

Idaho Has Declared It Won't Obey New Federal Gun Laws

2014-05-23 22:46:59 by Southern

In conservative states, "nullification" laws are becoming popular—but they're likely pointless.



(Karen Bleier/AFP/Getty Images)

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Last Friday, Idaho passed a law declaring that the state does not have to abide by federal gun laws going forward. The law, which criminalizes the enforcement of federal gun laws, passed unanimously in both the House and the Senate and takes effect immediately.

Under the new law, state law-enforcement officials could also be fined up to \$1,000 and charged with a misdemeanor for enforcing federal gun laws.

"This is an important first step for Idaho," Tenth Amendment Center spokesman Mike Maharrey told BenSwann.com. "Getting this law passed will ensure that any new plans or executive orders that might be coming our way will not be enforced in Idaho. Then, once this method is established and shown to be effective, legislators can circle back and start doing the same for federal gun control already on the books."

Both Alaska and Kansas have passed similar "nullification" laws. Kansas approved the Second Amendment Protection Act last April, and Alaska enacted a similar law in June. A ProPublica investigation from last spring found that at least 37 other states have introduced similar bills. Under the Kansas law, residents could "manufacture and sell semi-automatic weapons in-state without a federal license or any federal oversight." The law also made it a felony for federal authorities to enforce any law that conflicts with state law.

Idaho's Legislature—which enjoys a Republican supermajority in both its

chambers—has become home to many state laws that attempt to circumvent federal law. Earlier this month, the state tried and failed to pass a bill that would have outlawed federal environmental regulations. And in 2011, Idaho tried to declare the Affordable Care Act null and void. Since then, Gov. Butch Otter has come under attack from his fellow Republicans for softening his position on Obamacare.

Writ large, many conservative states are exploring creative but arcane ways to circumvent federal law. One growing conservative cause at the state level, the Article V movement, would attempt to call a convention of states to make laws in lieu of federal oversight.

The problem for states that have passed such nullification laws is that they are unconstitutional, *prima facie*. The Constitution's supremacy clause establishes that federal law trumps state law, and precedent has established the Supreme Court as the ultimate arbiter of a law's constitutionality. Under the supremacy clause, for example, federal drug-enforcement agents could technically arrest marijuana users in Colorado or Washington, even though it is legal under state law. For the same reason, Obamacare is the law of the land, whether states like it or not.

After the Kansas law was passed, U.S. Attorney General Eric Holder wrote a letter to Gov. Sam Brownback saying the law was unconstitutional. "Federal officers who are responsible for enforcing federal laws and regulations in order to maintain public safety cannot be forced to choose between the risk of a criminal prosecution by a state and the continued performance of their federal duties," Holder wrote. "The United States will take all appropriate action, including litigation if necessary, to prevent the State of Kansas from interfering with the activities of federal officials enforcing federal law."

Still, these states argue that they, not the Supreme Court, should be the ultimate arbiters of a law's constitutionality: "This is definitely a case that could make it to the Supreme Court," Kansas Secretary of State Kris Kobach said back in 2013. "There is nothing symbolic about this law."

So ironically, in order for these laws to remain legal, states would have to get the Supreme Court to agree to its own impotence in matters of constitutionality when state laws are involved. It's a bit of a catch-22. For now, though, the federal government mostly seems to be ignoring these laws and carrying on with business as usual.

[National Journal](#)

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