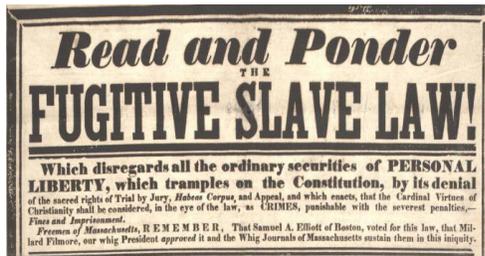


NULLIFICATION: MASSACHUSETTS IN 1855 AND MISSOURI IN 2014

“Massachusetts came up with a creative way to address this problem. The Massachusetts Personal Liberty Act of 1855 made it an impeachable offense for any state judicial officer to accept an appointment as a slave commissioner.”



Northern states carried out arguably the most successful non-compliance campaign defying a federal act in history with their opposition to the Fugitive Slave Act of 1850. Today, a Missouri bill takes a page from that playbook to stop state cooperation with federal enforcement of unconstitutional gun laws.

The Fugitive Slave Act of 1850 counts among the most disgusting acts ever passed by Congress. It denied a black person accused of escaping slavery any semblance of due process. A white man could basically drag a black man or woman south into slavery on the power of his word. Accused fugitives were not allowed to testify on their own behalf or offer any evidence countering the accusation that they were escaped slaves.

Many northern states simply refused to comply and took steps to block implementation, primarily relying on a strategy of non-compliance. Personal liberty laws utilized a variety of tactics to thwart federal fugitive slave catchers. Some denied the use of facilities like jails for holding accused runaways. Prohibiting state officers from participating in the fugitive slave rendition process served as another tactic.

A Missouri bill takes a similar tact in confronting unconstitutional federal gun laws by prohibiting state cooperation with feds. Like many of the personal liberty laws passed in the 1850s, the Missouri Second Amendment Protection Act bans state and local law enforcement from participating in any federal enforcement action. That leaves federal agencies to enforce the laws themselves, an almost impossible proposition for resource strapped Washington D.C.

The federal government depends heavily on state cooperation. Withdrawing it will make federal gun laws nearly impossible to enforce, just like refusal of state cooperation in the 1850s dramatically hindered fugitive slave rendition.

But simply prohibiting state agents from participating in federal enforcement efforts leaves a loophole. The feds can deputize state and local law enforcement officers, essentially turning them into federal agents who enjoy immunity from state law.

States seeking to hinder fugitive slave rendition faced a similar problem. The Fugitive Slave Act of 1850 empowered the superior court of each organized territory of the U.S. to appoint commissioners whom enjoyed the same powers as judges. Appointed commissioners had the authority to “take acknowledgments of bail and affidavits, and to take depositions of witnesses in civil causes,” and could also “exercise and discharge all the powers and duties conferred by this act.” The Fugitive Slave Act included a financial incentive for accepting the job. Commissioners received \$10 for every fugitive returned south. They got \$5 for hearing a case, but not issuing a certificate of removal.

Massachusetts came up with a creative way to address this problem. The Massachusetts Personal Liberty Act of 1855 made it an impeachable offense for any state judicial officer to accept an appointment as a slave commissioner.

Sec. 14. Any person holding any judicial office under the constitution or laws of this Commonwealth, who shall continue, for ten days after the passage of this act, to hold the office of United States commissioner, or any office under the laws of the United States which qualifies him to issue any warrant or other process, or grant any certificate under the acts of Congress named in the ninth section of the act, shall be deemed to have violated good behavior, to have given reason for the loss of public confidence, and furnished sufficient ground either for impeachment or for removal by address.

Missouri lawmakers included similar language in its Second Amendment Preservation Act to disincentivize state or local law enforcement officers from accepting federal deputization for the purpose of enforcing federal gun laws. Under the law, any person who enforces federal gun laws would be ineligible for employment as a law enforcement officer in Missouri.

1.470.1 —If after the effective date of this section any person who knowingly, as defined in section 562.016, and while acting as an official, agent, employee, or deputy of the United States Government or while otherwise acting under the color of federal law while within the borders of this state, they shall forever be ineligible to serve as a peace officer or to supervise peace officers for the state or any subdivision of the state:

- a. Commit any of the infringements identified in section 1.410.*
- b. Attempt to commit any of the infringements identified in section 1.410.*
- c. Give material aid and support to the efforts of others who attempt to or do commit any of the infringements identified in section 1.410.*

2. Neither the state nor any subdivision of the state shall accept into employment anyone as a peace officer or supervisor of peace officers if they are ineligible to serve in such capacity under section 1.410.1.

As Missouri lawmakers demonstrate, the personal liberty laws passed to thwart the draconian Fugitive Slave Act of 1850 provide a powerful blueprint for addressing unconstitutional federal acts today. They were so effective in hindering fugitive slave rendition, several southern states complaints listed northern nullification of the act in their declaration of causes for secession. Northern states successfully used the blueprint laid out by James Madison in Federalist 46 when he wrote that “refusal to cooperate with officers of the union” would create “serious impediments” to implementing federal acts, and “present obstructions which the federal government would hardly be willing to encounter” when replicated in numerous states.

In the 1850s, Northern states boldly defied federal power through non-cooperation to protect basic rights and thwart federal slavery laws. Today, states across the U.S. have the opportunity to follow suit and safeguard the liberties of their people on issues across the political spectrum.

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