



Written by [Bob Adelman](#) on June 15, 2015

Federal Judge Tosses Brady Campaign Lawsuit Over Kansas Second Amendment Law

U.S. District Court Judge Julie Robinson [punted last week](#) on the Brady Campaign's lawsuit against Kansas' Second Amendment Protection Act by declaring that the Brady Campaign lacked standing to bring the suit in the first place. She wrote:



At this time, Brady Campaign has not alleged an actual or imminent injury that is fairly traceable to the enforcement of the Act [that would therefore] be addressable by a favorable decision by this Court.

Brady Campaign, therefore, lacks ... standing to mount a constitutional challenge to the [state's] Second Amendment Protection Act.

This allowed Judge Robinson to avoid considering all the various "issues" raised by Brady: "The Court therefore need not reach the other issues raised in Defendants' motion to dismiss."

What "other issues"? For starters is the law's declaration that "any act, treaty, order, rule or regulation by the government of the United States which violates the Second Amendment of the United States is null, void and unenforceable in the state of Kansas."

Second, the bill that Governor Sam Brownback signed into law back in April 2013 doesn't rely merely on the Second Amendment itself but also on the "compact" between the people of Kansas and the national government when it applied for statehood:

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 United States was agreed upon and adopted by Kansas in 1859 and the United States in 1861.

Then there was the little matter about the law making it "unlawful for any official, agent or employee of the government of the United States ... to enforce or attempt to enforce any act, law, treaty, order, rule or regulation of the government of the United States upon a firearm, a firearm accessory, or ammunition that is manufactured commercially or privately and owned in the state of Kansas and that remains within the borders of Kansas."

If it was made in Kansas and it stays in Kansas, it isn't subject to federal rules under the Commerce Clause. And if federal officials attempt to enforce federal rules, they will be arrested and charged with a felony.

It gets better:

No official, agent or employee *of the state of Kansas* ... shall enforce or attempt to enforce any act,



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law, treaty, order, rule or regulation of the government of the United States regarding any personal firearm, firearm accessory or ammunition that is owned or manufactured commercially or privately in the state of Kansas and that remains within the borders of Kansas. [Emphasis added.]

Finally, doctors cannot ask questions of their patients about their ownership of guns:

No physician, other than a psychiatrist, shall inquire of any patient in conjunction with obtaining the patient's personal information and medical history, whether the patient has any firearms in such patient's home or on such patient's property and shall not require such information before providing treatment.

One can understand the judge's likely relief at finding a way to avoid ruling on all of these, at least for the moment. The Brady Campaign is now trying to determine a way to bring another lawsuit because it believes that the Kansas Second Amendment Protection Act (SARA) is "an unconstitutional attempt to nullify federal gun control regulations" and that the act "will have the effect of deterring application of federal gun laws in Kansas."

One doesn't need a degree from Harvard Law to discern that this is *exactly* what the SARA is designed to do. And Governor Brownback will be happy to oblige if Brady lawyers can find a way past Judge Robertson's dismissal. When notified of the Brady Campaign's initial attempt to nullify the law, Governor Brownback scoffed:

It now appears that they have found some Washington DC lawyers to do their bidding. As I have said previously, 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 ... but also protected by the Kansas Bill of Rights.

Brownback's state attorney general Derek Schmidt has already built a war chest of some \$250,000 to fight the Brady Campaign and anyone else with the temerity to challenge the law.

They might need every dollar. Just days after Brownback signed the bill into law he received a letter from then-Attorney General Eric Holder who took umbrage that Kansas would even dare to pass such a law. He told Brownback:

[Your new law] directly conflicts with federal law and is therefore unconstitutional....

Under the Supremacy Clause ... Kansas may not prevent federal employees and officials from carrying out their official responsibilities. And a state certainly may not criminalize the exercise of federal responsibilities....

Because [your new law] conflicts with federal firearms laws and regulations, federal law supersedes this new statute: all provisions of federal laws and their implementing regulations therefore continue to apply....

[We] will take all appropriate action, including litigation if necessary, to prevent the State of Kansas from interfering with the activities of federal officials enforcing federal law.

But Kansas officials, under the new law, are prohibited from assisting federal officials in their duties! What happens then? As Michael Boldin noted at the Tenth Amendment Center, the question is moot:

There are many ways to nullify a law. The courts can strike it down. The executive branch could refuse to enforce it. People in large numbers might refuse to comply. A number of states could pass a law making its enforcement illegal.

Or a number of states could refuse to cooperate in any way with its enforcement.



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For years the federal government has been relying on states to do the heavy lifting in enforcing federal laws, constitutional or not. The simple fact is that, left to their own devices, the Department of Justice just simply doesn't have the manpower to enforce unenforceable laws in recalcitrant states.

Take the issue of marijuana. Noted Boldin:

Here at the Tenth Amendment Center we've been touting marijuana legalization efforts as a nullification of unconstitutional federal laws since our inception. Last fall, when voters in Colorado and Washington State legalized marijuana for the public at large, even the Department of Justice agreed.

And under the ["anti-commandeering" doctrine](#) established in constitutional jurisprudence and summed up nicely by Supreme Court Justice Sandra Day O'Connor, "The Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions," Kansas official cannot be coerced into assisting the federal government in its enforcement of federal laws.

The issue isn't going away any time soon. Watch for the Brady Campaign to refile. Or better yet, watch for Kansas officials to arrest a federal official attempting to enforce an unconstitutional gun law and then enjoy the fireworks.

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