

Date: March 7, 2024
HB 2803, Hearing in the House Federal and State Affairs Committee
Jered Taylor with the American Firearms Association on behalf of our
members
Proponent HB 2803, with written and oral testimony

Honorable Chairman Carpenter and members of the House Federal and State Affairs Committee, my name is Jered Taylor on behalf of the American Firearms Association. Here today to support H.B. 2803, the Kansas Gun Rights Preservation Act, sponsored by Representative Houser. A little background about me, I recently termed out of the Missouri House, where I was a State Representative for 8 years, the Missouri Second Amendment Preservation Act (SAPA), which this bill was modeled after, was my legislation in Missouri and we passed it in 2021. The version you have in front of you is similar but not exactly the same.

Anti-Commandeering

This legislation is based on the established Anti-Commandeering doctrine that has been upheld numerous times by the Supreme Court of the United States dating as far back as 1842 with *Prigg v. Pennsylvania*. Congress passed a law called the Fugitive Slave Act that required states to return fugitive slaves to slave owners and the state of Pennsylvania refused to enforce it. The Supreme Court ruled that the feds can't force states to enforce federal law. There are other examples such as in 1997 *Printz v. U.S.* dealing with the Brady Gun Control legislation the Supreme Court expanded anti-commandeering to include states officers. The Supreme Court ruled that "*Congress cannot circumvent that prohibition by conscripting the States' officers directly.*" In 2012 *NFIB v. Sebelius*, the Supreme Court ruled that states can't be forced to expand Medicare and further the federal government can't withhold funding to the states as punishment. Anti-Commandeering was first introduced by James Madison in *Federalist 46*, explaining to the states that within the 10th amendment the way the states push back on federal overreach is by refusing to comply. He recognized that the feds will use states to enforce federal law and by one state refusing to comply it would cripple the effort by the feds but if multiple states refuse it would be nearly impossible for the feds to proceed.

The argument that is almost certainly brought up is in regards to the Supremacy Clause. That this law violates the Supremacy Clause and is therefore unconstitutional. As I mentioned above this law is based on the Anti-Commandeering doctrine, it does not violate the Supremacy Clause. This law does not tell Federal Law enforcement what they can or can't do in Kansas, we are directing our resources what they can and can't do. If we attempted to arrest or demand or inform federal officers that they can't enforce federal law in Kansas, then I would agree, this would violate the Supremacy Clause. However, nowhere in this legislation does it do any of those things.

What We saw in Missouri

There were concerns with the original bill filed in Missouri but after hearing the concerns of law enforcement, we made several changes that you see reflected in this legislation. We defined that this law only protects law abiding citizens and we defined a law abiding citizen as an individual who is lawful under state law to own and possess a weapon. A prohibited possessor or felon is not a law abiding citizen (page 3 Line 10-13). This bill doesn't make Kansas a sanctuary state for criminals to flee from other states, this bill will not protect an individual who committed a crime in another state (page 1 Line 27-30). This law will not protect an individual who commits a felony controlled substance crime or any felony crimes against a person (page 1 Line 31 through top of page 2 Line 1). We also clarified that Law Enforcement can work with federal law enforcement and use federal resources to enforce any Kansas laws (page 2 Line 5-9). Once these changes were made in Missouri, the law enforcement associations became neutral on this legislation. We worked with law enforcement for months leading up to the passage of this bill to ensure they could still put the bad guys away and protect law abiding citizens. At first our law enforcement had a knee jerk reaction and pulled back their officers from every task force. As they began to understand and operate under SAPA, they have realized that wasn't necessary and are participating in task force's with federal agencies but they are operating a little differently than they previously did. To date, there have been no successful lawsuits from a law abiding citizen filing a claim that a law enforcement agency

violated SAPA. I am only aware of less than a handful of lawsuits filed and each were dismissed immediately because they were either felons or SAPA didn't protect them because of the crime they committed.

SAPA Protects Law Enforcement

This legislation not only protects law abiding citizens but it also protects Kansas law enforcement. Right now, Kansas cops have two choices, either enforce federal law, including any new rule the ATF comes out with or stick to their morals and lose their jobs. This legislation gives them a third option, the option to point to this legislation and refuse to enforce an unconstitutional dictate. The men and women on the street love this legislation, they understand the protection it provides them. Most law enforcement officers are very pro-Second Amendment. They know the risk of having to enforce federal law against law abiding citizens and they want a way out.

Missouri SAPA Court Battles

The United States DOJ filed suit in federal court against SAPA in February 2022. We received the Judge Wimes decision in May of 2023 and it was in favor of the DOJ but the judge put a stay on his order which meant SAPA was still in place temporarily. Judge Wimes decision did not make a ruling or discuss the core of the bill which is the 10th amendment, he took the talking points of the DOJ and picked parts that he didn't like and wrote his decision based on that. Just two weeks ago we gave oral arguments in front of the 8th Circuit Court of Appeals. We expect a decision by August. After the decision from Judge Wimes, we decided to edit SAPA and remove any unnecessary portions of the bill, the sections the judge focused on and that is the legislation you have before you. The legislation you have before you is a result of those changes. We have filed similar legislation in no less than half a dozen states and have been through committee in some of those states. There are two other lawsuits in state court. One was filed by the large democrat controlled cities, Kansas City, STL, and Columbia. They also requested an immediate injunction that the court denied and ruled in favor of the state, which was then heard by the Missouri Supreme Court who also didn't order an injunction and remanded it back to the lower court. The second suit in the state was filed by several small municipalities who told me specifically that

they aren't looking to stop SAPA from being implemented, they just want court clarification on a few things, rather than relying on different attorney opinions who are each giving them different answers.

Why It's Critical We Pass it Immediately

Democrat gun control is no longer rhetoric, Biden has weaponized the ATF to go after law abiding citizens by redefining firearms and accessories, we consistently see democrats in Congress file legislation to ban certain types of weapons because they look scary or create hurdles for law abiding citizens to purchase weapons. Just a few years ago, democrats stuck to the lie that they "don't want to take away your guns", Joe Biden now regularly says "come hell or high water" he's going to ban "assault weapons" and high capacity magazines. They are actively attempting to ban "assault weapons", limit magazine capacity, require insurance to own a weapon, and ban an individual from possessing a gun without a criminal conviction. We expect you to uphold your oath and protect law abiding citizens from an out of control federal government. Stop using our tax dollars to enforce laws we vehemently disagree with. Our law enforcement isn't an extension of the federal government, they operate with our tax dollars and should be enforcing our laws. You are a state representative, stand up for Kansas, stop being pushed around by the federal government and bowing down to their overreach. I think you as a State Representative know what your citizens want, not a Senator or Congressman from California or Illinois and certainly not an unelected bureaucrat with the ATF. When will you stop handing over your authority as a Kansas State Representative to the federal government? If not now, when?