State of the Nullification Movement

2019-20 Tenth Amendment Center Annual Report
“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.”
In This Report

“The ground of liberty is to be gained by inches, that we must be contented to secure what we can get from time to time, and eternally press forward for what is yet to get.”
-Thomas Jefferson
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Introduction

“Let us remember that if we suffer tamely a lawless attack upon our liberty, we encourage it, and involve others in our doom!”

Writing as Candidus in the Boston Gazette on Oct. 14, 1771, Samuel Adams recognized an important and timeless truth. Turning a blind eye to an attack on liberty only guarantees that more attacks will follow in the future.

The same goes for violations of the Constitution, which the Founders often referred to as “usurpations,” or the exercise of “arbitrary power.”

History bears out this truth. Step-by-step, the federal government has expanded its own power and chipped away our liberties as most people turned a blind eye.

In his 1791 Opinion on the Constitutionality of a National Bank, Thomas Jefferson agreed with Adams in principle when he wrote:

“I consider the foundation of the Constitution as laid on this ground: That ‘all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people.’ [10th Amendment] To take a single step beyond the boundaries thus specifically drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.” [emphasis added]

Today we face a federal government that has taken literally hundreds of thousands of steps beyond the boundaries drawn by the Constitution.

Here at the Tenth Amendment Center, we will never turn a blind eye, and step-by-step, we’re pushing the feds back.

But turning things around from a government with tens of thousands of unconstitutional “laws,” regulations, rules and orders on the books isn’t going to happen in a single step either.

As Thomas Jefferson put it in a 1790 letter to the Rev. Charles Clay:

“The ground of liberty is to be gained by inches, that we must be contented to secure what we can get from time to time, and eternally press forward for what is yet to get. It takes time to persuade men to do even what is for their own good.” [emphasis added]
To be blunt, anyone promising a silver bullet is lying to you.


While the odds are certainly against us, we can take comfort in the fact that we have a lot of amazing advice – successful advice – from the Founders and Old Revolutionaries.

Take this short expression for example. You can find on most pages of our website and on official TAC membership cards.

“Concordia res parvae crescunt.”

John Dickinson wrote those words in response to the Townshend Acts of 1767. It’s a Latin phrase meaning “small things grow great by concord.” And it’s something we value immensely every single day here at the TAC.

Background

In May 1765, when most attention was being paid to the hated Stamp Act, King George III gave Royal Assent to the Quartering Act requiring the colonies to house British soldiers in barracks provided and paid for by the colonies.

If those barracks were too small to house all the British soldiers, then the colonies or the specific localities in question were required to accommodate them in local “inns, livery stables, ale-houses, victuallling-houses, and the houses of sellers of wine.”
And should there still be soldiers without accommodation after all these “publick houses” were filled, the colonies were then required to “take, hire and make fit” for these soldiers, “such and so many uninhabited houses, outhouses, barns or other buildings, as shall be necessary” to house the rest.

However, the New York colonial assembly didn’t like being commandeered to provide and pay to house British troops, so it refused to comply with the law.

More than two years later, the first of the Townshend Acts, the New York Restraining Act, suspended the assembly and governor of New York by prohibiting them from passing any new bills until they agreed to comply with the Quartering Act 1765.

In effect, this left all decision-making outside the colony.

This sounds familiar, doesn’t it?

The most influential response to the acts came from John Dickinson, widely known as “the Penman of the Revolution.” Opposing the new Acts, he wrote a series of 12 essays known as “Letters from a Farmer in Pennsylvania.”

In the first of his “Letters,” Dickinson spent time discussing the New York Restraining Act. He wrote:

“Whoever seriously considers the matter, must perceive that a dreadful stroke is aimed at the liberty of these colonies. I say, of these colonies; for the cause of one is the cause of all. If the parliament may lawfully deprive New York of any of her rights, it may deprive any, or all the other colonies of their rights; and nothing can possibly so much encourage such attempts, as a mutual inattention to the interests of each other. To divide, and thus to destroy, is the first political maxim in attacking those, who are powerful by their union.”

He continued on to say that, in essence, the rightful response at that moment would have been for other colonial assemblies to at least pass non-binding resolutions informing Parliament that the act was a violation of rights and that it should be repealed.

Why?

His answer came through clearly at the end of this first letter, where he signed off with that Latin phrase mentioned above, *Concordia res parvae crescant.*

Small things grow great by concord.
We Won’t Stand Idly By

In many ways, today’s federal government has effectively suspended the legislative power of the states by assuming powers never delegated to it in the Constitution.

For far too long, people have stood idly by. They’ve put all their time, energy and money into “voting the bums out,” hoping that a new crop of federal politicians will ride in and save the day. But, while new bums have come and gone – and come and gone, and come and gone – the day has yet to be saved.

Pushing off the yoke of the most powerful government in the history of the world is not something that’s going to happen in one fell swoop. This is something that Dickinson and many others recognized early on.

“Great Britain,” they say, “is too powerful to contend with; she is determined to oppress us; it is in vain to speak of right on one side, when there is power on the other; when we are strong enough to resist we shall attempt it; but now we are not strong enough, and therefore we had better be quiet; it signifies nothing to convince us that our rights are invaded when we cannot defend them; and if we should get into riots and tumults about the late act, it will only draw down heavier displeasure upon us.”

Today, just as in the pre-Revolutionary times, many people are afraid of upsetting the status quo. So they sit idly by – and urge others to the same

Dickinson’s response?

“Are these men ignorant that usurpations, which might have been successfully opposed at first, acquire strength by continuance, and thus become irresistible?”

He was far from alone. Samuel Adams, for example, urged the same:

“The liberties of our country, the freedom of our civil Constitution are worth defending at all hazards; and it is our duty to defend them against all attacks.”

If people stand by and do nothing we absolutely know what the result will be.

The Tenth Amendment Center hasn’t been standing idly by at all. For well over a decade, we’ve been pushing back against unconstitutional federal power. In the early days, it was all about first steps, sometimes as small as passing non-binding resolutions in support of the Tenth Amendment. But even though this movement still has thousands of steps yet to go, it has traveled many miles beyond those first small steps.
Here’s the bottom line - no matter how much the odds appear to be against us, it’s our duty to do what’s right. For us at the Tenth Amendment Center, doing what’s right is pretty straightforward: The Constitution. Every issue, every time. No exceptions, no excuses.

**Playing the Long Game**

Step-by-step is the only way to victory, but it’s not an easy path. Most people want a quick fix. The truth is when it comes to rolling back government power, there is no quick fix. The federal government has been usurping power and expanding its reach for decades. We won’t roll it back in a year.

This reality tends to discourage people. They focus on what cannot be done today and miss the bigger picture – what we can do today to set the stage for what we will do tomorrow.

We have a long fight ahead of us, and we won’t win it through one decisive battle or a quickly executed short-game.

**Turning Radical Idealism into Workable Strategy**

It’s one thing to have lofty goals. Achieving them takes more than strong rhetoric. You have to have a solid, actionable strategy.

In response to the hated Alien and Sedition Acts, Thomas Jefferson used the Kentucky and Virginia Resolutions of 1798 to lay out the principles of nullification. But the resolutions themselves did not nullify the Alien and Sedition Acts. Instead, Jefferson and Madison first created a framework for future action.
On November 17, 1798, one day after passage of the Kentucky Resolutions, Thomas Jefferson sent a draft to James Madison, along with a letter. He wrote:

“I inclose you a copy of the draught of the Kentucky resolves. I think we should distinctly affirm all the important principles they contain, so as to hold to that ground in the future, and leave the matter in such a train as that we may not be committed absolutely to push the matter to extremities, & yet may be free to push as far as events will render prudent.”

Jefferson and Madison stated their principles, justified their actions, and then left the door open to proceed with a practical strategy they could adapt as circumstances evolved.

At the TAC, we try to follow this blueprint. We always keep the ultimate goal in front of us, but we act strategically when and how specific situations allow. It’s a balancing act - always keeping in mind that you don’t achieve radical long-term change by abandoning radical principles.

William Lloyd Garrison took a similar tack in his battle against slavery in the U.S.

Garrison ranks as one of the greatest abolitionists in American history, and he understood this strategy too. He steadfastly stuck by his call for absolute and immediate emancipation of all slaves.

While it seems absurd to our 21st-century sensibilities, total abolition of slavery was an idealistic, radical, extremist position in the mid-1800s. Principled abolitionists were generally reviled, even in the North. The broader abolitionist movement was dominated by pragmatists content with modest policy changes here and there. A lot of them were merely jockeying for political power.

Garrison would have none of this. He believed slavery should end immediately, and he constantly said so. He wasn’t concerned about winning a popularity contest or convincing people he was properly mainstream. He unapologetically wore a badge of radicalism. He unwaveringly pursued the ideal.

But Garrison wasn’t just running around like a proverbial bull in a china shop. He had pragmatic reasons for maintaining his hard-core stance. He recognized that by pushing for the ultimate goal he was more likely to reach it.

“Urge immediate abolition as earnestly as we may, it will, alas! be gradual abolition in the end. We have never said that slavery would be overthrown by a single blow; that it ought to be, we shall always contend.”
Economist and political philosopher Murray Rothbard put it this way in *A Case for Radical Idealism*:

“William Lloyd Garrison was not being ‘unrealistic’ when in the 1830s he first raised the glorious standard of immediate emancipation of the slaves. His goal was the morally proper one, and his strategic realism came in the fact that he did not expect his goal to be quickly reached”

Gradualism in theory indeed undercuts the goal itself by conceding that it must take second or third place to other non- or antilibertarian considerations. For a preference for gradualism implies that these other considerations are more important than liberty.”

At the TAC, we always keep the Constitution and liberty as our core objective. But we also recognize that it will take a series of small victories to reach our ultimate goal.

We’ll never abandon our radical idealism. But we will always work strategically, step-by-step, to achieve those objectives.
Two Definitions

Nullification is a loaded word. To many people, it conjures up images of standoffs with federal agents or even civil war. Many people believe it was some kind of arcane legal principle that died in the civil war.

In order to understand the modern nullification movement, it’s important to cut through the inflammatory rhetoric and understand what the word actually means.

We can actually define nullification in two primary ways; a legal definition and a practical definition.

A modern Merriam-Webster dictionary defines “nullify” in this way:
- to make null; especially: to make legally null and void
- to make of no value or consequence

The first definition is the legal meaning - ending the force of something in law. For example, a court might nullify, or invalidate, a contract between two people. By a ruling of the court, the contract becomes void and has no legal force.

The second definition is the practical meaning - ending the actual effect of something. Merriam-Webster gives an example of a penalty nullifying a goal in a game of soccer. As another example we’re all familiar with, when the flow of traffic moves at 80 mph in a 70 mph zone, the speed limit is nullified in practice and effect. The law remains on the books, but it can’t be practically enforced.

People of the founding era also understood nullification in much the same way. Evidence from contemporary dictionaries of the day indicates 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.
What About John C. Calhoun?

When pundits, members of the media, and other legal experts talk about “nullification,” they almost always focus exclusively on the legal definition.

They specifically fixate on a particular nullification process created and proposed by South Carolina Sen. John C. Calhoun during the so-called “tariff crisis” of the late 1820s and early 1830s.

Given the way the media and academics talk about nullification, you would almost think Calhoun came up with the concept himself. Because Calhoun was a vocal proponent of slavery, nullification opponents play this game to the hilt, inferring, and sometimes outright asserting, that the whole idea is rooted in racism.
Calhoun started with Thomas Jefferson’s reasoning 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.”

In fact, Thomas Jefferson never mentioned a specific path to nullify in the Kentucky Resolutions, or anywhere in his writings. He never outlined a process, much less an exclusive method of nullification, as Calhoun claimed.

But Calhoun took this general principle and invented his own elaborate process to carry out nullification out of thin air.

The Calhoun-inspired South Carolina plan for nullification held that if a single state declared a federal act unconstitutional, it legally overturned the law - not just in that state, but throughout the entire country.

From that point forward, the state’s position must be immediately recognized by the federal government as legally-binding in every state unless ¾ of the other states, in convention, overruled the single state and overturned its nullifying act.

As Mike Maharrey noted in his handbook Smashing Myths: Understanding Madison’s Notes on Nullification, James Madison was asked to offer 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.

The Smashing Myths handbook covers James Madison’s views in more detail.

Calhoun’s process rested solely on a legal definition of nullification. By focusing on this exclusively, mainstream historians and media pundits completely ignore nullification that has happened and is happening now in a more practical sense.
Nullification in Practice and Effect

Given that we generally only hear about Calhoun’s legal nullification, one might be tempted to think that there is no way to nullify without ending the force of something in law. In other words, without a legislative body repealing the law, or a judge striking it down.

But this certainly isn’t always the case, as our speed-limit illustration shows. Most people practice nullification virtually every time they get in their vehicle - unless of course they always drive at or below the posted speed limit.

We find one of the most absurd examples of practical nullification in Virginia, where the state completely bans sex except between married couples. No matter your age or your partner’s, breaking this law will supposedly get you slapped with a Class 4 misdemeanor.

In 2020, Virginia finally repealed this archaic law. However, there is no doubt that while the law was still in effect, it was nullified in practice on a daily basis. Unmarried couples were having sex in Virginia in 2019, and the police did not engage in any bedroom or backseat raids to enforce the law.

Alcohol prohibition provides an example of nullification in practice on an even larger scale. From 1920 to 1933, there was a nationwide federal ban on the sale, production, importation, and transportation of alcoholic beverages.

That ban didn’t work.

Alcohol prohibition didn’t fail because a federal judge struck it down. Prohibition was reduced to a virtually unenforceable decree in much of the country for many reasons, including mass individual disregard of the law, along with a refusal by states to assist in its enforcement. Repeal only happened after it became clear that enforcement was impossible and that there was no popular support for prohibition to continue.

Most commentators today focus solely on nullification as a process in the legal realm and completely ignore its practical definition. This indicates they must believe a lot more people in Virginia have misdemeanor convictions on their records than actually do. These people 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 report, we take a more expansive view of nullification. We think beyond the mere legal and into the realm of 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.”
James Madison gave us a blueprint for practical nullification before the Constitution was even ratified. In Federalist #46, he advised a four-step strategy to resist the enforcement of federal acts. He wrote:

“Should an \textit{unwarrantable measure} of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a \textit{warrantable measure} be so, which may sometimes be the case, \textit{the means of opposition to it are powerful and at hand}. The disquietude of the people; their repugnance and, perhaps \textit{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.” [Emphasis added]
Madison offered a simple but incredibly effective strategy to nullify federal acts in practice - refuse to cooperate.

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

Madison developed this strategy when the federal government was absolutely tiny in size and scope. As we take on the largest government in the history of the world, his blueprint can prove even more effective today. As the National Governors Association pointed out in a letter during the 2013 federal government shutdown, "states are partners with the federal government in implementing most federal programs." [emphasis added]

But here’s a little secret that supporters of the monster state don’t want you to know: Partnerships don’t work too well when half the team quits.

These facts give Madison’s strategy even more power. The feds depend heavily on state and local resources, including personnel, to do virtually everything. When states refuse to participate, it makes it difficult, if not impossible, for the federal government to run its programs or enforce its laws in that state.

Judge Andrew Napolitano agreed 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.”

Whether initiated by individuals or state legislative action, or a combination of the two, non-cooperation - “a refusal to cooperate with officers of the Union,” as James Madison put it - creates serious impediments and obstructions, and can ultimately nullify such federal programs in practice and effect.

Proven Effective in Practice

Madison’s blueprint was put into full effect by northern abolitionists in the years leading up to the Civil War.

The Fugitive Slave Act of 1850 made it a federal crime to help an escaped slave, and denied any semblance of due process to those accused of running away from their “owners.” Northern states implemented policies to effectively end cooperation with enforcement of this federal law, including passage of “personal liberty laws” to thwart fugitive slave rendition.

Individuals simply ignored the federal law and helped escaped slaves travel along the Underground Railroad on the path to freedom. Additionally, Northern juries often refused to convict people charged under the Fugitive Slave Act.
These efforts by individuals, in conjunction with the Personal Liberty Laws, ultimately passed in all the northern states, nullified the federal law in practice and effect.

Leading abolitionists supported this nullification of the Fugitive Slave Act.

For instance, John Greenleaf Whittier, an ardent abolitionist poet from Massachusetts, said: “Since the passage of the Fugitive Slave Law by Congress, I find myself in a position with respect to it, which I fear my fellow citizens generally are not prepared to justify. So far as that law is concerned, I am a nullifier.”

And our grand abolitionist strategist William Lloyd Garrison agreed: “The nullification advocated by Mr Whittier...is loyalty to goodness.”

Southerners considered these northern actions nullification as well. In fact, the first grievance listed in the Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union was northern nullification of the Fugitive Slave Act. It even uses the word “nullify.”

“For many years these laws were executed. But an increasing hostility on the part of the non-slaveholding States to the institution of slavery, has led to a disregard of their obligations, and the laws of the General Government have ceased to effect the objects of the Constitution. The States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Illinois, Indiana, Michigan, Wisconsin and Iowa, have enacted laws which either nullify the Acts of Congress or render useless any attempt to execute them.”

Other seceding states, including Mississippi, Texas and Georgia included similar statements in their own secession documents.
So, while northern actions didn’t end the fugitive slave act in law, they did make it nearly impossible to enforce, nullifying them in practice and effect.

**Anti-Commandeering**

This strategy of non-cooperation has not only been proven effective, it’s also been repeatedly validated by the Supreme Court, with multiple opinions holding that the federal government cannot require states to expend resources or provide personnel to help it carry out its acts or programs.


“We held in New York that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the States’ officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty.”

This captures the heart of Madison’s advice in *Federalist* #46 – a “refusal to cooperate with officers of the Union.”

In 2018, the Supreme Court reaffirmed and even expanded the anti-commandeering doctrine, holding that Congress can’t take any action that “dictates what a state legislature may and may not do” even when the state action conflicts with federal law. Samuel Alito wrote, “a more direct affront to state sovereignty is not easy to imagine.” He continued:

“The anticommandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated into the Constitution, i.e., the decision to withhold from Congress the power to issue orders directly to the States ... Conspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States. The anticommandeering doctrine simply represents the recognition of this limit on congressional authority.”

While Madison’s advice should stand on its own, the unfortunate truth is that it holds more weight within the legal profession and among state legislators simply because the Supreme Court has validated it consistently for over 175 years.
Although we don’t base our philosophical foundation on the opinions of federal judges, we can use this knowledge for a strong strategic advantage.

A significant number of lawyers make up the typical state legislature, and powerful committee chairs are often lawyers too. 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 legislation from moving forward.

For this reason, the anti-commandeering approach makes for an excellent strategy. It eliminates the claim of unconstitutionality and illegality that opponents always raise with other methods of nullification -- for example, legislation that attempts to physically block federal enforcement or that includes the physical arrest of federal agents.

That doesn’t mean nullification bills based on anti-commandeering will easily pass through the legislative process either. In fact, they still face harsh resistance in almost every case. But anti-commandeering bills start to shift the debate to the issues at hand and away from purely academic and legal arguments. It forces opponents of nullification to address issues like asset forfeiture, federal gun control and warrantless surveillance head-on instead of hiding behind arcane legal posturing.

As noted above, according to the National Governors Association, the states “partner” with the federal government to carry out “most federal programs.” That means passing an “anti-commandeering” bill banning the state from participating in a specific federal act or program can make those acts “nearly impossible” to enforce.

As they say - the proof is in the pudding, and in recent years, we’ve seen states pass dozens of anti-commandeering laws. This contrasts vividly with the almost complete failure to pass nullification legislation that seeks to physically block federal agents. The political climate isn’t ready for that type of aggressive action.

The key is in continuing to push bills that will pass and simultaneously create positive practical effects while continuing our work to educate the public on the principles of nullification. If we can change the political climate through education, coupled with tangible legislative success, it will plow the fields for future, more aggressive nullification efforts in cases where it might be necessary.

Just as Jefferson advised in his letter to Rev. Clay quoted earlier:

“The ground of liberty is to be gained by inches, that we must be contented to secure what we can get from time to time, and eternally press forward for what is yet to get. It takes time to persuade men to do even what is for their own good.”
Modern Nullification

Northern nullification of the Fugitive Slave Act of 1850 proved the effectiveness of Madison’s blueprint in a historical context. But can this strategy of non-cooperation be used successfully in a modern political context with today’s seemingly all-powerful federal government?

In a word -- yes!

In fact, it’s already happening.

Practically speaking, 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 use.

To this day, the federal government claims the power to strictly enforce a total prohibition of marijuana. It makes no exception for medical purposes.

As the November vote loomed in 1996, three different presidents came to California to campaign against it. Of course, opponents trotted out the typical “reefer madness” philosophical opposition to the proposition. But they also made a constitutional claim - that the supremacy clause didn’t allow the people of California to defy federal marijuana policy.

They defied it anyway.

With medical marijuana legal in nearly three-dozen states today, it’s easy to forget that those early days of limited medical marijuana legalization in California were precarious. The federal government put heavy pressure on anyone violating its prohibition. The DEA jailed people. The feds took people’s property. The government regularly threatened and carried out more aggressive raids. Initially, the legal market under state law barely registered a blip.

But from those small beginnings, Prop 215 grew into something great.

In 2016, Californians voted to make cannabis legal for recreational use. And even before full legalization went into effect, the plant already ranked as the #1 cash crop in the state.
The growth of the marijuana industry happened despite increasingly aggressive federal enforcement measures in subsequent years, escalating significantly, first under Presidents Clinton and G.W. Bush. Enforcement under President Obama proved even more aggressive in his first term, more than doubling the number of enforcement actions and resources spent by his two predecessors - over three terms - combined.

It also happened in the face of a 2005 Supreme Court opinion in 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, even if it was never bought or sold, and never left your backyard.

At the time of that case, there were 10 states with medical marijuana laws on the books. Not one single state repealed its law after the court issued its opinion. Today, that number has more than tripled, to 33.

Even in the face of increasing federal enforcement measures, the states found the winning path. It’s only a matter of time before they overwhelm federal enforcement capabilities completely. At that point, the feds will have to act like they’ve decided to drop the issue just to save face.

We’ll cover more details on continuing efforts later. More importantly, however, this represents an effective strategy that can be implemented on other issues too.

**It’s Up to Individuals**

Political action at the state and local level is key to taking on overreaching federal power, but depending on government action alone to nullify isn’t enough. Ultimately it takes individuals willing to engage in the prohibited activity.

In short, it takes human action.

Drivers nullify speed limits on highways every day simply because they aren’t willing to drive as slow as the government mandates. It requires no government action to nullify a speed limit.

And it is ultimately individual action that serves as the lynchpin for nullification of federal marijuana prohibition, along with every other nullification action. People in California were already using, buying, growing and selling cannabis for both medical and recreational purposes before Prop 215 was passed.

State legalization in 1996, even with its limited, medical scope, cracked open the door for more, and the market responded. Today, Californians have thrown that door wide open. They now use, buy, grow and sell marijuana in even larger numbers. Businesses have taken root in communities, and farmers have embraced the crop.
The underground market eventually created enough pressure to get Prop. 215 approved. Passage of the law facilitated the growth of the market by creating a legal space and allowing people to do what they were already doing without fear of state prosecution. As the market grew, the state legislature passed new laws loosening restrictions further. That allowed the market to grow more, creating a positive feedback loop.

And as the market grew, it became more and more difficult for the feds to put a dent in it.

This demonstrates an important truth - when given even just a little room to flourish, **markets are more powerful than government**.

We can apply this same strategy to countless other issues. For instance, states can pass laws making it easier to use gold and silver in everyday transactions as a step toward nullifying the Federal Reserve’s monopoly on money.

But for this to be truly effective, markets need to develop. People and businesses have to actually start using gold and silver in daily transactions. Or states can facilitate free-market alternatives to Obamacare, but it won’t usher in the collapse of federal health care unless people take advantage of these alternatives.

When we’ve seen people rely on government efforts alone to nullify a federal act, it has not fared well over the long haul. After the passage of the REAL ID Act in 2005, multiple states passed laws blocking the implementation of the national ID program. A decade later, the majority of states still hadn’t complied with REAL ID mandates. But over the last few years, resistance has withered under constant federal pressure. A number of states that initially passed laws prohibiting implementation of REAL ID, including Idaho, Oklahoma and Utah, have reversed course.

The lesson here is clear - government action alone is an unreliable way to resist federal power. It is essential that individuals commit themselves to exercise their freedom - whether Washington D.C. wants them to or not.

As Thomas Jefferson put it in 1774, “A free people [claim] their rights as derived from the laws of nature, and not as the gift of their chief magistrate.

With 33 states - and counting - taking actions in varying degrees to nullify federal cannabis prohibition in practice and effect, we can look to their approach for a successful strategy on other issues.

In 2019 and 2020, state legislatures passed 88 laws that push back against federal power in some way. That compares with 36 in 2018.
Many of these new laws expanded nullification efforts that were already underway. For example, a number of states expanded their medical or recreational marijuana laws. North Carolina expanded its Right to Try Act to reject additional FDA regulations. And New Mexico closed a loophole in its recently reformed state asset forfeiture process that city police were using to circumvent restrictions on seizing property.

The expansion of nullification efforts already on the books reaffirms Jefferson’s strategy, “the ground of liberty is to be gained by inches.” Passing bills that take a single step forward sets the stage for more in the future.

In the sections ahead, we’ll cover prominent state and local actions in the 2019 and 2020 legislative sessions that open the door to undermining federal power -- first steps, second steps and beyond.
Note: The 2020 legislative session came to a standstill in the midst of the coronavirus pandemic. Some legislatures adjourned sine die early and others announced indefinite recesses. We’ve reported on all of the bills that passed before the shutdown. If legislatures reconvene this year and take further action, we will cover those bills in our next report.
Before the crash in the first quarter of 2020, the stock market soared to record highs in 2019. The surging markets were a favorite subject of President Trump’s Twitter feed. It was proof, according to him, that we experienced “the greatest economy in American history.”

To hear the president tell it, the world had never seen this kind of economic growth. But the truth is the world did see it - during the Obama administration. Economic growth during the Trump administration looked an awful lot like economic growth during the Obama era. In 2019, GDP grew by 2.3 percent. That wasn’t even as high as Obama’s best year.

In historical terms, U.S. economic growth in 2019 was tepid.

And the crash in early 2020 revealed the rot in the economy’s foundation. While most people blame the coronavirus for the market crash, the pandemic was merely the pin that popped the bubble. In fact, we saw trouble in the stock markets long before the coronavirus reared its ugly head.

So, if the economy wasn’t really booming, why was the stock market setting records?

Look no further than the Federal Reserve.

When people talk about the economy, they generally focus on government policies such as taxation and regulation. For instance, Republicans credit Pres. Trump’s tax cuts for the seemingly booming economy and surging stock markets.

Meanwhile, Democrats blame “deregulation” for the 2008 financial crisis. While government policies do have an impact on the direction of the economy, this analysis completely ignores the biggest player on the stage – the Federal Reserve.

You simply cannot grasp the economic big-picture without understanding how Federal Reserve monetary policy drives the boom-bust cycle.

The effects of all other government policies work within the Fed’s monetary framework. Money-printing and interest rate manipulations fuel booms and the inevitable attempt to return to “normalcy” precipitates busts.
In simplest terms, easy money blows up bubbles. Bubbles pop and set off a crisis. Rinse. Wash. Repeat.

This is just what happened after the 2008 economic crisis, and what fueled the bubble that’s deflating right now.

The Fed not only dives the economic boom-bust cycle; it also enables out-of-control government spending.

The budget deficit topped $1 trillion in calendar year 2019. It was the first budget deficit over $1 trillion in any calendar year since 2012 and the Trump administration was on track to run a trillion-plus deficit in fiscal 2020 even before coronavirus.

The federal government has only run deficits over $1 trillion in four fiscal years, all during the Great Recession. Even before the coronavirus economic shutdown, the Fed was already running the kinds of deficits you would expect during a deep recession, despite having what Trump keeps calling “the greatest economy in the history of America.”

Mainstream pundits tend to blame the 2017 tax cuts for the ballooning deficits, but revenue has actually increased. The problem is spending has increased even faster.

Meanwhile, the national debt climbed over $23 trillion in 2019.

To put this into some historical perspective, the national debt topped $22 trillion in February 2019. When President Trump took office in January 2017, the debt was at $19.95 trillion. That represented a $2.06 trillion increase in the debt in just over two years. And the borrowing pace continues to accelerate. It didn’t even take a full year to add another $1 trillion to the debt.

It should be obvious that spending was already out of control even before coronavirus. The response to the pandemic put it into overdrive. In March 2020, Congress passed a 883-page, $2 trillion stimulus bill. And that’s likely just the tip of the iceberg.

Coupled with the economic downturn that’s just beginning, it’s impossible to even guess how high deficits will run over the next few years.

This kind of spending would be impossible if the Federal Reserve was not monetizing the debt. The central bank is effectively funding government spending at well-below free-market interest rates via monetary creation on a massive scale.

The Fed effectively prints money out of thin air and then purchases U.S. Treasury bonds, creating artificial demand and holding interest rates down.
In many ways, spending is merely a symptom. The problem is a federal government that has grown far beyond its intended scope. Politicians with no respect for constitutional limits drive the spending and the Federal Reserve enables it. In fact, without the central bank backstopping federal borrowing, and printing money out of thin air, the federal government would find it nearly impossible to finance the unconstitutional federal welfare and warfare state.

For many years, Ron Paul spearheaded efforts to end - or at least audit - the Fed on a federal level. But the powers-that-be in Washington D.C. will almost certainly never let that happen. Nevertheless, we find successful efforts at the state level to chip away at the Federal Reserve’s monopoly on money, and these efforts continued to pick up steam.

By passing laws that encourage and incentivize the use of gold, silver and cryptocurrency in daily transactions by the general public, state action has the potential to create a wide-reaching impact, and set the foundation to nullify the Fed’s monopoly power over the monetary system.

There are a number of concrete steps being taken to expand the market for gold, silver and crypto as money.

**Recognize Gold and Silver as Legal Tender**

In 2011, Utah became the first state in modern times to formally recognize gold and silver coins issued by the United States as legal tender. In practice, the value is based on the market price of the metal, not the coin’s face value. The impact of this success is multi-tiered. Many forms of gold and silver inside the Beehive State are now recognized to be what they are – legal tender under Article I, Section 10 of the United States Constitution.

The Utah law protects gold and silver’s role as money and fosters their use – creating a first-hand opportunity for the state’s 3 million residents to experience the superiority of sound money. The educational impact of millions of people coming in direct contact with sound money over time cannot be overstated.

The law has also had a practical effect, opening the door for the development of a gold and silver market in Utah. With some legal hurdles cleared away by the state, United Precious Metals Association (UPMA) set up the state’s first “gold bank.”

UPMA offers publicly available accounts denominated in gold and silver dollars. In just a short time, it grew 700 percent in assets under management and makes up about 2 percent of the market for U.S gold and silver coins. You don’t even have to live in Utah to open an account, and an account-holder can conduct business in gold and silver with any other account-holder across the country.
UPMA has also issued Goldbacks, a local, voluntary currency. Goldbacks are dollar-denominated currencies made from physical gold. The company created a process that turns pure gold into a spendable form for small transactions.

Wyoming and Oklahoma have also officially recognized gold and silver as legal tender.

**Eliminate Sales Taxes and Capital Gains Taxes on the Exchange of Money**

Imagine if you asked a grocery clerk to break a $5 bill and you were charged a 35 cent tax. Silly, right? After all, you were only exchanging one form of money for another. But that’s essentially what a sales tax on gold and silver does.

Sales tax and capital gains taxes treat gold and silver as a commodity instead of money. They also create a barrier to using gold and silver in everyday transactions. Repealing taxes is a crucial first step toward the use of specie as money.

Last year, Kansas and West Virginia both repealed their sales tax on the sale of gold, silver and other precious metal bullion. This is an important first step toward creating currency competition and breaking the Fed’s monopoly on money. They joined at least 37 states that have already done the same.

While repealing state sales taxes on precious metals may seem like a relatively small step, it removes one barrier to owning gold and silver and eliminates a penalty on the use of sound money.

“We ought not to tax money – and that’s a good idea. It makes no sense to tax money,” former U.S. Rep. Ron Paul said during testimony in support of an Arizona bill that repealed capital gains taxes on gold and silver in that state back in 2017. “Paper is not money, it’s fraud,” he continued.

**Establish State Gold Depositories**

The Texas Bullion Depository officially opened for business in 2018. The creation of a state bullion depository in Texas represents a power shift away from the federal government to the state, and it provides a blueprint that could ultimately end the Fed.


The depository will provide a secure place for individuals, businesses, cities, counties, government agencies, and even other countries to store gold and other precious metals.
You don’t have to be a Texas resident to use the depository. Any U.S. citizen can set up an account online and then ship or personally deliver metal to the facility. The Texas Bullion Depository accepts gold, silver, platinum, rhodium and palladium.

The law also creates a mechanism to facilitate the everyday use of gold and silver in business transactions.

While the depository does not currently have a system in place to facilitate everyday transactions with gold and silver, it remains part of the long-term plan. According to an article in the *Star-Telegram*, state officials want a facility “with an e-commerce component that also provides for secure physical storage for Bullion.”

Ultimately, depositors will be able to use a bullion-funded debit card that seamlessly converts gold and silver to fiat currency in the background. This will enable them to make instant purchases wherever credit and debit cards are accepted.

By making gold and silver available for regular, daily transactions by the general public, the new depository has the potential for a wide-reaching effect. In practice, the Texas Bullion Depository will operate much like the privately-owned UPMA already established in Utah.

In 2019, Texas passed a constitutional amendment and enabling legislation that exempts precious metals stored in the Texas Bullion Depository from certain taxes. Enactment of this law ensures there won’t be any barriers to using gold and silver stored in the depository for everyday financial transactions.
In 2016, both houses of the Tennessee legislature unanimously passed a resolution in support of creating a depository in the Volunteer State. Gov. Bill Haslam signed the resolution. Despite overwhelming support, the legislature did not follow up with a bill to establish a depository in any of the following four years.

UPMA and the Texas bullion depository offer a strategy for other states to follow. If the majority of states controlled their own supply of gold, it would conceivably make the Federal Reserve completely irrelevant and set the foundation for the people to nullify the federal reserve’s monopoly on money in practice and effect.

**Cryptocurrency**

In 2018, Wyoming enacted several laws to facilitate and encourage the use of cryptocurrency, positioning itself to become the national leader in cryptocurrency and blockchain sectors.

In 2019, the state followed up with three more laws to support and encourage the use of cryptocurrencies in the state.
The first law created a legal framework for chartering “special purpose depository banks” tailored to serve cryptocurrency and blockchain businesses.

The second law specifies that digital assets are property within the Uniform Commercial Code and authorizes security interests in digital assets. The law also clears the way for banks to serve as crypto custodians.

A third bill signed by the governor enables securities to be issued in a tokenized form in Wyoming. “Normally, a stock certificate is a piece of paper. ... If you want to use a blockchain token to represent a stock certificate, [that would be] legal in Wyoming. [It would be] a legally issued security,” the sponsor of the bill said.

In combination, these laws have not only set Wyoming on the path toward becoming the cryptocurrency capital; they also take an important first step toward generating currency competition.

If other forms of money, whether it be cryptocurrencies or gold and silver, gain a foothold in the marketplace against Federal Reserve notes, people will be able to choose them over the central bank’s rapidly-depreciating paper currency. The freedom of choice expanded by these laws helps allow Wyoming residents secure the purchasing power of their money.

**The Big Picture**

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 - almost none of which contain gold or silver.
In a paper for the Mises Institute, constitutional tender expert Professor William Greene said that when people in multiple states actually start using gold and silver instead of Federal Reserve Notes, it would effectively nullify the Federal Reserve and end the federal government’s monopoly on money.

“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.”

Once things get to that point, Federal Reserve notes would become largely unwanted and irrelevant for ordinary people.

All of these state efforts open the door for a serious push-back against the Fed and its monopoly on money. But state action alone won’t accomplish the goal. Ultimately, it will be up to everyday people to take advantage of these state laws and actually start using gold, silver and cryptocurrency as money.
The United States is hurtling toward an Orwellian surveillance state.

Federal agencies, including the NSA, the FBI and the DEA are leading the push, but they could never run their rapidly-expanding surveillance network without the willing cooperation of state and local law enforcement agencies.

Over the years, the feds have implemented a very effective scheme to increase surveillance within the borders of the United States.

Thanks to federal dollars, local police have access to a mind-boggling array of surveillance equipment. The federal funding process also often allows law enforcement agencies to obtain this high-tech, extremely intrusive technology without any approval or oversight. Members of the community, and even elected officials, often don’t know their police departments possess technology capable of sweeping up electronic data, phone calls and location information.

In return for this federal money, state and local police make the information they gather through their surveillance programs available nationwide through federal databases. The feds, along with police in other jurisdictions, can share and tap into vast amounts of information gathered at the state and local level through fusion centers and a system known as the “information sharing environment” or ISE.
Fusion centers were sold as a tool to combat terrorism, but that is not how they are being used. The ACLU pointed to a bipartisan congressional report to demonstrate the true nature of government fusion centers: “They haven’t contributed anything meaningful to counterterrorism efforts. Instead, they have largely served as police surveillance and information sharing nodes for law enforcement efforts targeting the frequent subjects of police attention: Black and brown people, immigrants, dissidents, and the poor.”

Fusion centers operate within the broader ISE. According to its website, the ISE “provides analysts, operators, and investigators with information needed to enhance national security. These analysts, operators, and investigators...have mission needs to collaborate and share information with each other and with private sector partners and our foreign allies.”

In other words, ISE serves as a conduit for the sharing of information gathered without a warrant. Known ISE partners include the Office of Director of National Intelligence which oversees 17 federal agencies and organizations, including the NSA. ISE utilizes these partnerships to collect and share data on the millions of unwitting people they track.

In effect, these federal entities facilitate a surveillance state integrated with virtually every state and local agency in the country.

**We Were Warned**

Orwell’s *1984* was written as a warning, but it seems governments in the United States have adopted it as an instruction manual instead. With a vast array of high-tech gadgetry at their disposal, federal, state and local governments monitor us, snoop on us, listen to us, vacuum up and store reams of our private data, and spy on all of us with almost total impunity.

Sen. Frank Church issued this warning in 1975.

“If this government ever became a tyranny, if a dictator ever took charge in this country, the technological capacity that the intelligence community has given the government could enable it to impose total tyranny, and there would be no way to fight back.” [emphasis added]

That was more than 40 years ago.

Church was talking about the potential for “total tyranny” before widespread public access to the internet, before cell phones and before the proliferation of email. Today, the technological capacity of the NSA, along with surveillance tools in the hands of state, local and federal law enforcement agencies, exceed anything he could have imagined.

In 1975, Church insisted Congress needed to take action to make sure the NSA and other agencies with surveillance powers operate legally and with accountability.
Congress never acted. In fact, it has doubled down on federal surveillance with the Patriot Act and other laws expanding federal spying since 9/11.

Pushing Back Through State Action

Edward Snowden raised awareness of warrantless federal spying conducted by the NSA and other federal intelligence agencies when he released reams of documents beginning in 2013. This created a public outcry, but led to little in the way of reform in Washington D.C.

In the wake of the Snowden revelations, we asked the question: if Congress won’t rein in out of control spy agencies, is there anything that states can do? It seemed like an impossible task. After all, what can Utah do to stop a powerful federal intelligence agency?

As it turns out, quite a bit. As we dug deeper, we discovered the NSA has an Achilles heel. In 2006, reports surfaced indicating that the NSA had maxed out its capacity of the Baltimore-area power grid.

To get around the physical limitation of the amount of power required to monitor virtually every piece of communication around the globe, the NSA started searching for new locations with their own power supplies and other resources. The NSA chose the Utah Data Center in Bluffdale due to the access to cheap utilities, primarily water. The water-cooled supercomputers require as much as 1.7 million gallons of water per day just to function.

But here’s a little secret they don’t want you to know: No water = No NSA data center.

The water provided to the Utah Data Center comes from a political subdivision of the state of Utah. They have the authority to turn that water off.

The situation is similar at many other locations, including a massive NSA facility in San Antonio, Texas.

Based on these revelations, we drafted the Fourth Amendment Protection Act. Since then, a dozen states have considered legislation to ban “material support or resources” to NSA mass surveillance programs over the last four years.

In 2014, California Gov. Jerry Brown signed SB828 into law, laying the foundation for the state to turn off water, electricity and other resources to any federal agency engaged in mass warrantless surveillance. The California law needs additional steps for effectuation by defining specifically what actions constitute “illegal and unconstitutional.” As a next step, the legislature needs to amend the current law or pass new legislation that puts the prohibition of state cooperation into immediate effect.
In 2018, Michigan built on this foundation with the passage of HB4430. The new law prohibits the state and its political subdivisions from assisting, participating with, or providing “material support or resources, to a federal agency to enable it to collect, or to facilitate in the collection or use of a person’s electronic data,” without a warrant or under a few other carefully defined exceptions.

The original, legal definition of “material support or resources” included providing tangible support such as money, goods, and materials and also less concrete support, such as “personnel” and “training.” Section 805 of the PATRIOT Act expanded that definition to include “expert advice or assistance.”

Practically-speaking, the legislation will almost certainly stop the NSA from ever setting up a new facility in Michigan - assuming of course Michiganders follow through and enforce the law.

The same approach can help stop the NSA from expanding in other states, too. By passing this legislation, a state becomes much less attractive for the NSA because they will not be able to access state or local water or power supplies. If enough states step up and pass the Fourth Amendment Protection Act, we can literally box them in and set the stage to shut them down.

**State Surveillance Programs**

Although NSA spying remains the most high-profile warrantless surveillance program, the federal government has created a national surveillance network that extends well beyond the operation of this single agency. In fact, as we’ve already shown, state and local law enforcement have become vital cogs in the national surveillance state.

State, local and federal governments work together to conduct surveillance in many ways. As a result, efforts to protect privacy at the state and local level have a significant spillover effect to the national level.

While continuing efforts to cut off resources to NSA facilities in recent years, we also focused on four major state-federal surveillance partnerships.

**ALPR/License Plate Tracking**

As reported in the *Wall Street Journal*, the federal government, via the Drug Enforcement Agency (DEA), tracks the location of millions of vehicles through data provided by Automatic Licence Plate Readers (ALPRs) operated on a state and local level. They’ve engaged in this for nearly 10 years, all without a warrant, or even public notice of the policy.
State and local law enforcement agencies operate most of these tracking systems, which are often paid for by federal grant money. The DEA then taps into the local database to track the whereabouts of millions of people – for the “crime” of driving – without having to operate a huge network itself.

ALPRs can scan, capture and record up to 1800 license plates every minute and store them in massive databases, along with date, time and location information.

Records obtained by the Electronic Frontier Foundation (EFF) through open records requests encompassed information compiled by 200 law enforcement agencies that utilize ALPRs. The data revealed more than 2.5 billion license plate scans in just two years (2016 and 2017).

Perhaps more concerning, this gigantic sample of license plate scans reveals that 99.5 percent of this data was collected regardless of whether the vehicle or its owner were suspected of being involved in criminal activity. On average, agencies share this data with a minimum of 160 other agencies. In some cases, agencies share this data with as many as 800 other agencies.

Police generally configure ALPRs to store the photograph, the license plate number, and the date, time, and location of a vehicle’s license plate, which is bad enough. But according to records obtained by the ACLU via a Freedom of Information Act request, these systems also capture photographs of drivers and their passengers.
With the FBI rolling out a nationwide facial-recognition program in the fall of 2014, and the federal government building a giant biometric database with pictures provided by the states and corporate friends, the feds can potentially access stored photographs of drivers and passengers, along with detailed data revealing their location and activities. With this kind of information, government agents can easily find individuals without warrants or oversight, for any reason whatsoever.

Since a majority of federal license plate tracking data comes from state and local law enforcement, laws banning or even restricting ALPR use are essential. As more states pass such laws, the end result becomes more clear. No data equals no federal license plate tracking program.

Currently, six states have placed significant restrictions on the use of ALPRs. Activists are expected to push several states to consider similar restrictions in the next legislative session.

**Facial Recognition and Biometric Surveillance**

Facial recognition is the newest frontier in the national surveillance state.
Over the last few years, the federal government has spearheaded a drive to expand the use of this invasive technology.

At the same time, some state and local governments have aggressively pushed back.

A recent report revealed that the federal government has turned state drivers’ license photos into a giant facial recognition database, putting virtually every driver in America in a perpetual electronic police lineup. The revelations generated widespread outrage, but this story isn’t new. The federal government has been developing a massive, nationwide facial recognition system for years.

As mentioned above, the FBI rolled out its facial-recognition program in the fall of 2014, with the goal of building a giant biometric database with pictures provided by the states and corporate friends.

In 2016, the Center on Privacy and Technology at Georgetown Law released “The Perpetual Lineup,” a massive report on law enforcement use of facial recognition technology in the U.S. You can read the complete report at perpetuallineup.org.

The organization conducted a year-long investigation and collected more than 15,000 pages of documents through more than 100 public records requests. The report paints a disturbing picture of intense cooperation between the federal government, and state and local law enforcement to develop a massive facial recognition database.

“Face recognition is a powerful technology that requires strict oversight. But those controls, by and large, don’t exist today,” report co-author Clare Garvie said. “With only a few exceptions, there are no laws governing police use of the technology, no standards ensuring its accuracy, and no systems checking for bias. It’s a wild west.”

There are many technical and legal problems with facial recognition, including significant concerns about the accuracy of the technology, particularly when reading the facial features of people of color. During a test run by the ACLU of Northern California, facial recognition misidentified 26 members of the California legislature as people in a database of arrest photos.

Although we might joke that identifying these politicians as criminals is probably high-accuracy, the impact on everyday people can be extremely detrimental and even life-altering.

With facial recognition technology, police and other government officials have the capability to track individuals in real-time.
These systems allow law enforcement agents to use video cameras and continually scan everybody who walks by.

As with all surveillance technology, the federal government is involved in both funding it and actively working with state and local law enforcement agencies to implement it.

Reports that the Berkeley Police Department in cooperation with a federal fusion center deployed cameras equipped to surveil a “free speech” rally and Antifa counterprotests provided the first solid link between the federal government and local authorities in facial recognition surveillance.

In response, there is a growing movement to ban or limit the use of facial recognition technology at both the state and local level.

In 2019, California enacted a law that prohibits a law enforcement agency or law enforcement official from installing, activating, or using any biometric surveillance system in connection with an officer camera or data collected by an officer camera. This includes body-worn and handheld devices.

This new law had a significant impact. After its enactment, San Diego shut down one of the largest facial recognition programs in the country in order to comply with the law.

Washington state passed a bill that would require a warrant for ongoing and realtime facial recognition surveillance. The bill doesn’t completely ban the use of facial recognition and there is some concern about how police will interpret the statute, but it takes a good first step toward addressing the issue.

There are restrictions on facial recognition under consideration in a number of states including New Jersey, New York, Massachusetts and New Hampshire.

In a nutshell, without state and local cooperation, the feds have a much more difficult time gathering information. Passage of laws banning or restricting the use of facial recognition eliminates one avenue for gathering biometric data. Simply put, data that doesn’t exist cannot be entered into federal databases.

**Stingrays and Electronic Data Collection**

Cell site simulators, more commonly called “stingrays,” are portable devices used for cell phone surveillance and location tracking. They essentially spoof cell phone towers, tricking any device within range into connecting to the stingray instead of the cell tower, allowing law enforcement to sweep up all communications content within range of that tower. The stingray will also locate and track any person in possession of a phone or other electronic device that tries to connect to the tower.
The feds sell the technology in the name of “anti-terrorism” efforts and often provide grants of equipment or money to buy it to state and local law enforcement agencies.

The feds often require the agencies acquiring this technology to sign non-disclosure agreements (NDA). This throws a giant shroud over the program, even preventing judges, prosecutors and defense attorneys from getting information about the use of stingrays in court. With NDAs in place, most police departments refuse to release any information on the use of stingrays. But information that has leaked out reveals police typically use the technology for routine criminal investigations, not terrorism cases.

In 2015, California and Louisiana were the first states to pass laws specifically limiting stingray surveillance, and the push to curtail the warrantless use of these devices has grown since. In 2017, Illinois imposed the most sweeping restrictions on stingrays to date. Arizona, Washington state and New Hampshire also restricted warrantless stingray spying that year.

In 2019, New Mexico barred warrantless stingray spying in its Electronic Communications Privacy Act. The law requires police to obtain a warrant or wiretap order before deploying a stingray device, unless they have the explicit permission of the owner or authorized possessor of the device, or if the device is lost or stolen.

The law also bars law enforcement agencies from compelling a service provider or any person other than the owner of the device without a warrant or wiretap order.
This includes actual communication content such as phone conversations, text messages and email, location information and other metadata such as IP addresses pertaining to a person or device participating in the communication.

In the 2020 session, New Mexico expanded protections under that 2019 law by limiting the retention and use of incidentally-collected data.

The new law strengthens protections by requiring police to seal any information obtained through the execution of the warrant that is unrelated to the objective of the warrant, or that is not exculpatory to the target of the warrant.

The information cannot be subject to further review, used, or disclosed, except pursuant to a court order or to comply with discovery. The law also requires the destruction of any information obtained through the execution of a warrant or order that is unrelated to the objective of the warrant as soon as feasible after the termination of the current investigation and related investigations or proceedings.

Also in 2020, the Maryland legislature passed a bill to ban warrantless stingray spying by adding provisions to existing statutes limiting warrantless location tracking through electronic devices. At the time of publication, the bill is awaiting action by the Governor. The bill addresses the use of cell-site simulators, requiring police to get a court order based on probable cause before deploying a stingray device. The bill also bars police from using a stingray to obtain communication content and spells out explicit criteria law enforcement must meet in order to justify such an order.

The New Mexico Electronic Communications Privacy Act also addresses a particularly galling aspect of the federal surveillance apparatus.

By prohibiting the collection of location information “obtained” without a court order the law will hinder one practical effect of NSA spying in New Mexico.

Information released by Edward Snowden and other whistleblowers revealed the NSA tracks the physical location of people through their cell phones. 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.

It’s likely this number has increased dramatically in the last 6-plus years.

We also know the NSA shares this information with state and local law enforcement. Reuters revealed the extent of such NSA data sharing with state and local law enforcement in an August 2013 article.
According to documents obtained by the news agency, the NSA passes information to police through a formerly-secret DEA unit known as the Special Operations Division. The cases “rarely involve national security issues.” Almost all of the information involves regular criminal investigations, not terror-related investigations.

In other words, not only does the NSA collect and store this data, using it to build profiles, the agency actively encourages state and local law enforcement to violate the Fourth Amendment and similar state constitutional restrictions on warrantless surveillance by making use of this information in their day-to-day investigations.

Former NSA technical director Bill Binney called this “the most threatening situation to our constitutional republic since the Civil War.”

Two other states also expanded their restrictions on warrantless government access to electronic data last year.

Utah passed a bill expanding its electronic data protection by barring law enforcement agencies from accessing electronic information or data transmitted to a “remote computing service” without a warrant based on probable cause in most situations. In effect, it prohibits police from accessing information uploaded into the “cloud” without a warrant. The state previously prohibited both the use of stingrays and accessing data on a device without a warrant.

Illinois also expanded its protection of electronic data in 2019. Under the old law, police were required to get a court order based on probable cause before obtaining a person’s current or future location information using a stingray or other means. The new law removes the words “current or future” from the statute. In effect, the law now includes historical location information under the court order requirement.

As with the other surveillance technology we’ve discussed, information collected by these devices by state and local cops undoubtedly ends up in federal databases. As we’ve already explained, the feds can share and tap into vast amounts of information gathered at the state and local level through the ISE.

In other words, stingrays create the potential for the federal government to track the movement of millions of people, and to collect and store phone conversations, emails and Internet browsing history, all with no warrant, no probable cause, and without anybody even knowing it.

These laws restricting the use of stingray devices not only protect privacy in the state, they also keep the federal government from accessing all kinds of information, including phone conversations, location information and other personal electronic data.
We expect additional states to consider legislation limiting the warrantless use of stingrays during the next legislative session.

**Drones**

Drones, or Unmanned Aerial Vehicles (UAV) serve as highly-effective surveillance tools. According to a report by the EFF, drones can be equipped with various types of spy gear that can collect high definition video and still images day and night.

Drones can be equipped with technology allowing them to intercept cell phone calls, determine GPS locations, and gather license plate information. They can also be used to determine whether individuals are carrying guns. Synthetic-aperture radar can identify changes in the landscape, such as footprints and tire tracks. Some drones are even equipped with facial recognition.

According to research from the Center for the Study of the Drone at Bard College, 347 U.S. police, sheriff, fire, and emergency response units acquired drones between 2009 and early 2017 - primarily sheriffs’ offices and local police departments.
As is the case with other surveillance technologies, much of the funding for drones at the state and local level comes from the federal government, in and of itself a constitutional violation. In return, federal agencies tap into the information gathered by state and local law enforcement.

In 2013, Virginia and Florida kicked off the effort to limit drone surveillance.

Virginia put a temporary ban on the use of drones by police that year, and Florida became the first state to enact permanent restrictions on the use of unmanned aircraft by law enforcement agencies requiring a warrant for most drone surveillance.

From those modest beginnings, 19 states - Alaska, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Montana, Nevada, North Carolina, North Dakota, Oregon, Tennessee, Texas, Utah, Vermont, Virginia, and Wisconsin - now require law enforcement agencies in certain circumstances to obtain a search warrant to use drones for surveillance or to conduct a search.

Several state legislatures are expected to consider restrictions on drone surveillance in the next legislative session.

**Local Action**

There are also efforts to limit surveillance at the local level.

In September 2016, local government officials in 11 cities announced plans to launch legislative efforts to pass ordinances that will take the first step toward limiting the unchecked use of surveillance technologies that violate basic privacy rights and feed into a broader national surveillance state. This proposed legislation requires law enforcement agencies to get the approval from their local governing body before obtaining equipment such as stingray devices, automatic license plate readers (ALPRs) and other surveillance technology.

The announcement kicked off the Community Control Over Police Surveillance (CCOPS) initiative. A broad coalition of partners including the Tenth Amendment Center and the ACLU are working to grow the movement.

Cambridge, Mass. approved an ordinance based on the CCOPS model in December 2018. It joined at least nine other local jurisdictions to do so. Other municipalities that have passed similar laws include Seattle, Nashville, Somerville, Mass., Berkeley, Oakland, Davis, Palo Alto and Santa Clara County, Calif. (home of Silicon Valley). The San Francisco Bay Area Transit Authority also approved such a policy.
Efforts have continued since that initial push. Significantly, a strong coalition is currently pushing a CCOPS ordinance in New York City.

Passage of an ordinance requiring local government approval for procurement of surveillance technology prevents local police from obtaining high-tech spy gear without public knowledge, and provides an avenue for concerned residents to oppose and stop the purchase of spy gear.

This takes a solid first step toward dismantling the surveillance state. Having set a precedent for limiting law enforcement use of spy gear, local governments can follow up by banning certain types of surveillance technology completely.

This is already happening. Many cities that previously passed ordinances have expanded them to include a ban on facial recognition.

San Francisco, Oakland, and Berkeley, California all prohibited government use of facial recognition technology in 2019, along with Cambridge, Somerville, Northampton and Brookline, Massachusetts. Alameda, California took the first step in January 2020, passing a resolution banning the use of facial recognition. Alameda. Council members said the next step will be to pass ordinances that will create a process for enforcing the ban so it cannot be sidestepped or ignored by police. Local action also puts pressure on the state legislature. If enough cities pass local ordinances, it becomes more likely the state will act by imposing warrant requirements, limiting the use of certain types of surveillance equipment and banning some spy gear all together.

Starting with a more easily manageable local effort, activists can take on Big Brother through a bottom-up strategy that builds momentum with each small victory.
Asset Forfeiture

Asset forfeiture is the process by which governments confiscate a person’s property, generally after asserting it was involved in criminal activity or that it was the proceeds from a crime.

Police often seize property as part of the investigative process. In many states, they don’t even have to make an arrest. For instance, officers might let a person go but seize a car they suspect was used to facilitate a drug deal or cash they thought somebody got from selling drugs.

Once police seize property, it becomes subject to the judicial process. If the government prevails, it keeps the assets. How the case proceeds through the legal process depends on the laws of the state.

There are two types of asset forfeiture: criminal and civil.

In a criminal forfeiture process, police must first convict the owner of the property of a crime before they can permanently confiscate their property. After a conviction, prosecutors then must prove the asset was connected to the crime. If they prevail, the state takes permanent control of those assets. This process isn’t particularly problematic. It maintains the requirements of a presumption of innocence and due process.

On the other hand, civil asset forfeiture does not require a guilty verdict. In some states, it doesn’t even require the owner to face criminal charges. In this process, the property itself is literally charged with a crime and is the subject of the legal proceeding.

Property owners must prove that the property wasn’t involved in criminal activity. This flips due process on its head, forcing the owner to establish the property’s “innocence.” This shifts the burden of proof from the state to the citizen.

This process has produced some odd-sounding court case names like State of Texas v. One 2004 Chevrolet Silverado or United States v. One Solid Gold Object in Form of a Rooster.

The federal government and many states have civil asset forfeiture processes. The Institute for Justice (IJ) says, “Civil forfeiture laws pose some of the greatest threats to property rights in the nation today, too often making it easy and lucrative for law enforcement to take and keep property - regardless of the owner’s guilt or innocence.”
How is asset forfeiture lucrative? In many states, law enforcement agencies get to keep some or all of the proceeds from forfeitures. This creates a perverse “policing for profit” motive. Forfeiture proceeds often supplement or increase department budgets and even serve as an indispensable funding source. As a result, law enforcement agencies become incentivized to seize as much property as possible.

In response, there is a growing movement to reform asset forfeiture laws. Several states have ended civil asset forfeiture altogether, replacing it with a criminal forfeiture process. Some jurisdictions have also addressed the policing for profit motive by barring law enforcement agencies from keeping asset forfeiture proceeds. Instead, they must be deposited in the general fund or some other non-law enforcement related account.

While some people believe the Supreme Court “ended asset forfeiture, its opinion in Timbs v. Indiana ended nothing. Without further action, civil asset forfeiture remains. Additionally, as law professor Ilya Somin noted, the Court left an important issue unresolved. What exactly counts as an “excessive” in the civil forfeiture context?

“That is likely to be a hotly contested issue in the lower federal courts over the next few years. The ultimate effect of today’s decision depends in large part on how that question is resolved. If courts rule that only a few unusually extreme cases qualify as excessive, the impact of Timbs might be relatively marginal.”

Going forward, opponents of civil asset forfeiture could wait and see how lower federal courts will address this “over the next few years,” or they can do what a number of states have already taken steps to do, end the practice on a state level.

Equitable Sharing

Even with significant state reforms, police have a federal loophole they can use to continue cashing in on asset forfeiture even when states reform their systems and do away with the monetary incentives.

“Equitable Sharing” incentivizes prosecutors to bypass more stringent state asset forfeiture laws by passing cases off to the federal government.

Both the Department of Justice and the Department of the Treasury operate the program. It works like this: state and local police work the case and then claim it involves federal law or crosses into federal jurisdiction.

Through a process known as “adoption,” the federal government prosecutes the forfeiture case under federal law and splits the proceeds with the local police. Through this program, state and local law enforcement agencies receive up to 80 percent of the take.
In 2018, the federal government distributed over $400 million to state and local law enforcement agencies. That was up from $295 million the previous year.

Until a few years ago, California was a prime example of how equitable sharing undermines state-level restrictions on civil asset forfeiture.

The state has some of the strongest restrictions in the country, but state and local police were circumventing the state process by passing cases to the feds and accessing the equitable sharing program.

According to a report by IJ, Policing for Profit, California ranked as the worst offender of all states in the country between 2000 and 2013. In other words, California law enforcement was passing off a lot of cases to the feds and collecting the loot. In 2016, the state closed the loophole in the vast majority of cases.

Under former-Attorney General Jeff Sessions, the federal government tried to ramp up equitable sharing.

In July 2017, Sessions issued a policy directive for the Department of Justice (DOJ) that reiterated full support for the equitable sharing program, directed federal law enforcement agencies to aggressively utilize it, and set the stage to expand it in the future.

This likely explains the significant jump in equitable sharing distributions in 2018.

The equitable sharing program also provides the federal government a powerful way to influence local policing priorities. The lure of federal money incentivizes state and local law enforcement agencies to focus on federal agendas instead of local needs. For example, the feds dangle asset forfeiture funds in front of local police to entice them to prioritize the drug war and federal gun control enforcement.

It is imperative that states looking at updating their asset forfeiture laws include language closing the federal loophole. Without provisions barring state and local law enforcement agencies from passing off cases to the federal government, even the best state reforms will prove to be largely ineffective.

**Opting Out**

Following California’s lead, Colorado opted out of equitable sharing in most cases in 2017.

The law bars Colorado law enforcement agencies from transferring seized property to a federal agency unless it has a net value of more than $50,000.
It also prohibits state and local police from accepting payment of forfeiture proceeds resulting from the adoption, a joint task force, or other multijurisdictional collaboration, unless the aggregate net equity value of the property and currency seized in the case is in excess of $50,000, the case is commenced by the federal government, and it relates to a filed criminal case.

In the preceding five years, 85 percent of the $2 million in seizures received through the federal equitable sharing program did not meet the $50,000 threshold, according to the Colorado Municipal League. Additionally, IJ reports that 82 percent of proceeds received through the DOJ’s equitable sharing program came from joint task forces and investigations.

Nebraska, New Mexico, Ohio, Arkansas, Utah and Arizona have also passed reforms placing similar limits on participating in the equitable sharing program. And in 2018, Wisconsin took a small step toward disincentivizing equitable sharing by prohibiting law enforcement agencies from collecting equitable sharing money unless there is a federal or state criminal conviction on the crime that was the basis for the seizure.
In 2019, Michigan, North Dakota and New Jersey all reformed their asset forfeiture laws to require a conviction in most cases, but none of them addressed the federal loophole. Unless they pass follow-up legislation, law enforcement will be able to use equitable sharing and render these reforms significantly less effective in practice.

Alabama and New Jersey took the first step toward ending equitable sharing by implementing strict reporting requirements last year, and West Virginia did the same in 2020. The requirements include reporting on cases adopted by the federal government and information on participation in equitable sharing.

While these three reporting laws do not stop civil asset forfeiture, they do lay a foundation to do so in the future. By increasing transparency, these reporting requirements will allow people in those states to actually see the reality of asset forfeiture. As the saying goes, sunlight is the best antiseptic. Transparency often creates the momentum needed to drive future change.

New Mexico provides an example of how law enforcement agencies will continue to try to work around forfeiture reforms and the sunshine and diligence required to keep them in check.

In 2019, Gov. Lujan Grisham signed a bill into law closing a loophole some city officials claim allows them to continue with civil asset forfeiture despite a 2015 law meant to end the practice.

In July 2015, a law went into effect ending civil asset forfeiture and prohibiting the state from taking property without a criminal conviction. The New Mexico law also closed the equitable sharing loophole in most situations. It was the first state in the country to institute such sweeping reforms to address both state and federal forfeiture programs.

But even with the tough new forfeiture law on the books, police in Albuquerque and other municipalities continued civil asset forfeiture programs, claiming the new state law did not apply to them. An Albuquerque city ordinance allowed police to seize vehicles from persons arrested on suspicion of a second drunk-driving charge, or on suspicion of driving on a suspended or revoked license due to a prior DWI. Often times, the vehicle seized didn’t even belong to the person charged with the DUI offense. Nevertheless, the owner had to fight to get the vehicle back through the draconian civil forfeiture process the state intended to eliminate.

SB312 changed language in the law to make clear it applied to city entities as well.

When it comes to liberty, diligence is always required.
Marijuana

As we have already highlighted, marijuana is the granddaddy of the modern nullification movement. On no other issue do we find state-by-state resistance to federal power so advanced, well-funded, supported and successful.

Beginning in California with the legalization of cannabis for medical use in 1996, states have advanced the issue every year. This has happened in spite of a 2005 Supreme Court opinion supporting federal prohibition, at least 12 years of relentless year-to-year increase in spending and enforcement efforts by the federal government through three presidential administrations and ongoing, complete prohibition at the federal level.

Thirty-three states and Washington D.C. have legalized marijuana for medical use, and 24 states along with Washington D.C. have decriminalized marijuana possession. Eleven states have expanded on these efforts and legalized marijuana for recreational use.

Moving Forward Step-By-Step

The movement to nullify federal marijuana prohibition has been a step-by-step process. Many states started with modest medical programs and then expanded them over the years. We’ve seen the same progression when it comes to adult-use marijuana.

Each year, new state laws and regulations help expand the market, and each expansion further nullifies the unconstitutional federal ban in effect. With state and local actions accounting for as much as 99 percent of all enforcement efforts, the feds rely heavily on state and local help to fight the “drug war.” That help has rapidly evaporated in the last few years with marijuana legalization and decriminalization.

In 2019, Illinois joined Alaska, California, Colorado, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont and Washington State in legalizing marijuana for recreational use, choosing to reap the rewards rather than racking up the spending to enforce federal prohibition. Illinois became the second state to legalize adult-use marijuana through legislative action. Vermont was the first in 2018.

Voters in New Jersey and South Dakota will have the opportunity to legalize marijuana for recreational use. The South Dakota referendum was placed on the ballot through a citizen initiative.
In New Jersey, the legislature passed a resolution that puts a constitutional amendment legalizing cannabis for personal, non-medical use by adults who are age 21 years or older. Additionally, at the time of this report, activists in Arizona had gathered more about 80,000 more signatures than required to put legalization before voters there.

While no new states legalized medical marijuana last year, several states expanded their programs and paved the way to grow the market even further. And there will be a measure on the ballot in November to legalize medical marijuana in South Dakota and Mississippi voters will choose between two competing initiatives.

New Jersey passed the biggest expansion. According to USA Today, the law “simplifies the process for patients to qualify for, purchase and consume cannabis for medicinal purposes.”

Oklahoma also expanded its medical cannabis program and took a significant step to protect patient rights by including a provision that prohibits the denial of firearms ownership to patients using medical marijuana. The law also prohibits the state from denying a medical marijuana patient access to public assistance programs, including Medicaid, SNAP and WIC.

North Dakota’s expansion increased the number of qualifying conditions from 17 to 29 and expanded the definition of “health care provider” to include physicians assistants, authorizing them to offer medical marijuana recommendations. The new law also eliminated a provision that required doctors to attest that medical marijuana would definitively help a patient.

New Mexico expanded its program to allow medical cannabis use on school campuses under defined circumstances, and extended the registration renewal period from one to three years. The new law also allows for licensed medical marijuana establishments to create “consumption areas.”

Florida changed language in the current medical marijuana statutes to include the possession, use, or administration of marijuana in a form for smoking.

Utah made a number of tweaks to the state’s medical marijuana program that will help expand access for patients. Significantly, the new law doubles the caps on the number of patients to whom a doctor can recommend marijuana from 300 to 600. It also adjusts dosing parameters to allow for more flexibility.

West Virginia made a number of changes to the state’s medical marijuana laws that will streamline the program, increase access for patients, and open up the market for medicinal cannabis.

And finally, Washington state enacted a law that allows the consumption of medical marijuana on school grounds.
The expansion of medical marijuana laws in these states demonstrates the strategic point we mentioned earlier - small first steps often lead to significant second steps. Once a law is put into place, they tend to eventually expand. As a state tears down some barriers, markets develop and demand expands. That creates pressure to further relax state law. Each step represents a further erosion of unconstitutional federal marijuana prohibition.

We also saw some interesting cannabis market-expanding laws in states with legal recreational marijuana. As with the steps forward outlined above, each expansion in the recreational market helps further nullify federal prohibition in practice and effect.

California enacted a law that severed a link between state and federal tax law, allowing individuals to deduct expenses from legal marijuana businesses for state income tax purposes. Enactment of the law will encourage the growth of the market in California.

Colorado enacted four new laws to help expand the legal marijuana market in the state. HB1230 legalized limited on-site sales and consumption of marijuana in licensed, public establishments. These include restaurants, hotels, music venues and other businesses. Dispensaries will be able to open “tasting rooms.” The law also authorizes marijuana tour buses and limos. Establishments running the vehicles can’t sell cannabis, but marijuana consumption is allowed in a “bring-your-own-weed” system. HB1234 legalized marijuana delivery. HB1090 opens up Colorado’s cannabis industry to outside investors and capital, including publicly held companies and large venture funds. And HB1311 established the Institute of Cannabis Research at Colorado State University-Pueblo. The role and mission of the institute are to conduct research related to cannabis and publicly disseminate the results of the research.

Marijuana businesses face significant challenges accessing banking services due to ongoing federal prohibition. West Virginia enacted a law to begin addressing this issue. The legislation empowers the West Virginia Treasurer to authorize financial institutions to provide banking services for the state fees, penalties, and taxes collected under the West Virginia medical marijuana program. Under the law, the state government cannot “prohibit, penalize, incentivize, or otherwise impair” financial institutions that accept accounts for medical cannabis businesses operating in compliance with state law. The bill also commits the state to do everything “permitted by law” to defend these financial institutions and cover “payment of the amount of any judgment obtained, damages, legal fees and expenses, and any other expenses incurred.”

Maine ensured there will be a market for edible marijuana products in the state with the passage of a law declaring that food additives or food products containing adult-use marijuana are not considered to be “adulterated,” and thus, illegal.
We’ve also seen a growing movement to create a process to expunge marijuana past marijuana charges in states where cannabis is now legal. In the past, we’ve seen some opposition to marijuana legalization bills because the new laws generally leave those previously charged and convicted unprotected.


In many states, the decriminalization of marijuana is the first step. Decrim doesn’t make marijuana legal, but it does change possession from a criminal charge to a civil offense punishable by a fine.

Last year, Delaware and New Mexico passed decriminalization laws. New York expanded its decriminalization law by lowering fines.

As marijuana becomes more accepted and more states simply ignore the feds, the federal government is less able to enforce its unconstitutional laws. After more than two decades of state, local and individual nullification, the federal government’s unconstitutional prohibition of cannabis is beginning to come apart at the seams.
Food Freedom/FDA

As we’ve seen throughout this report, the federal government intrudes on our lives in countless ways, but perhaps nowhere is it as personal as when it tries to regulate what we can and can’t put in our own bodies.

The FDA has grown increasingly aggressive in enforcing both food and drug laws. It not only asserts the power to regulate interstate commerce; it also often asserts the authority to regulate food and drugs within state lines.

But the FDA faces the same problem as every other federal agency. It does not have the personnel or resources to enforce all of its regulatory edicts without state and local support. By refusing to cooperate with FDA rules and regulations, and by passing laws that encourage the growth of markets in federally-prohibited items, state and local action can nullify onerous FDA mandates in practice and effect.

Markets Work

Food freedom flourishes in states where government regulators simply get out of the way. The proof is in the pudding – and the raw milk.

According to a 2019 Forbes article, hundreds of local businesses have sprouted up across three states that have passed food freedom laws in recent years without a single report of foodborne illness.

Food freedom laws exempt small food-producing businesses from onerous regulations and licensing requirements. These businesses can sell directly to the consumer from a home, a farm or a ranch, as well as at farmers’ markets and roadside stands.

Wyoming enacted the first such law in 2015. The expansive law even allows poultry farmers with fewer than 1,000 birds to sell chicken and turkey, along with products made from their birds. It also authorizes the sale of raw milk, rabbit meat and most farm-raised fish.

Rep. Tyler Lindholm sponsored the Wyoming Food Freedom Act. He said his state now has the best artisan food laws in the nation.

“When it comes to local foods being produced by local people directly sold to consumers, Wyoming stands far above the rest.”
Wyoming expanded its Food Freedom Act in 2020 with the passage of two bills. HB155 allows consumers to buy individual cuts of meat through herd-share agreements. The law is modeled on laws that allow the sale of raw milk in some states. Consumers pay the rancher a fee for a “share” in either an individual animal or a herd. In return, the consumer gets cuts of meat. In effect, it completely bypasses the U.S. Department of Agriculture inspection regime, nullifying the federal law in effect.

HB84 allows for the sale of “non-potentially hazardous” homemade foods to be sold in retail stores and restaurants. “Potentially-non hazardous foods are defined as " food that does not require time or temperature control for safety and includes jams, uncut fruits and vegetables, pickled vegetables, hard candies, fudge, nut mixes, granola, dry soup mixes excluding meat-based soup mixes, coffee beans, popcorn and baked goods that do not include dairy or meat frosting or filling or other potentially hazardous frosting or filling.

Following Wyoming’s lead, North Dakota and Utah passed similar laws. In 2017, Maine enacted a law that gives local governments the authority to enact ordinances regulating local food distribution without state interference.

States with food freedom laws have undeniably seen a boom in the number of small, local food producers.

The most common objections brought up in opposition to food freedom revolve around “public safety.” But according to Forbes, representatives from health departments in Wyoming, North Dakota and Utah reported exactly zero outbreaks of foodborne illnesses connected to a business operating under a food freedom law.

Meanwhile, according to the Forbes article, “Last year, the Centers for Disease Control and Prevention investigated and advised the public on 24 multistate outbreaks of foodborne illness, the highest in over a decade, with federally regulated romaine lettuce, chicken salad, and even Honey Smacks Cereal all linked to outbreaks that hospitalized Americans.”

It appears market forces do a better job of ensuring food safety than government regulatory schemes. As one Wyoming farmer and put it, if you produce a bad product, “you’re risking not only your family’s health, but the health of your community, your friends.”

Food freedom laws not only open markets, expand consumer choice, and create opportunities for farmers and entrepreneurs; they take a step toward restoring the United States’ original political structure. Instead of top-down, centralized regulatory schemes, these laws encourage local control, and they can set the foundation to nullify federal regulatory schemes in effect by hindering enforcement of federal regulations.
While state law does not bind the FDA, the passage of food freedom laws creates an environment hostile to federal food regulation in those states as well. And because the state does not interfere with local food producers, that means it will not enforce FDA mandates either. Should the feds want to enforce food laws in states with food freedom laws, they have to do so by themselves.

There are some specific policy areas where state and local governments have been particularly aggressive in undermining FDA regulations.

**CBD**

Many people are under the impression that CBD is completely legal now due to the fact that it’s available on virtually every street corner and the 2018 farm bill legalized industrial hemp. But this is not the case.

With the passage of the farm bill, the federal government now treats industrial hemp as an agricultural commodity instead of a controlled substance. While the DEA no longer has the authority to regulate or prohibit hemp, the provisions of the farm bill have no bearing on FDA rules and regulations regarding CBD. In fact, a section in the farm bill makes this explicit.

Section 297D, paragraph (c)(1) “Regulations and Guidelines; Effect on Other Law” states “nothing in this subtitle shall affect or modify the Federal Food, Drug, and Cosmetic Act.”

So, practically speaking, the passage of the farm bill does not mean CBD is now federally-legal in all 50 states, as some hemp supporters claim. In fact, the FDA still maintains a strict prohibition on the sale of CBD in the entire country.

The FDA classifies CBD as “a drug for which substantial clinical investigations have been instituted.” Under federal law, that designation means the FDA maintains full control over the substance and it cannot be marketed as a “dietary supplement.”

To date, the FDA has only approved one product with cannabidiol as an active ingredient – Epidiolex, a medicine for the treatment of seizures. The agency maintains that the sale of CBD or any food product containing the substance is illegal.

The FDA held its first public meeting relating to CBD in May 2019. FDA principal deputy commissioner Amy Abernethy said there is a need to “further clarify the regulatory framework to reduce confusion in the market,” and “Key questions about product safety need to be addressed. Data are needed to determine safety thresholds for CBD.”
The FDA evaluation process is ongoing. In March 2020, FDA Commissioner Dr. Stephen Hahn delivered a report to Congress on CBD.

“FDA is currently evaluating issuance of a risk-based enforcement policy that would provide greater transparency and clarity regarding factors FDA intends to take into account in prioritizing enforcement decisions. Any enforcement policy would need to balance the goals of protecting the public and providing more clarity to industry and the public regarding FDA’s enforcement priorities while FDA takes potential steps to establish a clear regulatory pathway.”

Meanwhile, the FDA is reopening a public docket to solicit additional scientific information about the risk and benefits of the cannabis compound.

According to NutraIngredients, food and dietary supplement industry stakeholders said the report offers “little hope of a timely regulatory solution.”

In effect, the agency can continue to prohibit the sale of CBD and its addition to food and beverages even with the passage of the 2018 farm bill. While farmers can now legally grow hemp for commercial purposes, including the production of fiber, biofuel, building products, paper, clothes and even food products that don’t contain CBD, the sale of cannabinoil or food products containing CBD remain federally-illegal, as it has been all along, unless the FDA changes its policy or Congress passes legislation specifically legalizing CBD.

States can undermine FDA regulation of CBD by simply making it legal within their borders and refusing to enforce the agency’s regulations.

Over the last few years, at least 11 states (Arkansas, Florida, Maine, New Mexico, Texas, Virginia, West Virginia, Wyoming, Ohio, Oklahoma and New York) passed laws creating regulatory structures for the manufacture and sale of CBD. These laws open the door to the production and sale of CBD products produced in the state regardless of continued federal prohibition.

And at least 10 states expressly authorized CBD as an additive in food products, despite the FDA’s explicit prohibition.

And without state cooperation, the FDA will likely have trouble regulating CBD at all.

The power of markets and the state action that supports them was apparent even before Congress legalized industrial hemp. With so many states simply ignoring prohibition, there was a booming market for CBD even before the 2018 farm bill was even debated in Congress.

In fact, despite past and ongoing federal prohibition, CBD is everywhere.
A *New York Times* article asserted that “with CBD popping up in nearly everything - bath bombs, ice cream, dog treats - it is hard to overstate the speed at which CBD has moved from the Burning Man margins to the cultural center.”

This was happening when both the DEA and FDA prohibited CBD. It will undoubtedly continue as long as market demand remains and states don’t interfere. The FDA can’t effectively enforce prohibition without the assistance of state and local officials.

According to the FDA, the agency prioritizes enforcement based on a number of factors, including “agency resources and the threat to public health. FDA also may consult with its federal and state partners in making decisions about whether to initiate a federal enforcement action.”

Even when both the FDA and DEA were theoretically enforcing federal laws and regulations banning CBD, state and local action had already nullified federal prohibition in practice and effect. There’s no reason to think that won’t continue as long as states maintain the same stance on CBD as they did before 2018.. Simply put, the federal government lacks the personnel and resources to crack down on CBD – even if the FDA wants to.
The federal regulation of raw milk reveals just how deeply the federal government is involved in local food issues.

FDA officials insist unpasteurized milk poses a health risk because of its susceptibility to contamination from cow manure, a source of E. coli. The agency’s position represents more than a matter of opinion. In 1987, the feds implemented 21 CFR 1240.61(a), providing that,

“no person shall cause to be delivered into interstate commerce or shall sell, otherwise distribute, or hold for sale or other distribution after shipment in interstate commerce any milk or milk product in final package form for direct human consumption unless the product has been pasteurized.”

Not only do the Feds ban the transportation of raw milk across state lines; they also claim the authority to ban unpasteurized milk within the borders of a state.

“It is within HHS’s authority…to institute an intrastate ban [on unpasteurized milk] as well.” FDA officials wrote in response to a Farm-to-Consumer Legal Defense Fund lawsuit against the agency over the interstate ban.

The FDA clearly wants a complete prohibition of raw milk. Some insiders say it’s only a matter of time before the feds try to institute an absolute ban. Armed raids by FDA agents on companies like Rawsome Foods back in 2011, and Amish farms in recent years also indicate this scenario may not be too far off.

However, states can undermine federal prohibition schemes by legalizing raw milk sales within their borders.

As we’ve seen with marijuana and industrial hemp, an intrastate ban becomes ineffective when states ignore it and pass laws encouraging the prohibited activity anyway. The federal government lacks the enforcement power necessary to maintain its ban, and people are more likely to take on the small risk of federal sanctions if they know the state will not interfere. This increases when the state actively encourages the market.

In the same way, removing state barriers to raw milk consumption, sale and production undoubtedly spur the creation of new markets for unpasteurized dairy products, no matter what the feds claim the power to do.

This kind of response could ultimately nullify the interstate ban in practice and effect as well. If all 50 states legalize raw milk, markets within the states could easily grow to the point that local sales would render the federal ban on interstate commerce almost pointless.
And history indicates the feds likely do not have the resources to stop people from transporting raw milk across state lines either - especially if multiple states start legalizing it. Growing markets can overwhelm federal enforcement attempts.

In 2019, Vermont expanded raw milk sales in the state. The new law makes a number of changes to the state’s agriculture policies, including expanding raw milk sales. Under the law, farmers who sell more than 87.5 gallons to 350 gallons of raw milk per week can sell and deliver unpasteurized milk directly to the consumer off the farm and at farmer’s markets.

The former law only allowed direct-to-consumer sales on the farm where the milk was produced. Tier-2 producers were able to deliver raw milk to farmer’s markets, but only if the sale and financing had been set up beforehand.

Utah also expanded raw milk sales in the 2020 legislative session. The new law allows permit holders to sell raw milk cream and butter. The former law only allowed the sale of pure raw milk even by those holding a permit.

Currently, 13 states allow raw milk sales in retail stores and 17 states allow sales only on the farm where the milk was produced. Nine states have legalized herd-share agreements.

Other states should follow the lead of those that have legalized raw milk, and work to expand current laws in states where it is already legal.
Right to Try

The “Right to Try” movement arguably ranks as one of the most legislative-ly successful nullification campaigns in modern history, at least in terms of the number of bills signed into law, as well as its bipartisan support.

The Federal Food, Drug, and Cosmetic Act prohibits general access to experimental drugs. However, under the expanded access provision of the act, 21 U.S.C. 360bbb, patients with serious or immediately life-threatening diseases may access experimental drugs after receiving express FDA approval.

State Right to Try laws create a process to bypass the FDA expanded access program and allow some patients to obtain experimental drugs from manufacturers without first obtaining FDA approval. This procedure directly conflicts with the federal program and sets the stage for people to nullify it in practice.

The first Right to Try laws were signed in Colorado, Louisiana and Missouri in 2014. From there, Arizona gave the movement a huge boost when voters approved Proposition 303 with a 78.47 percent “yes” vote in November 2014. The overwhelming public support put Right to Try in the national spotlight. That led to an avalanche of Right to Try bills. By the end of the 2018 legislative season, 41 states had implemented Right to Try.

With most of the country already offering the right to try under state law, Congress passed its own limited version of the legislation in 2018. While this may seem like a great victory, Congress was obviously quite late to the party. In fact, it almost certainly would not have passed Right to Try if states hadn’t acted first. Pressure bubbling up from the state level drove Congress to act. This once again demonstrates the power of a bottom-up approach.

Not the End of the Road

Passage of a national Right to Try law isn’t the end of the road in the states either. While the federal law opened up the process for terminally-ill patients to access experimental treatments, the FDA still blocks chronically-ill patients from using them. It also limits the types of treatments and technologies covered. Now states are looking for ways to expand the concept despite ongoing FDA restrictions.

Louisiana successfully expanded its Right to Try law. In 2017, the state included robotic technology that assists patients suffering from terminal degenerative muscular diseases with mobility in its Right to Try statute. The law is specifically meant to allow ALS patients in the state to access EyeDrive technology that allows them to maneuver a wheelchair using eye movements.
The technology is currently unavailable on the market because it’s still in the FDA trial phase. Passage of HB179 opens the door for all ALS patients in the state to bypass the FDA and access this potentially far-reaching technology.

Last year, North Carolina expanded its Right to Try law as well. The expanded provisions allow certain patients to access stem cell treatments not yet given final approval by the FDA.

**Practical Effect**

The impact of Right to Try isn’t merely theoretical.

Since the Texas Right to Try law went into effect in June 2015, at least 78 patients in the Lone Star State received an experimental cancer treatment not allowed by the FDA. While the FDA would have allowed these patients to die, Houston-based oncologist, Dr. Ebrahim Delpassand continued their treatment through the Texas law.

Although Right to Try only addresses one small aspect of FDA regulation, it provides a clear model that demonstrates how to nullify federal programs that violate the Constitution. The strategy, which is already proving itself effective, narrows the nullification action to limited aspects of a specific law.

The expansion of Right to Try in Louisiana and North Carolina also demonstrates how a narrow nullification of federal overreach can grow over time. Right to Try opens the market to experimental treatments. As people take advantage of the opportunities and see the benefits, as they already have in Texas, they will be more likely to seek to open the door further.

This should be seen as a strategic blueprint to approach other federal programs.
Bill of Rights

Congress of the United States,

McArthur, a resident of the City of New York, on

A. Martin of March, one thousand seven hundred and eighty nine.

Resolved, by the Senate and House of Representatives, pursuant to the Constitution of the United States, as follows:

Article I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article II.

No Soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner prescribed by law.

Article III.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article IV.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject in any criminal case to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article V.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Article VI.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article VII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article VIII.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article IX.

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.
“We don’t have to worry about gun control now that Donald Trump is president and Republicans control Congress!”

We heard this over and over in the days after President Trump took the White House. The reality turned out quite differently though.

In fact, Trump did something even President Obama failed to do. He implemented new gun control via executive order with his late-2018 bump stock ban.

And although organizations like the NRA might have you think otherwise, protecting the right to keep and bear arms doesn’t begin and end with stopping new federal gun control, and nothing more.

The federal government violates the Second Amendment every single day through existing gun control that has been on the books for decades, including the National Firearms Act of 1934, the Gun Control Act of 1968, the Federal Gun Control Act of 1986, the Undetectable Firearms Act of 1988 and other various laws and regulations, including the NICS, the Firearms Owners’ Protection Act, and the Brady Act.

All of these violate the Second Amendment and every one of them is still being enforced by the feds just as aggressively as they were when Obama was president. In some cases, even more so.

In fact, the Trump ATF ramped up enforcement of unconstitutional federal gun laws in 2018 according to the most recent report released by the agency. This follows on the heels of increased enforcement actions during President Trump’s first year in office. Statistics for 2019 are expected to be released in May.

Looking into the numbers, ATF enforcement of federal gun laws under Trump in his first year increased at roughly the same trajectory as it did during the last three years of Obama’s second term. And while the increase wasn’t as dramatic, the Trump ATF bumped up enforcement again in 2018. In other words, the NRA-backed, GOP protector of the Second Amendment has been as least as bad, if not worse, than the Democratic Party gun-grabber.
Patrick Henry warned us about trusting politicians with our liberty in a speech during the Virginia Ratifying Convention (5 June 1788).

“Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty?”

When Barack Obama was president, Republicans in state legislatures introduced dozens of bills to nullify federal gun control by refusing to help with federal enforcement. After Trump won the White House, those efforts virtually stopped, even though not one single federal gun control law has been repealed.

By and large, Republicans use the Second Amendment as a campaign prop, but they do very little to actually stop the federal government from infringing on your right to keep and bear arms. They don’t do anything to challenge the unconstitutional laws already on the books, and they can’t even hold the line on new gun control.

This is why we need to continue pushing forward with state efforts to end enforcement of unconstitutional federal firearms laws no matter who holds power in Washington D.C.

Our Strategy

The ATF employs about 2,630 special agents. Historically, this workforce has been able to investigate between 8,000 and 10,000 cases per year.

There is no way that relatively small group of people can impose federal gun laws on more than 300 million people encompassing 3,794,083 square miles without state and local cooperation. As Judge Andrew Napolitano has said, banning state and local assistance with the enforcement of federal gun laws in a single state will make federal gun control “nearly impossible to enforce” in that state.

As with many other issues, our strategy takes a step-by-step approach, with each step building on the last. The ultimate goal is all federal gun control rendered unenforceable and effectively null and void within the states.

In the first step, the state bans enforcement of any future federal gun acts, laws, orders, regulations, or rules. (We’ll call these “measures” from here on out) This legislation prohibits a state from taking any action or providing any resources, to enforce or assist in the enforcement of future federal gun measures.

Idaho was the first state to pass step one as law, with former Gov. Butch Otter signing S.1332 in March 2014.
Practically speaking, the law will bar state and local police from enforcing Trump’s bump stock ban in Idaho, or any future federal gun control measure for that matter. Without state and local support, it likely won’t be enforced at all.

The second step bans state enforcement of specific current federal gun measures. This builds on step one by including one or more significant federal measures currently on the books. For instance, in 2015, former Indiana Gov. Mike Pence signed a bill that “Repeals the prohibition against manufacturing, importing, selling, or possessing a sawed-off shotgun.”

The third step prohibits state enforcement of all federal gun measures, current and future.

In 2019, the Missouri Second Amendment Preservation Act passed a Senate committee but was never brought to the Senate floor. The legislation would ban any person, including any public officer or employee of the state and its political subdivisions, from enforcing any past, present or future federal “acts, laws, executive orders, administrative orders, court orders, rules, or regulations” that infringe on the right to keep and bear arms. The proposed law includes a detailed definition of actions that qualify as “infringement.”

The bill was reintroduced in both the House and the Senate in the 2020 legislative session. With more than 80 cosponsors, it has enough support to sail through the House.

Prior to the shutdown due to the coronavirus, the House General Laws Committee approved the bill, giving it a “Do Pass” recommendation for the full House.

In 2015, Tennessee former Gov. Bill Haslam signed a bill into law that sets a foundation to nullify many current and future federal measures, but will require additional action to effectuate.

The law prohibits the state from implementing or enforcing federal gun measures that violate the Tennessee state constitution. The next step potentially involves compiling a report of federal enforcement actions taken on firearms in Tennessee, highlighting those enforced with the participation of state agencies, along with which actions likely violate the new law. From there, state-based gun rights groups can file an injunction to stop state participation.

An Alaska bill on the books since 2013 also sets the stage to nullify present and future federal gun laws. It establishes the principle that no state or local agency may 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 that specifically clarifies which federal acts qualify as an “infringement” and that expressly prohibits state and local assistance or participation in any enforcement action. We recommend including all federal acts.

In Kansas, the 2nd Amendment Protection Act was signed into law in April 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:

“All 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.”

In June 2015, a federal judge dismissed a lawsuit challenging the constitutionality of the Kansas law, saying the suit from the Brady Campaign was “without merit.” While this was a victory, it should be noted that the federal court didn’t say that the federal government doesn’t have the power to regulate firearms under the commerce clause, as the Kansas law states. The Brady suit was dismissed for lack of standing.

However, one part of the bill wasn’t challenged at all - the section setting the foundation for all state and local agents to refuse to help implement federal gun control measures. 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 put the current law into real-life effect.

Second Amendment “Sanctuaries”

In 2018-19, we saw a growing movement to create Second Amendment “Sanctuary Jurisdictions” in cities and counties across the country. The movement took root in Illinois and Oregon in 2018 and then began to expand into other states, including Florida, Texas and Kentucky.

The movement really took off in Virginia and gained national attention after Democrats took control of the Virginia legislature and quickly moved to impose sweeping gun control legislation.

While local government politicians claim to have created “Second Amendment Sanctuaries,” so far they’ve missed the mark by a wide margin.

Contrary to the rhetoric being spread in support of these efforts, virtually none of these jurisdictions have passed laws equivalent to even the most modest immigration “sanctuary city” policy. In fact, most of them aren’t passing laws at all.
While there is no concrete, legal definition of a sanctuary city, when it comes to immigration, the generally-accepted view is that the local government refuses to participate in the enforcement of a narrow to a wide range of federal immigration laws.

San Francisco might be the most prominent of these. The “City and County of Refuge” Ordinance, also known as the Sanctuary Ordinance, was first passed there in 1989 and was amended as recently as 2013.

According to the city government website, it “generally prohibits City employees from using City funds or resources to assist Immigration and Customs Enforcement (ICE) in the enforcement of federal immigration law unless such assistance is required by federal or state law.”

On the narrower end of the spectrum, a number of counties in Iowa have found themselves on lists of sanctuaries because county sheriffs decided that without first getting a warrant or court order, they would not honor detainer requests from ICE and hold individuals suspected of being in the country illegally.

In reviewing “Second Amendment Sanctuary” measures passed in Texas, Illinois, Oregon, Florida, Arizona and elsewhere in the past year, none of them prohibit any local government employees from using funds or resources to assist in the enforcement of any federal or even state gun laws or regulations. And other than a few outliers, almost none of them have passed any laws at all, despite making public claims to have created a “sanctuary” for gun owners.
In Hood County, Texas, for example, Sheriff Roger Deeds was outspoken about his desire for a sanctuary there, and the Commissioners Court obliged by unanimously passing a resolution sponsored by Commissioner James Deaver.

It specifically declares Hood to be a “Second Amendment Sanctuary County,” and states that it will not “appropriate government funds, resources, employees, agencies, contractors, building, detention centers or offices for the purpose of enforcing a law that unconstitutionally infringes on the right of people to keep and bear arms.”

The problem with this effort, and for those claiming to have created a sanctuary for gun owners elsewhere, is the fact that Hood County passed a resolution - not an ordinance.

According to the Texas Municipal Courts Education Center (TMCEC), local governing bodies make law by passing an ordinance. A resolution “does not have the force of law” and is used as “an expression of an opinion of the legislative body.”

Despite Hood County’s claim to be a “Second Amendment Sanctuary County,” its resolution doesn’t stop the enforcement of any gun measure. It is merely the opinion of those who voted to pass it - and nothing more.

This problem isn’t exclusive to Hood County.

At the time of this writing, hundreds of localities around the country have also claimed “Second Amendment Sanctuary” status. All of them have passed non-binding resolutions that don’t prohibit the enforcement of anything.

And despite all of the media hype, the situation is much the same in Virginia.

This doesn’t mean that resolutions don’t have a place in a strategy to defend the right to keep and bear arms. Thomas Jefferson famously drafted non-binding resolutions in response to the Alien and Sedition Acts, and the Kentucky legislature passed them in November, 1798. But supporters there didn’t claim they nullified the hated federal acts, even though they called on all states to do just that.

Resolutions can set the stage for future action, galvanize support and generate media buzz. They can also create pressure on elected officials to change policy. But resolutions should be called what they are and their limits recognized.

Ordinances can also have their limitations, depending on how they are worded.
In Oregon, where voters in November 2018 passed eight county-level "Second Amendment Preservation Ordinances" rather than mere resolutions, the laws only prohibit the use of local resources for the enforcement of gun laws or regulations if it’s first determined that they are unconstitutional.

In other words, enforcement assistance continues until a law or regulation is struck down.

That approach is the exact opposite of what’s happening in San Francisco and other immigration sanctuaries around the country.

While those cities have drawn a growing ire from many conservatives and Republicans, it’s almost certain these self-styled Second Amendment Sanctuaries won’t get the same treatment from their ideological opponents unless they dramatically change their strategy and pass laws that actually do something.

Indirect Action

Indirect action at the state and local levels can help protect the right to keep and bear arms from federal infringement even if it doesn’t directly challenge enforcement of federal gun laws.

Kentucky, South Dakota and Oklahoma all passed so-called “constitutional-carry” bills in 2019, and in another example of incremental steps forward, Idaho expanded its permitless carry law for the third time in 2020. These laws make it legal to carry a concealed firearm without a state-issued permit.

Permitless carry not only expands gun freedom within the state, but it also helps foster an environment hostile to federal gun control. Widespread passage of such laws subtly undermines federal efforts to regulate guns.

As we’ve seen with marijuana and industrial hemp, a federal regulation becomes ineffective when states ignore it and pass laws encouraging the prohibited activity anyway. The federal government lacks the manpower and resources necessary to maintain its ban, and people will willingly take on the small risk of federal sanctions if they know the state will not interfere. This increases when the state actively encourages “the market.”

Less restrictive state gun laws have the potential to cause a similar impact on federal gun laws. They make it much more difficult for the feds to enforce any future federal gun control, and increase the likelihood that states with few limits will simply refuse to cooperate with federal enforcement efforts.
Along similar lines, Arkansas Gov. Asa Hutchinson signed a bill into law decriminalizing the manufacture and possession of firearm suppressors in the state.

Suppressors simply muffle the sound of a gun. They do not literally silence firearms. Nevertheless, the federal government heavily regulates silencers under the National Firearms Act. The feds charge a $200 tax on the purchase of the devices. Buying one also requires months-long waits after filing extensive paperwork with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives.

The repeal of state suppressor restrictions does not alter federal law, but it does remove a layer of law hindering access to these devices. The widespread easing of suppressor regulations in states subtly undermines federal efforts to unconstitutionally regulate firearms.

State and local efforts to block federal gun control are important, but ultimately, it’s up to individuals to take advantage of less restrictive state laws and exercise their right to keep and bear arms. When enough people take this kind of human action, the federal government will become increasingly powerless to stop them.
Defend the Guard

Presidents come and presidents go, but the wars just keep marching on.

James Madison warned that you can’t have liberty and perpetual war.

“Of all the enemies to public liberty war is, perhaps, the most to be dreaded because it comprises and develops the germ of every other.”

We have not heeded his warning.

The results should have been predictable, since Madison told us what would happen.

He continued, “War is the parent of armies; from these proceed debts and taxes; and armies, and debts, and taxes are the known instruments for bringing the many under the domination of the few.” [emphasis added]

As the unconstitutional war in Afghanistan marches toward the end of its second decade, the Trump administration upped the death and destruction raining down from Afghani skies to decade-high levels in 2019.

The number of bombs dropped last year exceeded the record-high number dropped during President Obama’s Afghanistan troop surge in 2010 and 2011.

As Madison warned us, these wars not only exact a toll in lives; they also squander our treasure.

According to a study by the Watson Institute of International and Public Affairs at Brown University, Between 2001 and 2018, America’s wars cost $5.6 trillion. That equates to $23,000 per taxpayer. This is more than three times the Pentagon estimate – which still comes in at a staggeringly high $1.5 trillion.

This is precisely why the Constitution carefully separated the power to initiate war and the power to execute it.

James Madison wrote in detail about constitutional war powers in his Letters of Helvidius.
“In the general distribution of powers, we find that of declaring war expressly vested in the congress, where every other legislative power is declared to be vested; and without any other qualification than what is common to every other legislative act. The constitutional idea of this power would seem then clearly to be, that it is of a legislative and not an executive nature.

“Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws.”

In yet another example of the federal government going off the rail, the president now has almost complete control over matters of war and peace. Without any restraint from Congress – the representatives of the people – one president after another has dragged America into undeclared war after undeclared war. This has been going on for decades no matter which party has controlled the White House.

Sometimes Congress rubber-stamps executive action with unconstitutional, open-ended authorizations “for the use of military force.” But over the last several years, presidents have abandoned even this formality. It’s proof of the old adage, “Give government an inch and they always take a mile.”

In few areas does this prove to be more true than with war powers.

State Action

You might think there is nothing we can do at the state level to affect foreign policy, but you would be mistaken.

For the last several years, West Virginia Delegate Pat McGeehan has introduced the Defend the Guard Act in the state House. The bill would prohibit the deployment of West Virginia Guard troops in “active duty combat” unless there is a declaration of war from Congress, as required by the Constitution.

Guard troops have played significant roles in all modern overseas conflicts, with over 650,000 deployed since 2001. Military.com reports that “Guard and Reserve units made up about 45 percent of the total force sent to Iraq and Afghanistan, and received about 18.4 percent of the casualties.” More specifically, West Virginia National Guard troops have participated in missions in Iraq, Afghanistan, Libya, Kosovo and elsewhere.

Since none of these missions have been accompanied by a Constitutional declaration of war, the Defend the Guard Act would have prohibited those deployments.
Such declarations have only happened five times in U.S. history, with the last being at the onset of World War II.

Article I, Section 8, Clauses 15 and 16 make up the “militia clauses” of the Constitution. Clause 16 authorizes Congress to “provide for organizing, arming, and disciplining, the Militia.” In the Dick Act of 1903, Congress organized the militia into today’s National Guard, limiting the part of the militia that could be called into federal service rather than the “entire body of people,” which makes up the totality of the “militia.”

Thus, today’s National Guard is governed by the “militia clauses” of the Constitution, and this view is confirmed by the National Guard itself.

Clause 15 delegates to the Congress the power to provide for “calling forth the militia” in three situations only: 1) to execute the laws of the union, 2) to suppress insurrections, and 3) to repel invasions.

During state ratifying conventions, proponents of the Constitution, including James Madison and Edmund Randolph, repeatedly assured the people that this power to call forth the militia into federal service would be limited to those very specific situations, and not for general purposes, like helping victims of a disease outbreak or engaging in “kinetic military actions.”

It is this limited Constitutional structure that advocates of the Defend the Guard Act seek to restore. That is, use of the Guard for the three expressly-delegated purposes in the Constitution, and at other times to remain where the Guard belongs, at home, supporting and protecting their home state.

McGeehan said the states have a powerful opportunity to force a return to the proper Constitutional operation of war powers.

“For decades, the power of war has long been abused by this supreme executive, and unfortunately our men and women in uniform have been sent off into harm’s way over and over,” he said. “If the U.S. Congress is unwilling to reclaim its constitutional obligation, then the states themselves must act to correct the erosion of constitutional law.”

McGeehan served as an Air Force intelligence officer with tours in Afghanistan and the Middle East. He called war the most serious enterprise a government can engage in.

“It’s near and dear to my heart because it’s been clear to me that over the last two decades we’ve had this sort of status quo where it is somehow acceptable for unilateral action to be taken not by just the executive, but also the Pentagon to send our men and women in the Armed Forces overseas into undeclared wars and unending wars,” McGeehan said.
Last year, Defend the Guard passed the House Veterans Affairs Committee. McGeehan then used a parliamentary move to push the bill to the House floor. Leadership did not allow the bill to come up for a vote, but McGheen’s efforts generated nationwide interest in the legislation.

A coalition of veterans pushed to have the Defend the Guard Act introduced in at least 20 states in 2020. Several states had bills pending when the coronavirus pandemic forced most legislatures to go into recess or early sine die. We will be taking up the fight again in the coming months.

After all, as Daniel Webster once noted, one of the reasons state governments even exist. In an 1814 speech on the floor of Congress where Webster urged similar actions to the Hawaii Defend the Guard Act. He said,

“The operation of measures thus unconstitutional and illegal ought to be prevented by a resort to other measures which are both constitutional and legal. It will be the solemn duty of the State governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State governments exist.”
More to Watch

There are a number of other issues where we’re seeing nullification efforts develop that have a potential to grow in the coming years.

Healthcare

The Patient Protection and Affordable Care Act (ACA) vividly illustrates why we can’t depend on Washington D.C. to limit itself.

From the moment the ACA passed, Republicans talked about repeal. In fact, while President Obama was in office, the GOP passed several bills to fully repeal the law, knowing the president would never sign them. Meanwhile, Republicans swore that they would repeal Obama-care on “day one” when they gained control of the federal government.

The Republicans did effectively repeal mandate by zeroing out the penalty in the 2017 tax bill, but as we near the end of Trump’s first term, Obamacare with all of its mandates and regulations remains the law of the land, even as insurance premiums skyrocketed, vividly taking “affordable” out of the affordable care act.

Regardless, two broad strategies involving state and individual action can help completely bring down the Affordable Care Act, or any national healthcare plan Congress comes up with in the future.

The first, and possibly the most important, involves states, businesses and individuals taking action now to encourage market solutions and undermine federal control. This is already happening in many places.

Some healthcare providers simply bypass onerous federal mandates and expensive insurance bureaucracy by effectively opting out of the system and dealing directly with patients. These “direct primary care” practices can offer standard procedures and medications at a much lower cost.

This represents the kind of cost control Obamacare promised but failed to deliver.

In 2015, Tom Woods interviewed a Kansas doctor who utilizes the direct primary care model. Dr. Josh Umbehr’s practice demonstrates the cost savings possible when doctors are unfettered from the bureaucratic health insurance system.
These direct patient/doctor agreements allow a system less controlled by government regulations to develop. It makes doctors responsive to patients, not insurance company bureaucrats or government rule-makers. Allowing patients to contract directly with doctors via medical retainer agreements opens the market.

Under such agreements, market forces set the price for services based on demand instead of relying on central planners with a political agenda. The end result is better care delivered at a lower cost.

This underscores the importance of state and local governments eliminating barriers that keep independent practices like these from operating.

A "Direct Primary Care" Act at the state level specifies that direct primary care agreements (sometimes called medical retainer agreements) do not constitute insurance. This frees doctors and patients from the onerous requirements and regulations under the state insurance code.

A more open healthcare marketplace within a state will help spur de facto nullification of the federal program by providing an affordable alternative. If patients flock to these arrangements and others spurred by ingenuity and market forces, the old system can begin to crumble.

By incentivizing creative healthcare solutions, the market naturally provides better options, such as with the Surgery Center of Oklahoma. This facility operates completely outside of the insurance system, providing a low-cost alternative for many surgical procedures.

Twenty-six states have passed Direct Primary Care acts over the last several years. Arizona and Georgia joined their ranks last year.

And now we’re now seeing states that opened the door to direct primary care practices expanding those laws.

In 2019, Florida passed a law to include all licensed healthcare providers, not just primary care physicians. This will open the door for specialists to establish DPC practices.

Louisiana expanded its direct primary care law to include dental practices.

As more open healthcare markets develop within the states, the stage is set for further actions to bring about a nullification of federal healthcare laws and regulations in practice and effect. States can help accomplish this by refusing to cooperate with the implementation of the ACA and enforcement of its rules and regulations.

The ACA was predicated on state cooperation. By ending all state actions that support the ACA and refusing to enforce any of its mandates, a state can make it nearly impossible for the federal government to run Obamacare within its borders.
Federal Militarization of Police

Our work to address federal militarization of state and local police departments caught the attention of the Department of Defense (DoD) in 2017. Susan Lowe in the public affairs office of the Defense Logistics Agency took issue with our characterization of mine resistant armored vehicles (MRAPS) as “essentially unarmed tanks.” She called our description “misleading.”

Despite Lowe’s protest, Images of armored vehicles filled with battle-ready cops toting automatic weapons during the Ferguson protests brought the issue of federal militarization of local police into public consciousness, but the federal government has been arming local police with military-grade weapons for nearly two decades.


Through these programs, local police departments procure military-grade weapons, including automatic assault rifles, body armor and mine-resistant armored vehicles (MRAPs) – essentially unarmed tanks. Police departments can even get their hands on military helicopters, drones, and other high-tech surveillance gear, including wiretapping gear, geolocation tracking devices, cell phone jamming equipment and high-tech cameras. States can take action to nullify the practical effect of these federal programs by simply withdrawing from them.

New Jersey became the first state to address the issue in 2015 when Gov. Chris Christie signed S2364 into law. It banned local law enforcement agencies from obtaining military equipment without first getting approval from their local government. Currently, these military transfers happen directly between the feds and local police, as if they make up part of the same government. This law interposes the local government in the process, giving the people of New Jersey the power to end it, and at the least, forcing the process into the open.

Montana took things a step further when Gov. Steve Bullock signed HB330 into law in 2015, completely banning the acquisition of certain military equipment.

The law prohibits state or local law enforcement agencies from receiving drones that are armored, weaponized, or both; aircraft that are combat configured or combat coded; grenades or similar explosives and grenade launchers; silencers; and “militarized armored vehicles” from federal military surplus programs.
The law also stops local agencies from using federal grants to procure military gear still allowed under the law. Law enforcement agencies can continue to purchase such items, but they must use state or local funds. This totally blocks DHS grant programs because the agencies cannot use that money.

It also creates a level of transparency because purchases must now go through the legislative budgeting process. Law enforcement agencies have to give public notice within 14 days of a request for any such local purchase.

Last year, Maryland took a first step by requiring law enforcement agencies to publicly report all acquisitions of military equipment. The reporting requirement operates through the Department of State Police.

While passage of the legislation did not create any mechanism to stop local police from acquiring military surplus equipment, it took an important first step in that direction by ensuring that it doesn’t happen in secret. By increasing transparency, the legislation allows Marylanders to actually see the reality of police militarization. This can serve as a foundation for further action.

Looking ahead, the Maryland legislature should take the next step with an outright ban of military gear.

Other states have three models to choose from.

(1) local approval (like New Jersey)
(2) Prohibition (like Montana - including a ban on spending federal dollars)
(3) Combination of both approaches (banning specific equipment and requiring local approval for all others)

Federal militarization of local police can also be tackled at the local level.

In 2016, dedicated activists in Los Angeles forced the end to federal militarization of law enforcement on a hyper-local level, demonstrating the power of a bottom-up approach when confronting federal power.

After 18 months of pressure and activism, the Labor/Community Strategy Center reached an agreement with the Los Angeles Unified School District and the Los Angeles School Police Department to demilitarize school police.

As reported by CounterPunch, they agreed to return all military-grade weapons procured from the federal 1033 Program, withdraw completely from the program, and to apologize for the policy that brought the weapons to LA schools in the first place.
Federal Land

The federal government controls large swaths of land, particularly in the west. In total, the feds control about 28 percent of the total landmass in the U.S.

The federal government has title to about half the territory of the eight Rocky Mountain states, the west coast states, and Alaska. The share of ownership in each of those states ranges from about 30 percent to about 88 percent.

Constitutionally, the federal government is only supposed to control a small amount of land. The Constitution delegates no power in the federal government to retain land indefinitely for any purpose the government chooses. The Constitution does give Congress an unqualified power to dispose of property (and regulate property already held).

But it authorizes Congress to acquire and hold land only for certain listed purposes. In fact, when supporters of the Constitution were pushing for ratification, one of their most frequent assurances was that the states would control the territory within their own borders.

That promise has been broken, but some states are finding ways to push back against that control.

Last year, California passed a bill to block oil and gas drilling on some federal lands. The new law prohibits any state agency with leasing authority over California public lands from allowing the construction of new oil or gas infrastructure intended to support oil and natural gas production on federal lands now or previously designated as federally protected.

The bill does not affect oil or natural gas production on state lands or waters. Nor does the law extend the prohibition to private land.

By blocking the transportation of oil and natural gas across state lands that adjoin federal lands, California will throw a roadblock in front of companies wanting to drill for oil or gas on federal lands. According to the Los Angeles Times, the prohibition includes “state lands near the Carrizo Plains National Monument in San Luis Obispo County, an area known for its spectacular wildflower blooms and potentially large reserves of oil and gas.”

The new law is a response to Trump Administration plans to open up federal lands in California to oil and gas production. The federal government controls nearly 48 percent of the lands in California. Last April, the Trump administration announced a plan to open more than a million acres of public and private land in California to fracking. The move ended a five-year moratorium on leasing federal land in California to oil and gas developers.
Even if you support opening up these areas for gas and oil exploration, it’s not the federal government’s role. In fact - doing so would only empower a future president with opposite goals to just flip it around.

As George Washington warned in his farewell address, “But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.”

The strategy used by California is similar to the one used by Nevada to block the construction of a nuclear waste facility on Yucca Mountain. The Department of Energy (DOE) filed five applications to obtain the water it needed to begin drilling and constructing the facility. Each time, the state of Nevada denied the permits and refused to grant access to the water. Without water, the Yucca Mountain waste dump project was stopped cold.

This is another creative example of states following James Madison’s advice to “refuse to cooperate with officers of the Union” as a way to hinder and stop unconstitutional federal act.

**Smart Meters**

A number of states have considered legislation to allow customers to opt out of utility company smart meter programs.

Smart meters monitor home energy usage in minute detail in real time. The devices transmit data to the utility company where it gets stored in databases. Anybody with access to the data can download it for analysis. Without specific criteria limiting access to the data, these devices create significant privacy issues. Smart meters can also be used to remotely limit power usage during peak hours.

The proliferation of smart meters creates significant privacy concerns. The data collected can tell anybody who holds it a great deal about what goes on inside a home. It can reveal when residents are at home, asleep or on vacation. It can also pinpoint “unusual” energy use, and could someday serve to help enforce “energy usage” regulations. The ACLU summarized the privacy issues surrounding smart meters in a recent report.

“The temptation to use the information that will be collected from customers for something other than managing electrical loads will be strong – as it has been for cell phone tracking data and GPS information. Police may want to know your general comings and goings or whether you’re growing marijuana in your basement under grow lights. Advertisers will want the information to sell you a new washing machine to replace the energy hog you got as a wedding present 20 years ago. Information flowing in a smart grid will become more and more ‘granular’ as the system develops.”
The privacy issues aren’t merely theoretical. According to information obtained by the ACLU of California, utility companies in the state have already disclosed information gathered by smart meters on thousands of customers.

San Diego Gas and Electric alone disclosed data on more than 4,000 customers. The vast majority of disclosures were in response to subpoenas by government agencies “often in drug enforcement cases or efforts to find specific individuals,” according to SFGate.

“Mark Toney, executive director of the Utility Reform Network watchdog group, said the sheer number of data disclosures made by SDG&E raised the possibility that government agencies wanted to sift through large amounts of data looking for patterns, rather than conducting targeted investigations.”

So, how can we stop government agencies from using smart meters to peer into our lives? We can simply refuse to install them on our property. This is the only sure-fire way to ensure your energy use data won’t fall into the hands of government agents and private marketers, be used to build a profile on you, or end up stored in some kind of government database.

Of course, utility companies and governments want you to have a smart meter. These devices allow them to control your energy usage. Utilities want this power because it saves them money and allows them to more easily manage their power grids.

As a result, many companies penalize customers who opt out of smart meter programs, and some go a step further and simply require them as a condition of service.

That’s where state and local action can make a difference. State laws and city ordinances can require utility companies to allow customers to opt out without any fees or penalties. These laws make opting out a legal option for residents and give them control over their own privacy.

The federal government serves as a major source of funding for smart meters. A 2009 program through the U.S. Department of Energy distributed $4.5 billion for smart grid technology. The initial projects were expected to fund the installation of 1.8 million smart meters over three years.

The federal government lacks any constitutional authority to fund smart grid technology. The easiest way to nullify such programs is to simply not participate. Opt-out laws make that possible. If enough states pass similar legislation, and enough people opt out, the federal program will go nowhere.
Marriage

The issue of marriage has led to contentious debates across the country with federal courts creating a national policy.

In fact, the Constitution does not delegate any authority to the federal government to regulate marriage. That is supposed to be left to the states.

Alabama found a way to nullify both sides of the contentious debate in practice by getting the state out of marriage altogether.

The new law abolishes all requirements to obtain a marriage license in Alabama. Instead, probate judges will simply record civil contracts of marriage between two individuals based on signed affidavits.

According to the bill summary, SB69 will “eliminate the requirement for solemnization of a marriage for it to be considered valid” and “specify that the judge of probate would have no authority to reject any recording of a marriage, so long as the affidavits, forms, and data are provided.”
While this change in the law may seem like semantics, it is quite significant. It ends the requirement to get state permission before getting married.

The state will now record signed contracts between consenting individuals who have already solemnized their marriages. In effect, it removes the state from the approval process and relegates it to a mere record-keeper.

Removing state meddling in marriage will render void the edicts of federal judges that have overturned state laws defining the institution. The founding generation never envisioned unelected judges issuing ex-cathedra pronouncements regarding the definition of social institutions, and the Constitution delegates the federal judiciary no authority to do so.
No Exceptions

You can sum up the core philosophy of the Tenth Amendment Center in one phrase: **The Constitution: Every issue, every time. No exceptions. No excuses.**

But here’s the hard truth. The Constitution doesn’t enforce itself.

In *Federalist* #48, James Madison described constitutions as mere “parchment barriers.”

> “Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more adequate defence is indispensably necessary for the more feeble, against the more powerful members of the government.”

Governments won’t follow limits on their own power just because they’re written down on paper. So does this mean the Constitution is useless? Of course not. What Madison was suggesting is that we need something to back up those words - a more adequate defense.

In short - constitutions must be enforced. And they can’t be enforced by the government they are supposed to limit. You need an outside entity.

The nullification movement is that enforcement mechanism.

After years of relying on parchment barriers and expecting the federal government to limit itself, we’re now facing the most powerful government in the history of the world.

But as this report shows, we’re making progress and gaining ground for liberty, step-by-step. Or as Thomas Jefferson put it “the ground of liberty is to be gained by inches.”

Following Jefferson’s wisdom, we will continue to be “contented to secure what we can get from time to time, and eternally press forward for what is yet to get.”

After all, “It takes time to persuade men to do even what is for their own good.”