I Support
Missouri's
Second Amendment
Preservation Act!
SB 367 & HB 1039 & HB 786

SAPA

SB 588 (Burlison)
HB 1637 (Taylor)

The Second Amendment Preservation Act

The best constitutionally sound statutory protection from *federal threats* on the right to bear arms.

The greatest threat to Missourians' right to bear arms is from the federal government!

Principles:

The general assembly and all of Missouri government is duty bound to:

- Defend Missourians from attacks on their liberty.
- Defend the Missouri and United States Constitutions against every aggression, either foreign or domestic.
- Ensure that federal government is ***relegated to its 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.

Missouri Constitution Article I, Section 23:

- "[T]he right of every citizen to keep and bear arms... shall not be questioned. The rights guaranteed by this section shall be ***unalienable***."
- "...the state of Missouri shall be obligated to uphold these rights ***and shall under no circumstances decline to protect*** against their infringement."

Unconstitutional edicts are not laws at all:

- 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.

Purpose:

To protect Missourians from infringement on their right to bear arms from unconstitutional federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations.

Method:

By application of the time-tested Anti-Commandeering Doctrine.

- Anti-Commandeering is a state's simple refusal to participate in the enforcement or application of federal laws and programs it disagrees with.
- The vast majority of extra-constitutional endeavors of the federal government depend on state and local participation. By denying that assistance, states can effectively neuter or nullify the unwanted federal intrusion within their own jurisdiction.
- SAPA make it **illegal** for Missouri officials to participate, in any way, the enforcement of federal gun control .

Legal Basis:

The U.S. Supreme Court has repeatedly recognized states' authority to use anti-commandeering.

- ***Prigg v. Pennsylvania*** (1842) - Justice Joseph Story held that the federal government **could not force** states to implement or carry out the Fugitive Slave Act of 1793
- ***New York v. United States*** (1992) - Sandra Day O'Connor wrote for the majority, saying "Congress may not simply"**commandeer** the legislative processes of the States.
- ***Printz v. United States*** (1997) - Supreme Court agreed with Sheriffs Mack and Printz that, as state level officials, they **could not be forced to participate** in the Brady Gun Bill.
- ***NFIB v. Sebelius*** (2012) - The U.S. Supreme Court **cited the anti-commandeering doctrine** to not only affirm the states' right to refuse to expand Medicare, but also to prohibited federal retribution through withholding federal funds.
- ***Murphy v. NCAA*** (2018), the Court held that Congress can't take any action that "dictates what a state legislature may and may not do" even when the state action conflicts with federal law. Samuel Alito wrote, "a more direct affront to state sovereignty is not easy to imagine."

Anti-Commandeering: An overview of five major Supreme Court cases

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The Supreme Court has long held that states do not have to actively participate in the enforcement or effectuation of federal acts or regulatory programs.

James Madison's advice for resisting federal overreach in Federalist #46 serves as the basis for what we now know as the legal doctrine of "anti-commandeering." Madison advised four primary tactics for individuals and states to effectively push back against federal overreach, including a "refusal to cooperate with officers of the Union."

The following are the five landmark cases where the Court has upheld this doctrine.

In Prigg v. Pennsylvania (1842), Justice Joseph Story held that the federal government could not force states to implement or carry out the Fugitive Slave Act of 1793. He said that it was a federal law, and the federal government ultimately had to enforce it:

The fundamental principle applicable to all cases of this sort, would seem to be, that where the end is required, the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted. The clause is found in the national Constitution, and not in that of any state. It does not point out any state functionaries, or any state action to carry its provisions into effect. The states cannot, therefore, be compelled to enforce them; and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or instrusted to them by the Constitution.

In New York v. United States (1992) the Court held that the regulations in the Low-Level Radioactive Waste Policy Amendment Act of 1985 were coercive and violated the sovereignty of New York, holding that "because the Act's take title provision offers the States a 'choice' between the two unconstitutionally coercive alternatives–either accepting ownership of waste or regulating according to Congress' instructions–the provision lies outside Congress' enumerated powers and is inconsistent with the Tenth Amendment."

Sandra Day O'Connor wrote for the majority in the 6-3 decision:

As an initial matter, Congress may not simply "commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program."

She later expounded on this point.

While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions.

Printz v. United States (1997) serves as the lynchpin for the anti-commandeering doctrine. At issue was a provision in the Brady Gun Bill that required county law enforcement officers to administer part of the background check program. Sheriffs Jay Printz and Richard Mack sued, arguing these provisions unconstitutionally forced them to administer a federal program. Justice Antonin Scalia agreed, writing in the majority opinion "it is apparent that the Brady Act purports to direct state law enforcement officers to participate, albeit only temporarily, in the administration of a federally enacted regulatory scheme."

Citing the New York case, the court majority declared this provision of the Brady Gun Bill unconstitutional, expanding the reach of the anti-commandeering doctrine.

We held in New York that Congress cannot compel the States to enact or enforce a federal regulatory program.

Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. 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. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty.

In Independent Business v. Sebelius (2012), the Court held that the federal government cannot compel states to expand Medicaid by threatening to withhold funding for Medicaid programs already in place. Justice Robert Kennedy argued that allowing Congress to essentially punish states that refused to go along violates constitutional separation of powers.

The legitimacy of Congress's exercise of the spending power "thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.' " Pennhurst, supra, at 17. Respecting this limitation is critical to ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system. That system "rests on what might at first seem a counterintuitive insight, that 'freedom is enhanced by the creation of two governments, not one.' " Bond, 564 U. S., at (slip op., at 8) (quoting Alden v. Maine, 527 U. S. 706, 758 (1999)). For this reason, "the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." New York, supra, at 162. Otherwise the two-government system established by the Framers would give way to a system that vests power in one central government, and individual liberty would suffer.

In Murphy v. NCAA (2018), the Court held that Congress can't take any action that "dictates what a state legislature may and may not do" even when the state action conflicts with federal law. Samuel Alito wrote, "a more direct affront to state sovereignty is not easy to imagine." He continued:

"*The anticommandeering 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… Conspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States. The anticommandeering doctrine simply represents the recognition of this limit on congressional authority.*"

Taken together, these five cases firmly establish a legal doctrine holding that the federal government has no authority to force states to participate in implementing or enforcing its acts.

Madison's advice in Federalist #46, supported by the anti-commandeering doctrine, provides a powerful tool that states can use against federal acts and regulatory programs.