



Written by [Joe Wolverton, II, J.D.](#) on June 19, 2014

Wichita City Council Reluctantly Repeals Gun Control Ordinances

Reluctantly, the Wichita (Kansas) City Council is in the process of repealing a spate of local gun control ordinances in order to comply with a recently enacted state law nullifying county and city statutes infringing on the right to own, carry, and transport firearms within the Sunflower State.

As reported by the Associated Press:

Among the Wichita ordinances taken off the books are laws requiring private security officers to have gun permits and safety training. A member of the city's legal department said Wichita would still regulate the private security industry, with background checks and basic education requirements.

The City Council also repealed ordinances on possession of guns, knives and air rifles. Members were told the state still prohibits people from carrying knives with the intent to harm another person, but the city can't outlaw knives in public buildings.

All such ordinances passed by cities and counties statewide must be removed from the books as mandated by HB 2578, signed into law by Governor Sam Brownback in April 2014.

On April 23, Brownback announced he had the bill which prohibits 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 declares that:

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 issued at the time of the signing of the bill into law.

The *Kansas City Star* reported that supporters of the bill praised the new law and the effects it has on local governments' 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*.





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Some Wichita local leaders are resistant to implementing the various pro-Second Amendment provisions of the new law. As reported on Guns.com:

Council member Pete Meitzner was disappointed that state lawmakers could meddle with the sovereignty of the city, likening it to criticism made by some who believe the federal government often interferes with matters that should be left to the states.

"The state doesn't like it when the federal government is imposing things on it," chided Meitzner, according to *The Wichita Eagle*. "Sometimes the local governments don't like it, and we get it from the federal and the state levels."

Likewise, council member James Clendenin argued that the city knows what's best for its people.

"I'm coming at this from a control issue than a purely gun-knife issue," said Clendenin, who also referenced pending changes to the way in which the city regulates knives. "We're here 365 days a year taking calls from the public. We're better equipped to know what is best for our city."

It is indisputable that local government governs best, but petty tyranny is no less vicious and an anathema to liberty than tyranny on a national level, and thus must be opposed just as vigorously.

The guns.com article records the opposition to the enforcement of HB 2578 from the anti-Second Amendment lobby:

Nevertheless, pro-gun control advocates believe HB2578 goes too far in expanding one's right to keep and bear arms. "When it comes to public safety, the lobbyists of the National Rifle Association have no expertise whatsoever," said Ladd Everitt from the Coalition to Stop Gun Violence.

"Their concern in such matters is always focused on gun industry profits," he continued. "It's unfortunate for Wichita residents that their democratic will was overruled by state legislators who felt appeasing the gun lobby was a greater priority."

When the law was originally signed by Governor Brownback, other gun control advocates made similar "sky is falling" laments.

Jonathan Lowy of the Brady Center to Prevent Gun Violence said of HB 2578, "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, including the nearly 400,000 residents of the state's largest city, 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.

In April 2013, 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



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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 HB 2578, 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.

Cities and counties in Kansas have until June 30 to repeal all local non-compliant gun control ordinances, as the new law goes into effect on July 1.



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