

Return of the 'Rightful Remedy': Nullification Legislation in the American States

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Introduction

- Conflict between the states and national government seems to have increased.
- There are several ways this conflict has manifested.
- We describe the recent proliferation of state legislative efforts to invalidate national government actions and attempt to explain why states engage in varying levels of nullification activity.

State of Federalism

- 'Uncooperative Federalism' (Bulman-Pozen and Gerken 2009).
- States seem increasingly inclined to respond to the national government with “acts of resistance or defiance” (Gamkhar and Pickerill 2012, 379).
- Nullification efforts are one such act of state-level resistance.

The Resurgence of Nullification

During the 2015 legislative session, the doctrine of nullification returned in earnest.

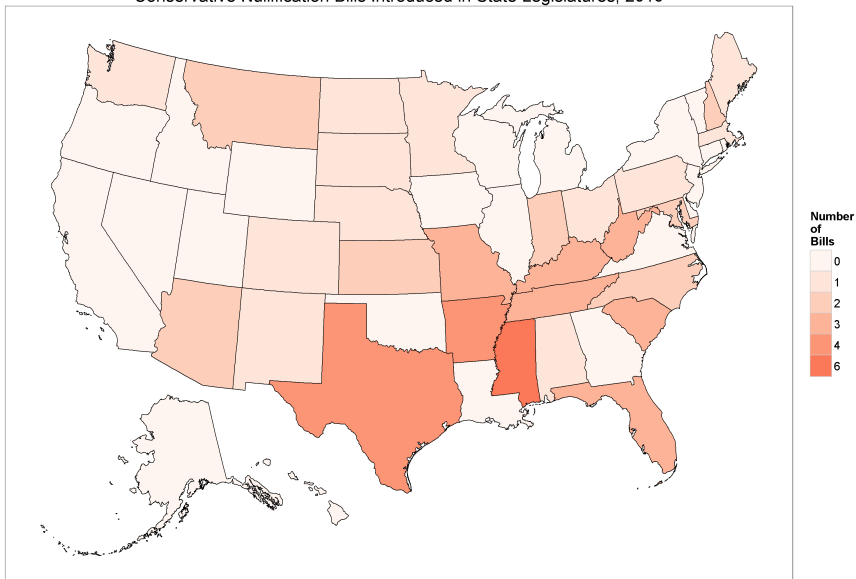
- 258 nullification bills introduced.
- 39 enacted into law.
- Nullification efforts present in 49/50 states.

The Modern Nullification Agenda

Issue Area	Number Introduced	Number Received Hearings	Number Passed Committee	Number Passed One Chamber	Number Passed Two Chambers	Number Signed
Agenda 21	6	1	0	0	0	0
Second Amendment	20	5	5	3	2	1
Affordable Care Act	12	3	2	1	1	1
Common Core	20	7	6	5	3	0
"Right to Try"	51	32	31	27	22	21
NSA Surveillance	22	7	6	2	2	2
Drones	30	12	10	9	5	4
Indefinite Detention	10	3	3	1	0	0
License Plate Tracking	11	8	7	6	5	2
Marijuana	41	10	7	4	1	1
Hemp Farming	20	12	9	8	6	4
Police Militarization	15	8	7	7	5	3

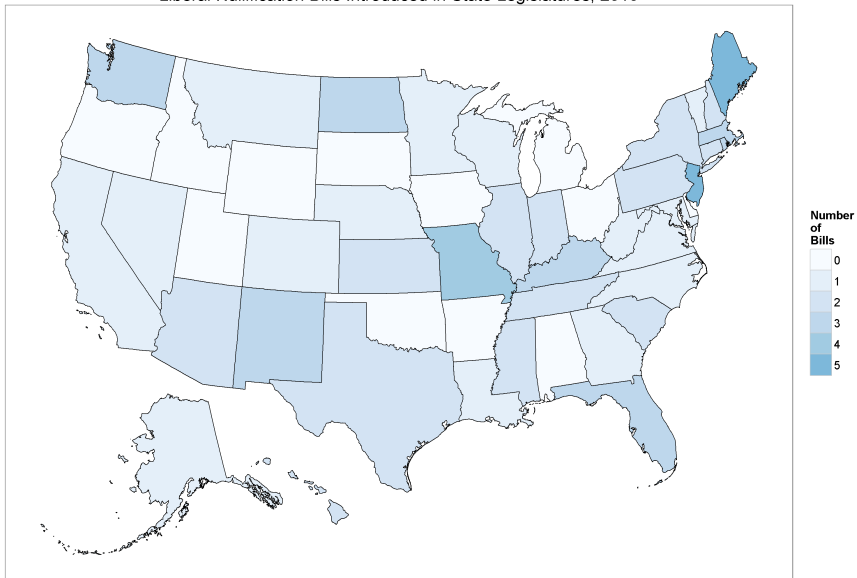
The Ideological Distribution of Nullification

Conservative Nullification Bills Introduced in State Legislatures, 2015



The Ideological Distribution of Nullification

Liberal Nullification Bills Introduced in State Legislatures, 2015



Analysis

Our paper asks three basic questions:

1. What factors predict nullification bill introduction?
2. What factors predict nullification bill enactment?
3. What factors predict ideologically categorized nullification bill introduction?

Dependent Variables

We estimate five cross-sectional models in this paper (N=50), each with a different dependent variable.

1. Count of all nullification bills introduced.
2. Count of all nullification bills enacted.
3. Count of all conservative nullification bills introduced.
4. Count of all centrist nullification bills introduced.
5. Count of all liberal nullification bills introduced.

Independent Variables

Republican Governor

Republican Control of Legislature

Coded as three-point measure capturing full, partial or no
Republican control of the state legislature

2012 Obama Vote Share

State Affluence

Real per capita personal income

State Population Characteristics

Logged state population

Percentage of the population living in an urban area

Legislative Professionalism

Squire (2007) measurement

Confederacy

Introduction and Adoption of Nullification Legislation

	Total Bills Introduced	Total Bills Signed
Republican Governor	-0.23 (-0.143)	0.03 (-0.392)
Republican Legislature	0.10 (-0.253)	0.24 (-0.717)
Obama Vote 2012	0.01 (-0.011)	-0.02 (-0.029)
Income	0.00001 (-0.00001)	<i>0.00006*</i> (-0.00003)
Population	<i>1.07***</i> (-0.271)	<i>1.33*</i> (-0.793)
Urbanization	-0.01 (-0.006)	-0.01 (-0.019)
Legislative Professionalism	<i>-2.62***</i> (-0.888)	<i>-6.50**</i> (-3.186)
Confederacy	0.02 (-0.198)	-0.20 (-0.543)
Constant	<i>-5.40***</i> (-1.734)	<i>-9.49*</i> (-4.902)
Observations	50	50
Adj. R-squared	0.106	0.095
Log Likelihood	-115.057	-50.931

Note: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$. Models estimated using Poisson regression.

Introduction of Nullification Legislation by Ideology

	Conservative Index	Centrist Index	Liberal Index
Republican Governor	-0.21 (-0.331)	-0.36* (-0.204)	0.003 (-0.26)
Republican Legislature	0.68 (-0.649)	0.001 (-0.363)	0.20 (-0.465)
Obama Vote 2012	-0.004 (-0.024)	0.010 (-0.017)	0.04* (-0.021)
Income	-0.00003 (-0.00003)	0.00003* (-0.00002)	0.00002 (-0.00002)
Population	1.72*** (-0.651)	0.98** (-0.387)	0.87* (-0.483)
Urbanization	-0.04** (-0.016)	-0.01 (-0.01)	-0.01 (-0.011)
Legislative Professionalism	-3.75 (-2.326)	-2.00* (-1.207)	-3.20* (-1.658)
Confederacy	0.01 (-0.38)	0.10 (-0.299)	-0.29 (-0.39)
Constant	-7.23* (-4.01)	-6.39** (-2.501)	-7.14** (-3.15)
Observations	50	50	50
Adj. R-squared	0.219	0.096	0.067
Log Likelihood	-60.87	-87.069	-73.209

Note: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$. Models estimated using Poisson regression.

Discussion

- Consistent positive relationship between state population and nullification activity.
- Largely consistent negative relationship between legislative professionalism and nullification activity.
- No consistent relationship between partisanship/ideology and nullification activity.

Conclusion

- Nullification activity appeared in nearly every state and spanned the political spectrum in terms of its policy goals.
- Some preliminary results for the 2015 session but what about earlier and future sessions?
- What is the role of model legislation?