



Written by [Joe Wolverton, II, J.D.](#) on July 12, 2014

## Brady Center Launches Legal Attack on Kansas Gun Grab Nullification

The people of the state of Kansas are under attack and the weapon being deployed is aimed at depriving them of their right to keep and bear arms, and their right to enact state laws protecting that right.



On Wednesday, July 9, the Brady Center to Prevent Gun Violence filed suit in the U.S. District Court for the District of Kansas challenging a law passed last year by the Kansas state legislature and signed immediately by Governor Sam Brownback.

On April 16, 2013, Governor Brownback signed the bill purporting to safeguard the constitutionally protected right of Kansans to keep and bear arms.

Titled the Second Amendment Protection Act, SB 102 declares:

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The second amendment to the constitution of the United States reserves to the people, individually, the right to keep and bear arms as that right was understood at the time that Kansas was admitted to statehood in 1861, and the guaranty of that right is a matter of contract between the state and people of Kansas and the United States as of the time that the compact with the United States was agreed upon and adopted by Kansas in 1859 and the United States in 1861.

In its complaint, the Brady Center argues that the bill violates the Constitution and requests that the court order Brownback and the Kansas state attorney general to “strike down” the law.

“Kansas’ gun nullification law is not just bad public policy, it is patently unconstitutional,” said Jonathan Lowy, director of the Brady Center’s Legal Action Project in Washington, D.C. “Courts have recognized for years that states cannot just declare ‘null and void’ federal laws they do not like or wish to enforce.”

“Just as Southern states were not allowed to opt-out of federal civil rights laws, the constitution does not allow Kansas or any other state to nullify federal gun laws that protect Kansans and all Americans from gun violence,” Lowy added.

For his part, state Attorney General Derek Schmidt promises to defend the Kansas state law — a law that itself defends the constitutionally protected rights of Kansans.

“This law has been in effect, unchanged, for more than a year, and the timing and tone of this election-year lawsuit are obviously political,” Schmidt said, as quoted in the *Topeka Capital-Journal*. “We are reviewing the complaint and will respond in due course and in the proper legal forum.”

Governor Brownback sees in the filing of the lawsuit but another in a long line of attacks by President Barack Obama on the Second Amendment and civil gun ownership.

“The Obama administration attacked this legislation when I signed it more than one year ago,” the governor said in the *Capital-Journal*. “It now appears that they have found some Washington, D.C.,



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lawyers to do their bidding.”

This isn't the first time Brownback has called out the Obama administration for its assault on fundamental rights.

Soon after the governor signed the Second Amendment Protection Act last April, he received a letter from U.S. Attorney General Eric Holder informing him that the Obama administration would ignore the Kansas law claiming to nullify federal gun control laws.

Additionally, Holder warned the governor that federal agents would “take all appropriate actions” to enforce federal gun control laws, calling the Kansas statute “unconstitutional.”

In a response to Holder's letter, Brownback defended his state's right to protect its citizens' right to keep and bear arms as guaranteed by the Second Amendment.

“The right to keep and bear arms is a right that Kansans hold dear. It is a right enshrined not only in the Second Amendment to the United States Constitution, but also protected by the Kansas Bill of Rights,” Brownback writes. “The people of Kansas have repeatedly and overwhelmingly reaffirmed their commitment to protecting this fundamental right.”

“The people of Kansas are likewise committed to defending the sovereignty of the State of Kansas as guaranteed in the Ninth and Tenth Amendments to the United States Constitution,” he adds.

The Ninth Amendment states, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people,” while the Tenth Amendment expressly reserves to the states and to the people all powers not specifically granted to the federal government in the Constitution.

Several sections of the act use very strong and unequivocal language to defend the right of citizens of the Sunflower State to own firearms as guaranteed by the Second Amendment. For example, Section 6(a) of the bill declares:

Any act, law, treaty, order, rule or regulation of the government of the United States which violates the second amendment to the constitution of the United States is null, void and unenforceable in the state of Kansas.

Supporters of the Brady Center's challenge believe such language is a recipe for anarchy.

“The statute is remarkable for its complete disregard of basic and long-established principles of constitutional law,” said San Francisco attorney Stuart Plunkett, one of the lawyers representing the plaintiff. “Our legal system would quickly break down if each of the 50 states were permitted to choose whether or not to follow federal law.”

Despite such constitutionally ignorant criticism, nullification would not lead to anarchy, as it is only *unconstitutional* federal acts that will be subject to state invalidation.

Nullification is the “rightful remedy” and can not only restore the rule of law in this Republic, but can restore the independence of states and cities, freeing them from the financial chains that have them bound to the federal behemoth.

In light of recent movements by the president, Congress, and the United Nations to effectively repeal the Second Amendment, there is an urgent need for states to stand up and assert their constitutional authority to resist any act of the federal government not specifically permitted in the “few and defined” powers delegated to it. States must nullify all such attempts to deny citizens of their God-given rights,



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including the right to keep and bear arms.

Nullification, not capitulation, is the way to defeat the powerful forces combined against the continued enjoyment of freedom.

Regarding the rightful role of nullification and the private ownership of weapons, lawmakers and citizens alike should remember the words of imminent jurist Joseph Story, who wrote in 1833:

The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them.

“We are confident the Court will agree that this law is unconstitutional,” Jonathan Lowy claims in a statement issued by the Brady Center.

What Mr. Lowy doesn’t understand is that in our federal system, the federal courts cannot rob the states of their right to uphold fundamental liberties in the face of federal tyranny.

*The New American* will follow this attack on the Second Amendment as it wends its way through the federal court system.

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