



Written by [Bob Adelman](#) on December 2, 2013

U.S. District Judge: Colorado Sheriffs Lack Standing to Join Gun Lawsuit

Back in May of 2013, 54 Colorado county sheriffs and 21 other parties filed a lawsuit complaining that two recent laws enacted by the Colorado legislature violated the Second and 14th Amendments. Without ruling on those complaints, Chief Judge Marcia Kreiger of the U.S. District Court of Colorado [declared](#) that the sheriffs lacked legal standing to bring the lawsuit.



Michael Schaus, the associate editor for Townhall.com, [complained](#) that the judge missed the point: “The sheriffs were not suing over fear that the laws would infringe on their “individual” rights. They were suing because of their fear that the law would infringe on the individual rights of the citizens they swore to uphold and defend.... Not only are they being charged with implementing law, but they are held accountable by the individuals they serve.”

He added, “[It’s] strange to think that the men and women who will be charged with enforcing these gun laws have no standing to object to them in their official office.”

Kreiger is not slamming the door on the sheriffs; they can rejoin the lawsuit as individuals in the next 14 days if they want to. In her opinion, Kreiger wrote:

If individual Sheriffs wish to protect individual rights or interests they may do so. In the [present complaint], however, the Sheriffs have confused their individual rights and interests with those of the county Sheriff’s Office. They each assert that they have a stake in the outcome of this litigation because ... they desire to adhere to their oath of office ... [but to do so] would compromise the performance of their office.

This, she claimed, is a “personal” claim but “no individual claims have been asserted in the [complaint].” She expounded her reasoning:

[The] limitation of the jurisdiction of federal courts to cases and controversies is crucial to maintaining the “tripartite allocation of power” set forth in the United States Constitution. Indeed, no principle is more fundamental to the judiciary’s proper role in our system of government....

This doctrine is an important limitation on the power of the federal government. It guarantees that a federal court [like this one] will not resolve certain disputes between a state and local government.

A political subdivision may seek redress against its parent state for violation of a state’s



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Constitution, but the political subdivision cannot invoke (nor can a federal court impose) the protections of the United States Constitution for individuals against a state.

Attorneys for the plaintiffs (the sheriffs and others bringing the lawsuit) anticipated this argument, and claimed that sheriffs are not a “political subdivision” of the state because the office of sheriff was created by the people of Colorado, through the state’s constitution, rather than being created by state law.

Krieger didn’t buy it, and hence tossed the argument that the sheriffs therefore had standing to sue. Said the judge:

The sheriffs are correct in that the people of Colorado acted through the Colorado Constitution, but in doing so they created and empowered the State of Colorado and its subdivisions....

In the Colorado Constitution, the people of the state of Colorado created the structure of the state government, making counties and county Sheriff’s Offices part of it — a political subdivision of the state of Colorado.

In this arbitrary ruling, the judge left herself free to rule, sometime in the near future, on the merits of the case — specifically the laws mandating background checks and limiting magazine capacities. The sheriffs, however, cannot be a party to the complaint in their “official” capacities, but only as individual citizens.

This ruling by the judge is sure to be the basis for an appeal in the event that the complaint is not resolved in favor of the plaintiffs — those individuals such as the Hamilton family who own the Family Shooting Center at Cherry Creek State Park; and businesses such as the Colorado Farm Bureau, the National Shooting Sports Foundation, the Colorado State Shooting Association, Rocky Mountain Shooters Supply, and Specialty Sports and Supply.

But by ruling against the sheriffs in this way, Krieger has tipped her hand as to the final outcome. As Schaus noted:

The judge’s fundamental misunderstanding of the official role of Sheriff ... does not necessarily bode well for the challenge. Her flippant disregard for the legal “standing” of elected Law Enforcement officials should give pause to those who hope she will adequately interpret the words “shall not be infringed” in the Second Amendment.

A graduate of Cornell University and a former investment advisor, Bob is a regular contributor to The New American magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics. He can be reached at badelman@thenewamerican.com



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