FIREARM NULLIFICATION LAWS

- **Bottom Line:** In recent years, bills purporting to nullify federal firearms laws and/or make it a state crime to enforce the federal firearms law have been proposed across the country—and enacted in at least nine states.
  - Nullifying federal law is patently unconstitutional under the Supremacy Clause, which makes federal law supreme over any state or local laws. Just as the Supreme Court struck down southern laws that sought to nullify federal desegregation laws during the civil rights era, courts today will reject firearms nullification laws.
  - While purporting to nullify federal law is unconstitutional and legally void, provisions in some of these laws may be dangerous, particularly to the extent that they prohibit state and local police from cooperating with federal law enforcement to crack down on gun traffickers and other gun criminals.

- **In recent years, numerous states have proposed legislation that would purport to nullify federal gun laws. At least nine states have passed some type of firearm nullification law.**
  - Over the last decade, more than 200 firearm nullification laws have been introduced across the country, in more than three-quarters of U.S. states. All but three have been introduced since President Barack Obama’s election.
    - At least 11 bills, in nine states, have been signed into law.
    - In Missouri, Montana, and Oklahoma, governors vetoed firearm nullification bills.
  - While not identical, these laws generally include some or all of several typical features.
    - Many of these laws declare federal firearms laws to be null and void in the state; declare that any future-enacted federal gun laws cannot be enforced in the state; and/or authorize criminal penalties against any law enforcement officials who enforce federal gun laws. As explained below, nullifying federal law is unconstitutional under the Supremacy Clause.
    - Several laws, often referred to as a state’s Firearms Freedom Act, declare that federal gun laws do not apply to guns made, sold, and used only in a particular state. These laws are unconstitutional under the Commerce Clause.

- **Nullification laws adopt a theory of states’ rights that was soundly discredited before the Civil War and has been squarely rejected by the Supreme Court, most recently during the Civil Rights Era.**
  - Under the U.S. Constitution’s Supremacy Clause, federal laws are “the supreme law of the land” and any state law that conflicts with federal law is null and void.
  - From the earliest days of the republic, the U.S. Supreme Court has uniformly rejected state laws that conflict with federal law. In the mid-nineteenth century, President Andrew Jackson forcefully rejected South Carolina’s repeated efforts to nullify federal law, and before the Civil War, the U.S. Supreme Court definitively rejected various states’ attempts to nullify the Fugitive Slave Acts.
  - The last spate of nullification laws were passed by southern states resisting efforts to end segregation and dismantle Jim Crow laws. The U.S. Supreme Court unanimously and unambiguously reaffirmed the principle that states cannot nullify federal laws when ruling in 1958 that the state of Arkansas was bound by the *Brown v. Board of Education* decision and could not maintain segregated schools.
There is a clear consensus that state firearm nullification laws conflict with federal law and therefore are preempted, unconstitutional, and invalid.

- In 2013, the Ninth Circuit Court of Appeals ruled that a Montana nullification law purporting to exempt firearms made in Montana from federal gun laws was preempted and void.¹⁰
- Attorney General Eric Holder has opined that nullification laws directly conflict with federal law and are therefore unconstitutional.
  - In a letter to Governor Sam Brownback of Kansas, Holder wrote that the Kansas law “directly conflicts with federal law and is therefore unconstitutional.”¹¹
  - Holder pledged that federal law enforcement agencies will continue to enforce federal firearms laws in states with preemption laws, and that the Department of Justice would take all necessary steps to prevent states from interfering with federal law.¹²

- Law professor and firearms expert Adam Winkler explained that “States are not entitled to nullify federal law. Any law that interferes with a valid federal law is unconstitutional.”¹³

Although purporting to nullify federal law is unconstitutional, some provisions in these laws present serious public safety risks.

- Before Governor Jay Nixon vetoed a sweeping nullification bill passed by the Missouri legislature, the state’s attorney general warned that the law would present a serious threat to public safety. He noted that while provisions purporting to nullify federal law would be struck down in court, other provisions of the law could remain in force — with dangerous consequences.¹⁴
  - Section 1.320.5 of the proposed Missouri Law, H.B. 436 (2013), would have prohibited state law enforcement from cooperating with federal law enforcement. This could have required state police to withdraw from federal/state joint task forces investigating and enforcing federal gun laws and could have caused Missouri agencies to lose federal funding for these joint efforts.
  - Section 1.320.7 of H.B. 436 would have given any Missouri citizen subject to an effort to enforce any federal gun laws the right to sue any police officer who enforced federal gun laws. This would mean that a felon who illegally possessed a firearm, or a drug dealer who possessed a federally regulated machine gun, could sue any officer who attempted to arrest him.

- If nullification laws in other states are packaged with provisions preventing state and local police officers from working with federal law enforcement, or allowing citizens to sue law enforcement officials who enforce federal gun laws, they would present similar dangers.

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² Nullification bills have been signed into law in Alaska, Arizona, Idaho, Kansas, Montana, South Dakota, Tennessee, Utah, and Wyoming.
³ Montana enacted a law entitled the Montana Firearms Freedom Act in 2009, H.B. 246 (2009), which the U.S. Court of Appeals for the Ninth Circuit declared unconstitutional in 2013. That same year, the legislature passed a new nullification bill; Montana’s governor, Steve Bullock, vetoed the 2013 legislation. In 2015, the Montana legislature again passed a nullification bill, H.B. 203 (2015), which Governor Bullock again vetoed on March 27, 2015.
⁵ See U.S. Constitution, Article VI, clause 2.
⁷ In his Proclamation to the people of South Carolina regarding nullification, President Jackson noted that “the power to annul a law of the United States, assumed by one State, [is] incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and

10 Mont. Shooting Sports Ass’n v. Holder, 727 F.3d 975 (9th Cir. 2013).
12 Id.
13 McDaniel et al., supra note 1.