



Constitutional Nullification and the Constitutional Officers Duty to Protect

There is no such thing as an unconstitutional federal law. There are only unconstitutional federal enactments which constitutional officersⁱ, state and federal, unlawfully support and/or enforce in violation of their oath to protect and defend the Constitution.

This principle is a fundamental principle of constitutional law, a principle which existed long before our current Constitution came into existence.ⁱⁱ This principle is however, codified in our own federal Constitutionⁱⁱⁱ and has been recognized by the federal Supreme Court for over two hundred years.^{iv}

Under this principle of Constitutional law any federal enactment that is not made "**in Pursuance**" (in accordance with) the Constitution is null and void at its inception.^v In other words it never becomes law. To say it another way, such law is null and void as a matter of law, it does not require a federal court or the federal Supreme Court to declare such an enactment unconstitutional before it is void.^{vi}

Article VI clause 2, commonly referred to as the "Supremacy Clause" is in reality an automatic nullification clause. It automatically nullifies or makes void any federal enactment which does not comply with both the procedural requirements and the substantive limits (enumerated powers) placed on Congress. This is why there is no such thing as state nullification. There is nothing to be nullified by the states.

All state and federal officers are under an oath to protect and defend the Constitution pursuant to Article VI clause 3 of the federal Constitution. This oath requires that those under such oath have a working knowledge of the Constitution. This oath is personal, active, affirmative, perpetual and without geographical and political limitations. Under the oath one may not sponsor, support, vote for, or enforce an unconstitutional enactment. A constitutional officer may not rely upon someone else to make a determination of constitutionality nor may they wait for someone else to make such a determination.

An unconstitutional action by the federal government is not made constitutional because the states agree to go along with it.

It is their personal duty and responsibility to take action in the face of an unconstitutional enactment, state or federal. This duty of action is not only required under their oath to protect but also under the state officers' duty of Protection under the sovereign principle of Allegiance and Protection.

The states also have the option, under the federalist principle of voluntary cooperation, to not assist or participate in any federal program even if such is Constitutional. This is not a principle of nullification but a principle of federalism.



FOOTNOTES

ⁱ **U.S. Const.** Art. VI cl. 3

"The Senators and Representatives before mentioned [federal] , and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, **shall be bound by Oath or Affirmation, to support this Constitution;** but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." [Emphasis added.]

ⁱⁱ **Marbury v. Madison** 5 U.S. 137, 180 (1803)

"It is also not entirely unworthy of observation that, in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned, and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the **principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void,** and that courts, as well as other departments, are bound by that instrument." (Emphasis added.)

ⁱⁱⁱ **U.S. Const.** Art. VI cl. 2

"This Constitution, and the **Laws of the United States which shall be made in Pursuance thereof;** and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." (Emphasis added.)

^{iv} **Marbury v. Madison** 5 U.S. 137, 180 (1803)

^v It is not appropriate to refer to an unconstitutional enactment as a "law" as such implies such is enforceable, which an unconstitutional enactment is not. Therefore, the more appropriate phrase for such is "unconstitutional enactment". An unconstitutional enactment may have the "color of law" i.e., may have the appearance of law, but is in fact not a law.

^{vi} **Ex parte Siebold**, 100 U.S. 371, 376-77 (1879)

"An unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment."

Norton v. Shelby County, 118 U.S. 425,442 (1886)

"An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."

Nigro v. United States, 276 U.S. 332,341 (1928)

"In interpreting the Act, we must assume that it is a taxing measure, for otherwise it would be no law at all. If it is a mere act for the purpose of regulating and restraining the purchase of the opiate and other drugs, it is beyond the power of Congress..."