

# Nullification

**Nullification is a necessary step toward restoring to the American federal system the relationship between federal and State governments that the framers of the Constitution originally intended, and one that conforms to the strict definition of a republic, in which governments at various levels have their own areas of responsibility, with which the higher-level governments are not supposed to interfere.**

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

The real way to **resist DC** is not by begging politicians and judges in Washington to *allow* us to exercise our rights...it's to exercise our rights whether they want to give us "permission" to or not.

**Nullification** – state-level resistance to unconstitutional federal laws – is the way forward.

When a state 'nullifies' a federal law, it is proclaiming that the law in question is void and inoperative, or 'non-effective,' within the boundaries of that state; or, in other words, not a law as far as that state is concerned.

Better yet, in the last 2+ years **more than 20 states have been able to effectively prevent the Real ID Act of 2005 from being implemented.** How did they do that? They passed laws and resolutions refusing to comply with it. And today, it's effectively null and void without ever being repealed by Congress or challenged in court.

While the Obama administration would like to revive it under a different name, the reality is still there – with massive state-level resistance, the federal government can be pushed back inside its constitutional box. Issue by issue, law by law, the best way to change the federal government is by resisting it on a state level.

That's nullification at work.

Over the years, wise men and women warned us that the Constitution would never enforce itself. The time is long overdue for people to start recognizing this fact, and bring that enforcement closer to home.

**The bottom line?**

**If you want to make real change; if you want to really do something for liberty and for the Constitution...focus on local activism and your state governments.**

**Page 2**

[http://www.sweetliberty.org/issues/staterights/tenth\\_amend.htm](http://www.sweetliberty.org/issues/staterights/tenth_amend.htm)

<http://www.sweetliberty.org/tenthamend.htm>

<http://www.tenthamendmentcenter.com/>

<http://www.lanternsofliberty.us/Documents/GNOTP/SenatorCrowe.pdf>

<http://www.lanternsofliberty.us/Documents/GNOTP/CroweCaldwellSuitRequestLetter1.pdf>

<http://lassc.wordpress.com>

<http://senate.legis.state.la.us/Crowe/>

<http://tenthamendmentcenter.com/>

[http://myfloridalegal.com/webfiles.nsf/WF/MRAY-7ZUMNW/\\$file/HealthCareMemo.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-7ZUMNW/$file/HealthCareMemo.pdf)

[http://www.nypost.com/f/print/news/opinion/opedcolumnists/obamacare\\_vs\\_the\\_constitution\\_n5KcxkRr3nyROy05Vt vSsO](http://www.nypost.com/f/print/news/opinion/opedcolumnists/obamacare_vs_the_constitution_n5KcxkRr3nyROy05Vt vSsO)

**ResistDC: The Federal Tax Funds Act**

<http://www.tenthamendmentcenter.com/2010/01/18/resistdc-the-federal-tax-funds-act/>

**“WE THE PEOPLE... are tired of Washington, D.C. trying to come down here and tell us how to run our State," . "The 10th Amendment was enacted by people who remembered what it was like to have a very oppressive government, to be under the thumb of tyrants in an all-powerful government. Unfortunately, the protections it guarantees have melted away over the course of the years... I believe the federal government has become oppressive. I believe it's become oppressive in its size, its intrusion into the lives of its citizens, and its interference with the affairs of our state.”**

**NULLIFICATION SPEECH BY WALT GARLINGTON**

My name is Walt Garlington, and I lead a statewide organization called the **Louisiana State Sovereignty Committee**. Like your organization, we are committed to the principle of limited government at all levels.

Our primary focus is on encouraging our state officials – legislators, the governor, and judges – to protect us, the citizens of Louisiana, from the federal government when it oversteps its boundaries, but we also contact federal and local officials when needed.

Our goal is to have a chapter active in every parish, which would be responsible for contacting government officials who represent any portion of their respective parish.

There are more important items to address tonight, however. If you would like to learn more about the LSSC, I invite you to visit our web site at [lassc.wordpress.com](http://lassc.wordpress.com) .

The main topic I wish to speak to you about is state nullification. Is anyone familiar with the concept?

State nullification, whereby a state refuses to comply with a federal measure, became a formal constitutional doctrine in the United States in 1798 when Thomas Jefferson and James Madison penned the Kentucky and Virginia Resolutions, even though it had been practiced prior to that date.

In the Kentucky Resolution, Jefferson laid down a series of constitutional principles. It began,

“Resolved, that the several states composing the United States of America, are not united on the principle of unlimited submission to their General Government...”

That statement alone is enough to shock some people today. But it gets better, much better.

“...but that by compact under the style and title of a Constitution for the United States and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving each state to itself, the residuary mass of right to their own self Government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force: That to this compact each state acceded as a state, and is an integral party, its co-states forming as to itself, the other party: That 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 parties 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.”

Likewise, Madison in the Virginia Resolution stated the following:

“...in case of a deliberate, palpable, and dangerous exercise of other powers [by the federal government], 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.”

Here we have both Jefferson and Madison explaining that each state, not the federal government, is to judge for itself in the final event whether a legislative act or an executive order or a judicial ruling is in violation of the U. S. Constitution because the states are the ones who created the federal government by writing and ratifying the U. S. Constitution.

#### **Page 4**

his is alluded to in the Constitution’s 10th Amendment, which Jefferson, writing elsewhere, declared to be the “foundation of the Constitution”: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Louisiana’s own constitution contains this provision: “The people of this state have the sole and exclusive right of governing themselves as a free and sovereign state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled.”

And wherever a right is declared, there must also be a way of protecting it, or else the declaration is meaningless. State nullification, as Madison and Jefferson explained, is the proper method of protecting our rights and liberties from injury by the federal government.

The immediate reaction of some of the other states to the resolutions of the KY and VA legislatures was to reject them as something unconstitutional and dangerous to the Union. Some of those same states would very soon have a change of heart, however.

Take the example of Massachusetts, one of the states critical of the KY and VA Resolutions. Its state legislature declared at the time, “The people, in that solemn compact which is declared to be the supreme law of the land, have not constituted the State legislatures the judges of the acts or measures of the Federal governments.”

But in 1809, when a federal trade embargo began to harm the commercial interests of Massachusetts and other New England states, the MA legislature declared the Embargo Acts “in many particulars, unjust, oppressive, and unconstitutional” and that they were “not legally binding on the citizens of this State.”

I don’t know about you, but I think it would be nice to have more than a few of those fiery MA lawmakers in our state legislatures today. But they weren’t finished.

When a new embargo law, more restrictive than the previous one, became effective in 1813, the MA legislature would loudly condemn and reject it as well, saying,

“A power to regulate commerce is abused, when employed to destroy it; and a manifest and voluntary abuse of power sanctions the right of resistance, as much as a direct and palpable usurpation. The sovereignty reserved to the States, was reserved to protect the citizens from acts of violence by the United States, as well as for purposes of domestic regulation. We spurn the idea that the free, sovereign and independent State of Massachusetts is reduced to a mere municipal corporation, without power to protect its people, and to defend them from oppression, from whatever

quarter it comes. Whenever the national compact is violated, and the citizens of this State are oppressed by cruel and unauthorized laws, this Legislature is bound to interpose its power, and wrest from the oppressor his victim.”

Other New England states would make similar pronouncements – and act on them – while the Embargo and the War of 1812 lasted, and throughout that region the word that scandalizes so many today was uttered openly and often: secession.

Moving forward some years, there was the clash of the states with the Bank of the United States, which was chartered by the federal government. Some states like Indiana and Illinois amended their constitutions to prohibit the national bank from operating in their states. Other states – North Carolina, Georgia, Maryland, Tennessee, Kentucky, and Ohio – levied taxes of up to \$60,000 per year on the branches of the national bank within their states– high sums of money in those days.

## **Page 5**

Ohio provides us with one of the more humorous stories from this era. Despite the *McCulloch v. Maryland* decision of the U. S. Supreme Court in February 1819 that decreed that the states had no power to tax or otherwise impair the execution of any federal law, the Ohio state legislature later that year imposed a tax of \$50,000 on both of the national bank’s two branches operating in Ohio.

The national bank would not pay the tax, leading the State Auditor to dispatch agents to collect it, despite an injunction by a federal judge ordering them not to.

I will quote the rest from James Jackson Kilpatrick’s excellent book on states’ rights, *The Sovereign States*:

“Entering the bank’s branch office at Chillicothe, on the morning of September 17[, 1820], [John L.] Harper [deputy of the Ohio State Auditor] made one last request for voluntary payment. When this was denied, he leaped over the counter, strode into the bank vaults, and helped himself to \$100,000 in paper and specie. He then turned this over to a deputy, one H. M. Currie; and Mr. Currie, stuffing this considerable hoard into a small trunk, with which the party thoughtfully had come equipped, loaded the trunk into his wagon and set off down the road to Columbus.”

There is more to that story, but time will not allow it to be told. Suffice it to say, state opposition to the national bank would continue for many more years, until in 1834 the bank’s charter expired and the U. S. Congress chose not to renew it.

Again, notice the contrast between the courage of state officials during the years of the Early Republic and the despicable servile cowardice of many of our state officials today.

We may use an analogy, via some familiar animated characters, to clarify the situation as it has stood for some decades now: The citizens of the states are Olive Oyl, perpetually in distress because of Bluto, the federal government. Our modern state officials are best represented by Wimpy, who is content to overlook any outrage so long as he gets his hamburgers to eat (which is to say, federal money and projects). And old Popeye represents the legislators, governors, and judges of yore, the hero who rescues Olive Oyl from the bullying Bluto.

How do you transition smoothly from that? Let me try, though.

During roughly this same period, South Carolina was involved in perhaps the most famous nullification case in the entire history of the United States. From 1816 to 1828 tariffs on manufactured goods were raised substantially by the federal government to protect domestic industries from foreign competition. This came at the price of placing a nearly intolerable economic burden on South Carolina and the other agrarian states who were forced to pay much higher prices for items essential to day-to-day living.

The constitutional crisis that erupted over whether the federal government may levy tariffs to protect domestic industry as opposed to simply raising revenue (the latter is the only one of the two sanctioned in the U. S. Constitution) gave rise to some of the finest constitutional writings our country has seen, as Vice President and later Senator John Calhoun of South Carolina undertook the task of giving flesh to the bones of the theory of nullification. As time is short, I will give you only a brief excerpt from one of his best works, The Ft. Hill Address of 1831:

‘The great and leading principle is, that the General Government emanated from the people of the several States, forming distinct political communities, and acting in their separate and sovereign capacity, and not from all of the people forming one aggregate political community; that the Constitution of the United States is, in fact, a compact, to

## **Page 6**

which each State is a party, in the character already described; and that the several States, or parties, have a right to judge of its infractions; and in case of a deliberate, palpable, and dangerous exercise of power not delegated, they have the right, in the last resort, to use the language of the Virginia Resolutions, “to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them.”

‘This right of interposition, thus solemnly asserted by the State of Virginia, be it called what it may—State-right, veto, nullification, or by any other name—I conceive to be the fundamental principle of our system, resting on facts historically as certain as our revolution itself, and deductions as simple and demonstrative as that of any political or moral truth whatever; and I firmly believe that on its recognition depend the stability and safety of our political institutions.’

I must mention only in passing the actions of Maine, Vermont, Massachusetts, Ohio, Michigan, and several other states from New England and the Old Northwest, who all interposed their state powers to nullify federal fugitive slave laws from the 1830s through the 1850s, and even portions of the U. S. Supreme Court’s Dred Scott decision of 1857.

Despite all these successes, states’ rights were dealt a heavy blow by The Civil War. The states, exhausted and depleted, were unable and unwilling to raise serious protests against the federal government after combat had ceased. All branches of the federal government thereafter took on new powers which had formerly been exercised exclusively by the state and local governments, private associations, and individuals.

But an extraordinary thing has begun to happen of late. The creature left for dead at the end of The Civil War – state interposition against federal acts – is beginning to stir again. The states are beginning to reassert their powers, to defend themselves against an ever more expansive federal government.

Here, quickly, are some of the actions the states have undertaken recently as well as a brief look at what 2010 may bring, as compiled by Michael Boldin, the founder of the Tenth Amendment Center:

“Already 7 states have passed resolutions reaffirming the principles of the Founders and Ratifiers, 20+ states have passed resolutions or laws refusing to comply with the 2005 Real ID Act, and 2 States have passed (and nearly 2 dozen others are considering) laws to nullify federal gun laws and regulations. On top of all these successes over the last few years, there’s more to come in 2010. 20+ states will be considering laws to nullify national health care, and others will be considering laws to resist DC on issues like “federalization” of the [national] guard, Constitutional Tender, Cap and Trade, No Child Left Behind, the Patriot Act and more.”

What we have reviewed together is but a fraction of the cases of state interposition that could have been recounted from our history. Also omitted was any mention of state interposition by governors and state judges; any mention of jury nullification, which played a large role in New England’s embargo quarrel mentioned earlier, whereby the jury acknowledges that the defendant is technically in violation of a law, but because they consider the law unjust, they declare the defendant “not guilty”; nor any mention of parish or county interposition, which has taken on a new energy thanks to the former sheriff of Graham County, Arizona, Richard Mack

**There are two things that we must do at this point.**

- 1.) First, convince the general public that their rights and freedoms would be safer if power were returned to state and local authorities from the federal government; and that one of the best ways of accomplishing this is through the act of interposition, in whatever form. Call talk radio shows, write letters to the editor, e-mail information to family and friends, hold a 10th Amendment rally – all of these are good ways to inform the public.

**Page 7**

- 2.) Second, convince government officials – be they city, parish, or state – to join the effort to nullify unconstitutional laws within their jurisdictions. Personal visits; letters or faxes; rallies outside their offices – these and other ideas should be considered.

**But if we are to do these things, it is essential that we first educate ourselves on states’ rights and nullification.**

Let me also address a phrase we are hearing a lot of lately: The will of the people. I am pleased, and I am sure you are too, that a majority of Americans are opposed to a government takeover of the private health care system. However, we should have the humility to admit that the majority is not always right in its judgments. Or, said another way, the voice of the people is not to be equated with the voice of God.

We still need a balanced government to check the vices of the different orders of society, whether we are considering urban and rural interests, national vs. state interests, local vs. state interests, the elites and the commons, property owners and non-property owners, and so on.

In closing I would like to read you two short statements, one from Samuel Adams and the other from Pres. George Washington’s last will and testament.

Samuel Adams said, “The liberties of our country, the freedoms of our civil Constitution are worth defending at all hazards; it is our duty to defend them against all attacks. We have received them as a fair inheritance from our worthy ancestors. They purchased them for us with toil and danger and expense of treasure and blood. It will bring a mark of

everlasting infamy on the present generation – enlightened as it is – if we should suffer them to be wrested from us by violence without a struggle, or to be cheated out of them by the artifices of designing men.”

From Pres. Washington: “To each of my Nephews, ... I give one of the Swords or Cutteaux of which I may die possessed.... These Swords are accompanied with an injunction not to unsheath them for the purpose of shedding blood, except it be for self defence, or in defence of their Country and its rights; and in the latter case, to keep them unsheathed, and prefer falling with them in their hands, to the relinquishment thereof.”

I do not set these lines before you as a call to bloody revolution but rather as an appeal to imitate the noble example set before us by Pres. Washington, Samuel Adams, and their fellow statesmen and soldiers from the Founding generation – to fight for our inherited rights and liberties until we can fight no more.

Thank you. Walt Garlington

## **Page 8**

The Alliance of Texans Against Government Controlled Healthcare  
John Stacy of [www.notintexas.org](http://www.notintexas.org) explains nullification.

States' Rights: Nullification of Federal Laws - Part 1 (10:49)  
<http://www.youtube.com/watch?v=eu2Y9Js5QqA>

States' Rights: Nullification of Federal Laws - Part 2 (10:25)  
[http://www.youtube.com/watch?v=AVU6uKUV\\_xc](http://www.youtube.com/watch?v=AVU6uKUV_xc)

States' Rights: Nullification of Federal Laws - Part 3 (10:59)  
<http://www.youtube.com/watch?v=66qmsMsb2Kk>

<http://www.examiner.com/x-28973-Essex-County-Conservative-Examiner~y2009m12d26-Nullification-of-HCR-sought-in-several-States>

The [Lectric Law Center](#) contains multiple case-law citations bearing on the Tenth Amendment and the viability of any Tenth-Amendment-based challenge to federal power. More broadly, the Tenth Amendment Movement as such has drawn mixed reaction from commentators that might be sympathetic to the basic premise. [Larry Elder](#) suggested, in April 17, 2009, that such efforts were "a day late and a dollar short," saying that health-care reform is only one of many federal programs that, he says, activists should have challenged long before this. [Matt Ross at The Conservative Hideout](#) cited several pitfalls, such as cutoffs of highway and other funds, but suggests that States could and should cope with such cutoffs by learning how to run their States without such funds.

Nullification has never resulted in armed conflict, though several pre-War-Between-the-States nullification initiatives came close. (Technically, the War Between the States began with secession, not nullification.) Usually, one side or the other has backed down. In the REAL-ID case, perhaps federal authorities backed down for one reason only: a change in administration, to one that probably regards such stringent identification procedures as discriminatory against the most likely perceived targets, which are Arab citizens and lawful residents. However, the backdown in the REAL-ID case has emboldened libertarian activists who see this as a precedent for effective nullification action against federal health-care reform, if any health-care form bill actually becomes law.

Joining in with states all over the country, considering or passing legislation to resist federal overreach, are Washington and Oklahoma. Both states have bills introduced which would effectively nullify any future cap and trade legislation emanating from D.C.

Washington, [HB2708](#) – “Concerning adopting the Washington state energy freedom act of 2010 and requiring express legislative authorization for a greenhouse gas or motor vehicle fuel economy program. Some additional text from Washington HB2708: Any federal law, rule, order, or other act by the federal government violating the provisions of this act is hereby declared to be invalid in this state, is not recognized by and is specifically rejected by this state, and is considered as null and void and of no effect in this state.

Oklahoma - HB3219 – State Constitutional Amendment to reject Federal Interference in Energy policy

#### **Political Party Affiliation**

Political party affiliation is irrelevant. We serve and align with all Louisianians and their legislators, state and federal, who stand firmly behind enforcing the Bill of Rights' 10th Amendment and the enumerated powers outlined in Article 1, Section 8 of the U.S. Constitution.

## **Page 9**

### **Example Letter:**

Dear Sen. or Rep. (XYZ),

Pursuant to SCR 2 (the Louisiana State Sovereignty Resolution) which passed the Louisiana Legislature during the 2009 regular session, I urge you to accept the Tennessee General Assembly's invitation to form a joint working group of states to enumerate and seek repeal of unconstitutional acts of the federal government. The invitation is found in this section of Tennessee's State Sovereignty Resolution (HJR 108), signed by Gov. Bredesen on June 23, 2009:

“BE IT FURTHER RESOLVED, that a committee of conference and correspondence be appointed by the Speaker of the House and of the Senate, which shall have as its charge to communicate the preceding resolution to the legislatures of the several states, to assure them that this State continues in the same esteem of their friendship and to call for a joint working group between the states to enumerate the abuses of authority by the federal government and to seek repeal of the assumption of powers and the imposed mandates.”

Tennessee State Rep. Susan Lynn, who sponsored HJR 108, is coordinating this effort. I urge you to contact her about how you and Louisiana's other state legislators willing to stand for state sovereignty and a limited federal government can become a part of the working group of states. Rep. Lynn's contact information is below:

E-mail: rep.susan.lynn@capitol.tn.gov

Telephone: (615) 741-7462

Fax: (615) 253-0353

Please give Louisiana's citizens, public and private, an example of courage to follow as we confront a federal government intent on becoming all-powerful. We face a difficult path, but one person willing to lead can give profound inspiration to a cause, helping it to hold together through the most trying times.

Louisiana's sovereignty (and the sovereignty of each state) is worth defending. I hope you agree and will do all you can as a member of the gathering of states to uphold it.

Sincerely,  
(YOUR NAME)

P. S. Please also show your support for Louisiana by signing the attached 10th Amendment Pledge.

Page 10

**Create a "Nullification" Fact sheet**

**Create a "Nullification" post card mailer**

**Create a "Nullification" Petition**

**Set dates to hold "Street Corner Rallies"**

## **Form “Nullification Senator Committee”**

**\*\*Contact Senator**

**\*\* Schedule a meeting**

**\*\* Be prepared to “blitz” their office**

**Have a scorecard: on** Political Candidate's stance on Nullification

Example from Texas ...**Governor Rick Perry** - "... I'm certainly willing and ready for the fight if this administration continues to try to force their very expansive government philosophy down our collective throats." July 23,2009

- **debra Medina** - "Texas must stop the over reaching federal government and nullify federal mandates in agriculture, energy, education, [healthcare](#), industry and any other areas D.C. is not granted authority by the Constitution"
- **Kay Bailey Hutchinson** - All requests for her opinion regarding nullification have gone unanswered.