

TENTH AMENDMENT CENTER

State of the Nullification Movement  
Report 2023

*Step by Step for Liberty*

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*First edition*

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# Preface

Taking on the biggest and most powerful government in history may seem like an impossible task.

It isn't.

That's not to say that it's going to be easy.

As Thomas Jefferson said, *"We are not to expect to be translated from despotism to liberty, in a feather-bed."*

He was right. There is no silver bullet.

But if we follow the wisdom and advice of the founders and old revolutionaries - who took a stand against what was then the largest government in history - we **can** enforce the Constitution and regain liberty - without waiting for government to limit its own power.

So, how can we do this?

That's what this report is all about.

In the first section, we highlight some of the most common strategies people use to defend the Constitution and protect liberty today - and why they fail.

Then you will learn about a path to liberty that actually works: Nullification.

We start with some philosophies and principles taught by the founders and old revolutionaries, including the philosophy and constitutional justification behind nullification through two important resolutions penned by Thomas Jefferson and James Madison.

But of course, philosophy alone won't change anything. It ultimately requires human action. And when it comes to keeping a government in check, a lot of it, too.

So, with a strong philosophical and strategic foundation in place, we highlight successful human action through historical nullification movements taking on British overreach prior to the American Revolution, countering fugitive slave rendition prior to the Civil War, resisting alcohol prohibition in the 20th century, and more.

From this, a broad-based strategic blueprint becomes pretty clear.

But an important question remains: how do we apply the strategy today?

As you'll learn, James Madison provided a practical blueprint for resisting unconstitutional, or even unpopular, federal actions in *Federalist* #46. We'll explain how it works and why it is effective.

Finally, you will learn how this nullification strategy is being applied today to a wide range of issues.

Some of them might surprise you.

For instance, you'll see how states, localities and individuals have nullified federal prohibition schemes in practice and effect. And we're not just talking about marijuana prohibition. States have taken action to stop other forms of prohibition as well, including federal gun control, federal bans on raw milk and CBD, and even the right to try experimental treatments despite FDA

rules prohibiting them, and more.

States have also taken on the ever-expanding surveillance state. You'll learn how one state took multiple steps over a period of several years to protect privacy at the state level, and undermine federal spying at the same time.

Similarly, states have taken steps to push back against federal control and influence over local police by opting out of federal militarization and asset forfeiture programs.

And as you'll see, we can even use this nullification strategy to address issues that seem purely "national" on the surface.

For instance, you'll learn how state, local and individual action is being used to take on the Federal Reserve's monopoly on money, and potentially undermine the introduction of central bank digital currencies (CBDCs).

We'll even explain how states can help put a stop to endless wars by limiting unconstitutional National Guard deployments.

As you read through the report, you'll learn about successes, setbacks, and even some failures. But it should become clear that this blueprint does indeed reveal a real path to liberty.

The fight will be long and difficult. But using the strategies outlined in this report, we can be successful.

As Thomas Paine put it, *"The strength and powers of despotism consist wholly in the fear of resisting it."*



# I

## NULLIFICATION HISTORY AND STRATEGY



## THE STRATEGY

**V**ote the bums out!” is the dominant political strategy in the United States.

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 even in situations where the incumbents get removed you almost always end up with new bums.

And even in the few isolated 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 lands. The government keeps borrowing, spending and devaluing your money. The gun-grabbers keep gun-grabbing.

At the end of the day, everything continues just as it was, and usually worse. Meanwhile, 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.

On top of that, it's not even the **right** strategy in most situations today.

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

*"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.

In other words, Jefferson meant "vote the bums out" was the right approach for dealing with bad policy or bad administration when government is still **within the bounds of the Constitution**.

But that's almost never the situation we face today.

When the federal government goes beyond the limits of the Constitution, Jefferson called for more aggressive measures.

*"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 and the states would have to be willing to take action to stop federal usurpation of power.

During the ratification debates, opponents of the Constitution warned that the general government could easily abuse its delegated powers, usurp state authority, and violate individual liberty. But numerous supporters of the Constitution argued that there was a check far superior to the division of powers between the various federal branches.

James Iredell, who later became one of the first Supreme Court justices, [put it this way during 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 didn’t consider resistance a mere good idea, or something to try after everything else. Instead, he considered it the **only** way to keep the federal government within the bounds of the Constitution.

Another North Carolinian, [Archibald Maclaine 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.

In December 1787, [Sherman argued](#) that *“all acts of the Congress not warranted by the constitution would be void”* and such acts would be unenforceable contrary to 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 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.

## The Principles of '98

In response to the hated Alien and Sedition Acts, Jefferson and Madison drafted the Kentucky and Virginia Resolutions of 1798, sometimes referred to as the “Principles of ‘98.”

The four laws making up the Alien and Sedition Acts clearly violated the Constitution. For instance, the Sedition Act criminalized criticism of the president and Congress contrary to the clear language of the First Amendment.

Madison and Jefferson approached the issue in slightly different ways, but both 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 than 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 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."

When used as a noun, Thomas Sheridan's "[Complete Dictionary of the English Language](#)," published in 1789, defines "void" as, "Empty, vacant; vain ineffectual, null; unsupplied, unoccupied; wanting, unfurnished, empty, unsubstantial, unreal." As a verb, it is defined as, "To quit, to leave empty; to vacate; to nullify, to annul."

The principles Jefferson drew upon predate the drafting and ratification of the 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.

In his 1761 [speech against writs of assistance](#), James Otis said, "An act against the constitution is void."

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 later, they were never expected to, either.

There has to be some mechanism to shut down a government action when



## THE STRATEGY

the people and government disagree about whether an act is void. And this disagreement 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.

James Iredell understood this tendency and warned, *“This is the foundation on which persecution has been raised in every part of the world. The people in power are always right, and every body else wrong.”*

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.

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 spring 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 sparked 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.”*

In other words, the power of taxation, as well as government power over most things of a local concern, were reserved to Virginia, with the far away Parliament only legitimately exercising certain limited powers.

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 a violation of the British constitution, and thus, “void.”

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 colonies 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 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 weeks before the 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.”*

Hancock was right. 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 patriots 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 stamped paper, pressured officers to delay the law’s enforcement, and drove 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 noncompliance planted during the Stamp Act resistance 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 a 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.

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 limits placed 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.

He was far from alone. As [John Dickinson observed writing under the pen name Fabius IV](#), *“A good constitution promotes, but not always produces a good ad-ministration.”*

That led him to the obvious question: when government goes beyond its limits, *“what is then to be done?”*

The answer, he wrote, *“is to be instantly found... before the **supreme sovereignty** of the people.”* [emphasis in original]

He continued:

*“IT IS THEIR DUTY TO WATCH, AND THEIR RIGHT TO TAKE CARE, THAT THE CONSTITUTION BE PRESERVED; Or in the Roman phrase on perilous occasions – TO PROVIDE, THAT THE REPUBLIC RECEIVE NO DAMAGE.”*  
[all caps original]

## A Blueprint for Liberty

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

Even Alexander Hamilton made this 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."*

[Roger Sherman made a similar point](#) 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 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 and indispensable 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 in comparison to what we live under today. As we take on the largest government in the history of the world, his blueprint can have far more impact 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](#) reiterated this important point. The authors make the same admission 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]

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; it has 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.”* [Emphasis added]

Over the years, the Court built on this opinion 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.”*

The anti-commandeering doctrine 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 participate in the enforcement of federal laws or help

implement federal programs whether they are first deemed 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. A state can prohibit its own agencies and political subdivision from enforcing federal laws or the implementing 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. Chief 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 nullify federal actions in practice and effect. 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:

- to make null; especially: to make legally null and void
- to make of no value or consequence

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

The second definition is the **practical** meaning - ending the **actual effect** of something. Merriam-Webster gives an example of a penalty nullifying a goal in a game of soccer. As another example that 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 in any significant way.

People of the founding era also understood nullification in much the same way. Evidence from contemporary dictionaries of the time 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, like Patrick Henry in his 1765 Virginia Resolves, 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 had to 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: Fugitive Slave Act

Instead of fixating on legalities, 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 the enforcement of this federal law, including the 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.*”



## THE STRATEGY

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.

But the effort to nullify the Fugitive Slave Act of 1850 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. In a very real sense, Harriet Tubman was a nullifier, possibly one of the most effective in history.

Additionally, northerners also used jury nullification to refuse 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 and effect. The Fugitive Slave Act remained on the books, but it became mostly unenforceable throughout 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."*

Walt Whitman even [penned a poem](#) that alluded to nullification, calling on states, cities and individuals to “*resist much, obey little.*”

Southerners considered these northern actions nullification as well, despite the fact that none of them fit the legal definition of the word. 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 the Northern nullification of the Fugitive Slave Act. It even used the word “nullify.”

*“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. They were wrong.

As [the University of Houston’s Digital History website](#) put it, “Prohibition failed because it was unenforceable.”

## THE STRATEGY

The federal government never had more than 2,500 agents enforcing the law. Without state and local cooperation, they had no hope in the face of widespread noncompliance.

That state cooperation never really materialized.

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

By 1925, six states had developed laws that actively 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 current nullification movements — weed.

The nullification of federal marijuana prohibition is the most successful effort of its kind in American history. There has never been another time when so many states have actively and effectively defied the feds.

Practically speaking, while [efforts in California started in the 1970s and 80s](#), the modern nullification movement really 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 1970 federal Controlled Substances Act (CSA), the federal government maintains complete prohibition of marijuana to this day. It makes no exception for medical use.

As the November vote in California loomed in 1996, three different presidents visited the state 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 38 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 marijuana.

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 38.

Meanwhile, 23 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 against the Stamp Act and the Fugitive Slave Act, 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 the

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. The 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 27 years since Californians approved Prop. 215. But there is still more work to do.

Advancing liberty is a game of inches.

It can feel overwhelming, but Thomas Jefferson gave us plenty of strategic advice. Consider this from a 1790 letter to the [Rev. Charles Clay](#):

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

The day after passage of the Kentucky Resolutions of 1798, [Jefferson offered similar advice to James Madison](#):

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

To be blunt, anyone promising a silver bullet is lying to you.

Jefferson understood this.

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 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 of 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 stop getting done. This chips away at federal power.

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

In the sections ahead, we'll cover prominent state and local actions during the 2023 legislative sessions that open the door to undermining federal power — first steps, second steps and beyond.

## II

PUTTING IT IN PRACTICE TODAY



## NULLIFY THE FED

**T**he Federal Reserve is the engine that powers [the biggest, most powerful government](#) in the history of the world.

But it's not going to end itself. And we can't count on Congress to cut off its funding source, so - like all the other issues in this report, it's up to the states and the people to get the job done.

This includes facilitating currency competition by treating and using gold and silver as money, as they always should have been - rather than mere investment vehicles, pushing back against the introduction of central bank digital currencies (CBDCs), and more.

First, however, it's important to understand how the Federal Reserve enables the biggest government in history and distorts the economy in the process.

Through money creation, along with its manipulation of interest rates (the cost of money), the central bank enables borrowing and spending that fuels the massive federal government.

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.

As a result, the Fed creates artificial demand for bonds. This holds bond prices up and keeps interest rates low. This benefits the government by keeping its borrowing costs lower.

Here's an example of how debt monetization works in practice.

In March and April 2020, as the country's economy was effectively locked down, the U.S. Treasury Department issued \$1.56 trillion in debt securities to fund Uncle Sam's massive pandemic 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 those two months **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 injecting itself into the market, there would not be sufficient demand to fund all of the government borrowing. Minus the central bank, there simply 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.

This isn't just about government policy. Federal Reserve money manipulation has a direct impact on the average person, as we saw with rampant price inflation in 2022 and 2023. As the Fed creates more and more money out of thin air to sustain government spending, it devalues your money. Month after month, your purchasing power erodes.

And with the advent of central bank digital currency (CBDC), the government will have even more control over your money and how you spend it. We'll discuss that in greater detail later in this section.

Looking at the bigger picture, Fed monetary policy also distorts the broader economy.

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 by 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.

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 recent years.

Through the passage of laws that encourage and incentivize the use of gold and silver 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 and silver.

## 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, the [United Precious Metals Association](#) (UPMA) in partnership with [Alpine Gold Exchange](#) set up the state's first "gold bank." This is discussed in more detail below.

The following year, the state expanded its legal tender act to clarify several tax measures and more importantly, expand the definition of specie to include gold and silver coins approved by the state.

By allowing additional types of specie to be used as legal tender, the Utah legislature has freed its citizens from potential supply constraints imposed by the use of only United States-minted gold and silver coin. More importantly, the people of the state of Utah now define what specie is considered constitutional tender, further distancing themselves from potential control of their money by Washington D.C.

The Utah Specie Legal Tender Act has also led to the creation of [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.

In 2022, [Utah revised its tax code](#) to include a sales tax exemption on the sale of "goldback" notes.

In 2023, [Arkansas](#) joined Wyoming and Oklahoma in following Utah's lead recognizing gold and silver as legal tender.

## 2. Eliminate Sales Taxes and Capital Gains Taxes on the Exchange of Money

Treating gold and silver as money by eliminating all taxes on their sale is the second way we can expand the market for precious metals and facilitate their use as sound 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 the [Wyoming Legal Tender Act 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 2023, [Mississippi became the 43rd state](#) to eliminate sales taxes on gold and silver bullion.

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 for the use of sound money.

*"We ought not to tax money – and that's a good idea. It makes no sense to tax*

money,” 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. Authorize State Gold and Silver Reserves

Investing in and holding gold and silver allows a state to shield its assets and hedge against rapidly depreciating Federal Reserve notes.

In 2023, [Tennessee enacted a law](#) creating a process for the state to buy, sell, and hold gold and silver. In practice, the enactment of the law allows the state of Tennessee to hold reserves of gold, silver, platinum, and palladium coins and bars.

Holding gold and silver in reserve also creates a pathway for states to maintain financial independence should the U.S. dollar collapse, a very real possibility as the world moves away from the greenback as its reserve currency.

State gold and silver reserves take another step in the process of abolishing the Federal Reserve system by attacking it from the bottom up – pulling the rug out from under it by working to make its functions irrelevant at the state and local levels, and setting the stage to undermine the Federal Reserve monopoly by introducing competition into the monetary system.

As JP Cortez noted while testifying in favor of a bill to authorize gold and silver reserves in Wyoming, “Proposals encouraging state gold holdings have come before the legislature since January 2019, but no bills have been passed. During the last four years of inaction on sound money, gold bullion, priced

in declining dollars, has risen by 50 percent.”

#### 4. Establish Gold Depositories

Whether they are private entities or state-run, bullion depositories can facilitate the use of sound money and undermine the Federal Reserve’s monopoly on currency.

The [Texas Bullion Depository officially opened for business in 2018](#) after Gov. Greg Abbott [signed legislation](#) creating the state bullion and precious metal depository three years earlier. The creation of a state bullion depository in Texas represents a power shift away from the federal government to the state, and it provides a blueprint that could ultimately end the Fed.

The depository 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.

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 planned for a facility “with an e-commerce component that also provides for secure physical storage for bullion.”

Ultimately, the goal is for depositors to 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 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.

Alpine is a good example of how private businesses can facilitate transactions in sound money when states take actions that help open the market.

The passage of the Utah Legal Tender Act paved the way for the establishment of the United Precious Metals Association (UPMA), a non-profit member cooperative that offers bank-like services to its members using legal tender precious metals. UPMA is similar to a credit union offering services from other providers to its membership much like the 'AARP' or other such associations.

Alpine Gold Exchange serves the UPMA as its metals exchange and exclusive service and support provider offering 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.

Customers with gold or silver accounts at Alpine can spend it in everyday transactions using a debit card connected to their accounts. In effect, Alpine facilitates the electronic transfer of gold and silver, allowing customers to make purchases using fractions of coins. This solves one of the central problems of transacting business using precious metals.

The Utah Specie Legal Tender Act included provisions exempting the sale of gold and silver that constitutes legal tender in the state from sales and use

tax. The act also included “a nonrefundable credit established for any capital gains incurred from the exchange of gold and silver coin issued by the federal government for another form of legal tender.”

In 2019, Texas [passed a constitutional amendment along with 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.

Finally, in 2021, the legislature passed a bill creating a commission to study the feasibility of creating a state gold depository.

[The commission report](#) concluded that “there does not appear to be enough demand for a state gold depository to be viable.” It recommended that the General Assembly should “consider a sales tax exemption for precious metals coins and bullion.”

Gov. Bill Lee signed a bill in 2022 [repealing the sales tax on gold and silver bullion](#), opening the door to increase demand and support a depository.

That paved the way for a 2023 bill to create a [state gold bullion depository](#). It was deferred to 2024.

## Central Bank Digital Currency (CBDC)

The advent of CBDCs has the potential to magnify all of the problems inherent in government fiat currency, but states are already looking for ways to push back.

The difference between a central bank (government) digital currency and peer-to-peer electronic cash such as bitcoin is that the value of the digital currency is backed and controlled by the government, just like traditional paper fiat currency. In fact, a Federal Reserve-issued CBDC would just be a dollar in a 100 percent digital form.

But the specter of a CBDC raises new concerns relating to financial privacy and the potential for government control.

At the root of the move toward CBDC is what some call “the war on cash.” For years, governments have looked for ways to eliminate physical cash because it is hard to control. I can put it under my mattress and nobody has to even know I have it. And if you and I do a cash transaction, no record exists. That’s a problem for government officials who would like to tax or restrict our transactions, or possibly prohibit them altogether.

Enter CBDCs.

Imagine if every transaction you ever made - buying, selling, giving gifts, and everything in between - was recorded on a centralized government database or ledger. It would be impossible to hide even the smallest transaction from the government’s eyes. Something as simple as your morning trip to get a coffee wouldn’t be a secret from government officials. As [Bloomberg put it](#) in

an article published when China launched a digital yuan pilot program in 2020, digital currency “offers China’s authorities a degree of control never possible with physical money.”

The government could even “turn off” an individual’s ability to make purchases.

Some observers also wonder whether payments could be linked to a social credit system, wherein citizens with exemplary behavior are ‘whitelisted’ for privileges, while those with criminal and other infractions find themselves left out.

Economist Thorsten Polleit outlined the potential for Big Brother-like government control with the advent of a digital euro in [an article published by the Mises Wire](#). As he put it, “the path to becoming a surveillance state regime will accelerate considerably” if and when a CBDC is issued.

You can see why governments are keen on implementing them as quickly as possible.

In 2022, the Federal Reserve released a “discussion paper” examining the pros and cons of a potential US central bank digital dollar. According to [the central bank’s website](#), there has been no decision on implementing a digital currency, but in the fall of 2022, [the New York Federal Reserve announced](#) a 12-week pilot program in partnership with several large commercial banks to test the feasibility of a central bank digital currency (CBDC).

While Congress would likely have to pass legislation to officially introduce CBDC, this pilot program reveals the idea is further along than most people realized.

Over the last year, states have started to explore ways to minimize the impact of CBDCs.



[Florida](#) and [Indiana](#) made the most aggressive moves, passing bills to remove central bank digital currency (CBDC) from the definition of money in the state Uniform Commercial Code (UCC).

The UCC is a set of uniformly adopted state laws governing commercial transactions in the U.S. According to the Uniform Law Commission, “Because the UCC has been universally adopted, businesses can enter into contracts with confidence that the terms will be enforced in the same way by the courts of every American jurisdiction. The resulting certainty of business relationships allows businesses to grow and the American economy to thrive. For this reason, the UCC has been called ‘the backbone of American commerce.’”

Under Florida and Indiana’s UCC, “money” means a medium of exchange that is currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

The new laws add “the term does not include a central bank digital currency” to that definition.

[Alabama took a smaller step](#), enacting a law prohibiting government agencies in the state from accepting a CBDC as payment, and from participating in any testing of a CBDC by the Federal Reserve.

[An Arkansas law](#) doesn’t attempt to stop CBDCs, but it does attempt to mitigate one of the negative impacts of digital currency - the ability to track purchases. The law prohibits tracking an individual through the use of digital currency without a warrant in most cases.

How such legislation would play out in practice against a CBDC, should the federal government attempt to implement one, is unknown.

Opponents of the legislation generally take the position that states can't do **anything** to stop a CBDC, since – [according to their view](#) – under the supremacy clause “any federal law on this point will automatically override state law.”

We've heard this song and dance on other issues before.

In the ramp-up to the 1996 vote on Proposition 215 in California, voters were repeatedly told that legalization of marijuana, even for limited medical purposes, was a fruitless effort, since, under the supremacy clause, any such state law would be automatically overridden by the Controlled Substances Act of 1970 (CSA). At best, opponents told Californians, the state would end up in a costly, and losing court effort.

But despite those warnings, Californians voted yes, setting in motion the massive state-level movement we see today, where a growing majority of states have legalized what the federal government prohibits. Ultimately, the federal government will likely have to back down, even if just to save face, because it has become impossible to fully enforce its federal prohibition over this massive state and individual resistance.

We'll provide more detail on how states, localities and individuals have effectively nullified federal marijuana prohibition in an upcoming section of this report.

A similar situation has played out in response to the REAL ID Act of 2005, [already 17 years late on full implementation](#) because a significant number of states have decided not to participate, or in some cases, just provide residents with a choice to opt out. There, federal officials have confirmed that state-level roadblocks to implementation are the primary reason for the continuing delays.

“Roadblock” is likely the way this legislation to oppose a CBDC could play out,

and it's part of James Madison's four-step blueprint for how states can stop federal programs. Passage would, as noted by [one opponent of the legislation](#), put a CBDC "into the bucket of 'general intangibles'" – rather than money, and wouldn't ban its use completely.

But, as can be seen so far with issues like marijuana and the REAL ID Act, whether a federal program is implemented or not ultimately gets down to the number of roadblocks put up by states, and [the willingness of the people to participate - or not](#).

## Human Action

State action alone won't crack the Federal Reserve's monopoly on money. That will require human action. And a lot of it, too.

In other words, states passing laws encouraging the use of gold and silver as money means nothing if individuals continue to support the government fiat regime by using government fiat money - whether paper or digital.

People's willingness to use government fiat is what got us into this position to begin with.

Instead, it will take people and businesses willing to use and accept forms of money that are not created and controlled by the government.

Ideally, money would evolve within a free market based on consumer choice outside of government control.

Historically, physical gold and silver have served as money, and one option is a return to a true gold or silver standard. This would entail using physical gold or silver as the currency, or linking any paper currency to a fixed amount of metal.

But some people prefer decentralized digital currencies, such as Bitcoin (BTC), Bitcoin Cash (BCH), Litecoin (LTC), Monero (XMR), and others. And as we've seen, there are also evolving processes using gold and silver in digital form for those who want to conduct transactions digitally.

In fact, in today's digital world, physical money alone simply is not a solution, even if it is gold or silver. Further development of digital platforms using non-government currency will be imperative.

That's because the vast majority of transactions do not use physical money.

According to a 2020 survey cited in [a San Francisco Fed paper](#), US consumers only used cash in 19 percent of transactions making up just 6 percent of the total value. That was down significantly from 2012 when 40 percent of all US transactions were in cash.

We focus primarily on gold and silver because it is expressly listed as money under the Constitution.

The 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.

As the government rolled out its fiat system, people embraced it, pushing out sound money.

But that process can be reversed - if the people take action to get it done.

And we're seeing some progress. As mentioned above, [Goldbacks](#) are dollar-

denominated notes made from physical gold that are growing in use. They are created in various series to circulate under the applicable laws in the jurisdictions of Utah, Nevada, Wyoming and New Hampshire. There are plans to launch a Goldback series for South Dakota before the end of the year.

People in any state can own Goldbacks, but they only qualify as an actual currency where authorized by local or state law. Regardless, consenting individuals can do business with Goldbacks anywhere.

As of the end of the second quarter of 2023, 18.1 million Goldbacks had been produced valued at \$72.3 million. According to the Goldback website, nearly 1 million people own Goldbacks.

[Hundreds of businesses officially accept Goldbacks](#) already, and based on a survey, at least 50 percent of businesses in Utah are open to accepting the gold currency.

This is exactly what needs to happen in order to crack the Fed's monopoly on money, but in a much bigger way.

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 lead to an end of 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.

But, it's ultimately up to the people to choose to use something other than the government's money to drive it to the dustbin of history, where it belongs.

The state efforts that we've discussed open the door for a serious push-back against the Fed and its monopoly on money. But we can't reiterate this enough - **state action alone won't accomplish the goal**. In the end, it's up to the people. They have to take advantage of the doors opened by state action, reject government fiat and embrace sound money in whatever form they find most convenient.

## GUN CONTROL

**S**ince 2021, we've seen a reinvigorated effort to push back against federal gun control on a state level.

During these recent legislative sessions, another state passed a law banning enforcement of some federal gun laws, setting the foundation to nullify them in practice and effect within the borders of that state. Another state enacted permitless carry, bringing [the current total](#) to 27 at the time of this writing.

We also saw a number of states ban a scheme that would allow the tracking of firearms purchases through a new merchant credit card code.

### **Strategy and Background**

Applying James Madison's advice from Federalist 46 to federal gun control measures is a fairly straightforward process, and it has the potential to be incredibly effective too.

In short, 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.

The [ATF employs](#) about 2,600 special agents for the entire country. Historically, this workforce has investigated and closed between 8,000 and 10,000 cases per year.

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 also follows Thomas Jefferson’s advice and takes a step-by-step approach, with each step building on the last. The ultimate goal is to render all federal gun control unenforceable and effectively null and void within the states.

Each step is likely to be unique to the political realities in each state.

## Pushing Forward in 2023

This year, Kentucky took the first step against federal gun control with [the passage of a law](#) that bans state and local enforcement of any federal gun control enacted or implemented after Jan. 1, 2021. This includes the recent ATF rule on pistol braces, regulation of “lower thirds” and any law they pass or implement in the future.

This law is based on a [Montana law passed in 2021](#) that 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 “federal ban” on firearms, magazines, or ammunition implemented after passage.

Kentucky law enforcement agencies, local governments, and public agencies



are prohibited from adopting a rule, order, ordinance, or policy under which the entity enforces, assists in the enforcement of, or otherwise cooperates in a “federal ban” on firearms, ammunition, or firearm accessory. It would also prohibit the expenditure of public funds for the same.

The law defines a “federal ban” as “a federal law, executive order, rule, or regulation that is enacted, adopted, or becomes effective on or after January 1, 2021, or a new and more restrictive interpretation of a law that existed on January 21, 2021, that infringes upon, calls into question, prohibits, restricts, or requires individual licensure for or registration of the purchase, ownership, possession, transfer, or use of any firearm, ammunition, or firearm accessories.”

## Missouri and Arizona

In 2021, significant laws barring enforcement of a wide range of federal gun control passed in Missouri and, to a lesser extent, Arizona.

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

It 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.

The Missouri 2nd Amendment Preservation Act is working so well – ending state and local enforcement of federal gun control – that the DOJ repeatedly pointed out [how well it's working](#) in [its lawsuit](#) against the state, which is still pending at the time of this writing.

Much of the DOJ's complaint focuses on severed federal enforcement relationships, noting that SAPA "severely impairs federal criminal law enforcement operations within the State of Missouri." The DOJ said, "Missouri House Bill 85 makes enforcement of federal firearms Laws more difficult..."

This was exactly the point of passing the law!

[The Arizona law](#) takes a more moderate approach but is built on the same foundation - a ban on state enforcement of purely federal gun control.

The 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 federal 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 future 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.

## Efforts in Other States

Other states have taken smaller steps to confront federal gun control in recent years.

In 2014, [Idaho took the first step](#), with former Gov. Butch Otter signing S.1332 into law.

Practically speaking, the law sets the stage for state and local police any federal gun control measures enacted or implemented after the date of the act, including the federal bump stock ban of 2018, the licensing and registration of firearms with “pistol grips” and new federal regulations on “lower thirds.”

In 2015, former Indiana Gov. Mike Pence [signed a bill](#) that “Repeals the prohibition against manufacturing, importing, selling, or possessing sawed-off shotguns.”

A [2021 law in Texas](#) decriminalized firearm sound suppressors under state law. Under the law, state agencies are also banned from adopting 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.

Also in 2021, [Idaho clarified and expanded](#) on the 2014 law, 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, 2021, that do the same.

In 2022, [Alabama Gov. Kay Ivey signed SB2 into law](#) prohibiting state and local enforcement of some federal gun control by executive order.

## Blocking Firearms Tracking Through “Merchant Category Codes”

[Florida](#), [Idaho](#), [Texas](#), [Montana](#), [North Dakota](#) and [Mississippi](#) all passed bills that prohibit financial institutions operating there from requiring or assigning a firearms code in a way that distinguishes a firearms retailer physically located in those states from general merchandise retailers or sporting goods retailers.

In September 2022, the International Standards Organization, based in Switzerland, approved a new merchant category code for firearm and ammunition merchants. In a letter to payment card networks, federal lawmakers stated that the new Merchant Category Code for firearms retailers would be “. . .the first step towards facilitating the collection of valuable financial data that could help law enforcement in countering the financing of terrorism efforts,” expressing a clear government expectation that networks will utilize the new Merchant Category Code to conduct mass surveillance of firearms and ammunition purchases in cooperation with law enforcement.

This merchant category code could result in credit card companies reporting law-abiding citizens to a law enforcement agency based on overbroad definitions of suspicious activity, and the creation of a de facto gun registry and watchlists of everyday people.

In response to legislation blocking the use of the firearms code, the major credit card payment networks [“paused”](#) implementation of the firearms merchant code. In an [email to Reuters](#), a Mastercard representative said such laws would cause “inconsistency” in how the code could be applied by merchants, banks and payment networks. The more states that ban such codes, the more likely this program gets scrapped permanently.

West Virginia took a slightly different approach. It didn’t ban the firearms merchant code, but it did [pass a law](#) prohibiting state government entities from accessing information about firearm and ammunition purchases generated by a credit card merchant code without a warrant.

### Permitless Carry and More

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 the enforcement of federal gun laws.

[Florida passed a bill](#) legalizing permitless carry in 2023, bringing the total to 27 at the time of this writing.

Permitless carry not only expands 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.

In another move that could help expand and normalize the carrying of firearms, [an Arkansas law enacted in 2023](#) prohibits the Arkansas State Police from denying a concealed carry license on the basis of an individual's use of medical marijuana under state law.

The federal government has [long claimed the power](#) to restrict the right to keep and bear arms of medical marijuana patients, and most states have formally adopted this federal ban or simply help with enforcement. For instance, police in Hawaii sent letters to medical marijuana patients who owned guns telling them they had [30 days to surrender their weapons](#).

While laws protecting the right to keep and bear arms of medical marijuana patients do not overturn the federal Gun Control Act of 1968, they do remove the state and local enforcement arm of that unconstitutional act as it applies to medical marijuana users in Arkansas.

Iowa took another approach to protecting the right to keep and bear arms with a state constitutional amendment.

In November 2022, [Iowa voters passed Amendment 1](#) by a 65-35 percent margin.

The constitutional amendment adds the following language to the Iowa state constitution:

*"Right to keep and bear arms. Sec. 1A. The right of the people to keep and bear arms*

*shall not be infringed. The sovereign state of Iowa affirms and recognizes this right to be a fundamental individual right. Any and all restrictions of this right shall be subject to strict scrutiny.”*

The amendment will make it more difficult for the state to implement gun control, and like permitless carry, will also foster an environment more hostile to federal gun control.

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.

## 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 sheriff’s associations, police chief associations, and other groups representing law enforcement. 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 in 2021. 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.”

Law enforcement pressure was also almost certainly a factor in the creation of loopholes in a number of state laws passed in recent years.

In fact, there is similar law enforcement opposition in every single state where measures to end enforcement of federal gun control are 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, they 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, especially in war on drugs cases, 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, or gets any kind of opposition from a law enforcement group

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

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

## Second Amendment Sanctuaries: The Worst of the Worst

With police lobbyists pushing to derail any efforts against federal gun control, and a lot of politicians eager to remain in the good graces of law enforcement lobbying groups, you need to be on the lookout for bills that **claim** to limit cooperation with the enforcement of federal gun control, but **actually** fail to do anything in practice.

While we've seen some promising efforts to end the enforcement of federal gun control, there are a number of cautionary tales underscoring the fact that you have to look closely at legislation to make sure it will do what the politicians claim it will do.

State efforts purporting to limit enforcement of federal gun control are often little more than political posturing. Over the last couple of years, several states have passed bills claiming to create "Second Amendment Sanctuaries" that, in practice, create sanctuaries for absolutely nothing.

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 federal gun control.

Here are the worst of the worst so-called 2nd Amendment "Sanctuary" laws passed over the last couple of years.

## **North Dakota**

[This 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.

## GUN CONTROL

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. Similar to laws passed in Montana and Kentucky, 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 leaves a big loophole for law enforcement officers to continue enforcing federal gun control. It specifically limits the prohibition on helping enforce federal gun control to those acts that “conflict with Arkansas Constitution, Article 2, § 5, or any Arkansas law.”

Law enforcement agencies are likely to hold 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 will almost certainly continue helping in the enforcement of all federal gun control in Arkansas **until a court tells them to do otherwise.**

That’s really no different than how things are today - and that isn’t working too well either.

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 a twisted definition of anti-commandeering in the law 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,” but doesn’t come close.

The 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 state-federal task force agreements, which virtually every locality in the state already 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 2021 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.”*

The law includes no express or clear prohibition on enforcement. 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.

## Wyoming

[The Wyoming Second Amendment Protection Act](#), signed as law in early 2022, purports to restrict the enforcement of federal gun control. However, due to massive loopholes, it will do nothing to protect the Second Amendment in practice and effect.

Under the law, the state or any political subdivision of the state is prohibited from using “personnel or funds **appropriated by the legislature of the state of Wyoming or any other source of funds that originated within the state** to enforce, administer or cooperate with any unconstitutional act, law, treaty, judicial or executive order, rule or regulation of the United States government that infringes on or impedes the free exercise of individual rights guaranteed under the Second Amendment to the Constitution.” [Emphasis added]

There are two significant problems with this language that make the proposed law utterly ineffective in practice.

**It doesn’t tell law enforcement to stop doing anything they’re currently doing.**

Without specific instructions to stop enforcing specific federal gun control measures, merely telling law enforcement to not enforce unconstitutional

federal gun control means nothing changes in practice and effect. State and local law enforcement agents and agencies will continue to defer to the courts to rule something unconstitutional before ending enforcement. As we've seen for many years, without specifically defining what types of federal actions the state can no longer help enforce, the status quo doesn't change.

**The language only prohibits the use of *state* appropriations to enforce federal gun control.**

Even if there was a concrete prohibition on enforcement, this text leaves the door open for the state of Wyoming to use federal funds to enforce federal gun control. With billions of dollars flowing into state and local law enforcement agencies from federal sources, this almost certainly ensures Wyoming police will continue to assist the feds in enforcement even with the passage of this law. In fact, the language was likely written to specifically allow state and local law enforcement to work on federal task forces to enforce federal gun control.

During the process, the House also rejected amendments that would have given the bill some practical impact and decided instead to grandstand - like politicians in so many other states - on a 2nd Amendment "protection" act that protects little more than the status quo.

**Tennessee**

A [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, regu-

lation, 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 follow-up law passed in 2021](#) 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, the so-called “Tennessee Second Amendment Sanctuary Act” created a sanctuary for nothing.

Instead of defining specific acts that violate the state constitution to effectuate the 2015 statute, it instead 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.**



## Big Picture

All federal gun control laws are unconstitutional.

This brings up another important point. Even if they were to stop trying to give us 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](#), and hasn't been for nearly a century.

As Thomas Jefferson made clear, whenever the federal government goes beyond the limits of the constitution, "a nullification of the act is the rightful remedy."

## CANNABIS PROHIBITION

**A**s 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 increases in spending and enforcement efforts by the federal government through three presidential administrations, and ongoing, complete prohibition at the federal level.

In other words, nullification works.

At the time of this report, 38 states have legalized marijuana for medical use, and 23 states along with Washington D.C. have expanded on these efforts, legalizing marijuana for adult recreational use.

Additionally, at least eight [states have decriminalized marijuana possession](#). In 18 states, decrim was the first step on the path to legalization.

[Over 100 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.

In California, [individual and local action started over 20 years before](#) the passage of Proposition 215 in 1996. From there, other states followed California's lead. 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, or "recreational" marijuana legalization.

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 61.9 percent since 2018 and over 80 percent since 2012 when Colorado and Washington became

the first states to legalize recreational, adult-use marijuana.

Since our last report, the movement has continued to grow (pun intended).

In November 2022, [Maryland voters passed Question 4](#), legalizing the use of cannabis by individuals who are 21 or older. The amendment also authorized the Maryland General Assembly to “provide for the use, distribution, possession, regulation, and taxation of cannabis within the state.”

During the 2023 legislative session, the Maryland legislature did just that, [enacting a law](#) to create a regulatory structure for commercial marijuana cultivation and sales.

Under the system created by HB556/SB516, the newly created Maryland Cannabis Administration regulates commercial sales and cultivation of cannabis. Existing medical cannabis dispensaries will be converted into dual licensees subject to payment of a fee. Regulators will start approving additional marijuana business licenses by July 1, 2024. The new law imposes licensing caps for 300 dispensaries, 100 processors, and 75 growers. The law also creates a program for smaller microbusinesses with a limit of 10 dispensaries, 100 processors, and 100 growers.

Two more states legalized adult-use marijuana in 2023.

Delaware [enacted two laws](#) that together legalize marijuana for adult use and create a regulatory structure for cannabis commerce in the state.

The first law removed a \$100 civil penalty for the possession and consumption of up to one ounce of marijuana by adults over 21. The legislation also made the following cannabis-related activities affirmatively legal.

Adult sharing of a personal use quantity or less of marijuana.

## CANNABIS PROHIBITION

- Possessing, using, displaying, purchasing, or transporting marijuana accessories or a personal use quantity or less of marijuana outside of a motor vehicle.
- Possessing and transporting marijuana accessories or a personal use quantity or less of marijuana, inside of a motor vehicle as long as the marijuana accessories or marijuana is in a closed container or is not readily accessible to anyone inside the motor vehicle.
- Assisting another individual who is 21 years of age or older in any of the above acts.

The second law created a basic system for regulating and taxing a commercial marijuana market in the state under the control of the Division of Alcohol and Tobacco Enforcement (DATE). It provides for up to 30 cannabis retail licenses in the first 16 months. It also includes provisions to regulate the commercial cultivation of marijuana.

It will reportedly take about 16 months to get the regulatory structure in place for commercial cultivation and retail sales.

Under [a new law in Minnesota](#), adults 21 and over can legally possess up to 2 ounces of marijuana in public. They can also have up to 2 pounds of processed marijuana in their homes and grow up to 8 cannabis plants (4 mature).

Additionally, it creates a licensing and regulation scheme for the commercial cultivation and sale of marijuana under a newly created Office of Cannabis Management. It will take 12 to 18 months to get retail sales going. The law also includes provisions allowing marijuana use at specially licensed businesses and events.

After multiple failed attempts, [Kentucky finally legalized medical marijuana](#) in 2023. It allows patients with a long list of conditions to access marijuana in the state with a doctor's recommendation. Smoking marijuana is still

prohibited, but patients can access raw cannabis for vaporization. The program has strict limits on THC levels, but medical cannabis will be exempt from sales tax. The law also includes provisions to create a licensing program for the cultivation and sale of medical marijuana.

## Additional Steps Forward

The following new laws passed during the 2023 legislative session represent a further erosion of unconstitutional federal marijuana prohibition.

A Colorado law [legalized online payments](#) for marijuana. Under the law, an individual must be physically present on the retail marijuana store's licensed premises to take possession of cannabis products purchased online.

[Illinois](#) and [Connecticut](#) enacted legislation eliminating state conformity with Internal Revenue Code (IRC) Section 280E. The enactment of this provision provides limited but important state tax relief for marijuana businesses.

Section 280E forbids businesses from deducting otherwise ordinary business expenses from gross income associated with the "trafficking" of Schedule I or II substances, as defined by the Controlled Substances Act. The IRS applies Section 280E to state-legal cannabis businesses, meaning marijuana growers, processors and sellers cannot deduct expenses from their taxes that businesses in other sectors can write off. The only deduction that cannabis businesses can make is the cost of goods sold.

Under this tax scheme, marijuana businesses pay effective tax rates of up to 80 percent.

State tax codes in Illinois and Colorado generally conform to federal tax law with respect to itemized deductions and business deductions. With

the enactment of these new laws, marijuana businesses will be able to take deductions for state tax purposes in an amount equal to the deductions that were disallowed under Section 280E of the Internal Revenue Code for the taxable year. In the years since the legalization of marijuana took off, many states have expanded their marijuana laws to give consumers and patients better access, and to ease the burden on marijuana businesses.

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.

## Bringing it Down

After more than two decades of state, local and individual resistance and nullification, the federal government’s unconstitutional prohibition of cannabis is coming to an end.

As mentioned earlier, with 99 out of 100 marijuana arrests happening under state law, state and local legalization efforts sweep away most of the basis for 99 percent of marijuana arrests. Without state or local cooperation, prohibition comes to a defacto end.

Of course, the feds can still enforce federal marijuana laws with their own personnel and resources, but with no help from the states, they have started to give up. According to DEA data, [federal marijuana arrests declined by 24 percent](#) in 2022 alone.

Congress has also stopped funding federal prosecutions of individuals using medical marijuana if they are following state laws.

None of these changes at the federal level happened because the feds suddenly

decided marijuana prohibition is a bad idea. It is all being driven by their complete inability to maintain prohibition in the face of so much state, local and individual defiance.

It's only a matter of time before the states and the people put the final nails in the coffin.



## POLICE STATE

**T**he United States are rapidly evolving into a centralized, national police state thanks to federal government efforts and the willing cooperation of many state and local law enforcement agencies. But states and localities can stymie those efforts by simply severing those partnerships.

Over the last several years, a number of state and local governments did just that, opting out of federal programs to militarize police, ending participation in a federal asset forfeiture program, and creating state laws to circumvent Supreme Court opinions that give police leeway to violate individual rights without fear of punishment. Plus, we're seeing some states move to restrict or prohibit "no-knock" warrants despite several Supreme Court opinions that give police legal cover for conducting such raids.

Through incentives and strings created by federal funding, along with the proliferation of [joint task forces](#) that combine state, local and federal policing into one conglomerate, the feds have effectively created a nationalized police force that prioritizes the war on drugs, federal gun control, and other federal policies above local peacekeeping.

The federal government was never intended to exercise wide-ranging “police powers” in the first place. There are just [five broad categories where the Constitution delegated to Congress](#) the power to enact criminal laws. All other “police powers” were left to the states and the people.

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

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

While police reform efforts in Washington D.C. continue to fall flat, we’ve seen a growing number of successes at the state and local levels.

As the Founders repeatedly advised, this is the most effective path forward.

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

And that’s exactly what many have done.

## Asset Forfeiture

In recent years, [nine states and Washington D.C. have taken steps](#) to shrink a loophole that allowed police to use a federal program to circumvent more restrictive state asset forfeiture laws.

Civil 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 of a crime.

Both states and the federal government engage in forfeiture and this makes it more difficult to limit. When states reform their forfeiture processes, law enforcement agencies often utilize a big loophole to facilitate forfeiture through a federal program.

### ***How it Works***

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 an "illegal" gun sale, or cash they **thought** somebody got from selling drugs.

Once police seize property, it becomes subject to a 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 itself isn't **particularly** problematic, even if many of the criminal laws in question are constitutionally dubious, at best. The process, however, maintains the essential 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 basically 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.

As noted by the Institute for Justice (IJ), *"civil forfeiture is not only a civil process, it is an "in rem" proceeding, meaning it is a lawsuit against the property, not the person."* This has produced some odd-sounding court case names including, *State of Texas v. One 2004 Chevrolet Silverado* and *United States v. One Solid Gold Object in Form of a Rooster*.

The federal government and many states have civil asset forfeiture processes. 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 has been a growing movement since about 2014 to reform asset forfeiture laws. Several states have ended civil asset forfeiture on a state level 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.

Additionally, 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 a massive federal loophole, discussed below.

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.

### ***Equitable Sharing***

Police have a federal loophole they use to continue cashing in on asset forfeiture even when states reform their systems and do away with the monetary incentives - or even when they do away with civil asset forfeiture completely.

As we've already mentioned, states can nullify this program in practice and effect by opting out and refusing to participate.

The federal "[Equitable Sharing](#)" program, [first created in 1984](#) with heavy support from a certain Senator in Delaware, incentivizes prosecutors to bypass more stringent state asset forfeiture laws by moving cases to federal jurisdiction.

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 can prosecute the forfeiture case under federal law even though there was initially no federal involvement in the investigation and seizure. If the forfeiture is successful, the feds split the proceeds with the local police. Through this program, state and local law enforcement agencies receive up to 80 percent of the take.

State and local police can also tap into equitable sharing by working with the feds on [joint task forces](#). About 70 percent of equitable sharing cases and 83 percent of the total value forfeited arise from these joint task forces. Still, roughly 30 percent begin with adoption - a significant number.

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.

States have opted out of equitable sharing with varying degrees of success.

Arizona, Maryland, Nebraska, Maine, New Mexico and Ohio have all prohibited state and local agencies from transferring property to the federal government for forfeiture unless the property is worth more than a threshold amount.

California and Colorado attempted to shrink the equitable sharing loophole by removing the financial incentive rather than completely restricting participation in the program.

California banned adoption but still allows cases arising through joint task forces to be prosecuted by the feds. In those cases, state and local law enforcement agencies can only keep equitable sharing proceeds if there is a criminal conviction and the value of the property is above a \$40,000 threshold.

Law enforcement agencies in Colorado can turn over any property to the feds for forfeiture, but they can only receive a cut of the proceeds if the property value reaches a \$50,000 threshold.

Pennsylvania bans all adoptions but allows property seized by joint task forces

to go through the federal forfeiture process. As noted above, this approach restricts about 30 percent of equitable sharing cases.

You can see the impact of limiting both adoption and task force forfeitures in Nebraska. According to data collected by the IJ, between 2012 and 2016 - the year Nebraska passed its anticircumvention law - 93 percent of Nebraska's equitable sharing forfeitures fell below the state's \$25,000 threshold for equitable sharing participation. With the reform, these forfeitures must happen under more restrictive state laws, or not at all.

Similarly, in New Mexico, equitable sharing money dropped by 85 percent the year after it aggressively limited the federal loophole. The next year, we saw a 95% drop.

As previously mentioned, California took a more modest approach. At the time, the state had some of the strongest restrictions in the country, but state and local police were circumventing the state restrictions 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 narrowed the loophole by prohibiting adoption and limiting the proceeds law enforcement could pocket from equitable sharing. This led to a roughly 25 percent drop in equitable sharing proceeds. That's an improvement, but it pales in comparison to the decreases we've seen in Nebraska and New Mexico.

Many states have reformed their asset forfeiture process without addressing the federal loophole at all. With the loophole wide open, these state-level reforms have minimal impact in practice and effect. It will just result in more cases moving to the federal level.

The increase in state reforms without addressing the federal process likely explains the big jump in equitable sharing in recent years.

In fiscal 2021, [the federal government distributed over \\$230.9 million to state and local law enforcement agencies](#) through equitable sharing programs. That was up significantly from the \$135.7 million distributed the previous year.

The only way to truly limit forfeiture is to take on both state and federal programs simultaneously.

## No-Knock Warrants

Over the last several years, a number of states have taken a step toward effectively nullifying and making irrelevant a series of Supreme Court opinions that [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 circumstances” - 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 noted](#), 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 this



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 opinion make no-knock the norm instead of the exception.

A third Supreme Court opinion 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, where the federal government supposedly protects the people of the states from state and local governments violating the Bill of Rights, these cases would have never gone to federal court in the first place. And more importantly, we wouldn’t have these blanket rules for all 50 states.

Without specific restrictions under state law, police officers and judges generally operate within the standards set by the Supreme Court. By passing restrictions on no-knock warrants, states set standards that go beyond the Supreme Court limits and can nullify the SCOTUS opinions 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 police 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](#).

In 2022, [Austin, Texas](#), and [St. Louis, Missouri](#), joined the ranks of cities banning no-knock warrants.

Several states introduced legislation to ban no-knock warrants in 2023, but as with other issues, aggressive law enforcement lobbying killed these bills. [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.

## Fake No-Knock Reforms

We’ve also seen a rise in the number of “reforms” that do little or nothing to change the status quo in practice and effect.

A [bill signed into law in Colorado](#) in 2023 is a good example. Under the new law, a judge may only issue a no-knock warrant if the officers seeking the warrant establish by affidavit that *“a no-knock entry is necessary because of a credible threat to the life of any person, **including the peace officers exercising the warrant.**”* [Emphasis added].

The law allows for a warrantless no-knock entry if “*circumstances known to the officer at the time provide an objectively reasonable basis to believe that a no-knock entry or not waiting a reasonable amount of time is necessary because of an emergency threatening the life of or grave injury to a person, provide that the imminent danger is not created by law enforcement itself.*”

On the surface, this may sound like it imposes tight limits on no-knock raids, but in practice, it imposes virtually no limits at all. That’s because the law allows police officers to subjectively determine if the entry might put their lives in danger. And police officers can (and do) almost always positively assert “officer safety.”

In practice, under the new Colorado law, police can get a no-knock warrant or conduct a warrantless no-knock entry simply by declaring they are or were “in fear for their lives.” Nobody is going to dispute their assessment. Judges will almost certainly rubber-stamp every no-knock raid in the state.

This is literally a limit with no limits.

In fact, the standard is very similar to the one set by the Supreme Court that opened the door to the proliferation of no-knock raids to begin with.

## Qualified Immunity

Some states have also taken action to undermine another Supreme Court-created legal doctrine by establishing a process to sue police officers and government officials in state court for the deprivation of individual rights - without the possibility of “qualified immunity” as a defense.

Qualified immunity is a legal doctrine that shields government employees 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, and nothing in the Constitution does either.

[The Supreme Court created the doctrine out of thin air](#) and then effectively imposed it on all 50 states through the [incorporation doctrine](#).

In practice, qualified immunity makes it extremely difficult to legally punish government agents 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 seems to have been 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 far worse in the long run. 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.

As John Taylor of Caroline put it, “*There are no rights where there are no remedies, or where the remedies depend upon the will of the aggressor.*”

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. We can't rely on the federal government to protect us from itself - or from the states. Government protects its own. In the long run, centralized power almost never benefits the average person. 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 have 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 court to sue peace 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.

[California also took a step](#) toward limiting qualified immunity in 2021. SB2 amended the 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 closed the loopholes in the current law by amending Civil Code section 52.1 to render those protections inapplicable. This created a legitimate alternative pathway to sue law enforcement officers for violating basic rights.

In practice today, people sue police for using excessive force or other types of misconduct through the federal court system under the 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, New Mexico and California create an alternative path through the state courts, with no federally created qualified immunity hurdle to leap.

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 now reflexively run to federal courts. Removing the qualified immunity hurdle 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 federally imposed qualified immunity.

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

For 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.

It might be possible for officers to have their case removed to federal court to consider U.S. constitutional ramifications. But even then, federal courts might 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.

But as of today, all of this is hypothetical.

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 Constitution of the United States and the Bill of Rights. The state process will make it more difficult for police to simply side-step civil suits by declaring qualified immunity upfront.

After Colorado, New Mexico and California created a state process to circumvent qualified immunity, [powerful police lobbies organized to oppose the movement](#). Several states, including New Jersey, Florida, Maryland, Washington, West Virginia, Vermont, Hawaii, Illinois, West Virginia, New York, Oklahoma, Missouri and Rhode Island considered bills to create a state process to hold police accountable, but none advanced in the face of massive law enforcement opposition.

## Police Militarization

State and local action can drastically reduce or even eliminate the federal militarization of local police, and over the last several years, a handful of states have taken steps to do so. Several states have created a process to create transparency, oversight, and a mechanism to block militarization. A few have taken a bigger step and banned the acquisition of specific combat gear.

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 three 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. They also simply hand 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. However, 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 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.

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



In May 2022, President Biden issued an executive order reinstating the Obama-era limits. But the Obama “reform” was nothing more than window-dressing in the first place. In practice, the Obama policy did little to stem the flow of military equipment to state and local law enforcement agencies.

Even with the Obama-era limits back in place, the 1033 program remains essentially intact. Military gear continues to pour into local police agencies, just as it did when Obama was in the White House.

Even if that policy had been effective, 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 this or the next president imposes through executive order can be undone with a stroke of a future president’s pen.

The only way to actually end federal militarization of state and local police 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 today.

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).

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. The law is similar to [a 2015 law enacted in Montana](#).

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](#) in 2021. 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.

As a result of AB481, a San Francisco Police Department (SFPD) plan to arm robots - some federally funded - with lethal force was brought to public attention before implementation. Swift and massive public backlash pressured the Board of Supervisors to quickly reverse course after initially approving the SFPD proposal. The 8-3 vote in support of the "killer robots" was quickly flipped in December 2022 when the Board voted unanimously to explicitly ban the use of robots in such a fashion, at least for now.

But the battle isn't over. [According to an ABC 7 report](#), the SFPD floated the idea again during a February 2023 meeting. That means the issue could come before the board again and it could still approve a revised policy allowing robots to use lethal force in the future.

But for the time being, despite SFPD's wishes, they are currently banned from arming robots with a deadly force option.

The Board's surprising U-turn underscores the power of sunlight coupled with dedicated grassroots activism.

The law enacted by AB481 is relatively narrow in scope and doesn't do anything to stop the federal militarization of police. But it does make the process of acquiring military-grade equipment more transparent. Prior to the enactment of this law, law enforcement agencies in California often acquired military equipment without anybody even knowing, much less approving it.

As reported in the [\*San Francisco Chronicle\*](#):

*"The vote was the result of a new state law that requires police departments to inventory equipment including certain guns, grenades, armored vehicles and battering rams and to seek explicit approval for their use. So far, only San Francisco and Oakland have discussed lethal robots as part of that law. Oakland police wanted to arm robots with shotguns but backed down in the face of public opposition, instead opting for pepper spray."*

Of course, transparency alone doesn't stop government actions. Oftentimes, government bodies simply rubber-stamp police requests. But when grassroots activists get involved, they **can** drive change, as we saw with this killer robot policy.

Transparency sets the stage. It provides a means for the community to know exactly what its government is doing. As the old saying goes, sunlight is the best antiseptic. But ultimately, substantive changes in policy require human action.

Initially, the San Francisco Board of Supervisors was set to rubber-stamp law enforcement's request for killer robots – even with public disclosure. But when activists got wind of the proposal and took action, they were able to exert enough pressure on government officials to reverse the bad policy.

Without AB481, nobody would have known about the killer robots. But without the concerted effort of concerned individuals pressuring government officials, they would have gotten killer robots anyway.

## The Big Picture

Despite all of the protests and promises of police reform after the deaths of people 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 unconstitutionally controlled 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 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 back by the kind of state and local action outlined above.

## REAL ID

**T**he REAL ID Act was supposed to go into effect on May 11, 2008.

More than 15 years later, it still hasn't happened due to states' unwillingness to cooperate with its implementation and individuals refusing to get compliant IDs.

In 2005, President George W. Bush signed the REAL ID Act into law, essentially creating a national ID system and putting the onus of implementation - and the funding for it - on each state.

In December 2022, the Department of Homeland Security (DHS), as it has done multiple times already, officially extended the enforcement deadline yet again for two more years, announcing it would not begin enforcing REAL ID requirements until May 2025.

The bottom line is due to intense opposition and foot-dragging by the states, along with a refusal to participate by individuals, REAL ID won't be in full effect until at least 17 years after the initial implementation date - and that's assuming the DHS doesn't extend the deadline again.

Practically speaking, postponing enforcement means that people with non-compliant driver's licenses or ID cards will still be able to use them at airport TSA checkpoints for another two years. At least.

And there are millions of them

Since its original implementation date, DHS has faced massive noncompliance from states - and millions of people.

The [\*New York Times\* reported](#) that mass non-compliance was the key to this latest postponement:

*"Federal authorities determined that not enough citizens were ready for the change," said Dan Velez, the New England spokesman for the T.S.A., "and made the decision to extend the deadline two more years."*

In other words, the federal government does not want the political fallout it would face by effectively banning millions of people from domestic air travel.

Research shows that in states where people are given the option to get a REAL ID-compliant license, compliance is often quite low. For example, as of the beginning of 2023, only [17 percent of IDs in Kentucky are REAL ID compliant](#). Figures indicate that even [California had just over 37 percent compliance](#) at the time of the most recent DOJ extension, while the most recent numbers from DHS put compliance at only 43 percent nationwide.

Texas, on the other hand, which doesn't offer residents an option, reports compliance of over 85 percent. But that also means that at least 2 million people have refused to comply, even when the state hasn't provided a path to do so.

Velez told the *New York Times* that states dragging their heels on full implementation - and likely just giving people an option - has created

significant issues for federal enforcement.

*“Real ID progress over the past two years has been significantly hindered by state driver’s licensing agencies,” Mr. Velez said. “The extension is necessary to give states the needed time to ensure their residents obtain a Real ID-compliant license or identification card.”*

## What’s the Problem With REAL ID?

After Bush signed REAL ID into law, states rebelled for several reasons, including privacy concerns and constitutional issues, along with the fact that Congress didn’t provide any funding for the mandates it expects states to implement.

As [Joe Wolverton noted](#), “Constitutionalists will immediately recognize the real problems with REAL ID.”

*“First, the federal government has no authority to mandate such national identification documents. This federal overreach is such an obvious act of usurpation that all state legislators should stand shoulder-to-shoulder in their resistance to such despotic designs.*

Second, REAL ID taps into the ever-growing federal surveillance state that ignores the limits imposed on the government by the Fourth Amendment. Wolverton put it like this:

*“Next, there is another aspect of the federal REAL ID program that is perhaps more pernicious than the requirement of carrying papers proving you have the government’s permission to travel. This threat to liberty comes through the connection of REAL ID to the growing federal surveillance apparatus.”*

At the American Institute for Economic Research (AIER), [Peter C. Earle](#)

called REAL ID “the last mile in the ability of the state to track individuals in real-time.”

*“With various electronic, social media, and cellphone tracking measures, there is always a delay; and one can choose not to use social media, not to own a cellphone, and opt into other methods of extricating oneself from the prying eyes of the NSA or other government agencies. But the Real ID — in particular, coupled with biometrics — fulfills Orwellian conceptions of the total surveillance state.”*

Earle warned that the “worst US government infringements upon life, and liberty” will be “vastly easier and more efficient to accomplish with the imposition of a mandatory identification requirement.”

He predicted that the national ID card would be an easy tool to link compliance with various programs, and what might even look like a social credit score:

*“Census data, drug prescriptions, and even library borrowing choices and habits are likely to eventually be linked with personal data associated with the new ID requirement. And if the Real ID is eventually accessible by the private sector, many individuals with innocuously-tainted personal histories may become effectively unemployable.”*

## Resistance

As noted above, this isn’t the first time the feds have put off the enforcement deadline. In fact, the DHS has delayed the full implementation of REAL ID multiple times since Congress passed the act in 2005 with an original implementation date of 2008.

After Bush signed the act into law, many states simply chose not to act. Half of the states passed resolutions objecting to the law or signaling that they



would not comply. New Hampshire, Missouri, Maine, Oklahoma and others took things a step further, passing laws **expressly prohibiting** compliance with the national ID standards.

In Montana, [Gov. Brian Schweitzer told NPR](#) it's best to just tell the feds to "go to hell."

*"Well, we are putting up with the federal government on so many fronts, and nearly every month they come out with another harebrained scheme, an unfunded mandate to tell us that our life is going to be better if we'll just buckle under on some other kind of rule or regulation. And we usually just play along for a while, we ignore them for as long as we can, and we try not to bring it to a head. But if it comes to a head, we found that it's best to just tell them to go to hell and run the state the way you want to run your state. And unfortunately, this time around, they have - they really got a harebrained scheme."*

Instead of forcing the issue, the feds issued waiver after waiver.

The DHS started extending deadlines almost immediately. On January 29, 2008, the agency issued REAL ID regulations that created a gradual implementation schedule. States would have until the mandated implementation date of May 11, 2008, to become "materially" compliant with the act but could ask for an extension valid until the end of 2009. It also set a date of May 10, 2011 for full compliance.

In December 2009, [the DHS extended the date](#) for "material compliance" because "a large majority of states and territories - 46 of 56 - have informed DHS that they will not be able to meet the Dec. 31 REAL ID material compliance deadline." At the time, it left the full compliance date in place.

That date came and went. In December 2012, the DHS [announced](#) that only 13 states had met the law's requirements and that beginning the following month, all the other states would get a deferment.

*“Beginning January 15, 2013, those states not found to meet the standards will receive a temporary deferment that will allow Federal agencies to continue to accept their licenses and identification cards for boarding commercial aircraft and other official purposes.”*

On and on it went, with new extensions and deferments year after year.

Over the years, the federal government used various pressure tactics, including the threat of turning states into virtual no-fly zones to compel the adoption of REAL ID. But even with badgering and threats, the feds have found it difficult to coerce states into compliance.

By any conceivable measure, the implementation of REAL ID has been an abject failure **because** of this widespread state and individual inaction and resistance.

In 2016, the feds [ratcheted up their bullying tactics](#), specifically threatening to stop accepting noncompliant licenses at TSA security checkpoints. This would effectively ground travelers from states that refuse to comply with the unconstitutional national ID scheme. On Oct. 13, 2016, DHS sent letters to five states denying their request for time extensions to bring their driver’s licenses in compliance with REAL ID. At the time, the DHS set a 2018 deadline but still allowed for individual state extensions.

Instead of standing their ground, some state politicians began to cave. Idaho reversed its ban on REAL ID implementation in 2016. Oklahoma followed suit the next year. At least six other states reversed course during this time period.

For instance, in 2010, Utah Gov. Gary Herbert [signed a law](#) banning REAL ID implementation, calling the act “inimical to the security and well-being of the people of this state.”

But almost as soon as the political climate changed in Washington D.C., so did Herbert's view on REAL ID, later doing an about-face and signing legislation implementing the act.

Even with a number of states reversing efforts to oppose the ID system, foot-dragging and public pushback have still hindered the process to the point that the feds will now be facing a delay of *17 years*, at least.

The federal government's struggle to implement REAL ID for so many years reveals a dirty little secret – the feds can't do much of anything when states and people refuse to cooperate in wide numbers.

This was the blueprint James Madison gave in *Federalist #46* to resist “unwarrantable” or even unpopular federal acts. He said that a “refusal to cooperate with officers of the union” would create impediments and obstructions that would stymie federal actions.

Here's something that should be unsurprising: James Madison was right, as this has certainly proved true when it comes to the REAL ID Act.

But we also see another less pleasant reality in this saga. We can't trust politicians to hold the line on their own.

State legislators and governors held the feds almost completely at bay for over a decade. It wasn't until they started to cave and reverse course that REAL ID gained any momentum toward implementation in the first place.

And even then, the federal government has still faced a rocky road because 57 percent of the public has refused to get on board - for one reason or another.

In the end, it takes public action to stop government overreach. As John Dickinson noted, it's ultimately up to the “supreme sovereignty of the people.”

Even when politicians do the right thing, the people must remain vigilant. We can't just turn our heads and hope elected politicians will continue to do the right thing in the future.

The fate of REAL ID in 2025 and beyond rests with the people themselves.

## FDA AND HEALTH FREEDOM

**A**s 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.

Federal agencies, including the FDA, the Department of Agriculture, the Department of Commerce, and others, have grown increasingly aggressive in enforcing both food and drug laws. They not only use an unconstitutionally expansive view of power to regulate interstate commerce to justify its intrusive regulations and mandates, but they also often assert the authority to regulate food and drugs **within state lines**.

However, 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 regulations and mandates in practice and effect.

## Food Freedom

Freedom flourishes in states where government regulators simply get out of the way. The proof is in the pudding – or more accurately, the raw milk.

Some broad-based “food freedom” laws generally exempt small food-producing businesses from onerous state and local 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.

These types of 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 the 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 generally not enforce FDA mandates either. Should the feds want to enforce food laws in states with food freedom laws, they have to figure out how to do so by themselves.

According to [a \*Forbes\* article](#), hundreds of local businesses have sprouted up across three states that have passed food freedom laws in recent years - all 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.

With a track record of success, [Wyoming expanded its food freedom law](#) in 2023 to open the market to small egg and dairy producers.

Under the new law, “designated agents” can “facilitate sales transactions” in the marketing, transport, storage, or delivery of food and beverage products. Under previous law, producers could only sell directly to consumers.

The new law also adds eggs and dairy products to the foods that can be sold at farmer’s markets, farms, ranches, producer’s homes or offices, and the retail location of the third-party sellers.

Expanding the market for eggs and dairy could provide some relief for Wyoming residents struggling to deal with the rampant price inflation of recent years. The price of both eggs and milk increased precipitously in 2023. Opening up the market to more producers and sellers could help the people of Wyoming get some relief from the money-printing frenzy of the Federal Reserve.

## 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, but 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 any such potential federal prohibition schemes by legalizing raw milk sales within their borders.

As we've seen with marijuana and industrial hemp, an intrastate ban becomes



increasingly ineffective as more and more 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 effect increases even more when the states actively encourage 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 likely block any attempt to ever implement an intrastate ban as well.

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](#), 11 states allow raw milk sales in retail stores, and 20 states allow sales on the farm where the milk is produced. Seven states have legalized herd-share agreements and six states don't prohibit them.

In 2023, [Iowa](#) and [North Dakota](#) became the 19th and 20th states to legalize the sale of raw milk by dairy farms directly to consumers for personal consumption.

Idaho took a smaller step forward, with the [enactment of a new law](#) that simplifies regulations on herd share agreements for the acquisition of raw

milk. It completely removed previous limits on the number of animals allowed in a shared herd and also eliminated some of the existing regulations on farms hosting shared herds.

In effect, the changes in the law will facilitate herd shares and make it easier for people willing to pay another individual for the upkeep of milk-producing livestock to share raw milk and other things produced from the raw milk of those shared animals.

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

As of this year, at least a dozen states have legalized CBD in food and beverages despite the fact that the FDA still maintains that this is illegal under federal law.

Many people are still under the impression that CBD is completely legal now due to the fact that it's available all over, and the 2018 federal 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.” The [agency also maintains](#) that the sale of CBD or any food products containing the substance is illegal. To date, the FDA has only approved one medication with cannabidiol as an active ingredient – [Epidiolex](#) for the treatment of seizures.

The FD&C Act specifically asserts that “*THC and CBD products are excluded from the dietary supplement definition*” and “*it is prohibited to introduce or deliver for introduction into interstate commerce any food (including any animal food or feed) to which has been added a substance which is an active ingredient in a drug product that has been approved under section 505 of the FD&C Act.*”

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 wildly expansive federal definition of “interstate commerce,” this includes virtually all CBD products.

But things aren’t as cut and dry as FDA proclamations may sound.

In fact, the FDA has conceded it cannot regulate CBD under its current congressional authority. That means theoretically, CBD and cannabinol will remain illegal at the federal level for the foreseeable future. But in practice, it means the status quo will continue with CBD being widely available and most regulation occurring at the state level, or not at all.

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.*”

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.”*

A [January 2021 FDA report](#) shows the FDA had made little headway in promulgating a new policy.

In May 2022, [the FDA reiterated](#) that the sale of CBD products is not considered legal from a federal standpoint.

*“The FDA has not approved any human or animal products containing CBD other than one prescription drug product to treat rare, severe forms of epilepsy in children. Therefore, all other CBD products intended for use as a drug are considered unapproved drugs and are illegal to sell.”*

Now it appears the FDA has given up completely and punted the issue to Congress in the hope it can get more control.

In January 2023, the FDA [issued a statement](#) saying the agency couldn’t regulate CBD as foods or supplements under its current regulatory structure. In effect, that means the agency can’t figure out a workable rulemaking scheme without Congress granting it new authority.

*“Today we are announcing that after careful review, the FDA has concluded that a new regulatory pathway for CBD is needed that balances individuals’ desire for access to CBD products with the regulatory oversight needed to manage risks. The agency is prepared to work with Congress on this matter.”*

At the same time, the FDA denied three citizen petitions asking the agency to conduct rulemaking to allow the marketing of CBD products as dietary supplements.

The FDA couched its claim in concerns about safety.

*“The FDA’s existing foods and dietary supplement authorities provide only limited tools for managing many of the risks associated with CBD products. Under the law, any substance, including CBD, must meet specific safety standards to be lawfully marketed as a dietary supplement or food additive. ... Given the available evidence, it is not apparent how CBD products could meet safety standards for dietary supplements or food additives. For example, we have not found adequate evidence to determine how much CBD can be consumed, and for how long, before causing harm. Therefore, we do not intend to pursue rulemaking allowing the use of CBD in dietary supplements or conventional foods.”*

Nevertheless, the FDA asserted that in the meantime, it will maintain the status quo and continue to “take action against CBD and other cannabis-derived products to protect the public **in coordination with state regulatory partners** when appropriate.” [Emphasis added]

If you take the rhetoric at face value, it’s difficult to understand exactly what the FDA is trying to do.

On the one hand, the agency claims it can’t adequately regulate CBD because it doesn’t fit under the current authority delegated to it by Congress. On the other hand, it has asserted “full control” over CBD due to approving it as a drug.

What exactly is going on? If it has “full control,” why does it need more authority from Congress?

You have to read between the lines to understand what actually happened.

The reality is, from a practical standpoint, the FDA can’t regulate CBD. But it wants to. We believe this is why the FDA refused the citizen petition to promulgate rules. The agency knew that no matter what rules it laid out, there was no way they were going to be able to enforce them.

With or without congressional intervention, the FDA faces two fundamental problems.

In the first place, [CBD is everywhere](#). You can likely walk into your local gas station or grocery store and buy CBD products.

A 2018 *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.

In 2022, the [CBD market generated \\$9.7 billion](#) in the U.S.

Secondly, the FDA can’t effectively enforce prohibition without the assistance of state and local authorities. The FDA alluded to this fact in its most recent statement when it mentioned it will continue enforcement “in coordination with state regulatory partners.”

The problem for the FDA is in most cases, state regulatory partners aren’t

enforcing CBD regulations at all. In fact, many states have explicitly legalized CBD by declaring it a “food additive” or clarifying that it is not an “adulterant” under state law. As we’ve seen with other issues, when states and localities stop enforcing laws banning a substance, the federal government finds it virtually impossible to maintain prohibition.

This is why the FDA wants Congress to step in. It hopes that with more authority, it can control the CBD market.

The bottom line is the FDA will almost certainly continue to prohibit the sale of CBD and its addition to food and beverages despite 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 cannabiniol or food products containing CBD remains 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, a number of states, including Arkansas, California, Florida, Maine, New Mexico, New York, Ohio, Oklahoma Texas, Virginia, West Virginia and Wyoming have passed laws creating regulatory structures for the manufacture and sale of CBD and/or expressly authorize CBD as an additive in food products. These laws open the door to the production and sale of CBD products produced in the state regardless of continued federal prohibition.

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.

## Right to Try

The FDA doesn't just hinder individual choice in food and beverages. It also impedes the free market in medicine. But 41 states have already taken a small first step by enacting "Right to Try" laws that effectively nullify one FDA regulatory roadblock.

In effect, the FDA maintains a de facto monopoly on medications and treatments in the U.S. through its approval process. Without FDA permission, companies and individuals cannot legally bring medications or treatments into the marketplace. The FDA even blocks the sale of drugs and medical treatments proven successful in other countries.

These FDA roadblocks can cause significant harm to sick individuals. They even kill people.

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

Getting FDA permission to use experimental treatments is difficult and time-



consuming. With so many sick people looking for options and stymied by federal bureaucracies, states stepped in with a solution known as “Right to Try.”

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

The [Goldwater Institute](#) was instrumental in starting and driving the Right to Try movement. Instead of initially trying to get a law passed in D.C., the organization started with the states.

*“We were told this was an impossible dream. That the FDA zealously guarded an exclusive power to decide when anyone can try a new medicine. That Washington politicians and federal courts were too heavily invested in promoting the FDA’s authority and would not force the agency to stand down. Our response? The Founding Fathers never viewed the federal government as the only source or protector of our liberties. Under the U.S. Constitution, all 50 states have the authority and the duty to protect your freedom. With your enthusiastic support, we traveled from state capital to state capital to talk about this fundamental principle of healthcare freedom. With your help, we built a grassroots bipartisan coalition of doctors, of healthcare advocates, of patients and their loved ones.”*

The first Right to Try laws were signed in Colorado, Louisiana and Missouri in 2014. From there, Arizona gave the movement a huge boost when voters approved Proposition 303 with a 78.5 percent “yes” vote in November 2014.

To date, 41 states have passed Right to Try legislation.

And it saved lives.

After the Texas Right to Try law went into effect, [at least 78 patients received an experimental cancer treatment](#) not allowed by the FDA.

[Congress passed a federal Right to Try law in 2018](#) after 40 states enacted laws allowing terminally ill patients to effectively bypass the FDA and try experimental treatments without federal permission.

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

In 2022, [Arizona Gov. Doug Ducey signed a bill](#) expanding the state's Right to Try law to allow patients to access individualized treatments based on their genetic makeup, without first getting federal approval. These treatments are tailor-made for each individual. By their nature, they cannot be approved by the FDA in a timely manner. SB1163 creates a process for patients to access these treatments without jumping through FDA bureaucratic hoops.

In 2023, both Texas and Montana followed suit, expanding their Right to Try laws.

[The expanded Right to Try law in Texas](#) enables patients suffering from **chronic** diseases, rather than only terminal illnesses, to access medications and treatments not yet given final approval for use by the FDA.

[Montana went even further.](#) Its expanded Right to Try law enables **any** patient to access medications and treatments not yet given final approval for use by the FDA. SB422 simply removed all patient eligibility requirements from the current law.

The Montana bill is the path forward. There is simply no reason the FDA should be able to limit people's choice in medical treatment.

## SURVEILLANCE STATE

**Y**ou 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.

More than a decade since Edward Snowden released the first documents exposing the extent of NSA spying to the world, the surveillance state has only gotten bigger.

Although NSA spying remains the most high-profile warrantless surveillance program, the federal government has created a national surveillance network harnessing state and local actors that extends well beyond the operation of any single agency.

We'll cover how this happened in a moment, but it's important to emphasize that the push to turn the U.S. into a massive surveillance state hasn't gone without pushback.

In fact, one state has been following Thomas Jefferson's strategy to a T.

## Step By Step

As Thomas Jefferson told us, “The ground of liberty is to be gained by inches.” This is exactly the approach Utah has taken to push back against the surveillance state.

Starting in 2014, the Utah legislature has built some of the most robust privacy protections in the country with a step-by-step approach.

That year, the [Electronic Information Privacy Act](#) was signed into law, making any electronic data obtained by law enforcement without a warrant inadmissible in a criminal proceeding. It also prohibited Utah law enforcement from obtaining phone location data without a warrant.

That same year, the state also [restricted warrantless drone surveillance](#).

In 2019, the state [expanded the Electronic Information Privacy Act](#) to ban warrantless access to data stored in the “cloud.”

In 2021, the state [expanded the Electronic Information Privacy Act again](#) to require police to get a warrant before accessing communication service provider networks.

And in 2022, the state [expanded restrictions on drone surveillance](#) to also include “radar, sonar, infrared, or other remote sensing or detection technology.”

And in 2023, Utah [enacted a law](#) limiting warrantless geofence location tracking and requiring detailed reporting on geofence warrants.

The new law requires police to get a warrant before obtaining reverse-location information for electronic devices within a geofence or by using cell site

records in most situations.

In effect, the passage of HB57 limits a process called “[geofencing](#).” This technique allows police to search broad geographical areas and identify every electronic device in the area. They can then take that data and determine the identity of individuals near a given place at a given time. In practice, police use Google location data to engage in massive fishing expeditions and subject hundreds, if not thousands, of innocent people to police location tracking.

Individually, each of these small steps chipped away at government surveillance in Utah – inch by inch. Taken together, they provide people in Utah with some of the most robust privacy protections in the United States.

And by limiting surveillance at the state and local level, Utah also takes a bite out of the broader national surveillance state.

## Information Sharing: Fusion Centers and ISE

As noted above, the NSA isn’t expanding the national surveillance state alone. Other federal agencies, including the FBI, the DoD, and the DEA lead the push along with the NSA. But they could never run their rapidly-expanding surveillance network without the willing cooperation of state and local law enforcement agencies.

Thanks to unconstitutional federal funding programs, [local police have access to a mind-boggling array of surveillance equipment](#). And the process usually allows law enforcement agencies to obtain this extremely intrusive technology without any local process for approval or oversight.

Members of the community, and even elected officials, often don’t know their police departments possess technology capable of sweeping up massive amounts of electronic data, phone calls, and location information. All without

a warrant, based upon probable cause, of course.

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. A [congressional report](#) acknowledged the true nature of government fusion centers goes well beyond fighting “terrorism” or apprehending violent criminals.

*“The investigation found that DHS intelligence officers assigned to state and local fusion centers produced intelligence of ‘uneven quality – oftentimes shoddy, rarely timely, sometimes endangering citizens’ civil liberties and Privacy Act protections, occasionally taken from already-published public sources, and more often than not unrelated to terrorism.”*

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 practice, federal, state and local agencies feed information into fusion

centers and the broader ISE. Through this network, data collected in one jurisdiction automatically gets shared with hundreds of other agencies - both state and federal - throughout the United States.

In effect, these state/federal partnerships facilitate a massive nationwide surveillance network integrated with virtually every state and local law enforcement agency in the country. As a result, efforts to opt out of these programs and protect privacy at the state and local levels have a significant spillover effect to the national level.

In 2021, 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.

This year, [a West Virginia bill](#) to create a Joint Fusion Center Oversight Committee to more closely monitor the activities of the West Virginia Fusion Center passed the House but failed to clear the Senate.

[Similar bills](#) were introduced in the Minnesota House and Senate but never got a committee hearing in either chamber.

Efforts to withdraw from fusion centers are still new, so with grassroots support, they are likely to grow in the coming years. Meanwhile, there are other efforts at both the state and local levels to limit surveillance and undermine federal spying.

## Facial Recognition and Biometric Surveillance

Facial recognition is poised to lead the next level of warrantless, mass surveillance. Over the last few years, the federal government has spearheaded a drive to rapidly expand the use of this invasive technology.



At the same time, some state and local governments have started to push back by limiting the use of facial recognition or the data gathered with such technology.

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.

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, as you will see below.

A [2019 report revealed](#) that the federal government has also turned state driver's 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](http://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.”*

Over the last few years, we’ve seen private companies play an increasing role in expanding facial recognition surveillance as well.

For instance, [Clearview AI CEO Hoan Ton-That admitted](#) that the company scraped 30 billion photos from Facebook and other social media platforms and used them in its massive facial recognition database accessible by state and federal law enforcement agencies across the U.S.

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. [Even at 100 percent accuracy, facial recognition surveillance would be dangerous to liberty](#).

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.

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.

That law sunset in 2023 and [an attempt to extend it](#) bogged down in the Senate, but supporters of the bill have vowed a renewed effort in 2024.

During the 2023 legislative session, [Montana Governor Greg Gianforte signed a bill into law](#) limiting the use of facial recognition surveillance in the state.

The new law includes an outright ban on “continuous facial surveillance” defined as “the monitoring of public places or third party image sets using facial recognition technology for facial identification to match faces with a pre-populated list of face images.”

Going forward, law enforcement agencies will have to get a warrant before requesting a facial recognition search to investigate a serious crime unless there is an emergency posing an imminent threat to a person. Montana law enforcement will also be generally prohibited from obtaining, retaining, possessing, accessing, requesting, or using facial recognition technology or information derived from a search using facial recognition technology.

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

## **Stingrays and Electronic Data Collection**

By banning or severely limiting the warrantless collection and retention of electronic data, state and local action can also undermine the federal surveillance state.

Cell site simulators, often 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 cell site simulator instead of the cell tower, allowing law enforcement to sweep up all communications content within range of that tower. The cell site simulator 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 promote 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. Some jurisdictions also [use civil asset forfeiture money to fund these devices](#), keeping the spending off the books.

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 cell site simulators in court. With NDAs in place, most police departments refuse to release any information on the use of cell site simulators. 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 on cell site simulators 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 - and shared all over

In 2015, [California](#), [Washington State](#), and [Louisiana](#) were the first states to pass laws specifically limiting cell site simulators, and the push to curtail the warrantless use of these devices has grown since. In 2017, [Illinois imposed the most sweeping restrictions on the government's use of these surveillance tools](#) to date.

Several states including [Mississippi](#), [New York](#), [Oklahoma](#) and [Rhode Island](#) considered bills to limit surveillance by cell site simulator in 2023, but none made it through the legislative process.

## ALPR/License Plate Tracking

As with electronic data more generally, states and localities can limit the collection and retention of data using automatic license plate readers (ALPRs). This places significant roadblocks in the way of a federal program using states to help track the location of millions of everyday people through pictures of their license plates.

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 ALPRs most of which are operated on a state and local level. They've engaged in this for nearly 15 years, all without a warrant, or even public notice of the policy.

As with most other surveillance technologies, these tracking systems 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 was 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 as well.

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.

Private companies are becoming important players in license plate tracking. Many local police departments are contracting with private vendors such as Vigilant Solutions and [Flock Industries](#). These companies provide hardware, software and databases, allowing law enforcement agencies to create massive ALPR networks without the hassle of running the systems themselves.

In spring 2022, [a San Diego Times report revealed](#) that police departments using ALPRs in conjunction with Vigilant Solutions databases are likely sharing information with the feds.

And they might not even know it.

According to the report, the Chula Vista Police Department shared the image, location, date and time of each vehicle photographed by the city's ALPRs with over 800 subscribers to the Vigilant system - including federal agencies.

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, only six states have placed significant restrictions on the use of ALPRs.

Legislatures in a handful of states considered bills to limit ALPR use and data sharing in 2023, 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), have become an important and invasive surveillance tool for local police and the federal government. By limiting drone surveillance, some states have established important privacy protections at the state level; doing so also helps thwart the federal surveillance state.

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 equipped with thermal imaging cameras, which can 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 the Atlas of Surveillance (a project of the EFF and the University of Nevada), [at least 1,172 law enforcement agencies nationwide use drones.](#)

Mandatory reporting from the state of Minnesota reveals how police departments use drones. The EFF summarized the findings.

*“According to the report, 93 law enforcement agencies from across the state deployed drones 1,171 times in 2020 - with an accumulative price tag of almost \$1 million. The report shows that the vast majority of the drone deployments are not used for the public safety disasters that so many departments use to justify drone use. Rather, almost half (506) were just for the purpose of “training officers.” Other uses included information collection based on reasonable suspicion of unspecified crimes (185), requests from other government agencies unrelated to law enforcement (41), road crash investigation (39), and preparation for and monitoring of public events (6 and 12, respectively). There were zero deployments to counter the risk of terrorism. Police deployed drones 352 times in the aftermath of an “emergency” and 27 times for “disaster” response.”*

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 starting points, and further limits will be required going forward.

## State Constitutions

You don't have to rely exclusively on state legislation to protect privacy and block intrusive government surveillance. Some states have amended their constitutions to add protections for electronic data.

Every state constitution has a provision similar to the Fourth Amendment, prohibiting warrantless search and seizure by state and local government agents. This provides an avenue to block, or at least limit, state and local surveillance without relying on federal judges.

Some states have expanded their state constitutional provisions on searches and seizures to explicitly include electronic data.

Missouri was the first state to do this with [the passage of Amendment 9](#) in 2014. A similar state constitutional amendment to protect "private and personal information" [passed in New Hampshire in 2018](#).

During the general election in November 2022, [Montana amended its](#)

[constitution](#) to require the government to obtain a search warrant in order to access a person's electronic data or electronic communication. Voters overwhelmingly approved the measure by an 82-18 percent margin.

Practically speaking, the inclusion of electronic communications and data in a state's constitutional prohibition on unreasonable searches and seizures means state and local police are required to obtain a judicial warrant, supported by probable cause, before accessing cell phones and other electronic devices regardless of any legislative statute. It also sets the foundation to help prevent law enforcement from accessing private information through third parties.

As the ACLU pointed out in an article supporting the New Hampshire amendment, without protections explicitly enshrined in the state constitution, the right to electronic data privacy exists at the whims of state legislators.

*"Without state constitutional protections, privacy is not the ... default setting. Rather, it needs to be repeatedly established, protected, and defended by the state legislature each time a new surveillance technology or method is established, which is a common occurrence in our modern technological world. State legislators should not play an endless game of Whack-A-Mole against threats to their residents' privacy. Relying exclusively on piecemeal statutes or search and seizure provisions written before the dawn of the internet is no way ... to protect privacy."*

## Going Local

States and localities can also help limit the expansion of the surveillance state by merely 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 in 2022 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 has the authority to review government use of surveillance technology and require state or city agencies to terminate, subject to a legislative override, the use of such technology if they fail to meet minimum acceptable standards.

The committee is 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 is required to be made 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 late 2021, [the Boston City Council passed a bill](#) requiring the Boston Police Department to get council approval before acquiring or using new surveillance technology. It also must get approval before using existing technology in a new way.

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.

The [San Diego City Council passed a similar ordinance](#) but included a big loophole inserted under pressure from San Diego Police Chief Dave

Nisleit. Similar to some of the massive loopholes in fake “2nd Amendment Sanctuaries” that are also supported by police, the amended language exempts officers working on federal task forces from the oversight and transparency requirements.

The oversight and transparency ordinance passed in Boston and other cities was based on CCOPS model legislation developed by the ACLU with input from the Tenth Amendment Center and many other organizations. Boston is one of at least 22 cities that have passed similar measures.

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

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 even 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 instead 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.

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.

This further demonstrates that we can’t depend on the federal government to limit spying no matter what party is in control.

## Pushing Back Through State Action

While restricting state and local surveillance can put a dent in the national surveillance state, states can do even more by directly ending cooperation with the NSA and other federal agencies engaged in mass, warrantless spying.

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. These 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 number of states have considered legislation to ban “material support or resources” to NSA mass surveillance programs in recent 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.



## DEFEND THE GUARD

A growing movement at the state level seeks to rein in endless wars with the passage of the [Defend the Guard](#) Act. This legislation would require the governor to stop unconstitutional foreign combat deployments of the state's National Guard troops. Passage into law would take a big step toward restoring the founders' framework for a state-federal balance under the Constitution.

James Madison warned us.

*"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. 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."*

War is one of the few truly national policy areas. But if you think states can't take any action to impact foreign policy, you're mistaken.

Defend the Guard can make it difficult for the feds to continue to drag the U.S. into unconstitutional wars.

This bill would prohibit the deployment of state National Guard troops in “active duty combat” unless Congress has passed a declaration of war or taken official action pursuant to Article 1, Section 8, Clause 15 of the United States Constitution to explicitly call forth the National Guard for one of three enumerated purposes in the Constitution –

- Execute the laws of the Union
- Repel an invasion
- Suppress an insurrection

The legislation specifically defines “active duty combat” as participation in an armed conflict, performance of a hazardous service relating to an armed conflict in a foreign state, or performance of a duty through an instrumentality of war.

Guard troops have played significant roles in all modern overseas conflicts, with well 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 were pursuant to a Constitutional declaration of war or any of the three expressly-delegated purposes in the Constitution, the Defend the Guard Act would have prohibited many of those deployments.

Looking at the big picture, the passage of this law in any state would force the federal government to only use the Guard for expressly-delegated purposes authorized by the Constitution.

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

First introduced in Maine by former state Senator Aaron Libby [in 2011](#), and in West Virginia every year since 2015, by Del. Pat McGeehan, this important

legislation long lacked the grassroots support needed to move it forward.

Then in 2019-20, a coalition of veterans called “[Bring Our Troops Home](#)” began pushing Defend the Guard across the country. In 2023, the legislation advanced further than ever before.

The [Arizona Senate was the first full legislative body to pass Defend the Guard](#). After clearing the Senate Military Affairs and Public Safety Committee and the Senate Rules Committee by 4-3 votes, the full Senate approved SB1367 by a vote of 16-13-1 on March 21.

After that success, the House leadership put the bill on ice, delaying introduction on that side until June 12, close to the end of the session. In effect, by intentionally delaying the committee assignment until the last minute, House leadership effectively killed it without bringing it up for a hearing.

In Maine, Sen. Eric Brakey managed to [bring Defend the Guard to the House and Senate floor](#). The Committee on Veterans and Legal Affairs issued a divided report on LD1054 with the majority voting that it “ought not to pass.” But with a strong minority report, the bill moved to the full Senate for debate and a vote.

The Senate ultimately accepted the “ought not to pass” report by a 34-1 vote and the House followed by a 92-53 margin.

Despite the vote, Brakey said the process created a great educational opportunity and he hopes to build on that in 2024.

In New Hampshire, Defend the Guard moved out of committee with a 10-10 tie in October. HB229 will now move forward for debate and a vote by the full House.

While getting Defend the Guard passed won’t be easy and will continue to 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.

McGeehan was instrumental in improving the original legislation and bringing attention to the issue. 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.”*

## Big Picture

Even as American troops were leaving Afghanistan, it was clear that the wars are far from over. Even as that conflict was winding down, 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.

*“No nation could preserve its freedom in the midst of continual warfare.”*

We have not heeded his warning.

The results should have been predictable.

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 and the states – 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 often 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.

## SOMETHING MORE

**A**s you've read through this report, we hope you come away understanding a hard truth: simply **having** a constitution isn't enough.

That's because the Constitution doesn't enforce itself - it never has, and it never will.

That's how James Madison described things in *Federalist No. 48*:

*"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."*

The people have to do more if they want to be free. Thomas Jefferson summed it up. People are only free when they exercise their rights - whether the government wants them to, or not.

*"A free people claim their rights as derived from the laws of nature, and not as a gift of their chief magistrate."*



This report was meant to drive home this critical point - protecting your liberty is actually up to the people - and for most of the founders and old revolutionaries, it was a duty, not just a good idea.

Samuel Adams said, *"It is the duty of everyone to use his utmost exertions in promoting the cause of liberty."*

John Dickinson wrote about duty as well, and noted that defending the constitution is ultimately up to the "supreme sovereignty of the people"

He wrote,

*"IT IS THEIR DUTY TO WATCH, AND THEIR RIGHT TO TAKE CARE, THAT THE CONSTITUTION BE PRESERVED; Or in the Roman phrase on perilous occasions—TO PROVIDE, THAT THE REPUBLIC RECEIVE NO DAMAGE."*

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 biggest government in history.

But as this report shows, we're gaining ground for liberty, step by step.

This is the path forward. As Thomas Jefferson put it *"the ground of liberty is to be gained by inches."*

But we can't rest on our laurels. Jefferson went on to say we must *"eternally press forward for what is yet to get."*

That ultimately requires human action.

As we've seen throughout this report, we can't depend on politicians and government people to uphold the Constitution and set a foundation for liberty. Again, liberty is up to the people. The people must remain vigilant, and resist usurpations the moment government crosses the line.

As Mercy Otis Warren put it, *"Resist the first approaches of tyranny."*

This report gives you a blueprint, but a blueprint won't build itself. People have to implement plans that are laid out.

Even though we've racked up some wins, as Samuel Adams advised, 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]*

Going from the largest government in history to a true "land of the free" won't be easy, and it won't happen quickly.

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."*

## SOMETHING MORE

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, magically limit itself.

Brick by brick. Person by person. State by state. 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."*

