Written by **Joe Wolverton, II, J.D.** on April 25, 2014

Kansas Governor Signs Bill Striking Down Local Gun Restrictions

Once again, Kansas Governor Sam Brownback (shown) has demonstrated his resolve to protect the right to keep and bear arms from infringement by government at any level. On April 23, Brownback announced he had signed HB 2578, a bill prohibiting cities or counties in Kansas from adopting or enforcing "any ordinance, resolution or regulation … governing the purchase, transfer, ownership, storage, carrying or transporting of firearms or ammunition, or any component or combination thereof."

The law also mandates:

> No city or county shall adopt or enforce any ordinance, resolution or regulation relating to the sale of a firearm by an individual, who holds a federal firearms license, that is more restrictive than any ordinance, resolution or regulation relating to the sale of any other commercial good.

Put simply, this new law prevents local governments in Kansas from reducing the scope of the rights protected by the Second Amendment.

"Kansans have long believed the right to bear arms is a constitutional right," the governor said in a statement reported by the *Kansas City Star*.

The *Star* also reports that supporters of the bill are praising the new law and the effects it is expected to have on local governments' recent attempts to abridge the right to buy, sell, trade, own, and transfer weapons.

"It means that all of the laws are going to be uniform statewide," said Patricia Stoneking, president of the Kansas State Rifle Association, as quoted by the *Star*.

Of course, there are those who oppose the new law and apparently don't understand the fact that criminals don't obey gun restricting laws, no matter how many are imposed.

Jonathan Lowy of the Brady Center to Prevent Gun Violence told the *Star*, "It is outrageous. It's contrary to public safety, and it's undemocratic. This is certainly one of the more extreme pre-emption laws that I've seen."

It is indicative of our times that securing a right formerly recognized as vital to preventing the government from imposing tyranny at the point of a gun on a disarmed population is now described as "extreme."

Fortunately for Kansans, Governor Brownback knows better, and he's an old hand at standing up to government gun grabs, even if it is being attempted by federal officials.

Last April, U.S. attorney general Eric Holder was threatening Governor Brownback with enforcement

by federal agents of gun control laws nullified by another Kansas law.

In a response to Holder's letter sent on May 2, 2013, Brownback defended his state's right to protect its citizens' right to keep and bear arms as guaranteed by the Second Amendment, writing,

> 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. 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.

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.

In 2013, the Second Amendment Protection Act was passed by the Kansas State Legislature by an overwhelming majority and signed into law by the governor on April 16 of that year. Although the final version of the law was not as potent as originally drafted, it remains a laudable example of a state exercising its constitutional prerogative to resist — nullify — unconstitutional federal acts.

That's one prerogative of federalism that Governor Brownback seems still ready to exercise.

In light of Brownback's signing of this latest gun rights protection, there is something to be learned from AG Holder's letter from last year, as it is likely that counties and municipalities will assert a "right" to enforce federal gun restrictions.

Last year, Holder demonstrated in his letter to Brownback his misunderstanding of key principles of federalism and the right of states to govern as protected by the Ninth and Tenth Amendments.

In a key paragraph, Holder denied that states have the right to interpose between citizens and federal acts. "Under the Supremacy Clause of the United States Constitution," Holder wrote, "Kansas may not prevent federal employees and officials from carrying out their official responsibilities."

His comments echo a common misreading and misunderstanding of Article VI of the Constitution, the so-called Supremacy Clause.

Holder and others who follow this reasoning are wrong. The "Supremacy Clause" of Article VI does not endow all federal laws with supremacy over state laws in the same arena. The clause grants that special denomination to the Constitution "and laws of the United States made in pursuance thereof."

That's the phrase that pays: "In pursuance thereof." Federal laws made in pursuance of the Constitution — not in violation of the Constitution — are afforded supremacy.

In fact, if an act of Congress exceeds the scope of the enumerated powers given to the federal government in the Constitution, that act was not made in pursuance of the Constitution and therefore it is not only not the supreme law of the land, but it is not law at all, but "merely [an act] of usurpation."

Unlike the attorney general, Governor Brownback understands this basic principle of constitutional construction. While President Obama and Attorney General Holder believe that federal agents have the responsibility to carry out unconstitutional federal laws, Brownback recognizes that states have a higher responsibility — a responsibility to maintain order in the Union by enforcing the limits of power

as set forth in the Constitution.

James Madison explained in the Virginia Resolution of 1798 that any power residing in the federal government is derived

> from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

Kansas and many of her sister states are trying to preserve liberty by opposing the threat to it posed by an out-of-control federal authority, bent on consolidating all power in Washington, D.C. Such a stance is not just the right of states, but is their obligation.

As for counties or municipalities in Kansas who fancy themselves free to nullify state laws, the fact is that those governments are creations of the state and therefore are not authorized to override state laws with which they disagree.

The 50 states possess such a prerogative, however, as they are not the creations of the federal government. In fact, the reverse is true and thus states are well within their constitutional authority to refuse to be bound by acts of the creature that exceeds the powers granted to it by the states in the Constitution.

The neighbor of Kansas to the east is currently considering a pair of bills that are aimed at eliminating the threat to the freedom to own firearms in Missouri. And, as the new Kansas statute reminds us, that threat can come from all levels of government.

Joe A. Wolverton, II, J.D. is a correspondent for The New American *and travels nationwide speaking on nullification, the Second Amendment, the surveillance state, and other constitutional issues. Follow him on Twitter @TNAJoeWolverton and he can be reached at jwolverton@thenewamerican.com.*