending on case law — to “rely on the plain meaning of” the U.S. Constitution “and any applicable constitutional doctrine as understood by” the Founding Fathers when hearing cases challenging the constitutionality of federal laws.

The Texas Legislature is joined by South Dakota and Wyoming in introducing comprehensive nullification bills. The South Dakota Sovereignty Act (SB 122) is sponsored by State Senator David Janson (R) and six other legislators, while the Wyoming Sovereignty Act (HB 256) is sponsored by Representative Robert Wharff (R) and 14 other legislators. Both bills are substantially similar to Texas’s HB 1215.

Unfortunately, the South Dakota Sovereignty Act failed in committee, thanks in part to opposition from the organization Convention of States, which is pushing for a Constitution-nullifying constitutional convention. However, it is encouraging that this bill received seven sponsors. While not passing this session, it has a strong base of support and is a useful template for other states and for future legislative sessions.

Defending the Second Amendment

The Texas and South Dakota Sovereignty Acts are the most comprehensive nullification bills. However, other legislation has been introduced that would robustly defend Americans’ constitutional freedoms from federal overreach. Many, if not most, of these bills focus on nullifying federal gun control.

The individual right to self-defense, enumerated in the Second Amendment of the Constitution, is probably the most endangered God-given liberty. Candidate Biden already made his anti-gun stance clear, campaigning in 2020 on extreme gun-control measures and on “defeating” the National Rifle Association. On February 14, 2021, President Biden, commemorating the third anniversary of the Stoneman Douglas High School shooting in Parkland, Florida, issued a statement calling for new gun-control laws “including requiring background checks on all gun sales, banning assault weapons and high-capacity magazines, and eliminating immunity for gun manufacturers who knowingly put weapons of war on our streets.” Already, multiple Democratic members of Congress have introduced legislation to implement Biden’s draconian vision.

The threat by the federal government to the Second Amendment was clear well before Biden’s inauguration, and four states — Alaska, Idaho, Kansas, and Wyoming — have already passed legislation prohibiting enforcement of federal gun-control laws. Meanwhile, hundreds of counties and municipalities have declared themselves “Second Amendment sanctuaries.”

Now, state legislators across the country, recognizing the present danger, have introduced a number of bills either nullifying federal gun controls for the first time or strengthening existing nullification laws.

Wyoming's SF 81, entitled the Second Amendment Preservation Act, is among the most detailed and comprehensive gun-control nullification bills and would strengthen the state's existing protections. It is sponsored by Senator Anthony Bouchard (R) and 19 other state legislators. An identical companion bill, HB 124, has been introduced in the Wyoming House.

SF 81 gives a list of policies that might be found in "federal acts, laws, executive orders, administrative orders, court orders, rules and regulations," that violate the Second Amendment and Article 1, Section 24, of Wyoming's constitution. These include any tax that might discourage gun purchases or ownership; gun confiscation laws; laws that prohibit law-abiding individuals from owning, using, or transferring guns; and laws mandating the tracking and registration of firearms, firearm owners, gun accessories, or ammunition.

Importantly, SF 81 nullifies both past and future unconstitutional firearm restrictions. While not naming any specific federal laws, the bill's effect would be wide-ranging, nullifying even the 1934 National Firearms Act and the 1968 Gun Control Act.

The remainder of SF 81 primarily en-

sures that government officials at the state and local levels do not enforce the listed unconstitutional federal gun-control policies and provides citizens with a means of redress if their self-defense rights are violated.

SF 81 is identical in content to proposed legislation in multiple other states, including Alabama (HB 157), Arkansas (HB 1435, SB 298), Florida (HB 1205), Georgia (HB 597, SB 268), Iowa (HF 518), Minnesota (HF1256), Missouri (HB 85, HB 310, SB 39), North Carolina (H189), Ohio (HB 62), and West Virginia (HB 2159, HB 2537). The Missouri bills have an especially good chance of becoming law, with HB 85 already having passed the State House as of this article's writing.

In Alabama, HB 157 not only has the same content, but also explicitly names the 1934 National Firearms Act and the 1968 Gun Control Act as being null and void in Alabama.

Although the above bills are the most detailed and thoroughly worded gun-control nullification legislation, they are not the only such efforts in 2021. Legislation in multiple other states would prohibit state and local enforcement of federal gun controls. These include Arizona (HB 2111, SB 1328), Arkansas (SB 59), Mis-

issippi (SB 2564), Montana (HB 258), Nebraska (LB 188), Oklahoma (SB 486), South Carolina (H 3012, H 3119, S 369), Tennessee (HB 928), and Texas (HB 635). Other states' bills, anticipating the Biden administration's coming actions, would specifically prohibit enforcement of future federal gun controls.

Nullifying *Roe v. Wade*

The 1973 *Roe v. Wade* decision remains one of the most infamous Supreme Court rulings in U.S. history, not only because of its disastrous consequences for human life, but also for its total lack of constitutional grounding. Even liberal law professors such as John Hart Ely and Lawrence Tribe have admitted that the ruling, which created a supposed constitutional right to abortion based on a "right to privacy," had a weak legal basis.

At least one bill has already been introduced that would nullify *Roe v. Wade* and related Supreme Court abortion rulings. Arizona HB 2877, entitled the "*Roe v. Wade* is Unconstitutional Act," is sponsored by State Representative Walter Blackman (R). If passed, it would prohibit all state or local officials from taking any action to enforce federal court rulings that mandate legalized abortion, and it would require those officials to enforce state and local prohibitions on abortion irrespective of those rulings. In essence, HB 2877 nullifies the entire federal abortion regime and allows Arizona to ban abortion under the Constitution as properly interpreted.

In recent years, state legislatures have seen increased interest in protecting the sanctity of life and challenging *Roe v. Wade*. For example, in 2019, Alabama enacted the Human Life Protection Act, which nearly entirely prohibits abortion, and other states including Arkansas are currently considering similar bills that also directly challenge *Roe v. Wade*. However, while the passage of these bills is a positive development, a major flaw with them is that they make no attempt to nullify the Supreme Court's unconstitutional rulings. They merely seek to coerce the Supreme Court into reconsidering its abortion precedents. So far, this strategy is failing; the Alabama law is enjoined in federal court and not being enforced by the state, and the Supreme



Nullifying gun control: Legislation to prevent enforcement of past, present, and future federal gun controls is a major topic this year in many state legislatures — and for good reason.

Court has refused to hear the case thus far. Similar legislation in other states will likely meet the same fate.

Arizona's HB 2877 succeeds where the other bills do not by ordering state and local officials to disregard unconstitutional court rulings.

Targeting Biden's Decrees

While most nullification bills focus on broad topics such as abortion and the Second Amendment, several bills proposed this year aim directly at Joe Biden's executive orders.

In South Dakota, State Representative Aaron Aylward (R), State Senator Julie Frye-Mueller (R), and 14 other legislators are sponsoring HB 1194. This bill would create a process for reviewing the constitutionality of presidential executive orders relating to six topics: "A pandemic or other public health emergency; ... The regulation of natural resources; ... The regulation of the agricultural industry; ... The regulation of land use; ... The regulation of the financial sector through the imposition of environmental, social, or governance standards;" and "The regulation of the constitutional right to keep and bear arms." Under HB 1194, if the South Dakota attorney general finds any such executive order unconstitutional, state and local agency would be prohibited from enforcing it.

This targeting of Biden's executive actions is not isolated to South Dakota. In Oklahoma, over 70 state representatives are co-authoring HB 1236. Similar to the South Dakota bill, it adds several other executive order topics for the state attorney general to review, and it allows the state legislature to nullify these orders if the attorney general declines.

Meanwhile, similar legislation (SB 277) has been introduced by Montana State Senator Tom McGilvray (R). In North Dakota, HB 1164 would have also created a similar process for reviewing and nullifying executive orders on those six topics, but it has since been amended to merely require the state to seek overturning those orders in court.

Other Nullification Bills

Multiple other nullification bills have been introduced that do not fit in any of the above categories but still warrant a mention.

One such bill is North Dakota HB 1282, introduced by seven legislators. If passed, it would create a process for identifying and nullifying federal laws, regulations, and executive orders in existence prior to the bill's enactment.

Under HB 1282, once such federal actions are identified by a newly created committee, both houses of the legislature would vote to nullify them, and if simple majorities of the House and Senate agree with the committee's recommendation, state officials would not be required to enforce those actions. While narrower in scope than the Texas and South Dakota Sovereignty Acts discussed above — which also cover court orders and future federal actions — HB 1282 would be an excellent start to challenging unconstitutional federal actions.

Some state legislators are also using nullification to push back against the federal government's neocon foreign policy. In Iowa, State Representative Jeff Shipley (R) sponsored HF 332, which would prevent combat deployments of the Iowa National Guard by the federal government in the absence of a congressional declaration of war in accordance with Article I, Section 8, Clause 11, of the U.S. Constitution.

In Kentucky, Senator Adrienne Southworth (R) introduced similar legislation, SB 173, which would only allow federal combat deployment of the Kentucky Na-

tional Guard if consistent with Clauses 11 and 15 of Article I, Section 8. Similar legislation has also been introduced in Florida (HB 1163) and West Virginia (HB 2138).

According to the Tenth Amendment Center, over 650,000 National Guard troops have been sent to foreign conflicts since 2001. Additionally, 45 percent of the total U.S. forces sent to Iraq and Afghanistan have been National Guard or Reserve troops. If the states prohibit unconstitutional National Guard deployments, the federal government's participation in these foreign conflicts would be severely hampered.

Keeping Up the Struggle

As one can see, there is much that state legislatures across our nation can do — and are already doing — to enforce the Constitution and push back against a leftist-controlled and out-of-control federal government.

Patriots must not be deceived into believing that all is lost, nor that it is not worth fighting. Yes, the 2020 presidential election and the Georgia Senate races were devastating for conservatives and gave the Democratic Party control over the presidency and Congress. However, state governments remain overwhelmingly under Republican control. Furthermore, the states have powerful constitutional tools at their disposal to protect individual liberty, namely Article VI and the 10th Amendment. ■



Defending the Guard: State legislation prohibiting unconstitutional federal deployments of the National Guard shows that nullification's impact can extend into foreign policy.