



Sheriffs and Legislators Are Acting to Nullify Obama Gun Controls

State and local nullification of unconstitutional usurpations of power by the federal government are crucial defenses against tyranny.

by William F. Jasper

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

— 10th Amendment of the Bill of Rights

State legislators, county sheriffs, and state governors are saying, “Enough!” Unconstitutional overreach by politicians and bureaucrats in Washington, D.C., has set the stage for multiple showdowns with state and local

government officials who vow to exercise their constitutional prerogatives to oppose usurpations of the federal government on issues ranging from the REAL ID Act and ObamaCare to infringements on the right to keep and bear arms.

President Obama’s release, on January 16, of his comprehensive plan for a new wave of national gun controls has made the Second Amendment the immediate flashpoint of the growing “nullification” movement in the states. Issued one month after the Sandy Hook Elementary School shooting in Newtown, Connecticut, the presi-

dent’s push for firearms restrictions clearly is an attempt to capitalize on public grief over that shocking massacre to jumpstart a moribund gun-control movement that has been unable to make any recent headway in Congress. Entitled “Now is the time: The president’s plan to protect our children and our communities by reducing gun violence,” the 15-page White House program proposes an array of executive and congressional actions that it says are “common-sense steps to reduce gun violence.”

Liberty-minded advocates, however, were quick to point out that what Presi-

Appearing on *Fox News* with Sean Hannity, Senator Paul pointed out, “I’m afraid that President Obama may have this ‘king complex’ sort of developing, and we’re going to make sure it doesn’t happen.”

dent Obama refers to as common-sense proposals, our Founding Fathers would have denounced as blatant usurpations by a dictatorial executive. On January 16, the same day that President Obama released his “Now Is the Time” plan, Senator Rand Paul (R-Ky.) announced that he would be introducing legislation the following week to oppose any of President Obama’s executive orders that unconstitutionally attempt to implement new national gun controls.

Appearing on *Fox News* with Sean Hannity, Senator Paul pointed out that there are several of the president’s executive orders “that appear as if he’s writing new law,” which would be an executive trespass on the legislative powers of Congress and a violation of the Constitution’s separation of powers. “I’m afraid that President Obama may have this ‘king complex’ sort of developing, and we’re going to make sure it doesn’t happen,” he told Hannity.

Some state legislators and county sheriffs, however, are not waiting for federal legislators like Senator Paul; neither are they confident that Congress will adequately respond to President Obama’s new efforts to impose more firearms restrictions. In fact, many are concerned that Congress itself, responding to pressure from the major media and President Obama’s bully pulpit, may enact unconstitutional infringements on the Second Amendment.

Within hours of President Obama’s press conference announcing his new gun control push, state legislators in Wyoming, Texas, Missouri, Oklahoma, Tennessee, Iowa, South Carolina, Indiana, and other states were initiating efforts to “nullify” any attempts by federal authorities to enforce those restrictions in their states. They are not merely talking about state resolutions expressing disapproval of federal encroachment, but actually making it

a criminal offense for agents of the federal government to attempt to enforce what the states determine to be illegal, unconstitutional usurpations of power. Wyoming’s H.B. 0104, the “Firearm Protection Act,” for example, threatens federal officials with up to five years in prison and \$5,000 in fines if convicted of attempting to enforce unconstitutional statutes or decrees infringing on the gun rights of Wyoming citizens. Missouri and Texas have similar legislation pending.

“We want to get things ahead of the game,” Republican state Representative Kendell Kroecker, the primary sponsor of the Wyoming bill, told the online Huffington Post. “We take the Second Amendment seriously in Wyoming.... If the federal government is going to pass laws taking back our rights, it is our right as a state to defend those rights.”

“We’re a sovereign state with our own constitutional form of government,” Rep. Kroecker told the Associated Press. “We’ve got a right to make our laws, and if the federal government is going to try to enforce unconstitutional laws on our people and take away the rights of Wyoming citizens, then we as a state are going to step up and make that a crime.”

Wyoming state Senator Larry Hicks, a cosponsor of the legislation, cited the 10th Amendment to the U.S. Constitution, which reserves all powers not specifically granted to the federal government to the states or the people. The nullification bill, he added in an interview with the *Washington Examiner*, will send a message to federal politicians considering further infringements on the rights of his constituents.

“It says that your one-size-fits-all solution doesn’t comport to what a vast majority of the state believes,” Senator Hicks told the paper. He also noted that state lawmakers were receiving e-mails in support of the bill from all across America and that citizens were urging their own states to take similar action. “I don’t think this is controversial in Wyoming at all.... I fully expect this bill to pass.”

In anticipation of President Obama’s anti-gun measures, Mississippi Governor Phil Bryant sent a letter to state lawmakers on January 16 urging them to “immediately pass legislation that would make any unconstitutional order by the President illegal to enforce in Mississippi.” Citing widespread concerns over “our sacred rights as Americans,” the governor noted that “several states have introduced similar measures and I believe will be successful in preventing this over-



President Barack Obama surrounded himself with children when he announced his anti-gun agenda, to project an image of himself as caring about children, during a January 16 White House news conference.

reaching and anti-constitutional violation of our rights as American citizens.”

County sheriffs across the country have also thrown down the gauntlet regarding federal infringement of the Second Amendment in their jurisdictions. Sheriff Glenn Palmer, now in his fourth term as chief law-enforcement officer of Grant County, Oregon, is one of a growing number of sheriffs who have publicly stated their intention to uphold their oaths of office to the point of defying and resisting illegal federal usurpations.

In a letter dated January 16 to Vice President Joe Biden, whom President Obama appointed to head a “task force on gun violence,” Sheriff Palmer, a veteran of nearly 30 years in law enforcement, and before that of four years in the U.S. Air Force, stated:

I too, have taken the Oath of Office to defend and uphold the Constitution for the State of Oregon as well as the Constitution of the United States. I take my duty and responsibility seriously. The citizens of Grant County have entrusted and empowered me to represent them. We have a history with customs and cultures that will support and defend the Second Amendment as well as the Oregon Constitution. The Oath that I swore to is to support and defend our constitutions from enemies, both foreign and domestic.

I will not tolerate nor will I permit any federal incursion within the exterior boundaries of Grant County, Oregon, where any type of gun control legislation aimed at disarming law abiding citizens is the goal or objective.

“As Sheriff for Grant County, Oregon,” the letter continues, “I too will publicly state that I will refuse to participate, or stand idly by, while the people I represent are made into criminals due to your unconstitutional actions.”

By February 1, similar letters and statements had been issued by 242 sheriffs, including Sheriff Gil Gilbertson of Josephine County, Oregon; Sheriff Tim Mueller of Linn County, Oregon; Sheriff-Coroner Adam Christianson of Stanislaus County, California; Sheriff Denny Peyman of Jackson County, Kentucky; Sher-



Obama’s “king complex”: Sen. Rand Paul (R-Ky.) says, “I’m afraid that President Obama may have this ‘king complex’ sort of developing,” and he has introduced legislation to block Obama’s unconstitutional gun grabs.

iff John D’Agostini of Eldorado County, California; Sheriff Dean Wilson of Del Norte County, California; Sheriff Thomas Allman of Mendocino County, California; Sheriff Mike Downey of Humboldt County, California; Sheriff Scott Mascher of Yavapai County, Arizona; Sheriff Stan Hilkey of Mesa County, Colorado; Sheriff Robin Cole of Pine County, Minnesota; and Sheriff Blake Dorning of Madison County, Alabama.

County commissioners and police chiefs are also registering their firm opposition to federal infringement of the Second Amendment. Reece Daniel, chief of police in Jacksonville, Texas, is among those who have spoken out.

“Gun control does not work,” Chief Daniel said in an e-mail to the *Jacksonville Progress*. “If it did, Chicago and Washington D.C. would have no violent crime. In fact, while having some of the most draconian gun laws in the U.S., both cities have a higher murder and robbery rate than most other cities.”

Chief Daniel said he is a constitutionalist and believes in the Second Amendment right to keep and bear arms without interference from the government. “Nothing I saw in the President’s unilateral action today will deter criminals but will interfere with law abiding citizens’ rights under the Second Amendment,” Daniel said. “In short, it was Washington politics as usual and will do nothing to solve gun crime.”

Gilberton Borough Police Chief Mark Kessler in Pennsylvania has gone further than Chief Daniel, requesting officials in

his borough to pass an ordinance or resolution nullifying any unconstitutional attacks on the unalienable rights of residents.

In a phone interview with *THE NEW AMERICAN*, Chief Kessler detailed his proposed “Second Amendment Preservation Ordinance,” which would prevent any federal or state infringements on the right to keep and bear firearms, accessories, or ammunition within the jurisdiction. If approved, the resolution, citing the U.S. and Pennsylvania constitutions, would nullify any unconstitutional acts purporting to restrict gun rights.

“We want to nullify any and all rules, regulations, and acts against the Second Amendment or our freedoms. We need to say this is unconstitutional, we need to stick together, and we need to get our message out there. We’re not going to stand for this anymore,” Kessler explained. “We want to do this peacefully, we don’t want any kind of violence whatsoever — I’m totally against that — I just want to see a peaceful resolution to this. And under the 10th Amendment, hopefully we can accomplish this through the nullification process.”

The Rule of Law

Predictably, to the extent that this issue has been covered at all by the mainstream media, many — if not most — of the stories have bent over backward to cite legal experts who summarily dismiss the nullification efforts as unconstitutional, foolish, and even dangerous. “A sheriff does not get to decide whether laws are constitutional,” said CNN’s Senior Legal Analyst



Upholding the law: Sheriff Richard Mack (above) founded the Constitutional Sheriffs and Peace Officers Association. By February 1 the CSPOA website posted that 242 sheriffs had announced opposition to Obama's gun controls.

Jeffrey Toobin. "Unless a court invalidates a law, he's obligated to enforce it."

The online Huffington Post quoted Jeffrey Fisher, a Stanford University law professor, who said Wyoming's proposed state law violates the Constitution. "It is elementary," said Fisher, "that a state cannot pass a statute that blocks enforcement of an otherwise enforceable federal law."

Two of the far-left organizations quoted by much of the liberal media, the "Think Progress" blog and MediaMatters.org, both trotted out the usual "supremacy clause" argument that supposedly renders attempts at nullification unconstitutional. "The constitution actually stipulates that federal law 'shall be the supreme law of the land,'" Annie-Rose Strasser asserted at ThinkProgress.org.

Strasser is citing, of course, from Article VI, Paragraph 2 of the U.S. Constitution. But like so many others who bring up this supposed trump card, she is quoting selectively and deceptively. Here is the full text of the relevant paragraph:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Note that when we unpack the text that it says several things: 1) The U.S. Constitution is "the supreme Law of the Land"; 2) federal laws "which shall be made *in Pursuance*" of the authority granted in the Constitution shall likewise be "the supreme Law of the Land"; 3) treaties made "*under the Authority* of the United States," shall also be "the supreme Law of the Land"; and 4) if a federal law or treaty comports with the restrictions and powers granted in the U.S. Constitution, *then — and only then* — does it trump state laws and constitutions.

Is this our own peculiar interpretation of Article VI? Not at all. Allow us to introduce Alexander Hamilton, who addressed this matter authoritatively in *The Federalist*, No. 33, where he noted:

If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted to it by its constitution, must necessarily be supreme over those societies, and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the large society which are NOT PURSUANT to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such.

The emphasis Hamilton places on "NOT PURSUANT" appears in the original text. And he goes on to reemphasize this point in the text immediately following. He continues:

Hence we perceive that the clause which declares the supremacy of the laws of the Union, like the one we have just before considered, only declares a truth, which flows immediately and necessarily from the institution of a federal government. It will not, I

presume, have escaped observation, that it EXPRESSLY confines this supremacy to laws made PURSUANT TO THE CONSTITUTION.

As this is such an important issue that has been so widely and repeatedly misrepresented by such "experts" as Professors Toobin and Fisher and Ms. Strasser, we will ask the reader to bear with several other appeals to authority that provide a contrary and convincing view. Again, we recur to *The Federalist*, this time No. 27, which was also written by Hamilton. He states plainly, using the term "Confederacy" as synonymous with the federal government:

It merits particular attention in this place, that the laws of the Confederacy, as to the ENUMERATED and LEGITIMATE objects of its jurisdiction, will become the SUPREME LAW of the land; to the observance of which all officers, legislative, ex-



No nonsense: Sheriff Glenn Palmer sent Vice President Biden a letter saying, "I will not tolerate ... any type of gun control legislation aimed at disarming law abiding citizens."

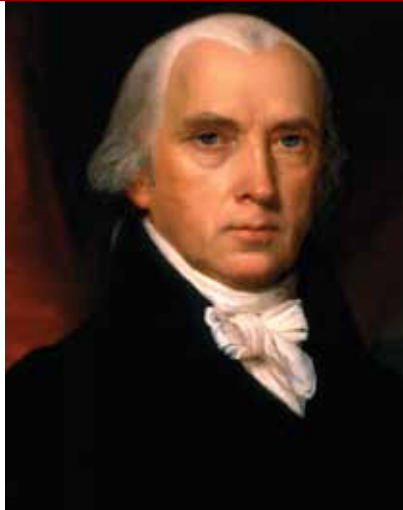
ecutive, and judicial, in each State, will be bound by the sanctity of an oath. Thus the legislatures, courts, and magistrates, of the respective members, will be incorporated into the operations of the national government AS FAR AS ITS JUST AND CONSTITUTIONAL AUTHORITY EXTENDS.

“AS FAR AS ITS JUST AND CONSTITUTIONAL AUTHORITY EXTENDS.” Once more, the emphasis is Hamilton’s. This is all the more noteworthy inasmuch as Hamilton was the federalist who is most associated with arguing *in favor* of a strong central government. Yet even he clearly affirms that under our constitutional system no act of Congress, much less a presidential executive order, that violates the “enumerated and legitimate” powers granted by the states to the federal government in the Constitution can be valid. Whenever the president, the Congress, or the courts trespass beyond where their “just and constitutional authority extends,” they are, says Hamilton, “merely acts of usurpation, and will deserve to be treated as such.”

We call on Hamilton again to explain to the constitutionally challenged professors, commentators, legislators, and jurists of our present day why it is that not every federal “law” is to be given the respect due to “the supreme law of the land.” Hamilton, in *The Federalist*, No. 78, instructs thusly:

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

That should be clear enough — even for professors, politicians, and bureaucrats.



“Supremacy” flaws: Founding Fathers Alexander Hamilton (right) and James Madison explain in *The Federalist* that federal laws are not valid unless made “pursuant” to the powers delegated by the Constitution.

In short, the federal government has only those *delegated* and *enumerated* powers specified in the Constitution. “The powers delegated by the proposed Constitution to the federal government are few and defined,” averred James Madison in *The Federalist*, No. 45. “Those which are to remain in the State governments are numerous and indefinite.” Those delegated powers are enumerated chiefly in Article I, Section 8 of the Constitution. When the federal government (the deputy, the servant) exceeds these delegated powers and usurps pretended authority to lord it over the states and the people (the principal, the master), its legislation is void and invalid, says Hamilton. So too concurred all the Founding Fathers.

What does one do when faced with a federal law or regulation that manifestly violates the Constitution? We return to Hamilton, who, in *The Federalist*, No. 78, explains:

If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Again, the principle is very simple: The people (the prin-

cipal, the master), acting through their representatives, the states, have created a compact, the Constitution, through which they have delegated very limited powers to the federal government (their agent, their servant). The Constitution is superior to, and takes precedence over, federal law if the two are in conflict.

But who is to decide if and when a federal law (or regulation or executive order) violates the Constitution? Critics of state and local nullification efforts say the federal courts, and ultimately the U.S. Supreme Court, should make this decision. True, normally, when the individual states see a piece of federal legislation or a federal program or regulation as being a usurpation of power or in some other sense a violation of the U.S. Constitution, the usual course of action is to challenge the offending act in court. This has been done many times; and many times the federal courts have indeed sided with the states and have struck down federal legislative or executive actions. But is suing in fed-

Wyoming’s H.B. 0104, the “Firearm Protection Act,” for example, threatens federal officials with up to five years in prison and \$5,000 in fines if convicted of attempting to enforce unconstitutional statutes or decrees infringing on the gun rights of Wyoming citizens.

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eral court the only option the states and the people have against usurpations by the federal government?

Historian Thomas Woods, author of several *New York Times* best-sellers on history, economics, and politics, points out in his 2010 book *Nullification: How to Resist Federal Tyranny in the 21st Century* that the states have another time-tested, effective, honorable means of responding to onerous federal overreach: state nullification. Dr. Woods argues, along with James Madison, Thomas Jefferson, and other Founders, that those who claim only the federal judiciary may judge whether a federal law has invaded powers reserved to the states under

tion, what do you think is going to happen? This is not brain surgery. If they have a monopoly on interpreting the Constitution, they’re going to interpret it in their own favor. Surprise! Then we all scratch our heads and wonder, ‘Why has the government gotten so completely out of control?’” Woods utilizes this analogy: “If you enter into a contract with somebody, never, ever would you say that the other party in the contract can exclusively interpret what it means.... Obviously, if only one party in a contract can interpret it, it’s going to interpret it in its own favor!”

In their compact (the Constitution), the states yielded certain limited portions of their sovereignty to the Union,

the U.S. Constitution have stood our “compact theory” of government on its head. Claiming that the U.S. Supreme Court, a branch of the federal government, has the sole and final say on the extent of federal power is preposterous, says Woods.

“Jefferson’s concern,” Woods explained at a Campaign for Liberty rally, “was that if we say the federal government has a monopoly on interpreting the Constitu-

the federal government, but reserved the vast majority of their sovereign powers to themselves, so as to be able to restrain the agent they had created. Woods cites on this matter, for example, James Madison’s famous Virginia Report of 1800, in which the Founder recognized that the federal judiciary might also present a danger and that, therefore, the parties to the compact (i.e., the states) have a right to judge whether a federal act violates the Constitution. Said Madison:

The resolution [of 1798] of the General Assembly [of Virginia] relates to those great and extraordinary cases, in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential right of the parties to it. The resolution supposes that dangerous powers not delegated, may not only be usurped and executed by the other departments, but that the Judicial Department also may exercise or sanction dangerous powers beyond the grant of the Constitution; and consequently that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority, as well as by



Utah Sheriffs Association

Near unanimity: Twenty-eight of Utah’s 29 county sheriffs signed a letter opposing President Obama’s assault on the Second Amendment and defying federal attempts to infringe on it.

Mississippi Governor Phil Bryant asked state lawmakers to pass legislation to “make any unconstitutional order by the President illegal to enforce in Mississippi.” Other states are doing likewise.

another, by the judiciary, as well as by the executive, or the legislature.

Nullification = Chaos and Bloodshed?

Among the many inflammatory charges hurled by critics of state opposition to usurpations of power by the federal government is the claim that state nullification efforts will lead to anarchy and violence. A common dismissive refrain is that “the Civil War settled the issue of nullification,” implying that state rights now, such as they may exist, are merely whatever the federal government may define and determine them to be, and that resistance to Washington, D.C., in these matters is not only futile, but subversive, seditious, and dangerous, possibly tantamount to courting a new Civil War.

But is servile submission or armed rebellion the only option for Americans? Is there not another, principled, peaceful alternative available? Happily, yes, and one that is already proving effective: *de facto* nullification. On issues ranging from the REAL ID Act to firearms freedom to medical marijuana laws, many states are openly defying unconstitutional usurpations by the federal government. And guess what? The sky has not fallen; the world has not ended. Neither anarchy nor civil war has ensued.

Do you remember the REAL ID Act of 2005? Passed by a Republican Congress and signed by President George W. Bush, this wrongheaded response to the 9/11 terrorist attacks represents a huge usurpation of power by Washington. Like the Patriot Act and so much other legislation that has drastically expanded the reach and power of the federal government in the name of fighting terrorism, it sweeps aside state sovereignty and reserved powers. The law states that “a federal agency may not accept, for any official purpose, a driver’s license or identification card issued by a State ... unless the state is meeting the requirements of this section.” This meant that by May 2008, states were going to have to issue federally approved, national ID drivers’ licenses.



But the states have not knuckled under; more than half have told Washington, D.C., to drop dead. It’s going on five years since that “deadline” passed and seven years since the law was enacted, but the federal Department of Homeland Security (DHS) has been forced to reissue several new deadlines because so many states are refusing to “obey” the federal “master.”

In its latest humiliation on this matter, the DHS, on December 20, 2012, issued a press release commending the 13 states that it has determined are in compliance with the REAL ID Act and announcing that it will grant the remaining 37 non-compliant states a “temporary deferment” of an unspecified length of time in order to come into compliance.

And our Founders intended that the states would retain their bite, not become mere toothless, yapping curs. If enough states and local governments offer resolute opposition to illegal federal encroachments, the would-be federal despots would be forced to back down. Fisher Ames, one of our distinguished Founders and an eloquent Federalist, told the Convention of Massachusetts:

A consolidation of the States would subvert the new Constitution, and

against which this article is our best security. Too much provision cannot be made against consolidation. The State Governments represent the wishes and feelings, and local interests of the people. They are the safeguard and ornament of the Constitution; they will protract the period of our liberties; they will afford a shelter against the abuse of power, and will be the natural avengers of our violated rights.

James Madison addressed these concerns in *The Federalist*, No. 39, and likewise posited that the states would be the guardians against consolidation:

An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts.... But as the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which



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were not, by that act, EXCLUSIVELY delegated to the United States.

Opponents of state nullification claim that state legislators who support such efforts are being foolish (or worse) for attempting to bring the federal juggernaut to heel. But Alexander Hamilton, in *The Federalist*, No. 26, argues that the state legislatures are one of the crucial checks and balances of our system. He writes:

The State legislatures, who will always be not only vigilant but suspicious and jealous guardians of the rights of the citizens against encroachments from the federal government, will constantly have their attention awake to the conduct of the national rulers, and will be ready enough, if any thing improper appears, to sound the alarm to the people, and not only to be the VOICE, but, if necessary, the ARM of their discontent. [Emphasis in original.]

The Founders recognized, however, that

ultimately, even state legislators would only be actuated to stand firm for state rights against encroachments from the federal government as long as the people themselves maintained a “vigilant and manly spirit.”

In *The Federalist*, No. 57, Madison answers an important question regarding what is to restrain Congress from violating the rights of the people. He responds:

I answer: the genius of the whole system; the nature of just and constitutional laws; and above all, the vigilant and manly spirit which actuates the people of America, a spirit which nourishes freedom, and in return is nourished by it.

To Yield or Not

The federal leviathan is steadily devouring the rights of the states and the people. Under the National Defense Authorization Act (NDAA), American citizens have been virtually stripped of protections against summary arrest and indefinite detention. Under ObamaCare,

a huge portion of our national economy is being commandeered by federal bureaucrats and the states risk becoming mere administrative units of the all-intrusive, all-encompassing federal medical state. Federal agencies now claim the right to tap, collect, and store all of our electronic communications and to keep us under surveillance 24/7. The federal TSA is determined to expand its invasive groping practices from airports to all public transportation facilities, even to roadblocks on highways and city streets.

The people and the states not only do not have to yield to this relentless federal onslaught; it is our duty as free Americans to resist this onslaught and roll back the federal government to the confines that the Constitution imposes. The Constitution is not self-enforcing; it requires that “vigilant and manly spirit” on our part that Madison referred to and found so praiseworthy. We can exercise that spirit by initiating and/or supporting nullification efforts by state and local officials aimed at curtailing federal usurpations and preserving our liberties. ■



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