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Proponent Testimony

HCR 5020

House Federal and State Affairs

Chair: Rep. Carpenter

01/23/2024

I support this resolution on its own and would support further strengthening it through language that would exert the right (10<sup>th</sup> Amendment) of the State of Kansas to reserve for the state government the power to legislate on matters concerning the lives, liberties, and properties of citizens in the ordinary course of affairs and that the term 'law-abiding citizen' shall mean a person who is not otherwise precluded under state law from possessing a firearm.

Kansas, the state, has the sole ability to determine who is a law-abiding citizen in matters concerning liberties and properties not specifically enumerated to the federal government and we have seen this in Missouri for example, where they have done well to attach historical precedent and true federalistic constitutionality to actions relating to cannabis (marihuana, marijuana) and the 2<sup>nd</sup> Amendment Preservation Act.

Whether it is the Gun Control Act of 1968 and possession and use of ammunition, firearms or firearm components or the Federal Controlled Substances Act and the possession and use of certain natural occurring plants, the federal government cannot commandeer state resources for that enforcement, which is one of the reasons we have a state Controlled Substances Act, to say we agree with said enforcement.

It is incumbent upon this legislature to defend state citizens from an overreaching federal government outside its bounds of enumerated powers and why enhancing this resolution's language will remind the creation (federal government) of its creator (sovereign states) and hopefully keep our Republic alive and our posterity intact.

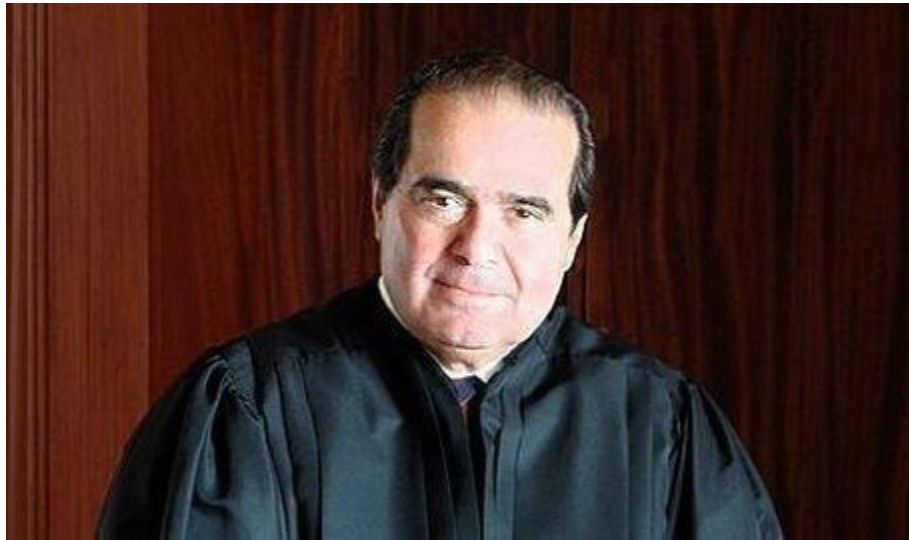
Thank you for your consideration on this matter and thank you for having this hearing to further defend Kansas citizens' natural and fundamental rights.

<https://constitutioncenter.org/blog/on-this-day-the-supreme-court-reinforces-the-10th-amendment/>

# On this day, the Supreme Court reinforces the 10th Amendment

June 27, 2023 | by NCC Staff

Setting a precedent with important implications today, the Supreme Court's decision from 1997 in [\*Printz v. United States\*](#) reaffirmed states' rights and the Constitution's anti-commandeering provisions.



In the 5-4 decision, Justice Antonin Scalia wrote the majority opinion which struck down part of the Brady Handgun Violence Prevention Act in violation of the 10th Amendment.

Specifically, the Brady Act's requirement for local sheriffs to perform gun background checks conflicted with the concept of "anti-commandeering" which had been set out as an important component of federalism in an earlier case, *New York v. United States* (1992).

The 10th Amendment says that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In *New York v. United States*, Justice O'Connor wrote that a federal waste-management law "would 'commandeer' state governments into the service of federal regulatory purposes, and would for this reason be inconsistent with the Constitution's division of authority between federal and state governments."

In *Printz*, Justice Scalia reinforced that concept. "The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers,

or those of their political subdivisions, to administer or enforce a federal regulatory program,” Scalia said. “Such commands are fundamentally incompatible with our constitutional system of dual sovereignty.”

This federalism argument has been at the heart of recent controversies involving legalized sports betting, sanctuary cities, and the state regulation of marijuana laws.

Justice Samuel Alito’s majority opinion in the recent *Murphy v. NCAA* case emphatically restated the ideas expressed by O’Connor and Scalia as the Court settled a controversy about New Jersey’s desires to start legal sports betting despite a federal law that prohibited such actions.

“The anti-commandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated into the Constitution, i.e., the decision to withhold from Congress the power to issue orders directly to the States,” Alito wrote. “Conspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States. The anti-commandeering doctrine simply represents the recognition of this limit on congressional authority,” he added.

<https://house.mo.gov/billtracking/bills131/biltxt/intro/hb0436I.HTM>

**1.320. 1. This section shall be known and may be cited as the "Second Amendment Preservation Act".**

**2. The general assembly finds and declares that:**

**(1) The general assembly of the state of Missouri is firmly resolved to support and defend the United States Constitution against every aggression, either foreign or domestic, and the general assembly is duty-bound to watch over and oppose every infraction of those principles which constitute the basis of the Union of the States, because only a faithful observance of those principles can secure the nation's existence and the public happiness;**

**(2) Acting through the United States Constitution, the people of the several states created the federal government to be their agent in the exercise of a few defined powers, while reserving to the state governments the power to legislate on matters which concern the lives, liberties, and properties of citizens in the ordinary course of affairs;**

**(3) The limitation of the federal government's power is affirmed under the Tenth Amendment to the United States Constitution, which defines the total scope of federal power**

**as being that which has been delegated by the people of the several states to the federal government, and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively, or to the people themselves;**

**(4) Whenever the federal government assumes powers that the people did not grant it in the Constitution, its acts are unauthoritative, void, and of no force;**

**(5) The several states of the United States of America are not united on the principle of unlimited submission to their federal government. The government created by the compact among the states is not the exclusive or final judge of the extent of the powers granted to it by the Constitution, because that would have made the federal government's discretion, and not the Constitution, the measure of those powers. To the contrary, as in all other cases of compacts among powers having no common judge, each party has an equal right to judge itself, as well of infractions as of the mode and measure of redress. Although the several states have granted supremacy to laws and treaties made pursuant to the powers granted in the Constitution, such supremacy does not apply to various federal statutes, orders, rules, regulations, or other actions which restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition exclusively within the borders of Missouri; such statutes, orders, rules, regulations, and other actions exceed the powers granted to the federal government except to the extent they are necessary and proper for the government and regulation of the land and naval forces of the United States or for the organizing, arming, and disciplining militia forces actively employed in the service of the United States Armed Forces;**

**(6) The people of the several states have given Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes", but "regulating commerce" does not include the power to limit citizens' right to keep and bear arms in defense of their families, neighbors, persons, or property, or to dictate to what sort of arms and accessories law-abiding mentally competent Missourians may buy, sell, exchange, or otherwise possess within the borders of this state;**

**(7) The people of the several states have also given Congress the power "to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of the United States" and "to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or in any department or officer thereof". These**

**constitutional provisions merely identify the means by which the federal government may execute its limited powers and ought not to be so construed as themselves to give unlimited powers because to do so would be to destroy the balance of power between the federal government and the state governments. We deny any claim that the taxing and spending powers of Congress can be used to diminish in any way the people's right to keep and bear arms;**

**(8) The people of Missouri have vested the general assembly with the authority to regulate the manufacture, possession, exchange, and use of firearms within this state's borders, subject only to the limits imposed by the Second Amendment to the United States Constitution and the Missouri Constitution.**

**3. (1) All federal acts, laws, orders, rules, and regulations, whether past, present, or future, which infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution and Article I, Section 23 of the Missouri Constitution shall be invalid in this state, shall not be recognized by this state, are specifically rejected by this state, and shall be considered null and void and of no effect in this state.**

**(2) Such federal acts, laws, orders, rules, and regulations include, but are not limited to:**

**(a) The provisions of the federal Gun Control Act of 1934;**

**(b) The provisions of the federal Gun Control Act of 1968;**

**(c) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;**

**(d) Any registering or tracking of firearms, firearm accessories, or ammunition which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;**

**(e) Any registering or tracking of the owners of firearms, firearm accessories, or ammunition which could have a chilling effect on the purchase or ownership of those items by law-abiding citizens;**

**(f) Any act forbidding the possession, ownership, or use or transfer of any type of firearm, firearm accessory, or ammunition by law-abiding citizens;**

**(g) Any act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens.**

**4. It shall be the duty of the courts and law enforcement agencies of this state to protect the rights of law-abiding citizens to keep and bear arms within the boarder of this state from the infringements in subsection 3 of this section.**

**5. No public officer or employee of this state shall have any authority to enforce or attempt to enforce any of the infringements on the right to keep and bear arms included in subsection 3 of this section.**

**6. Any official, agent, or employee of the United States government who enforces or attempts to enforce any of the infringements on the right to keep and bear arms included in subsection 3 of this section is guilty of a class A misdemeanor.**

**7. Any Missouri citizen who has been subject to an effort to enforce any of the infringements on the right to keep and bear arms included in subsection 3 of this section shall have a private cause of action for declaratory judgment and for damages against any person or entity attempting such enforcement.**