

**TESTIMONY OF REP. JOHN RUBIN
IN SUPPORT OF HB 2199**

**BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
MARCH 26, 2012**

Chairman Ostmeyer and committee members, I appreciate this opportunity to testify today as the lead sponsor and proponent of HB 2199. I am proud that 49 House colleagues have joined me in sponsoring this vitally important legislation, which proclaims loudly and clearly that not only the Second Amendment but the Tenth Amendment to the United States Constitution are alive and well in Kansas, and which for the first time puts real teeth into protecting the precious individual right of every Kansan to keep and bear arms under the United States and Kansas Constitutions.

This proposed legislation begins by citing the constitutional rights guaranteed to every Kansan to keep and bear arms under the Second Amendment and, under the Ninth and Tenth Amendments, to retain all powers and rights not specifically granted to the federal government – guarantees that were understood as a precondition to and a matter of contract between the state of Kansas and the federal government at the time Kansas entered the compact to join the Union in 1859. It also details the individual right guaranteed to every Kansan by Section 4 of the Bill of Rights in the Kansas constitution to keep and bear arms free of government interference.

Predicated upon these clear and unequivocal constitutional guarantees, this bill establishes two circumstances under which the federal government has no enforceable authority to regulate, restrict or ban Kansas firearms, and prohibits any state or federal attempt to do so.

First, it declares that any firearms, firearms accessories or ammunition (terms defined in section 3 of the bill) that are commercially or privately manufactured (defined in section 3) in Kansas, properly stamped “Made in Kansas,” owned in Kansas, and remain within the borders of Kansas have clearly not traveled in interstate commerce. As such, they are not subject to any current or future federal act, law, treaty, executive order, rule or regulation under the authority of Congress to regulate interstate commerce or any other constitutional theory. (Section 4.) Thus no state official, employee or agent may enforce any federal act, law, treaty, executive order, rule or regulation regarding any such Kansas-made firearm, accessory or ammunition. (Section 6(b).) Moreover, any federal official, agent, employee or contractor who enforces or attempts to

enforce any federal act, law, treaty, executive order, rule or regulation upon any such Kansas-made firearm, accessory or ammunition commits a severity level 10 nonperson felony under the Kansas criminal code and is subject to arrest and prosecution for same. (Section 7.)

Second, this bill declares that any federal act, law, treaty, executive order, rule or regulation that violates the Second Amendment of the U.S. Constitution is null, void and unenforceable in Kansas with respect to **any** firearm, accessory or ammunition, regardless of where it was manufactured or from what state it was imported into Kansas. (Section 6(a).)

In sum, this bill declares that there is no constitutional basis for the federal government to regulate, restrict or ban Kansas-made and owned firearms, accessories or ammunition, both because this is not a specifically enumerated power of the United States, and because such firearms, accessories and ammunition are not in interstate commerce. Moreover, any federal firearms law, order, rule or regulation that violates the United States Constitution is null, void and unenforceable in Kansas, regardless of where the firearms were manufactured or from where they are imported into Kansas.

Do not be dissuaded in asserting Kansas sovereignty under the Tenth Amendment. For those who proclaim the federal government's paramount right to regulate, restrict or ban Kansas firearms under the Constitution's supremacy clause, who say that this legislation is fruitless, a waste of time, because "everyone knows that federal laws trump state laws," there is a simple answer: the supremacy clause does not apply to federal laws, rules, regulations or orders **that are unconstitutional**. Who says so? The United States Supreme Court.

In holding that Congress could not subject the State of Maine to suit in state court under the Fair Labor Standards Act, the U. S. Supreme Court in *Alden v. Maine*, 119 S.Ct. 2240 (1999) said : "The States retain a 'residual and inviolable sovereignty' under the Constitution.... "As is evident from its text, however, the Supremacy Clause enshrines as 'the supreme Law of the Land' only those Federal Acts that accord with the constitutional design.... Appeal to the Supremacy Clause alone merely raises the question whether a law is a valid exercise of the national power."

And, in a federal firearms regulation case uniquely relevant here, the Supreme Court in *Printz v. U.S.*, 117 S.Ct. 2365 (1997) held that the handgun background check requirement of the federal Brady Handgun Violence Prevention Act was unconstitutional and could not be enforced against the state of Montana, saying: "When a law for carrying into execution the Commerce Clause violates the principle of state sovereignty reflected in the ... constitution ..., it is not a law proper for carrying into execution the Commerce Clause.... Even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. The Supremacy Clause, however, makes the 'law of the land' only laws of the United States which shall be made in pursuance of the Constitution.... The federal government may not compel the States to implement, by legislation or executive action, federal regulatory programs."

Accordingly, any attempt by state officials to enforce any such federal laws, rules, regulations or orders on Kansas firearms, accessories or ammunition, is prohibited because it is

unconstitutional, and any attempt by any federal official to do so subjects him to arrest and prosecution in Kansas.

Committee members, I ask you to stand with me and 49 of your legislative colleagues in preserving, protecting and defending every Kansan's individual right under the Second and Tenth Amendments to the United States Constitution and Section 4 of the Kansas Bill of Rights to keep and bear arms. I ask you to declare that the 10th Amendment to the United States Constitution is alive and well in Kansas. I ask you to report HB 2199 favorably for passage.

Thank you, and I would be pleased to stand for questions.