



Attention Legislators: Regarding HB2694

Your constituents are probably asking about “nullification” and “sanctuary states” – what are the realities of such legislation? The WVCDL has never been about “feel good legislation.” *Any legislative remedy we seek will be viable, practical, and enforceable.*

The Failings of “Nullification” or “Second Amendment Protection Acts

- Such policies make a fundamental assumption that WV officials (the WV State Police) will be attempting to stop any federal agents at the state border and refuse them entry into WV to enforce federal law or even that federal agents will be arrested by WV officials.
- In 2013 Kansas passed a Second Amendment Protection Act, relying on the 10th Amendment of the US Constitution. The law stated that personal firearms, accessories, and ammunition owned or manufactured in KS that remains within the state, were not subject to any federal regulations on such items.
 - The result? A Kansas man began manufacturing suppressors, entirely within the borders of Kansas. He later sold a suppressor to another Kansas citizen. Both men were arrested by federal law enforcement and convicted in federal courts. The men appealed their convictions. The 10th Circuit Court of Appeals upheld the convictions. The United States Supreme Court (SCOTUS) denied certiorari thereby upholding the conviction.

The Open Secret about Federal Arrests

- The federal government relies heavily on state/local law enforcement to enforce its dictates. Most sources note that well over 90% of all arrests in America each year are done by state/local law enforcement. Some sources maintain that federal law enforcement arrests may account for less than 1% of annual felony arrests.
- The fed has limited resources as evidenced by the lack of ability to successfully enforce its laws regarding cannabis without the assistance of local law enforcement.
 - Cannabis (marijuana) remains illegal at the federal level, yet a multitude of states, *including WV*, have legalized it at the state level.
 - Aside from a few high-profile raids for the cameras, the DEA and FBI have relied on state/local help to enforce federal statute. In fact, DEA agents have publicly admitted they don’t have the financial resources nor the manpower to investigate, raid, and prosecute the cannabis dispensaries in Los Angeles, California – a single American city – let alone in all of America.

The Better Option: Non-Participation

- The viable answer to curbing federal infringements is to withdraw state and local law enforcement from participating in the enforcement of federal firearms restrictions.
- Without state and local law enforcement participation, federal law enforcement will be stretched thin, and incapable of enforcing its dictates throughout the State of West Virginia (as well as the other states that cease participation in enforcement).



- Federal agents cannot lawfully be stopped at the borders and, as with cannabis prohibition, there may be some limited high-profile arrests.
 - Any arrested must be tried in West Virginia, in front of West Virginia jurors – who may not feel compelled to convict their fellow Mountaineers of crimes created by the federal government that infringe on their rights.
 - Attempts by outside federal agents to infringe on the right to keep and bear arms may indeed spur political momentum on this issue.

It is Lawful

- Unlike other “nullification” efforts, non-participation has clear legal precedent from the United States Supreme Court. In the case of *Printz v. United States*, 521 U.S. 898 (1997).
 - “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.” (See page 935).
 - Thus, states cannot prevent federal agents from enforcing federal law, but the federal government cannot mandate nor command state law enforcement to enforce federal law or regulation.
 - This anti-commandeering prohibition in *Printz* applies to federal funding as well.
 - Funding cannot be withheld from the State of West Virginia due to our refusal to participate in enforcing federal law. This is why Colorado still gets federal money even when flouting cannabis prohibition and California still gets federal funds even when explicitly rejecting federal immigration regulations.

The West Virginia Legislature should take the legally viable step of preventing its state and local law enforcement agencies from being exploited to enforce unpopular infringements upon the right to keep and bear arms.