

STATE OF THE NULLIFICATION MOVEMENT

2021 TENTH AMENDMENT CENTER ANNUAL REPORT



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THE RIGHTFUL REMEDY

“Vote the bums out!” is the dominant political strategy in the United States. It’s absolutely the wrong one, too.



If you don’t like what’s going on, wait two years, or maybe four, and kick the offensive politicians out of office. Right?

Well, the problem with this strategy is you always end up with new bums.

And even in the few individual cases where you don’t, unconstitutional federal overreach continues unabated.

The [largest government in the history of the planet](#) keeps growing.

The drug war rages on. The federal spies keep spying. Bombs keep falling on faraway



A NULLIFICATION
OF THE ACT IS THE
RIGHTFUL REMEDY

lands. The government keeps borrowing, spending and devaluing your money. The gun-grabbers keep gun-grabbing.

At the end of the day, everything continues on as it was while everybody gears up for the next election.

Wash. Rinse. Repeat.

Clearly, voting the bums out isn't a good strategy when it comes to stopping unconstitutional federal power grabs and reducing the power of the monster state.

Thomas Jefferson told us this was the case in [his draft](#) of the Kentucky Resolutions of 1798.

Of course, there is a time and place for everything.

Jefferson said “vote the bums out” was the right approach for dealing with bad policy or bad administration of the delegated powers.

“In cases of an abuse of the delegated powers the members of the general government, being chosen by the people, a change by the people would be the constitutional remedy,” Jefferson wrote.

But when the federal government goes beyond the limits of the Constitution, Jefferson called for more aggressive measures, writing:

*“But where powers are assumed which have not been delegated, a nullification of the act is **the rightful remedy.**”* [emphasis added]

Jefferson didn’t give us step-by-step instructions on how to nullify.

The Kentucky Resolutions, along with the [Virginia Resolutions of 1798](#) penned by James Madison, provide the philosophical and constitutional justification for nullification, but they don’t give us a nullification blueprint.

We’ll get to that in more detail later in this report.

Jefferson was far from alone in warning that the people would have to be willing to take action to stop federal usurpation of power.

James Iredell, who later became one of the first Supreme Court justices, [put it this way](#) in the North Carolina Ratifying Convention:

*“Abuse may happen in any government. The **only resource against usurpation** is the inherent right of the people to prevent its exercise.*

This is the case in all free governments in the world. The people will resist if the government usurp powers not delegated to it. [Emphasis added]

Notice that Iredell called resistance the “only resource” against an exercise of undelegated powers. He didn’t consider it a mere good idea, or something to be tried after everything else.

Instead, he expected that the people would resist if the general government tried to exercise unwarranted powers.

In fact, the idea that the people of the several states could ignore or block unwarranted federal actions predates the ratification of the Constitution.

During the ratification debates, opponents of the Constitution warned that the new general government could easily abuse its delegated powers and usurp state authority.

But numerous supporters of the Constitution argued that there was nothing to worry about because the states would be under no obligation to submit to unconstitutional acts.

Another North Carolinian, [Archibald McClaine](#), argued that states should not only disregard unconstitutional acts; they should “punish” Congress if it overstepped its bounds.

*“If Congress should make a law beyond the powers and the spirit of the Constitution, should we not say to Congress, ‘You have **no authority** to make this law. There are limits beyond which you cannot go. You cannot exceed the power prescribed by the Constitution. You are amenable to us for your conduct. This act is unconstitutional. **We will disregard it, and punish you for the attempt.**’”* [Emphasis added]

During the Massachusetts ratifying convention, [Theophilus Parsons argued](#) that there is a check on federal power *“founded in the nature of the Union, superior to all the parchment checks that can be invented, -- the 13 state legislatures.”*

He said they have the means, as well as the inclination to successfully oppose federal usurpation. *“Under these circumstances, none but madmen would attempt a usurpation.”*

Roger Sherman was the only person to sign the Continental Association, the Declaration of Independence, the Articles of Confederation and the Constitution.

During the Connecticut ratifying convention, [Sherman argued](#) that *“all acts of the Congress not warranted by the constitution would be void”* and such acts would be unenforceable without the *“sense of a majority of the States.”*

He continued, noting that *“when [the federal government] overleaps those bounds and interferes with the rights of the State governments, they will be powerful enough to check it.”*

Just weeks later, writing as PUBLIUS in [Federalist No. 46](#), James Madison made the same case, noting that *“legislative devices”* and a *“refusal to cooperate with officers of the Union”* when used by multiple states *“would present obstructions which the federal government would hardly be willing to encounter.”*

In other words, if the states refused to participate in the enforcement or implementation of a federal act, it would be virtually impossible for the general government to carry it out.

We'll cover more of Madison's strategy to stop federal overreach outlined in Federalist No. 46 in a bit.

When you consider what these and other supporters of the Constitution said, it becomes clear the document was ratified on the promise that the people and the states could hold the federal government in check through the power of resistance and nullification.

KENTUCKY LEGISLATURE.

In the House of Representatives,

NOVEMBER 18th, 1798.

THE HOUSE according to the Standing Order of the Day, resolved 18th into a Committee of the Whole on the State of the Commonwealth.

Mr. CALDWELL in the Chair,

And after Jonathan Spivey (having the Speech selected) the Chair, and Mr. Caldwell reported, that the Committee had according to writs had under consideration the Governor's Address, and had come to the following Resolutions thereupon, which he delivered in at the Clerk's table, while they were taken read and agreed to by the House.

RESOLVED, that the Federal States composing the United States of America, are not united on the principle

of a common Government; but that by compact under the Style and Title of a Constitution for the United States and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving each State to itself, the residue, such of rights as, their own self

preserving the Liberties and current coin of the United States, privileges and immunities committed on the High Seas, and offences against the laws of nations, and no other crimes whatever, and it being true as a general principle, and one of the amendments to the Constitution having also declared, "that 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," therefore also the same act of Congress passed on the 24th day of July, 1798, and entitled "An act in addition to the act entitled an act for the punishment of certain crimes against the United States;" as also the act passed by them on the 27th day of June, 1798, entitled "An act to punish frauds committed on the Bank of the United States" (and whether their acts which attempt to create, define, or punish crimes other than those enumerated in the Constitution) are also laws to create, define, and punish other crimes is referred, and all rights appertaining solely and exclusively to the respective States, each within its own Territory.

THE PRINCIPLES OF '98

In 1798, Jefferson and Madison formalized the principles behind nullification in the Kentucky and Virginia Resolutions, sometimes referred to as the Principles of '98.

They were written in response to the Alien and Sedition Acts, four laws that clearly violated the Constitution. For instance, the Sedition Act criminalized criticism of the president and Congress.

Madison and Jefferson approached the issue in slightly different ways, but both men affirmed the power of the states to resist these unconstitutional federal acts.

Madison wrote that the powers of the federal government are “limited by the plain sense and intention of the instrument constituting the compact” and “no further valid that they are authorized by the grants enumerated in that compact.”

And he said the states were obligated to step in when the federal government oversteps its bounds.

“In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.” [Emphasis added]

In his original draft of the Kentucky Resolutions, Jefferson argued “whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force,” and 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.”

VOID

Notice Jefferson emphatically asserted that when the government acts outside of its delegated powers the action is “void.”

This concept predates the drafting and ratification of the U.S. Constitution. The American colonists developed this idea in the early days of their resistance to British power and its currents ultimately ran all the way through the ratification of the Constitution.

When used as a verb, Merriam Webster defines “void” as “to nullify or annul.” It means to make something without force, or “to make of no value or consequence.”

One of the major complaints American colonists raised against the British was it was levying taxes and passing acts outside of its constitutional authority.





In [a 1761 speech against writs of assistance](#), James Otis said, “*An act against the constitution is void.*”

The colonists carried this idea over into their own conception of government under the Constitution. During the Virginia ratifying convention, George Nicholas said if the new general government committed an act beyond its specifically delegated powers, “*the people will have a right to declare it void.*”

In the Connecticut ratifying convention, [future Chief Justice Oliver Ellsworth declared](#), “*If they make a law which the constitution does not authorize, it is void.*”

Even Alexander Hamilton even joined the chorus in [Federalist No.78](#).

“There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid.” [Emphasis added]

VOID IN PRACTICE: RESISTING THE STAMP ACT

Declaring something “void” is one thing. Making it so in practice is something else altogether.

You can’t just scream, “That is void!” and hope the government will stop. And you can’t wave the Constitution around like a red sheet at a bull and expect the government to suddenly cease and desist.

Words on paper don’t enforce themselves. And as we’ll see, they were never expected to, either.

There has to be some mechanism to shut down a government action when the people and government disagree about whether an act is void.





And this is going to happen in virtually every case.

The government always thinks its actions are justified. After all, the government passed the questionable act into law to begin with.

We have an example of this type of action that predates the Constitution.

American colonists declared the British Stamp Act void. They then mounted fierce resistance, refused to comply with the act, and effectively nullified it in practice and effect. This spirit of nonsubmission was carried through to the American founding.

In March of 1764, Parliament expressed its intention to impose a direct tax on the colonies by requiring that important documents be printed on “stamped” paper. The act quickly flamed widespread opposition in the colonies.

By 1765, the standard American position held that the Stamp Act violated the bounds of the British constitutional system. Objecting to the notion that Parliament was supreme, and could impose whatever binding legislation it wished, the colonies instead adopted the rigid stance that colonists could only be taxed by their local assemblies.

This idea, they said, stretched all the way back to 1215 and the Magna Carta.

News of the proposed taxes reached Virginia in the summer of 1765. Led by Patrick Henry, the House of Burgesses adopted a series of resolutions a few weeks later. These were known as [the Virginia Resolves](#)

Henry drafted seven resolutions. Five were adopted, although the House of Burgesses repealed one after Henry left. Nevertheless, drafts of [all seven resolutions](#) circulated widely throughout all 13 colonies and flamed resistance to the Stamp Act.

Some of the language in the resolutions foreshadowed the Kentucky and Virginia Resolutions of 1798. And with a young Thomas Jefferson in the audience, it's likely he was influenced by them as well.

For instance, in the fifth resolution, the assembly asserted their rights under the British constitution, insisting, *“the General Assembly of this Colony have the only and exclusive Right and Power to lay Taxes and Impositions upon the inhabitants of this Colony and that every Attempt to vest such Power in any person or persons whatsoever other than the General Assembly aforesaid has a manifest Tendency to destroy British as well as American Freedom.”*

The sixth and seventh resolutions asserted that the colonists were not required to follow any illegitimate “law.”

Henry wrote the inhabitants of the colony were “***not bound to yield obedience to any law or ordinance whatsoever designed to impose any taxation whatsoever upon them, other than the laws and ordinances of the general assembly aforesaid.***” [Emphasis added]

In other words, the Stamp Act was “void.”

In the final resolution, Henry wrote that any person asserting otherwise “*shall be deemed an enemy to this his majesty’s colony.*”

Like the Kentucky and Virginia Resolutions, the Virginia Resolves didn’t outline any specific actions colonists should take, but they provided a needed spark that ignited the entire patriot campaign against the Stamp Act throughout the colonies.

Other states also adopted resolutions. [Pennsylvania’s assembly asserted](#) that it was “*the inherent Birthright and indubitable Privilege of every British Subject to be taxed only by his own Consent or that of his legal Representatives.*”

A similar [resolution in Massachusetts](#) claimed that restricting taxation to local assemblies only was “*one of the main pillars of the British constitution.*”

Many prominent founding-era figures also wrote forcefully against the Stamp Act. John Dickinson, known as the “Penman of the Revolution,” [urged colonists to refuse to cooperate](#) with the act, warning, “*If you comply with the Act by using Stamped Papers, you fix, you rivet perpetual Chains upon your unhappy Country. You unnecessarily, voluntarily establish the detestable Precedent, which those who have forged your Fetters ardently wish for, to varnish the future Exercise of this new claimed Authority.*”

And in his [argument against the hated British Stamp Act](#), John Adams

declared that it was *“utterly void, and of no Binding force upon Us.”*

“For it is against our Rights as Men, and our Priviledges as Englishmen. An Act made in Defiance of the first Principles of Justice: an Act which rips up the foundation of the British Constitution, and makes void Maxims of 1800 years standing.”

Just two weeks before the Stamp Act went into effect, [John Hancock](#) wrote a defiant letter to his London agent Johnathan Bernard, insisting, *“The people of this country will never suffer themselves to be made slaves of by a submission to the damned act.”*

Opposition to the Stamp Act didn't end with fiery rhetoric. Colonists took direct action to resist it as well.

For instance, in Massachusetts, Samuel Adams and the “Loyal Nine,” led a large group of patriot agitators and merchants aligned against Andrew Oliver, the British agent responsible for enforcing the stamp tax in the colony. A massive gathering of people hung Oliver in effigy from a liberty tree. “Liberty, property, and no stamps!” became their rallying cry.

The protestors even conducted a mock funeral procession, where they took the corpse to the top of a hill, stamped it, and burned it in a bonfire. The next day, a group of patriots convinced Oliver to resign from his post and vowed to do the same for any replacement officer sent to enforce the Stamp Act.

Similar tactics were utilized by most of the other colonies. Hostile groups seized stamp paper, pressured officers to delay the law's enforcement, and forced the stamp distributors out of commission.

The campaign proved effective. Parliament ultimately repealed the unenforceable Stamp Act in March 1766. But the repeal didn't end the conflict between the colonists and the mother country. At the same time,

the king gave royal assent to the Declaratory Act, maintaining that British colonies were absolutely subordinate to the Parliament by claiming the power to bind them “in all cases whatsoever.”

The seeds of noncooperation planted during the Stamp Act fight continued to grow as tensions between the colonists and the British government intensified. As this constitutional struggle continued, the colonists maintained a spirit of resistance and their refusal to submit to what they viewed as an illegitimate, unconstitutional authority.

We find the First Continental Congress using language similar to the Stamp Act resolutions in its [1774 Declaration and Resolves](#). After listing various actions they deemed unconstitutional and unjust, the Continental Congress declared, “*To these grievous acts and measures Americans cannot submit.*”

Colonial resistance to the Stamp Act demonstrates an important truth - constitutional barriers aren't enough to protect liberty. They must be backed up and enforced by concrete action. As Thomas Jefferson wrote in [A Summary View of the Rights of British America](#) in 1774:

“A free people [claim] their rights, as derived from the laws of nature, and not as the gift of their chief magistrate.”

PARCHMENT BARRIERS

Even as the Constitution was being debated and ratified, there was a general understanding that the document wasn't going to enforce itself.



Without some enforcement mechanism, the Constitution is of little use when it comes to limiting the power of the federal government

As [John Dickinson wrote under the pen name Fabius IV](#), the people have a “DUTY TO WATCH, AND THEIR RIGHT TO TAKE CARE, THAT THE CONSTITUTION BE PRESERVED,” [all caps original]

In [Federalist No. 48](#), James Madison described limits on power in 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.”

In other words, governments won't adhere to the limits on their own power just because we write them out. Madison went on to



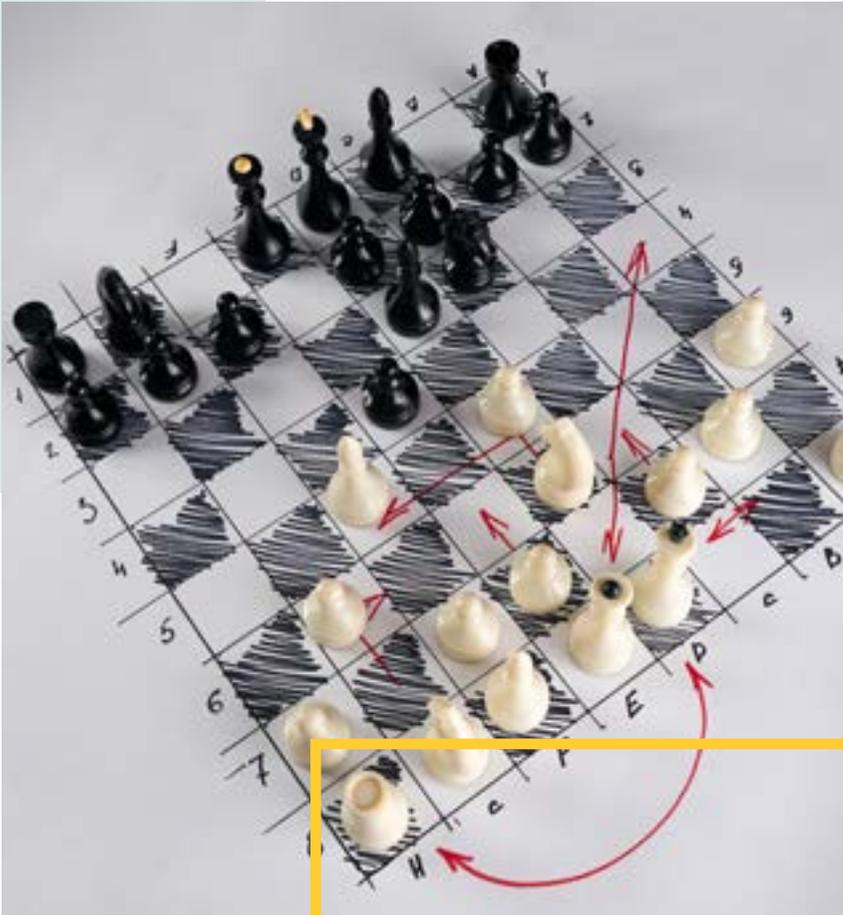
warn about the consequences of relying on parchment barriers.

“The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.”

And in a [letter to Thomas Jefferson](#) regarding the proposal for a Bill of Rights, Madison pointed out that state governments were notorious for ignoring their constitutional constraints.

“Repeated violations of these parchment barriers have been committed by overbearing majorities in every State. In Virginia I have seen the bill of rights violated in every instance where it has been opposed to a popular current.”

Madison suggested that we need something to back up our words – “some more adequate defense.” In short – the people must enforce their constitutions.



A BLUEPRINT FOR LIBERTY

As we've already seen, in the American system, the states were intended to serve as the defense against federal usurpations.

Even Alexander Hamilton made this same point in [Federalist #28](#).

"It may safely be received as an axiom in our political system, that the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority."

During the Connecticut ratifying convention, [Roger Sherman made a similar point](#) in a letter, saying the general government wouldn't even be able to act without the support of the states.

"All acts of the Congress not warranted by the constitution would be void. Nor could they be enforced contrary to the sense of a majority of the States. One excellency of the constitution is that when the government of the United States acts within its proper bounds it will be the



THEY HAVE ONLY NOT TO ACT, OR TO ACT EVASIVELY, AND THE MEASURE IS DEFEATED.

interest of the legislatures of the particular States to support it, but when it overleaps those bounds and interferes with the rights of the State governments, they will be powerful enough to check it."

Hamilton stumbled on the truth in [Federalist No.16](#). He argued that the states should not have any say in executing the powers of the federal government. In so doing, he unwittingly laid the foundation of state nullification.

"If the interposition of the State legislatures be necessary to give effect to a measure of the Union, they have only NOT TO ACT, or to ACT EVASIVELY, and the measure is defeated."

Hamilton got what he wanted in one sense. State legislatures have no say in approving or disapproving federal measures.

The federal government acts directly on the American people. But states still play a significant role in enforcing the federal government's will. While state legislatures do not approve federal measures directly, the federal government almost always depends on state resources and personnel to carry them into effect. By refusing to act, states have the power to defeat federal measures for all practical purposes.

This is the power behind the blueprint James Madison gave us to resist federal actions in [Federalist No. 46](#). He said state and individual action – specifically “a refusal to cooperate with officers of the union” – would impede federal power even in a single state. When multiple states take action, Madison said it would “create obstructions which the federal government would hardly be willing to encounter.”

Here, Madison offered a simple but incredibly effective strategy to nullify federal acts in practice - refuse to cooperate.

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

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]

A [2021 Pew Research Foundation report](#) on surface transportation funding reiterated this important point. The paper is the first in a series on “Fiscal Federalism in Action.” In the “about this report” section, the authors make the same admission as the National Governors Association made eight years before.

*“The federal government and the states are partners in **almost every major domestic policy area. Together,** their dollars pay for health care, education, transportation, public safety, and many other programs important to the American public.”* [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.

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.



ANTI-COMMANDEERING

This strategy of non-cooperation has not only been proven effective, but 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.

Known as “anti-commandeering,” this doctrine rests primarily on [five major SCOTUS cases](#).

The Court first established the doctrine in the 1842 fugitive slave case, *Prigg v. Pennsylvania*.



Justice Joseph Story held that the federal government could not force states to implement or carry out the Fugitive Slave Act of 1793. He said that it was a federal law, and the federal government ultimately had to enforce it.

“The fundamental principle applicable to all cases of this sort, would seem to be, that where the end is required, the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted. The clause is found in the national Constitution, and not in that of any state. It does not point out any state functionaries, or any state action to carry its provisions into effect. The states cannot, therefore, be compelled to enforce them; and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or intrusted to them by the Constitution.”

Over the years, the Court built on this decision in four more landmark cases: *New York v. U.S.* (1992), *Printz v. U.S.* (1997) *National Federation of Businesses v. Sebelius* (2012) and *Murphy v. NCAA* (2018).

The *Printz* case serves as the cornerstone. Justice Scalia wrote the opinion for the majority.

“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 No. 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.”

It’s important to understand that **no determination of constitutionality is necessary** to invoke the anti-commandeering doctrine. State and local governments can refuse to enforce federal laws or implement federal programs whether they are constitutional or not.

The crux of the anti-commandeering doctrine is that a state has the right to direct its personnel and resources as it sees fit. It can prohibit the enforcement of federal laws or the implementation of federal programs for any reason at all. A state could withdraw state resources from the enforcement of a federal act just because it’s Tuesday and there’s snow on the ground.

But won’t the feds just pull funding if a state refuses to cooperate? The anti-commandeering doctrine even limits this option for federal coercion.

In simple terms, the federal government cannot use funding to coerce states to take some desired action. *Independent Business v. Sebelius*

directly addressed this issue. In this case, the Court held that the federal government cannot compel states to expand Medicaid by threatening to withhold funding for Medicaid programs already in place. Justice John Roberts argued that allowing Congress to essentially punish states that refused to go along violates the constitutional separation of powers.

This built on the standard set years earlier, in [South Dakota v. Dole](#).

In 1984, Congress passed the National Minimum Drinking Age Act, withholding 5 percent of highway funds from states that didn't raise their drinking age to 21 in the first year, and 10 percent per year thereafter. South Dakota refused and challenged the law in court.

Although the Supreme Court upheld the federal law, it came with some pretty specific limitations. One was a requirement that the amount of funding could be seen only as an "inducement," and not be "so coercive as to pass the point at which pressure turns into compulsion." In this case, a withholding of 5 percent was below this threshold as the Court noted this "constituted less than half of one percent of South Dakota's budget at the time."

Additionally, the Court has held that funding conditions on the States must be reasonably related. For example, if the state refuses to enforce federal marijuana laws, the federal government can possibly cut some funding relating to drug war enforcement that the state agreed to participate in initially, but it can't take away education funding to punish a state for not cooperating with marijuana prohibition.

In practice, the federal government can withhold funding directly related to any action that a state refuses to take, but with some [significant limitations and caveats](#). And it can't take away unrelated funding.

“REAL” NULLIFICATION?

By refusing to cooperate with officers of the union, states and even localities can effectively nullify federal actions. But some will argue this isn't “real nullification.”

In order to understand the modern nullification movement, it's important to first 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:

1. to make null; especially: to make legally null and void

2. to make of no value or consequence

The first definition is the legal 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 legal experts talk about “nullification,” they almost always focus exclusively on the legal definition.

They specifically fixate on a peculiar 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 $\frac{3}{4}$ 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 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.

SUCCESS STORY: THE FUGITIVE SLAVE ACT

The Tenth Amendment Center nullification strategy follows Madison’s blueprint of non-cooperation to nullify federal acts in practice and effect. This has proven extremely successful when applied.

One of the first widespread nullification movements was put into 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.

For instance, the *Michigan Personal Freedom Act* guaranteed any man or woman claimed as a fugitive slave, “all the benefits of the writ of habeas corpus and of trial by jury.” It also prohibited the feds from using state or local jails for the purposes of holding an accused fugitive slave and made any attempt to send a freedman South into slavery a crime.

Before the beginning of the Civil War, every northern state had passed



some type of law intended to thwart the enforcement of the Fugitive Slave Act.

This nullification effort didn't rely solely on legislative action.

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 of the states, effectively nullified the federal law in practice. It remained on the books, but it became effectively unenforceable in most areas in the North.

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 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 used 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.**” [Emphasis added]*

Other seceding states, including Mississippi, Texas and Georgia included similar statements in their own secession documents.

So, while northern actions didn’t legally overturn the Fugitive Slave Act, they did make it nearly impossible to enforce, nullifying it in practice and effect.

SUCCESS STORY: ALCOHOL PROHIBITION

In the 20th century, state, local and individual action effectively nullified federal alcohol prohibition long before it was repealed in law.

After ratification of the 18th Amendment, nearly every state passed laws to enforce prohibition under the Volstead Act. State leaders widely accepted that they had an obligation to do so.

But Maryland never passed any laws to enable state-level enforcement and was eventually joined by other states, starting with New York in 1923.

A [University of Houston study](#) noted that states eventually grew tired of the hassle that came with enforcing the federal alcohol ban. By 1925, six states had developed laws that kept police from investigating alcohol infractions.

Cities in the Midwest and Northeast were particularly uninterested in assisting the feds with maintaining Prohibition. By 1928, 28 states had stopped funding for alcohol prohibition enforcement.

Add to all this the millions of individuals who flat out defied federal law.

Instead of decreasing drinking, Prohibition resulted in an alcohol boom.

Prior to Prohibition, there were fewer than 15,000 legal bars in the United States. By 1927, more than 30,000 speakeasies were in business and approximately 100,000 people brewed alcohol illegally from home.



During that time, Maryland's Senator Bruce recognized what was happening. He noted that even though national prohibition went into legal effect, "*except to a highly qualified extent, it has never gone into practical effect at all.*" [Emphasis added]

[New York Mayor Fiorello LaGuardia](#) agreed when he said "*It is impossible to tell whether Prohibition is a good thing or a bad thing. It has never been enforced in this country*"

It wasn't for a lack of trying on the federal level. But individuals, cities and states resisted Prohibition on a massive scale. In some cases, they even prohibited Prohibition enforcement. In the end, the federal government was unable to overcome this effective, practical nullification, and it was eventually forced to repeal Prohibition altogether with the passage of the 19th Amendment.

SUCCESS STORY: CANNABIS PROHIBITION

That brings us to modern times and the granddaddy of all nullification movements -- weed.

The nullification of federal marijuana prohibition is the most successful nullification effort in American history. There has never been another time when 36 states have actively defied the feds.

Practically speaking, while [efforts in California started in the 1970s and 80s](#), the modern nullification movement got rolling in 1996 when voters there approved Proposition 215. The *Compassionate Use Act* authorized the possession, cultivation and use of cannabis (marijuana) for limited medical purposes.

Under the federal Controlled Substances Act (CSA) passed in 1970, the federal government maintains complete prohibition of marijuana to this day. It makes no exception for medical use.

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 marijuana being legal in some form in 36 states today, it's easy to forget the precarious nature of limited medical marijuana legalization in California in those early days. The federal government put heavy pressure on anyone violating its prohibition. The DEA jailed people. The feds took people's property. Federal officials threatened to go after doctors who recommended medical marijuana. The government regularly carried out more and more aggressive raids.

And by the time Bill Clinton left office, seven more states had legalized medical cannabis.

From those small beginnings, Prop 215 grew into a nationwide movement that has overwhelmed federal marijuana prohibition in practice. At this point, the feds have mostly given up prosecuting marijuana users in states where it's legal.

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, ahead of almonds, dairy and grapes.

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 36. In the year since we wrote the last State of the Nullification movement report, three more states have legalized medical marijuana.

Meanwhile, 18 states have legalized marijuana for adult recreational use.

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



HUMAN ACTION

Political action at the state and local level is key to taking on overreaching federal power, but as you saw in past efforts, 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 federally-required 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 long before voters approved Prop 215.

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 further and further, 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.**

STEP-BY-STEP

Nullification of federal marijuana prohibition demonstrates another important truth - we don't win liberty in a day. We've seen tremendous progress in nullifying the feds on cannabis in the 25 years since Californians approved Prop. 215. But there is still more work to do.

Advancing liberty is a game of inches.

In his [1791 Opinion on the Constitutionality of a National Bank](#), Thomas Jefferson called the Tenth Amendment a line in the sand.

*"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]*

Sadly, over the years, the federal government has taken hundreds, if not thousands, of steps beyond those specifically drawn boundaries. Today, we face arguably the biggest and most powerful government in the history of the world.

It can feel overwhelming, but Jefferson gave us another bit of advice in a 1790 [letter to the Rev. Charles Clay](#) that can help us proceed with confidence.

“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.

Jefferson understood this.

Step-by-step. Inch-by-inch. Brick-by-brick. That’s how we build a strong foundation for the Constitution and liberty.

Consider this short expression for example. You can find it 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.

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, victualling-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 crescunt*.

Small things grow great by concord.

We've seen this strategy play out as states slowly pushed back against federal marijuana prohibition. And we apply this same strategy every single day to everything we do.

As we've pointed out, the federal government depends on the states to do almost everything it does. When states start refusing to cooperate, things start not getting done. This chips away at federal power.

Inch by inch.

PART 2: TRACKING PROGRESS



In the sections ahead, we'll cover prominent state and local actions during the 2021 legislative sessions that open the door to undermining federal power -- first steps, second steps and beyond.



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.

At the time of this report, 36 states have legalized marijuana for medical use, and 18 states along with Washington D.C. have expanded on these efforts, legalizing marijuana for adult recreational use. Additionally, [13](#)



[states have decriminalized marijuana possession](#). Over 50 localities in a dozen states have enacted municipal laws or resolutions either fully or partially decriminalizing minor cannabis possession offenses.

All of this is being done despite federal prohibition on the same.

Moving Forward Step-By-Step

The movement to nullify federal marijuana prohibition is a great example of 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 the loosening of old laws help expand the market, and each expansion further nullifies the unconstitutional federal ban in practice and effect. With state and local actions accounting for as much as 99 percent of all enforcement efforts according to the FBI, 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.

The data bears this out. [Federal marijuana trafficking convictions have fallen significantly](#) since the enactment of cannabis legalization by the states. According to a [fact sheet](#) issued by the United States Sentencing Commission (USSC), federal marijuana trafficking sentences are down 67 percent since 2016 and over 80 percent since 2012 when Colorado and Washington became the first states to legalize marijuana.

Since our last report, the movement has continued to grow.

In November 2020, [New Jersey, Montana and Arizona all legalized recreational marijuana through ballot measures](#). Arizona voters passed Prop. 207 to legalize cannabis for adult use by a 59.8-40.2 margin. Montana voters approved Ballot measure I-190 by a 56.6-43.4 margin. New Jersey voters said "yes" to Public Question No. 1 by a 66.9-33.1 margin.

South Dakota voters also approved a constitutional amendment to legalize marijuana for adult use during the November 2020 election. A judge struck down the measure in a lawsuit supported by Gov. Kristi Noem. The South Dakota Supreme Court is expected to issue an opinion on the suit in the near future.

Meanwhile, in October, a legislative subcommittee moved to advance ‘compromise’ legislation that would legalize the possession of small amounts of marijuana by adults, but would prohibit outdoor commercial cultivation operations and home grows. Gov. Noem’s spokesperson said the governor remains opposed to any efforts to legalize cannabis for adult-use purposes.

The legalization of recreational marijuana happened exclusively through voter initiatives until [Vermont because the first state](#) to legalize adult-use cannabis through state legislative action in 2018. [Illinois followed Vermont’s lead](#), legalizing marijuana the following year. During the 2021 legislative session, [New York](#), [New Mexico](#), [Virginia](#) and [Connecticut](#) all legalized adult-use marijuana through legislative action.

While South Dakota’s recreational legalization scheme is tied up by the legal system, voters [also legalized medical marijuana](#) during the 2020 election, and implementation of that program is moving forward, despite ongoing resistance from the state legislature.

Mississippi voters also overwhelmingly voted to legalize medical marijuana, but the state Supreme Court struck down the initiative. Over the summer, legislators worked to hammer out a compromise bill to implement the will of the voters. But in October, [legislative leaders said](#) Republican Gov. Tate Reeves was holding up a special session on the issue with “unreasonable demands.”

In one of the biggest surprises of the 2021 legislative session, [Alabama’s Republican governor signed a bill legalizing](#) medical marijuana passed

by the Republican-dominated legislature. While patients will probably not be able to get medical cannabis before the fall of 2022, the process of enacting the law began immediately.

The legalization of medical marijuana in one of the reddest of red states shows just how much the issue has advanced. Such an effort would have been doomed just a few years ago.

Several states expanded their marijuana laws to give consumers and patients better access. This demonstrates an important strategic point. Once a state legalizes marijuana – even if only in a very limited way – it tends to eventually expand and grow. As the state tears down some barriers, markets develop and demand expands. That creates pressure to further relax state law.

The following new laws represent a further erosion of unconstitutional federal marijuana prohibition.

In California, Gov. Gavin Newsom [signed a bill into law](#) that will make it easier for banks to work with marijuana businesses in the state despite federal prohibition on doing so. The new law clarifies that no state law prohibits a financial institution from providing financial services to a licensed cannabis business. This will reduce the cost and risk to banks as they walk the tightrope in dealing with federal requirements relating to serving state marijuana businesses.

In Nevada, Gov. Steve Sisolak [signed a bill into law](#) authorizing on-site marijuana consumption at licensed businesses. The new law creates two new cannabis business licenses. A license for a “retail cannabis consumption lounge” enables existing marijuana businesses to sell marijuana products for consumption on-site by adults 21 and older. An “independent cannabis consumption lounge” license authorizes a business to enter into a contract with an existing marijuana retailer to purchase and prepare ready-to-consume marijuana products for resale

and consumption on site.

Several other states expanded their medical marijuana programs.

[Delaware expanded access](#) to medical marijuana by allowing nurse practitioners and physician assistants to recommend medicinal cannabis for qualifying patients over the age of 18. Under the old law, only physicians could recommend medical marijuana.

[In Pennsylvania](#), cannabis patients can now possess up to a 90-day supply of marijuana. Under the original law, they were limited to a 30-day supply. The new law makes the program more convenient for patients by allowing them to consult with authorizing physicians via video conferencing and authorizing dispensaries to utilize curbside pickup. Additionally, HB1024 expanded the pool of eligible conditions for treatment with cannabis to include cancer remission therapy and CNS-related neuropathy. It also removed a requirement that patients suffering from chronic pain must first try prescription pain meds prior to using marijuana.

[In Louisiana](#), medical marijuana patients can now access smokable products. Under the old program, patients could only vaporize cannabis preparations using a “metered-dose inhaler,” but they could not purchase whole-plant flower. Smoking marijuana was illegal under the old law, even for qualified patients.

A [new law in New Hampshire](#) authorizes physicians to recommend medical marijuana for patients with moderate or severe insomnia. It also allows adult or pediatric patients with autism spectrum disorder (ASD) to use medical marijuana under specific circumstances.

A [bill passed in Texas](#) allows the Department of State Health Services to add more qualifying conditions via administrative rulemaking. It also raises the THC cap for medical marijuana products from 0.5 percent to

five percent.

A provision in Minnesota's health and human services [omnibus bill](#) expanded that state's medical marijuana program to allow the sale of dried cannabis flower and legalized smoking marijuana for patients in the program.

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.

For instance, Delaware decriminalized the possession or consumption of a "personal use quantity" of marijuana for adults 21 or over in 2015, making it a civil violation subject to a fine. But under the current law, possession of a personal-use quantity of cannabis remains a criminal offense for people under the age of 21. The [enactment of SB45](#) in 2019 expanded the decriminalization of personal use consumption or possession of marijuana to include individuals under 21.

Even in Colorado, where recreational marijuana has been legal since 2012, the state continues to loosen restrictions. In 2021, Colorado further decriminalized cannabis [with the passage of HB1090](#). The new law increases the amount of marijuana an adult over 21 can possess from 1 ounce to 2 ounces. It also streamlines the state's expungement process, by requiring courts to approve requests to have prior criminal records relating to marijuana possession sealed without consulting with a district attorney.

As marijuana becomes more accepted and more states, localities, and individuals simply ignore the federal prohibition, the feds become less able to enforce their unconstitutional laws. After more than two decades of state, local and individual resistance and nullification, the federal government's unconstitutional prohibition of cannabis is beginning to come apart at the seams.



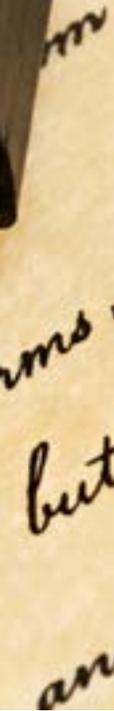
2ND AMENDMENT

With Joe Biden in the White House, Republicans suddenly became concerned about the Second Amendment again in 2021.

Numerous state legislatures took up measures to end enforcement of at least some federal gun control and create “Second Amendment sanctuaries.” Two states passed solid Second Amendment Preservation Acts (SAPA) that set the foundation to

nullify a broad range of federal gun control in practice and effect within the borders of those states. Three other states took more modest steps forward, setting the stage to more narrowly nullify gun control that might be coming in the future.

While these results are likely the best-ever in a single legislative session, there were a number of avoidable setbacks as well.



Unfortunately, bills passed in several other states don't come anywhere close to doing what they advertised.

Our Strategy

The [ATF employs](#) about 2,600 special agents. Historically, this workforce has been able to investigate between 8,000 and 10,000 cases per year.

There is no way that a 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 enforcement of tighter federal gun laws “nearly impossible” 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 bars 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. (Idaho expanded this law in 2021. More on that below.)

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 sawed-off shotguns.”

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

Missouri and Arizona

Biden’s victory in 2020 and Democratic Party control of Congress ignited fears of more draconian gun control coming down the pike, and states responded with a flurry of Second Amendment legislation not seen since the last year of the Obama administration.

Significant measures barring enforcement of both future and current gun control passed in Arizona and Missouri.

After eight years of tireless effort by dedicated grassroots activists, Missouri Gov. Mike Parson [signed the Second Amendment Preservation Act](#) (SAPA) into law.

Rep. Jered Taylor filed House Bill 85 (HB85) on Dec 1, with companions sponsored by Rep. Bishop Davidson and Sen. Eric Burlison. The new law bans any entity or 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, regulations, statutes, or ordinances” that infringe on the right to keep and bear arms.

Significantly, the legislation includes a specific list of infringing acts that the state cannot enforce. This ensures the decision won’t be left to the discretion of law enforcement officers or judges.

Since passage, Missouri law enforcement officers have complained that SAPA ties their hands and Gov. Parson's has even indicated the law needs to be "revisited."

"The specific attack on the relationship between the federal law enforcement officers and the state is particularly problematic," a Missouri law professor and former NYPD cop [told KMOV4](#).

A U.S. Department of Justice statement said the law has already done "significant damage to federal law enforcement operations," adding that nearly 25 percent of the state and local officers assigned to ATF task forces have already withdrawn.

[A new Arizona law](#) takes a different approach but will have the same basic effect - a ban on state enforcement of purely federal gun control.

Rep. Leo Biasiucci (R) introduced House Bill 2111 (HB2111). The new law bans the state and all political subdivisions of the state from "using any personnel or financial resources to enforce, administer or cooperate with any act, law, treaty, order, rule or regulation of the United States government that is inconsistent with any law" of the state of Arizona regarding the regulation of firearms.

While the law doesn't end all gun control in Arizona immediately, it represents a massive shift in strategy going forward. Practically speaking, the new law did the following upon enactment:

- Bans state and local enforcement of any federal gun control measures on the books that don't have concurrent measures in law in the state of Arizona.
- Bans state and local enforcement of any new gun control measures that might come from Washington D.C. in the future that aren't on the books in Arizona
- Shifts the focus and attention to any remaining gun control measures on the books in state law

- Encourages gun rights activists to work in future legislative sessions to repeal those state-level gun control measures as a follow-up.

Each state-level gun control repeal will now represent a one-two punch, not only ending state enforcement, but automatically ending support for any concurrent federal gun control measure as soon as the state law repeal goes into effect.

Other States

Several other states passed important, but less-sweeping measures.

A [Montana law passed in 2021](#) bans enforcement of future federal gun control in the state.

Rep. Jedediah Hinkle (R-Belgrade) sponsored House Bill 258 (HB258). The new law prohibits police officers, state employees, and employees of any political subdivision of the state from enforcing, assisting in the enforcement of, or otherwise cooperating in the enforcement of any new “federal ban” on firearms, magazines, or ammunition.

HB258 broadly defines “federal ban” as “a federal law, executive order, rule, regulation that is enacted, adopted, or becomes effective on or after January 1, 2021, or a new and more restrictive interpretation of an existing law that existed on January 1, 2021, that infringes upon, calls in question, or prohibits, restricts, or requires individual licensure for or registration of the purchase, ownership, possession, transfer, or use of any firearm, any magazine or other ammunition feeding device, or other firearm accessory.”

The new law also prohibits them from participating in federal enforcement actions and prohibits the expenditure or allocation of public funds or resources for such enforcement.

A [new law in Texas](#) decriminalizes firearm sound suppressors under state law. Under the law, state agencies may not adopt any rule, order, ordinance, or policy to enforce a federal statute, order, rule, or regulation that purports to regulate a firearm suppressor that does not exist under state law. The law also repealed a provision in current state law that made it an offense to possess, manufacture, transport, repair or sell a firearm suppressor unless it is registered by the National Firearms Registration and Transfer Record.

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 in Texas does not alter federal law, nor will it end federal enforcement, but it does remove a layer of law hindering access to these harmless devices. The widespread easing of suppressor regulation subtly undermines federal efforts to unconstitutionally regulate firearms. As Texas activist Tom Glass put it, it does not stop feds from attempting to enforce, but at least it gets Texas law right.

[Idaho expanded a law already on the books](#) and further restricted state enforcement of federal gun control. The Senate Affairs Committee sponsored Senate Bill 1205 (S1205). The old law prohibits officials, agents, or employees of the state or its political subdivisions from knowingly and willfully ordering any other official, agent, or employee of the state or a political subdivision of the state to enforce a federal executive order, agency order, law, statute, rule or regulation if contrary to the provisions of section 11, Article I, of the Constitution of the state of Idaho.

S1205 expands the prohibition on enforcement, adding provisions prohibiting “all Idaho government entities” from “using any personnel, funds, or other resources to enforce, administer, or support the enforcement of any executive order, agency order, treaty, law, rule, or regulation of the United States government upon a firearm, firearm component, firearm accessory, or ammunition **if contrary to the provisions of section 11, Article I of the Constitution of the state of Idaho.**” [emphasis added]

The Idaho Constitution provides strong protections for the right to keep and bear arms. It prohibits any laws that “impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony.”

The enactment of S1205 effectively bars the state from enforcing any federal gun laws in effect after Jan. 1 of this year that do the same.

How this plays out in practice remains to be seen. There is no mechanism in the bill to declare a specific federal act as “contrary” to the Idaho State Constitution. Although the types of laws prohibited by the state constitution are well-defined, law enforcement agents could still conceivably argue that “it’s not our job to decide if a federal act runs afoul of the state constitution.” That language should be clarified in the next legislative session.

Second Amendment Sanctuaries: The Worst of the Worst

While the new laws we’ve covered so far all take solid steps toward blocking enforcement of at least some federal gun control, several states passed bills purporting to create “Second Amendment Sanctuaries” that create sanctuaries for absolutely nothing in practice.

These laws were sold as bold moves against federal gun control, but in reality, they don’t ban any specific action, or they include language that



opens significant loopholes. One new law even asks permission from the feds to stop enforcing unconstitutional gun control.

North Dakota

[This new law](#) has decent provisions banning enforcement of some future federal gun control, but it includes language that could open a pretty significant loophole. State or local agents can cooperate with the enforcement of banned future federal gun control if a federal court finds probable cause that “a national security threat exists.” It also gives law enforcement plenty of wiggle room to continue working on joint state/federal task forces when federal gun control is “incidentally” enforced.

“This section does not prohibit an agency or political subdivision of the state or a law enforcement officer or individual employed by an agency or political subdivision of the state from providing assistance to a federal agency or official for an offense not related to firearms or an offense

to which firearms are incidental, including a drug offense, homicide, assault, kidnapping, sex offense, or human trafficking.”

With the exceptions and continued partnering with federal task forces, it’s hard to predict just how effective the ban on enforcement will play out in practice. In our view, it’s likely to be almost completely ineffective.

Arkansas

This is [another law](#) that might ban enforcement of some future federal gun control, but some convoluted language in the bill makes it very unlikely it will actually play out that way in practice.

The law prohibits public officers and employees of the state and its political subdivisions from “enforcing or assisting federal agencies or officers in the enforcement of any federal statute, executive order, or federal agency directive that conflicts with Arkansas Constitution, Article 2, § 5, or any Arkansas law.”

The bill declares a “federal ban” null and void in the state of Arkansas. A federal ban is broadly defined as “a federal law, executive order, rule, or regulation that is enacted, adopted, or becomes effective on or after January 1, 2021, that infringes upon, calls into question, or prohibits, restricts, or requires individual licensure for or registration of the purchase, ownership, possession, transfer, or use of any firearm, any magazine or other ammunition feeding device, or other firearm accessory.”

The bill also includes a list of federal actions that would qualify as “a federal ban.”

So far, so good, at least on the surface.

However, much of the language of the bill is extremely convoluted and could leave a loophole for law enforcement officers to continue

enforcing federal gun control. It specifically bars state and local agents from enforcing acts that “conflict with Arkansas Constitution, Article 2, § 5, or any Arkansas law.”

Law enforcement lobby groups are likely to promote the view that “it’s not the job of a law enforcement officer to determine what’s constitutional or not.” And in practice, that means law enforcement agents could plausibly continue helping in the enforcement of all federal gun control in Arkansas until a court tells them to do otherwise.

It appears that the bill intends to link the definition of a “federal ban” with acts state and local agents would be prohibited from enforcing. But the term “federal ban” does not appear in the clause prohibiting enforcement. The most generous reading of the bill would prohibit state and local officials from enforcing any federal action included in the definition of a federal ban. But the tangled language makes it difficult to determine how the law would be interpreted in practice.

A leading grassroots activist in Arkansas called the bill “smoke and mirrors.” Until we see otherwise, we absolutely agree.

West Virginia

This “[Second Amendment Preservation Act](#)” will likely serve only to protect most federal gun control. The law’s saving grace is that it does prohibit state enforcement of any potential federal “red flag laws” in West Virginia. Other than that, the law is a tangled web of convoluted language, promising a lot, but delivering almost nothing.

The law includes provisions that appear to block state and local police from enforcing federal gun control under the anti-commandeering doctrine.

“No agency of this state, political subdivision of this state, or employee of an agency, or political subdivision of this state, acting in his or

her official capacity, may be commandeered by the United States government under an executive order or action of the President of the United States or under an act of the Congress of the United States. Federal commandeering of West Virginia law-enforcement for purposes of enforcement of federal firearms laws is prohibited.”

But the twisted definition of anti-commandeering in the bill makes this provision utterly meaningless.

“Commandeering” means taking control of or seizing the assets, personnel, or operations of an agency of this state, or of a political subdivision of this state, or the employees of an agency or political subdivision of this state without the express authority for the control having been formally given by the state or political subdivision of the state.

This never happens.

The feds don't just go grab some local cops and force them to enforce federal gun control. State and local police do this voluntarily. The feds ask for help. State and local police provide it. And under this West Virginia law, they will be free to continue doing so.

Texas

Gov. Greg Abbott [said that signing HB2622](#) into law would make his state a “2nd Amendment Sanctuary.” However, the new law doesn't ban the state from enforcing any existing federal gun control – none. Given the extensive federal gun control already on the books, this new “sanctuary” status looks pretty much like the status quo. The state will continue to cooperate with the enforcement of all federal gun control. While this could represent a good first step like in Montana, that doesn't qualify as a “sanctuary” in any way.

The new law does appear to ban the state and local police from the enforcement of most future federal gun control that “imposes a prohibition, restriction, or other regulation that does not exist under the laws of this state.” However, a loophole in the bill will allow continued support for the enforcement of any future gun control as well – as long as it’s done under existing task force agreements, which virtually every locality in the state has.

Oklahoma

[A law](#) purporting to make Oklahoma a “Second Amendment Sanctuary State” did no such thing and it will have little or no practical effect. It is basically a non-binding resolution.

The new law declares the following:

“Any federal, state, county or municipal act, law, executive order, administrative order, court order, rule, policy or regulation ordering the buy-back, confiscation or surrender of firearms, firearm accessories or ammunition from law-abiding citizens of this state shall be considered an infringement on the rights of citizens to keep and bear arms as guaranteed by the Second Amendment of the Constitution of the United States and Article II, Section 26 of the Constitution of Oklahoma.”

Under the law, it is now *“the duty of the courts and law enforcement agencies of this state to protect the rights of law-abiding citizens to keep and to bear arms within the borders of this state and to protect these rights from the infringement provided under the provisions of this act.”*

Compare this approach with that of almost every immigration sanctuary city or state, and the difference becomes stark. The former includes an express prohibition on state and/or local law enforcement participation in federal immigration enforcement. SB631 includes no express prohibition. It directs courts and law enforcement agencies to perform a broadly



defined “duty,” but does not specify any action or prohibition to fulfill it. Lacking any specific actions or prohibition on actions for police or courts to follow, it’s almost certain they will take no action at all, instead deferring to the federal courts on any question of constitutionality.

Tennessee

A [new Tennessee law](#) is the worst of the worst. It literally begs for permission to stop state and local enforcement of federal gun control.

The Tennessee legislature actually passed two laws relating to federal gun control in 2021, neither of which will have any practical effect.

In 2015, [Tennessee enacted a law](#) that bans Tennessee state or local public funds, personnel, or property from being used for the “implementation, regulation, or enforcement of any federal law, executive order, rule or regulation regulating the ownership, use, or possession of firearms, ammunition, or firearm accessories” if such use “would result in the violation of Tennessee statutory or common law or the Constitution of Tennessee.”

The problem with this law is that it lacks any method to determine if a specific federal action violates the Tennessee constitution or a Tennessee law. For full effect, it needs to define specific acts that violate

the state constitution.

The [first law passed in 2021](#), sponsored by Sen. Mike Bell (R-Riceville) and Rep. Todd Warner (R-Chapel Hill), features language virtually identical to the 2015 law. It's inexplicable why this was even introduced if the law was already on the books.

Meanwhile, Sen. Joey Hensley (R-Hohenwald) and Rep. Scotty Campbell (R-Mountain City) sponsored the so-called "Tennessee Second Amendment Sanctuary Act." And once again, we have a sanctuary for nothing.

Instead of defining specific acts that violate the state constitution to effectuate the 2015 statute, SB1335/HB928 created a process to determine constitutionality – get an opinion from the U.S. or Tennessee Supreme Court. The new law added the following language to the current law.

"Pursuant to the sovereign authority of this state, a law, treaty, executive order, rule, or regulation of the United States government that has been found by the supreme court of the United States or the Tennessee supreme court to violate Article I, § 26 of the Constitution of Tennessee or the Second Amendment to the United States Constitution is null, void, and unenforceable in this state."

In other words, the state will continue to enforce all federal gun control until a court gives them permission to stop.

Police Opposition

Quite frankly, we would have probably had even more success in state and local efforts to nullify federal gun control if it weren't for one big hurdle - law enforcement lobby groups.

The biggest opponents of bills to end state and local enforcement

of federal gun control have been sheriffs' associations, police chief associations, and other groups representing cops. They have gotten these bills killed in some states, and significantly watered down in others.

For instance, the [Missouri Sheriffs' Association aggressively lobbied](#) to stop the Missouri Second Amendment Preservation Act. The lobbying group claimed that banning Missouri law enforcement from enforcing current federal gun control – and anything new from the Biden administration – will stop them from “catching criminals.”

And in Wyoming, [all 23 Sheriffs signed a letter](#) opposing [almost the same bill](#). SF81 passed the Senate by a 24-6 vote but with the intense law enforcement lobbying, it was never considered for introduction in the House.

There was similar law enforcement opposition in every single state where measures to end enforcement of federal gun control were introduced.

Why?

Because, as they repeatedly tell the public in hearings on these bills, they don't want to “jeopardize” their relationships with their “federal partners.” That is more important than the Constitution, it seems. After all, there is no money or power in standing up for the Second Amendment.

As we saw in Missouri, cops claim it's a matter of “public safety.” If they don't work with the feds, dangerous criminals will go free, they say. This is a total crock.

State and local police can go after dangerous criminals under state laws. But they like using federal gun charges to ratchet up penalties and

as a bargaining chip to force plea deals. They also like the money and toys that go along with working with the feds. And almost all of these partnerships revolve around the federal “war on drugs,” which, by the way, is also unconstitutional.

As a result, we basically have a national police force today. It operates under euphemisms such as “joint task forces” and “state/federal partnerships.” The bottom line is your local cops work for the feds - and as feds as members of these task forces - every single day. They like it that way. And they aren’t about to risk those partnerships so you can keep your AR-15. And many of the “pro-2nd Amendment” politicians in state legislatures will suddenly drop the “pro” as soon as it requires any limitation on the war on drugs.

We see the evidence of this every single day as we watch these lobbies oppose every effort to stop enforcement of federal gun control, and Republican politicians bowing to the pressure.

We will certainly have to continue battling these powerful lobbies as we continue to fight federal gun control.

Permitless Carry

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

[Texas](#), [Montana](#), [Utah](#), [Iowa](#), and [Tennessee](#), all passed “constitutional carry” or permitless carry laws in 2021. [Wyoming](#) expanded its law to remove residency requirements. And [South Carolina](#) took a smaller step by legalizing open carry for CCDW permit holders.

Permitless carry not only expands gun freedom within the state; it also helps foster an environment hostile to federal gun control. The 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.

Big Picture

During the Obama administration, there was a strong movement at the state level to nullify federal gun control. When Donald Trump ascended to the presidency, that movement all but petered out.

In politics, perception often trumps reality. The perception was that with a Republican in the White House, we didn't have to worry about the feds violating the Second Amendment. Trump was widely viewed as a "gun guy," even garnering an endorsement from the NRA.

But perception is not reality. In fact, Trump was demonstrably worse on federal gun control than even Barack Obama.

During a public appearance in 2019, President Trump proudly reminded us about his gun control credentials, bragging that his administration implemented new gun control and conducted more enforcement actions **than anyone in history.**

“At my direction, the DOJ banned bump stocks. Last year we prosecuted a record number of firearms offenses,” Trump boasted.

This wasn’t just rhetoric. In each of the first three years of the Trump administration, the ATF ramped up enforcement of federal gun control to record levels.

The president didn’t back off his commitment to enforcing gun laws in fiscal 2020, even with the pandemic. And throughout his entire term, the Trump administration was [far more aggressive in enforcing federal gun laws](#) than someone more known for his “gun grabber” credentials, Barack Obama.

And Trump did something even Obama wasn’t able to do. He enacted new federal gun control with the [implementation of a “bump-stock” ban](#).

And make no mistake; all federal gun control laws are unconstitutional.

This brings up another important point. Even without new federal gun control, the U.S. government enforces a myriad of unconstitutional federal gun control measures every day.

Federal gun control laws have been in effect more or less since the enactment of the National Firearms Act (NFA) in 1934. It set up excise taxes for the manufacturing and transfer of certain firearms and requires permits for the ownership of certain weapons. On top of that, we have the Gun Control Act of 1968, the Firearm Owners’ Protection Act of 1986 (FOPA), the Undetectable Firearms Act of 1988, the Brady Handgun Violence Prevention Act of 1993, and more.

In simplest terms, [the Second Amendment is not in force](#).

Backing off of federal gun control nullification during the Trump years was foolish and based on a myth.



POLICE STATE

The United States are rapidly evolving into a national police state.

Through incentives created by federal funding and the proliferation of [joint task forces](#) that combine state, local and federal policing, the federal government has effectively created a nationalized police force.

The federal government was never intended to exercise “police powers” in the first place. There are just [five broad categories](#) where the Constitution delegated to Congress the power to create criminal laws.

The creation of every other federal crime violates the Constitution, as does every federal law enforcement agency operating outside of these clear



limits.

In other words, virtually the entire federal law enforcement apparatus is unconstitutional.

Nevertheless, the federal government continues to develop a national police force that operates outside of any jurisdictional, legal or constitutional boundaries.

While police reform efforts in Washington D.C. have fallen flat, we continue to see a growing number of successes at the state and local levels.

This is the most effective path forward.

State and local governments can end this nationalization of police by simply withdrawing from the various federal programs that centralize authority in Washington D.C.

In 2021, a number of states did just that, opting out of federal programs to militarize police, ending participation in a federal asset forfeiture program, creating state laws to circumvent Supreme Court opinions that give police leeway to violate individual rights without fear of punishment, and prohibiting “no-knock” warrants despite several Supreme Court opinions that give police legal cover for conducting no-knock raids.

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 then prove that the property wasn't involved in criminal activity in order to get it back. 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 “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 2020, the federal government [distributed over \\$243 million](#) to state and local law enforcement agencies through equitable sharing programs despite the country being virtually shut down by governments in response to the coronavirus pandemic.

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 policy remains in effect today.

The equitable sharing program also provides the federal government with 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.

Even as states reform asset forfeiture laws to require a conviction before the forfeiture process can move forward, it is imperative that they 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.

In 2021, three more states reformed their asset forfeiture processes.

Maine scrapped civil asset forfeiture altogether and replaced it with a criminal process. The [passage of LD1521](#) also effectively opts Maine out of the federal equitable sharing program in most situations.

Arizona also [enacted legislation](#) requiring a criminal conviction before prosecutors can begin forfeiture proceedings in most cases. This built on [2017 reforms](#) that included provisions that closed the loophole allowing state and local cops to pass cases off to the feds and take advantage of equitable sharing.

In Utah, [SB98 didn't go as far](#). The Utah forfeiture process still does not require a criminal conviction. But the new law did make several positive changes to the state's asset forfeiture process and clarified ambiguities in the current law. It also includes important provisions that opted Utah out of the federal equitable sharing program in most cases.

Qualified Immunity

The number of high-profile cases involving police who used excessive force and violated individual rights without any consequences brought the issue of qualified immunity to the forefront.

Qualified immunity is a legal doctrine that shields cops from liability for actions taken in the line of duty unless they violate rights “clearly established” by existing judicial precedent. No statute exists granting qualified immunity. The [Supreme Court created the doctrine out of thin air](#) and then effectively imposed it on all 50 states through the [incorporation doctrine](#).

The very existence of qualified immunity reinforces an ugly truth. We can't trust the federal government to protect our rights. It almost always defers to government power.

In practice, qualified immunity makes it extremely difficult to legally punish police officers for using excessive force or committing other acts of misconduct. As Supreme Court Justice Byron White wrote in the 1986 case *Malley v. Briggs*, qualified immunity protects “all but the plainly incompetent or those who **knowingly** violate the law.” Reuters called it “a highly effective shield in thousands of lawsuits seeking to hold cops accountable for using excessive force.”

The rationale for federalizing state and local police misconduct cases was well-intentioned. When Congress passed the Civil Rights Act of 1871, it was next to impossible for African-Americans to get a fair shake in



many state courts, and government officials could abuse their rights with virtual impunity.

But the end result of centralizing power in the federal government was worse. Now it's next to impossible for **any person in any state** to get a fair shake when challenging police misconduct. The federal courts have cemented a system in place that gives law enforcement officers almost complete immunity and allows them to violate any individual's rights with virtual impunity.

Through the incorporation doctrine that applies the federal Bill of Rights to state and local governments, this system protects police officers in every city, county and state in the U.S. from Honolulu, Hawaii to West Quoddy Head, Maine.

The lesson here is pretty clear. Government protects its own. Centralized power almost never benefits the average person in the long run. And we cannot count on federal courts to protect our rights.

The only way around this is to decentralize the legal system and devolve power back to the states. A number of states attempted to do this by creating a process to sue in state court when government agents use excessive force or take other actions that violate individual rights without the possibility of “qualified immunity” as a defense.

In the summer of 2020, [Colorado became the first state](#) to create a cause of action in state courts to sue police officers when they infringe on “any constitutional right secured by the bill of rights of the Colorado constitution.” The law specifically states that qualified immunity “is not a defense” to such civil action.

[New Mexico followed suit in 2021](#) with the passage of HB4. The new law creates a cause of action in state courts to sue state or local government agencies when their employees or officials “subject or cause to be subjected any resident of New Mexico or person within the state to deprivation of any rights, privileges or immunities secured pursuant to the bill of rights of the constitution of New Mexico.”

In practice today, people sue police for using excessive force or other types of misconduct through the federal court system under the U.S. Bill of Rights. But with the federal qualified immunity defense, it is nearly impossible to hold law enforcement officers responsible for actions taken in the line of duty.

These laws in Colorado and New Mexico create an alternative path through the state courts, with no qualified immunity hurdle.

It remains unclear how the state legal process will play out in practice.

The first question is whether people will actually utilize the state courts instead of the federal process. Under the original constitutional system, most cases would have never been a federal issue to begin with. Regulation of police powers was clearly reserved to the states, not the

federal government. But with the advent of the incorporation doctrine, people reflexively run to federal courts. But by removing the qualified immunity hurdle, it could incentivize people to take advantage of the state system instead.

The second question is if police officers will be able to have cases removed to federal jurisdiction in order to take advantage of qualified immunity.

State and local law enforcement officers working on joint state/federal task forces almost certainly will. They are effectively deputized as federal agents.

For Colorado and New Mexico law enforcement officers not operating with a federal task force, it seems unlikely they will be able to remove the case to federal court initially, but that door could open on appeal.

One attorney the Tenth Amendment Center talked to said that it might be possible for officers to have their case removed to federal court to consider U.S. constitutional ramifications. But he said even then, he thinks federal courts would have to respect the state law prohibiting qualified immunity as a defense. The federal court would likely have to apply the state law as the state intended, even though the federal court might well be able to decide whether or not a U.S. constitutional violation had taken place.

Regardless, a process operating totally under the state constitution will be much less likely to end up in federal court than a process that depends on the U.S. Constitution and the Bill of Rights. The state process will make it more difficult for police to simply side-step civil suits by declaring sovereign immunity upfront.

[California also took a step](#) toward limiting qualified immunity. SB2 amends Tom Bane Civil Rights Act. It was originally enacted to address



“hate crimes,” but it has also been used to sue police officers who violate individual rights. Qualified immunity is not a defense under the law, but [according to Mission Local](#), it still grants police officers immunity for certain major offenses and courts have read loopholes into the law that give cops almost complete immunity. SB2 closes the loopholes in the current law by amending Civil Code section 52.1 to render those protections inapplicable. This creates a legitimate alternative pathway to sue law enforcement officers for violating basic rights.

Several other states considered bills to limit qualified immunity but [police lobbies successfully killed](#) the legislation.

No-Knock Warrants

A series of Supreme Court opinions also give police across the U.S. legal cover for conducting “no-knock” raids.

In the 1995 case [Wilson v. Arkansas](#), the Supreme Court established that police must peacefully knock, announce their presence, and allow time for the occupants to open the door before entering a home to serve a warrant. But the Court allowed for “exigent circumstance” - exceptions if police fear violence, if the suspect is a flight risk, or if officers fear the

suspect will destroy evidence.

As journalist [Radley Balko notes](#), police utilize this exception to the fullest extent, “simply declaring in search warrant affidavits that all drug dealers are a threat to dispose of evidence, flee or assault the officers at the door.”

The SCOTUS eliminated this blanket exception in [Richards v. Wisconsin](#) (1997) requiring police to show why a specific individual is a threat to dispose of evidence, commit an act of violence or flee from police. But even with the opinion, the bar for obtaining a no-knock warrant remains low.

*“In order to justify a ‘no-knock’ entry, the police must have a **reasonable suspicion** that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.”* [Emphasis added]

Reasonable suspicion is an extremely low legal bar to meet. Through this exception, police can justify no-knock entry on any warrant application. In effect, the parameters in the SCOTUS ruling make no-knock the norm instead of the exception.

A third Supreme Court ruling effectively eliminated the consequences for violating the “knock and announce” requirement even without a no-knock warrant. In [Hudson v. Michigan](#) (2006), the High Court held that evidence seized in violation of knock and announce was not subject to the exclusionary rule. In other words, police could still use the evidence in court even though they technically gathered it illegally.

Significantly, were it not for the incorporation doctrine, these cases would have never gone to federal court, and we wouldn’t have these blanket rules for all 50 states.

Without specific restrictions under state law, police officers generally operate within the parameters set by the Supreme Court. By passing restrictions on no-knock warrants, states set standards that go beyond the Supreme Court limits and nullify the SCOTUS opinion in practice and effect.

During the 2021 legislative session, [Connecticut](#), [Tennessee](#) and [Washington](#) state all passed laws to prohibit or significantly restrict no-knock warrants.

Restrictions on no-knock warrants in Tennessee were particularly significant. The reform passed unanimously through both houses of the Republican-dominated legislature that tends to defer to powerful policy lobbies.

At the local level, a number of cities and counties banned or severely limited the use of no-knock warrants, including [Lexington](#), Kentucky; [Pittsburgh](#), Pennsylvania; [Killeen](#), Texas; and [Pomona](#), California all banned or severely limited the use of no-knock warrants.

As with qualified immunity, aggressive law enforcement lobbying killed bills in a number of states. [Police claim they need “no-knock” warrants](#) to pursue murderers and violent criminals. But, this rarely seems to be the case. In reality, no-knock warrants are a tool that law enforcement used to beef up the war on drugs in the 1980s, and cops have continued to use them mainly for that purpose ever since.

Police Militarization

Images of armored vehicles filled with battle-ready cops toting automatic weapons during the Ferguson protests in 2014 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.

Under Section 1033 of the National Defense Authorization Act for Fiscal Year 1997, along with other programs like the Department of Homeland Security (DHS) “Homeland Security Grant Program” and the Edward Byrne Justice Assistance Grant (JAG) program, the federal government equips local police with free military weaponry and battlefield-ready equipment or simply hands out billions of dollars for them to buy it.

[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 equipment, geolocation tracking devices, cell phone jamming equipment and high-tech cameras.

Proponents of police militarization always talk about “protecting” police officers and the danger of terrorism. But the main function of local police militarization revolves around the unconstitutional “war on drugs.” After all, wars require soldiers, and the federal government doesn’t have the manpower to fight alone. The feds need state and local police to serve as foot soldiers in their drug war. Militarization, combined with asset forfeiture cash, incentivizes the necessary cooperation.

In fact, a 2015 [survey of applications](#) made to these and other federal programs by state and local law enforcement agencies revealed the drug war was by far the most common reason given for needing to militarize police officers.

The militarization of police has had wide-ranging impacts and fundamentally changed policing. Law enforcement has evolved from “serve and protect” to “command and control.”

In August 2017, President Trump issued an executive order that [gave a push to local police militarization](#). Trump’s action rescinded an Obama-era policy meant to provide greater transparency and oversight around the Department of Defense 1033 program and other federal resources that provide military weapons to local police.

President Joe Biden was reportedly planning to reinstitute the Obama policy, but at the time of this report, [he had not followed through](#). Regardless, the Obama “reform” was nothing more than window-dressing. In practice, the Obama EO did little to stem the flow of military equipment to state and local law enforcement agencies.

Even if Biden eventually gets around to putting the Obama-era limits back in place, the 1033 program would remain essentially intact. Military gear would continue to pour into local police agencies, just as it did when Obama was in the White House.

The multiple federal flip-flops underscore the importance of putting limits on police militarization at the state and local levels. Federal policy tends to change depending on the party in power. Whatever limits Biden or the next president imposes through executive order can be undone with a stroke of a future president’s pen.

The only way to effectively end police militarization for good is by permanently withdrawing the states from these federal programs.

There are two steps state and local governments can take to take on police militarization.

The first is to require police to get local government approval before they can procure military equipment from federal programs. While this does not stop law enforcement agencies from obtaining military gear, it does bring the process into the open. It creates a framework for accountability and transparency, and it also provides a foundation for

activists to step in and stop the procurement of military equipment by pressuring local government officials to vote no.

The second step is to withdraw the state or locality from the programs completely by banning the acquisition of military equipment entirely.

A third option is a combination of both approaches (banning specific equipment and requiring local approval for all others).

Several states addressed militarization in 2021.

Washington state took the most aggressive approach with the [passage of HB1054](#), banning law enforcement agencies from acquiring a long list of military gear.

Maryland took a more limited approach, banning the acquisition of a smaller list of military equipment with the [passage of SB600](#).

California took the first step with the [passage of AB481](#). Under the law, police departments are required to develop a detailed military equipment use policy and present it in an open meeting before obtaining military equipment. After the public meeting, the local governing body will either approve or deny the acquisition. Law enforcement agencies are also required to get local government approval prior to May 1, 2022, in order to continue using military equipment already in the department's possession as of Jan. 1, 2022.

Oregon took the combination approach. [HB2481 bans a list of weapons](#) similar to the new Maryland law. It also prohibits law enforcement agencies from using federal funds to purchase allowable equipment from military surplus programs. Instead, they will be required to use state or local funds. Additionally, the new law requires a law enforcement agency to get written permission from their local governing body before acquiring allowable equipment and they must publish notice of the

request on a publicly accessible website within 14 days after the request.

Several local jurisdictions passed ordinances to address police militarization including [Oakland](#), California; [Shelby County](#), Tennessee; and [Berkeley](#), California.

Our work to address the 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.”

So, why did the Defense Logistics Agency take the time to respond to a Tenth Amendment Center report on state efforts to restrict the militarization of police? We can’t say for sure, but we suspect it has to do with the 1033 program’s image problem, public backlash against militarized police in the streets, and the fact somebody somewhere realized, “Hey, it might not be a good idea to give Barney Fife an armored truck and a grenade launcher.”

The Big Picture

Despite all of the protests and promises of police reform after the deaths of Breonna Taylor, George Floyd and others at the hands of federally-funded local police, the federal government has plunged ahead unabated in expanding the ever-growing national police state.

This has been going on for decades. The “war on drugs” and the “war on terror” gave the feds more excuses to exert even more and more influence on local police departments. In the same way the federal government has monopolized education, healthcare, environmental regulation, the economy, and more, it has also increasingly monopolized local law enforcement, something the federal government has no authority to do under the Constitution.



Given the federal government's track record on everything else it controls, we should be wary of this movement to nationalize policing. It won't end well.

The Trump administration used the protests in the wake of these deaths [as an excuse to further insert the federal government into local policing](#). President Biden talked about reforms, but he hasn't taken any concrete action. In fact, the proposed 2022 White House budget [more than doubled](#) funding for a federal program that doles out money to state and local police departments to hire law enforcement officers. This despite Democrats talking about "defunding" the police. Meanwhile, efforts to end qualified immunity in Congress failed to produce any concrete results.

The only way Washington D.C. can reform policing is for the federal government to butt out. It's clear that despite all of the talk, it will never do so.

As already mentioned, the federal government's constant insertion of itself into local policing has fundamentally changed law enforcement for the worse. It has created a national police state dynamic that can only be rolled by the kind of state and local action outlined above.



SURVEILLANCE

As we've already discussed, the federal government is in the process of creating a national police state. But you can't have a police state without a robust surveillance state.

So, it should come as no surprise that government spying in the U.S. has become increasingly Orwellian.

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.

Other federal agencies, including the FBI and the DEA, lead the push with the NSA, 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 expand surveillance within the borders of the United States.

Thanks to federal dollars, [local police have access to a mind-boggling array](#) of surveillance equipment. And the federal funding process oftentimes 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.

Both were sold as tools 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. As a result, efforts to opt out of these programs and protect privacy at the state and local level have a significant spillover effect to the national level.

This year, the Maine House passed [a bill to defund the state's only fusion center](#), but after intense lobbying against it by federal, state and local law enforcement groups, the effort was quickly killed in the Senate.

While efforts to withdraw from fusion centers are likely to grow in the coming years, there are already robust grassroots efforts that focus on four major state-federal surveillance partnerships.

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 [2019 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](#).

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 paper-trail 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 levels. And it has had an impact.

We saw how effective state bans on facial recognition can be after California [enacted a law](#) in 2019 that prohibits police 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. After its enactment, [San Diego](#) shut down one of the largest facial recognition programs in the country in order to comply with the law.

Two more states took steps to limit facial recognition in 2021.

A [Maine bill limiting government use of facial recognition](#) technology in the state became law without the governor’s signature. It bans public employees and officials, including law enforcement officers, from obtaining, retaining, possessing, accessing, or using a facial surveillance system or information derived from a facial surveillance system with some exceptions. It also bans state agencies from entering into agreements with third parties to obtain facial recognition information.

An amendment approved in the Joint Committee on Criminal Justice and Public Safety allows police to use facial recognition in the investigation of a few serious crimes, including murder and rape. An amendment also

excluded iris scans from the ban.

Virginia implemented a de facto ban on facial recognition with the [passage of HB2031](#). The new law places a moratorium on law enforcement's use of facial recognition and prohibits the purchase or deployment of facial recognition technology unless it is expressly authorized by statute. In effect, the law bans police use of facial recognition until the state legislature passes another law in the future governing its use. HB2031 includes specific criteria that must be included in any future statute relating to the use of facial recognition technology including warrant requirements.

Building on momentum gained in 2020, a number of local jurisdictions also banned or limited facial recognition technology in 2021, including, but not limited to [Hamden](#), Connecticut; [King County](#), Washington; and [Minneapolis](#), Minnesota.

Stingrays and Electronic Data Collection

Cell site simulators, more commonly called "[stingrays](#)," are portable devices or software tools 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.

Law enforcement agencies also obtain electronic data from third parties including web servers and cell phone companies. They often access this information without a warrant. Once a law enforcement agency has the data, it can distribute it widely through fusion centers and the ISE.

State and local laws imposing warrant requirements and limiting data sharing hinder the broader surveillance state. In a nutshell, without state and local cooperation, the feds have a much more difficult time gathering information. If there is no data gathered, or if local agencies are prohibited from sharing it, the data can't be stored in federal databases.

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.

In 2021, Illinois built on that foundation with the [passage of HB2553](#) titled the *Protecting Household Privacy Act*. The new law prohibits government agencies from obtaining household electronic data or directing the acquisition of household electronic data from a private third party. Law enforcement can only access household electronic data with a warrant, with a few exceptions. Household electronic data includes any “information or input” provided by a person to a “household electronic device,” including “signs, signals, data, writings, images, video, audio, or intelligence.” Household electronic device” means any device primarily intended for use within a household that is capable of facilitating any electronic communication, but does not include personal computers, cell



phones, or tablets. This includes devices such as smart speakers, home surveillance systems, smart appliances, and other electronic devices found within homes.

Utah also took a second step to protect electronic data with the [passage of HB87](#). The new law prohibits law enforcement agencies from accessing electronic information or data transmitted through a provider of an electronic communication service. In practice, this tightens up the existing law to ensure police must get a warrant before accessing communication service provider networks in order to intercept data. The enactment of HB87 further expanded existing laws already on the books in Utah requiring police to get a warrant before accessing location information, stored data, and transmitted data from an electronic device.

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 regularly capture photographs of drivers and their passengers.

With the FBI's facial recognition program 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. Legislatures in Massachusetts, Virginia, California, New York and South Carolina all considered bills to limit ALPR use and data sharing in 2021, but none made it through the legislative process. Activists are expected to push several states to consider similar restrictions in 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.

These are all a starting point, and further limits will be required going forward.

Going Local

States and localities can limit the expansion of the surveillance state by making it more difficult for police departments to acquire invasive surveillance technology.

Creating a framework of oversight and transparency around surveillance technology and programs is a crucial step toward protecting privacy.

Utah took this approach with the [passage of HB243](#). In effect, the new law creates a process to review state and local surveillance technology

and to halt the use of surveillance tech that doesn't meet acceptable standards.

The law creates the position of "state privacy officer" along with the Personal Privacy Oversight Committee within the office of the state auditor. The committee will have the authority to review government use of surveillance technology and require state or city agencies to terminate the use of such technology if they fail to meet minimum acceptable standards. This will be subject to a legislative override. The committee will be responsible for developing guiding standards for best practices with respect to government privacy policy, technology uses related to personal privacy, and data security. This information will be available to the public creating an environment of transparency around surveillance tech.

Another approach is to require local government approval before police departments can purchase or use surveillance gear.

For instance, in May 2021, the [Detroit City Council unanimously passed](#) an ordinance requiring the police department to create a surveillance technology report before acquiring new surveillance tech. The report must outline how the technology will be used, how data will be stored and shared, and how it could impact privacy. The Detroit PD must submit the use policy at least 30 days before a required public hearing on proposed surveillance technology. After the hearing, the commission must approve the policy before the department can acquire the new surveillance tech. The ordinance also requires the police department to present an annual surveillance report to the city council describing how the technology and its generated data were used.

While the ordinance doesn't end the use of surveillance technology, it takes a first step toward limiting the surveillance state by ensuring surveillance technology is acquired and operated with transparency and oversight. It also gives residents a say in the process and provides an

avenue to limit the proliferation of surveillance technology. [Dayton](#), Ohio passed a similar ordinance in 2021.

These ordinances were based on CCOPS model legislation developed by the ACLU with input from the Tenth Amendment Center and many other organizations. Detroit and Dayton are two of at least 21 cities that have passed similar measures.

Several cities, including [San Francisco](#) and [Oakland](#), subsequently expanded their ordinances to ban facial recognition.

This kind of 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 altogether.

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 step forward.

We Were Warned

Orwell's *1984* was written as a warning, but it seems federal, state and local governments have adopted it as an instruction manual. With a vast array of high-tech gadgetry at their disposal, law enforcement agencies at every level 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 [warned us about this Orwellian nightmare 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]

Total tyranny.

Stop and think about this for a moment. Church issued this warning nearly 50 years ago. He 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 put warrantless federal spying by the NSA and other federal intelligence agencies in the spotlight when he released reams of documents beginning in 2013. This created a public outcry, but it led to little in the way of reform in Washington D.C. The revelations were swept under the rug and basically forgotten.

As talk about limiting surveillance at the federal level swirled, we took things in a different direction and asked a key 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 a state like 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 millions of gallons of water per week 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, where electricity is provided by a political subdivision of the state of 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 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.



SOUND MONEY

When people talk about the economy, they generally focus on government policies such as taxation and regulation. For instance, Republicans credit President Trump’s tax cuts for the seemingly booming economy and surging stock markets we saw during his term, and they blame Joe Biden for the surging inflation of today.

Meanwhile, Democrats blame “deregulation” for the 2008 financial crisis and fuss about Trump’s tax cuts. While government policies certainly 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 Fed 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 attempts to return to “normalcy” consistently precipitate busts.



In simplest terms, easy money blows up bubbles. Bubbles pop and set off a crisis. Wash. Rinse. Repeat.

We saw this play out with the inflation of the dot-com bubble in the 1990s and the inevitable bust in 2001, followed up with the housing bubble and the 2008 financial crisis. The coronavirus pandemic gave the central bank just the excuse it needed to blow up another massive bubble that will inevitably pop as well.

The Fed not only drives the economic boom-bust cycle; it also enables out-of-control government spending. In fact, it is the engine that powers the [biggest, most powerful government](#) in the history of the world.

The fiscal [2020 budget deficit](#) totaled a record-setting \$3.13 trillion, and the 2021 budget shortfall approached that amount, even with increased tax revenue flowing into the Treasury as the economy “recovered” from the pandemic. In the spring of 2021, the [national debt blew past \\$28 trillion](#). And of course, there is no sign the borrowing and spending will slow down any time soon.

Republicans are already blaming Joe Biden for the excessive federal spending. He’s certainly contributing to the problem with his [\\$6 trillion spending plan for 2022](#). But President Trump was a profligate spender as well. To put it 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 debt in just over two years.

Trump was no fiscal conservative and no strict constitutionalist. Not even close. And it should be obvious that spending was already out of control even before coronavirus, and before Trump and Biden. The response to the pandemic put it into overdrive with three rounds of stimulus and more. This kind of spending would be impossible if the Federal Reserve was not monetizing the debt.

In simple terms, the Fed buys debt with money created out of thin air and holds the bonds on its own balance sheet. In effect, the central bank puts its big, fat thumb on the bond market to enable federal government borrowing.

Case in point, in March and April of 2020 as the country's economy was effectively locked down due to coronavirus, the Federal Reserve monetized 100 percent of the new debt taken on by the U.S. government.

What does this mean in practice?

In March and April 2020, the U.S. Treasury Department issued \$1.56 trillion in debt securities to fund Uncle Sam's massive coronavirus spending spree. Meanwhile, in March, the Fed bought \$1.2 trillion in Treasury bonds. The central bank slowed its roll a bit in April, but still purchased \$526 billion in U.S. bonds. That brought the two-month total to \$1.56 trillion.

In effect, the Federal Reserve bought all of the debt issued by the U.S. government in March and April with money created out of thin air.

Granted, the central bank doesn't buy bonds directly from the U.S. Treasury. That would be illegal. Instead, it purchases Treasuries on the open market. But by inserting itself into the bond market, the Fed creates artificial demand for Treasuries. This keeps prices up and interest rates low.

Without the Fed interjecting itself into the market, there would not be sufficient demand to fund all of the government borrowing. Minus the central bank, there wouldn't be enough buyers.

In many ways, government spending is merely a symptom. The bigger 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 see some successful efforts at the state level that chip away at the Federal Reserve's monopoly on money. These efforts continued to grow in 2021.

Through the passage of 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.

1. 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 were always supposed to be – 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, [Alpine Gold Exchange](#) set up the state's first "gold bank."

Alpine Gold Exchange 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.

Alpine Gold Exchange has also issued [Goldbacks](#), a local, voluntary medium of exchange. Goldbacks are dollar-denominated notes made from physical gold. The company created a process that turns pure gold into a spendable physical form for small transactions.

Wyoming and Oklahoma have also officially recognized gold and silver as legal tender. As a next step, entrepreneurs should explore creating companies similar to Alpine Gold Exchange in these states.

2. 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 and capital gains taxes treat gold and silver as property instead of money. They also raise transaction costs, creating a barrier to using gold and silver in everyday transactions. Repealing taxes is a crucial first step toward the use of specie as money.

As [Sound Money Defense League](#) policy director JP Cortez testified during a committee hearing on a [similar bill in Wyoming in 2018](#), charging taxes on money itself is beyond the pale.

“In effect, states that collect taxes on purchases of precious metals are inherently saying gold and silver are not money at all.”

In 2021, [Ohio](#) and [Arkansas](#) repealed their sales taxes 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 39 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.

[Paul raised another important point](#): it’s not just about monetary policy and investing. It’s ultimately about the size and scope of government.

3. 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.

Gov. Greg Abbott [signed legislation](#) creating the state bullion and precious metal depository in June of 2015. The facility began accepting deposits on June 6, 2018.

The depository provides 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 execute 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 could operate much like the privately-owned Alpine Gold Exchange 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. The enactment of this law ensures there won't be any additional barriers to using gold and silver stored in the depository for everyday financial transactions.

Alpine Gold Exchange 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.

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 any steps to establish a depository in any of the following four years.

In 2021, the Tennessee legislature finally took another small step forward. [The new law](#) requires the Tennessee advisory commission on intergovernmental relations (TACIR) to study the feasibility of creating a state gold depository, including whether other states or jurisdictions

have created a gold depository, and to report its findings to the leadership of the state house and senate no later than January 1, 2022.

Cryptocurrency

In 2014, California became the first state to treat “virtual currency” as money under state law. Under AB129, signed into law by Gov. Jerry Brown, various forms of alternative currency, including digital currencies such as bitcoin, are legal under state law for the purchase of goods and services or the transmission of payments.

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

To get the ball rolling, the state exempted “virtual currencies” from state property taxes, created a clear legal definition of a “utility token” or “open blockchain token,” and set up a legal framework designed to encourage crypto companies to register in Wyoming as opposed to other states, like Delaware.

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 law 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.

We saw these efforts begin to bear fruit in the fall of 2020 when [Wyoming became the first state to approve a banking charter](#) for digital assets. By allowing cryptocurrency firms to charter a “special depository institution,” Wyoming gives additional support and encouragement for the use of cryptocurrencies in the state.

Efforts continued in 2021 when the legislature [passed HB43](#), clarifying the definitions of “digital assets,” along with the language dictating the ownership of such assets.

[SF38 established](#) a regulatory structure for the formation and management of “decentralized autonomous organizations” (DAO). These organizations are operated based on rules encoded as a computer program. These rules, along with the organization’s financial records, are recorded on the blockchain.

Despite legislative efforts at the state level, the feds still stand in the way. According to an [article on WyoFile](#), “the future of Wyoming’s cryptocurrency banking industry now lies in the hands of federal regulators.” Tyler Lindholm and Chris Land were instrumental in crafting the state’s crypto laws. They say the slow pace of federal regulators and quasi-regulatory organizations like the American Bankers’ Association in developing rules to allow consumers to bank with the decentralized, digital currency is slowing crypto adoption in the state.

Lindholm and Land said a key step would be giving cryptocurrency bankers access to an ABA routing number in order to facilitate crypto

transactions.

Even with federal feet dragging, individuals can use cryptocurrency today. As more and more people use digital currency, it will become increasingly difficult for federal authorities to block its growth.

If other forms of money - or mediums of exchange, whether it be cryptocurrencies or gold and silver, or cryptocurrencies - 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 to secure the purchasing power of their money.

Two Texas laws passed in 2021 set the stage to facilitate the use of cryptocurrency in the Lone Star State.

[HB4474](#) amended the state's Uniform Commercial Code to recognize cryptocurrencies under commercial law. Texas joins Wyoming, Rhode Island and Nebraska in clarifying the commercial law status of digital assets.

Texas Blockchain Council President Lee Bratcher [told Cointelegraph](#) that the new law better defines security interests for bitcoin and other cryptos and will "allow institutional investors to get involved with sizable investments."

Meanwhile, the Texas Banking Commissioner and the Texas Department of Banking announced that banks with a state charter can custody cryptocurrencies under certain circumstances. A second Texas law establishes a blockchain working group in the state.

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 could 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.



FOOD FREEDOM

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.

Food freedom laws exempt small food-producing businesses from onerous regulations and licensing requirements. These businesses can sell directly to the consumer from homes, farms, or ranches, as well as at farmers' markets and roadside stands.

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.

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.”

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.

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.

Raw Milk

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 spurs 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.

[Currently](#), at least 10 states allow raw milk sales in retail stores, and 17 states allow sales on the farm where the milk was produced. Eight states have legalized herd-share agreements and six states don't prohibit them.

In 2021, [Alaska took the first step](#) to legalize raw milk with the passage of HB22 authorizing “herd share” agreements. Under the contract, the consumer pays the farmer a fee for a “share” in either an individual animal or a herd of animals. In return, the consumer gets access to unpasteurized milk produced by the animals.

Overcoming years of opposition by the corporate milk lobby, Montana legalized limited raw milk sales through [a “food freedom” bill](#). The new law allows the unregulated sale of home-produced foods from producers directly to consumers, including raw milk and raw milk products. It also prohibits a state or local government agency from requiring licensure, permitting, certification, packaging, labeling, or inspection that pertains to the preparation, serving, use, consumption, delivery, or storage of homemade food or homemade food products.

Provisions in the new statute effectively legalize the sale of raw milk and raw milk products directly from the producer to a consumer if the producer keeps no more than five lactating cows, 10 lactating goats, or 10 lactating sheep on the farm for the production of milk.

Vermont expanded raw milk sales for the second time in two years in 2021 with the [passage of H218](#). The new law expands current raw milk sales by amending existing law to allow for sale by farm stands and community-supported agricultural organizations (CSA's). This [builds on the previous expansion of raw milk sales](#) passed in 2019.

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.

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 that 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 further declares, "It is a prohibited act to introduce or deliver

for introduction into interstate commerce any food (including any animal food or feed) to which THC or CBD has been added.” Under the federal definition of “interstate commerce,” this includes virtually all CBD products.

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.”

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

In effect, the agency will almost certainly 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 cannabitol or food products containing CBD will 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 12 states expressly authorized CBD as an additive in food products, despite the FDA's explicit prohibition.

California joined that list in 2021 with the [passage of AB45](#). The new law allows cannabinoids and other hemp extracts to be added to dietary supplements, food, beverages, cosmetics and pet food, despite FDA prohibition on the same. The bill declares that a dietary supplement, food, beverage, cosmetic, or pet food is not adulterated by the inclusion of industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp as long as it meets state specifications. The enactment of this legislation effectively ends state prohibition on the sale of CBD and CBD products based on federal law.

[Louisiana also enacted a new law](#) allowing the sale of CBD in food products.

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 well-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.



DEFEND THE GUARD

War is one of the only true national policy areas. Matters of war and peace were clearly delegated to the federal government. But you are incorrect if you think states can't take any action to impact foreign policy.

In fact, they can make it difficult for the feds to drag the U.S. into unconstitutional wars with the passage of "[Defend the Guard](#)" legislation.

This bill would prohibit the deployment of state National 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.”

Since none of these missions have been accompanied by a Constitutional declaration of war, the Defend the Guard Act would have prohibited those deployments of Guard troops.

Passage of the legislation would force the federal government to only use the Guard for the three expressly-delegated purposes in the Constitution.

- 1) to execute the laws of the union
- 2) to suppress insurrections, and
- 3) to repel invasions.

At other times, Guard units would remain where they belong -- at home, supporting and protecting their home states.

While getting this bill passed won't be easy and will face fierce opposition from the establishment, it certainly is, as Daniel Webster once noted, “one of the reasons state governments even exist.”

Webster made this observation in an 1814 speech on the floor of Congress where he urged actions similar to the Defend the Guard Act.

“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.”

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](#).

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.

Delegate Pat McGeehan began introducing Defend the Guard legislation in West Virginia in 2015. He 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. 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.”

In 2020, a coalition of veterans called “[Bring Our Troops Home](#)” began pushing Defend the Guard across the country. Last year, Defend the Guard bills were introduced in nearly two-dozen states.

Big Picture

The Biden administration oversaw a pullout of U.S. forces from Afghanistan but the wars are far from over.

Even as American troops were leaving Afghanistan, the Biden administration was quietly ramping up [bombing in Somalia](#).

This underscores an important truth -- 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 -- Madison told us what would happen.

“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]

These wars not only take a tremendous toll in human lives; they squander our treasure. Just consider the nearly two-decade war in

Afghanistan.

According to the [Cost of War Project by the Watson Institute](#) at Brown University, the U.S. spent \$2.26 trillion on the war in Afghanistan. That comes to over \$300 million spent **every single day** over the span of two decades.

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 rails, 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.”

We must realize the lessons of history and heed the wisdom of our Founding Fathers, before – as the ancient Romans eventually did – we’re forced to learn the hard way.





OTHER ISSUES

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

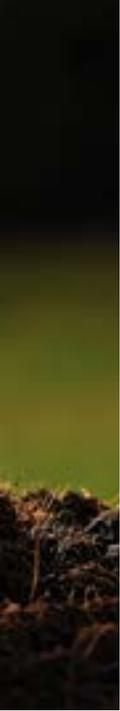
Healthcare

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 Obamacare on "day one" when they gained control of the federal government.

The Republicans did effectively repeal the mandate by zeroing



out the penalty in the 2017 tax bill, but after four years of a Republican presidency, Obamacare with all of its mandates and regulations remains the law of the land, even as insurance premiums skyrocket, 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 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 Umbehrr’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.

To date, [29 states have passed Direct Primary Care](#) acts over the last several years. [South Dakota](#) and [Montana](#) joined the list in 2021.

Meanwhile, West Virginia built on its direct primary care law passed in 2017 and [expanded it](#) to include all “medical care services.” The new law defines “medical care services” as “a screen, assessment, diagnosis or treatment for the purpose of promotion of health or the detection and management of disease or injury within the competency and training” of a medical care provider.

The enactment of HB2877 opens the door for specialists, chiropractors, and other healthcare providers to open practices based on the direct primary care model.

Opening more healthcare markets and allowing them to develop within the states sets the stage for further actions to bring about the nullification of federal healthcare laws and regulations in practice and effect. States can help accomplish this by refusing to participate in 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.

[Judge Andrew Napolitano noted](#) that if a number of states were to refuse to participate with the ACA in a wholesale fashion, that multi-state action “will gut ObamaCare because the federal government does not have the resources or the wherewithal [...] to go into each of the individual states.”

Education

Educating children is fundamentally a local concern. Nevertheless, the federal government involves itself deeply in education despite no constitutional authority to do so. The feds set standards and dictate programs at the local level. It enforces these mandates through a carrot and stick system of federal funding.

States can easily opt-out of federal education standards, but they must be willing to sacrifice the federal money that comes along with compliance.

The most well-known “federal” education program is Common Core.

Common Core was intended to create nationwide education standards. While touted as a state initiative through the National Governors Association (NGA) and the Council of Chief State School Officers

(CCSSO), the U.S. Department of Education was heavily involved behind the scenes. Initially, the DoE tied the grant of waivers from the No Child Left Behind Act to the adoption of Common Core, using the standards as powerful strings to influence state education policy.

The Every Student Succeeds Act passed by Congress in 2015 prohibited the DoE from attempting to “influence, incentivize, or coerce State adoption of the Common Core State Standards ... or any other academic standards common to a significant number of States.”

ESSA gives more latitude to states and local school districts in determining standards, but the feds still maintain significant control over state education systems. States are required to submit their goals and standards, along with a detailed plan outlining how they plan to achieve them to the DoE for feedback and then approval.

Even with the federal strings cut from Common Core, for the time being, it is still imperative for each state to adopt its own standards based on its own criteria. The feds can eventually use these national standards to meddle in state education at any time if they remain in place. Just as importantly, one-size-fits-all standards simply don't benefit children. State and local communities should remain in full control of their own educational systems.

Rejecting nationalized education standards is the first step toward bringing true academic choice, and freedom.

In 2021, [Tennessee enacted a law](#) that cuts the legs out from under Common Core. The law prohibits the state textbook and instructional materials quality commission, the state board of education, and public schools in Tennessee from recommending, approving, or using textbooks and instructional materials and supplemental instructional materials created to align with the common core state standards.

Even with the law in place, it's crucial for activists on the ground in Tennessee to monitor state and local education boards to ensure they aren't slipping Common Core standards in through back door maneuvering.

Even in the absence of state laws facilitating the effort, parents in many states [are opting their children out](#) of standardized testing anyway. The New York Post reported that 20 percent of parents in New York chose to opt their children out of the Common Core standardized testing in 2015. More localized opt-out pushes also bubbled up in other states including New Jersey, Colorado and California.

The opt-out movement continued in 2017. On Long Island, New York alone, [more than 90,000](#) students opted out of math testing and more than [97,000 opted out](#) of the standardized English test. Nearly [one-third of Dutchess County, N.Y. students](#) didn't take state tests in 2017. In tests given in the spring of 2018, [18 percent of students](#) opted out of the exams.

The movement continues today. In Florida, there is an [opt-out network](#) encouraging parents to withdraw their kids from "high stakes testing." A Long Island organization [published a form letter](#) parents can use to opt their kids out of standardized testing.

If enough parents across the country simply refuse to participate in the system, it will collapse Common Core faster than any state legislative action ever could. The federal government is powerless to force millions of disgruntled parents to participate in its ill-conceived and unconstitutional program.

Psychedelics

With success in nullifying federal marijuana prohibition, activists have turned to another front in the unconstitutional war on drugs --

nullifying federal prohibition of psychedelics including so-called “magic mushrooms.”

Denver was the first city to take on the federal prohibition of psychedelic drugs when it [decriminalized psilocybin through a voter initiative](#) in May 2019.

Initiative 301 initiated changes to Denver city ordinances that effectively decriminalized the possession and personal use of psilocybin mushrooms by people age 21 or over.

Under the new ordinance, “The enforcement of any laws imposing criminal penalties for the personal use and personal possession of psilocybin mushrooms as those terms are defined herein shall be the lowest law enforcement priority in the City and County of Denver.”

The law also bans the use of city funds to assist in the enforcement of laws imposing criminal penalties for the personal use and personal possession of psilocybin mushrooms by adults. This includes the enforcement of federal laws.

This takes the first step in nullifying the federal ban on hallucinogenic drugs in practice and effect. As we’ve seen with marijuana and hemp, when states and localities stop enforcing laws banning a substance, the federal government finds it virtually impossible to maintain prohibition.

Psilocybin is a hallucinogenic compound found in certain mushrooms. A number of studies have shown psilocybin to be effective in the treatment of depression, PTSD, chronic pain and addiction. For instance, [a Johns Hopkins study](#) found that “psilocybin produces substantial and sustained decreases in depression and anxiety in patients with life-threatening cancer.”

Following Denver’s lead, [Oakland](#), California; [Ann Arbor](#), Michigan; and



[Arcata](#), California have also decriminalized magic mushrooms.

Oregon was the first state to decriminalize psilocybin despite federal prohibition with the passage of Measure 109 in November 2020. The new law creates a legal framework for medical use.

Under the new law, the Oregon Health Authority (OHA) established a program to license medical practitioners to provide psilocybin to patients 21 or older. Clients can purchase, possess, and consume psilocybin at a “psilocybin service center” under the supervision of a licensed “psilocybin service facilitator.” The OHA will determine the qualifications for “facilitators” and patients.

The [California Assembly considered a bill](#) to legalize the possession of several psychedelic drugs, including psilocybin, psilocin, MDMA, LSD, DMT, mescaline (excluding peyote), and ibogaine. The Senate passed SB519 by a 21-16 vote, but the measure has yet to be considered by the Assembly, and will likely be taken up again in the second half of the 2021-22 session.

We expect more localities and states to take on the unconstitutional federal drug war in 2022.

A STRONG FOUNDATION



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 we always run into that hard truth, the Constitution doesn't enforce itself - it never has, and it never will.

In short - constitutions must be enforced. And they can't be enforced by the very same government they are supposed to limit. Every effort to get the federal government to stay within its limits through political action in Washington D.C. has failed - from voting the bums out to suing in federal court.

You need an outside entity. The nullification movement through state, local and individual action serves as 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."*

It's a long hard road. As Samuel Adams wrote, now is definitely not the time to let up.

*"Instead of sitting down satisfied with the efforts we have already made, **which is the wish of our enemies**, the necessity of the times, more than ever, calls for our utmost circumspection, deliberation, fortitude, and perseverance. Let us remember that 'if we suffer tamely a lawless attack upon our liberty, we encourage it, and involve others in our doom.'"*

[emphasis added]

We won't win liberty in a day. Not even close. In fact, we're really just getting started. 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, Jefferson was right: *"It takes time to persuade men to do even what is for their own good."*

Moving forward, we continue our work to teach people not just the proper role of government under the constitution - and the value of advancing liberty - but how to defend both, without relying on the government to somehow limit itself.

Brick by brick. Person by person. Building a strong foundation for the Constitution and liberty.

Samuel Adams may have summed it up best.

"The truth is, all might be free if they valued freedom, and defended it as they ought."

