

## State Non-Enforcement of ATF Proposed Rule Timeline

### What has happened with 2A Sanctuaries & the Biden Administration ATF's Gun Control Proposed rules?

1. The Biden Administration ATF announced a [Proposed Rule to regulate gun parts and keep Form 4473s](#) forever.
2. The Biden Administration ATF announced [a Proposed Rule to ban roughly 40,000,000 pistols](#).
3. Texas AG Ken Paxton [sent a letter](#) to the Bureau of Alcohol, Tobacco, Firearms and Explosives opposing its June 7 proposal to require federal registration of firearms with attached “stabilizing braces.”
  - a. “I strongly disagree with the recent notice of proposed rulemaking on “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces’” issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”).

“The new federal registration requirement would not only be time-consuming and cumbersome, but also places an additional and unnecessary expense on Americans exercising a basic constitutional right.

“My office will consider all available options to stop this action and any effort to restrict Second Amendment rights.”

4. Missouri Attorney General Schmitt, Governor Parson [Send Letter](#) to Biden DOJ, Fighting Federal Encroachment on Missourians' Second Amendment Rights
  - a. The letter argues that, under the Second and Tenth Amendments, the right to keep and bear arms is inalienable, and that Missouri has the right to refuse to enforce unconstitutional infringements by the federal government. The letter states, “Likewise, the Tenth Amendment directly limits the Federal Government’s ability to shift the balance of power within the federal system away from the States... the State of Missouri has every right under our system of government and the Tenth Amendment to place limitations on what state and local officials may do.”
  - b. The letter ends with, “We will fight tooth and nail to defend the right to keep and bear arms protected by the Second Amendment, Article I, § 23 of the Missouri Constitution, and the Second Amendment Preservation Act. And we will not

tolerate any attempt by the federal government to deprive Missourians of this critical civil right.”

5. Rep. Roy and his [Texas colleagues urge Governor Abbott](#) to fight Biden’s radical gun control agenda
  - a. But we would also support any efforts you can take under Texas’s new Second Amendment Sanctuary to prohibit state funding from flowing to any Texas agency or political subdivision that attempts in any way to assist in enforcing President Biden’s offensive, tyrannical gun control agenda, including the above-mentioned proposed regulations. We urge you to work with Texas agencies, political subdivisions, law enforcement officers and employees thereof to prevent any enforcement scheme.

We stand with you to ensure that regardless of any actions of the federal government, Texans’ right to keep and bear arms is not infringed.

6. Forty-Eight Senators [Urge ATF](#) to Withdraw Pistol Brace Ban Rule
  - a. McConnell says:
    - i. Federal law enforcement should focus on the criminals committing violent crimes in American cities—[not on law abiding gun owners!](#)
    - ii. The Justice Department [should] [cease its efforts](#) to restrict the use of common pistol-brace devices by lawful gun owners... We're talking about a plan that would turn millions of law-abiding Americans into criminals with a stroke of a pen.

**What we need next from elected officials:**

7. Governors
  - a. Issue proclamation to reject infringements on the right to keep and bear arms like Nebraska.
8. Attorney Generals
  - a. Issue memo of prosecutorial discretion & non-enforcement of ATF’s new proposed rules
  - b. Obama DOJ [did it with Marijuana](#)
9. Federal and State Senators & Representatives

- a. Urge your Governors and Attorney Generals to issue memos and proclamations of non-enforcement

## 10. Local officials

- a. Pass Second Amendment Sanctuary Ordinances

States have the right to refuse to enforce unconstitutional infringements by the federal government (*See Missouri Letter Argumentation*):

"It is the proud boast of our democracy that we have 'a government of laws, and not of men. "' Morrison v. Olson, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting). "The Framers of the Federal Constitution . . . viewed the principle of separation of powers as the absolutely central guarantee of a just Government." Id

"Without a secure structure of separated powers, our Bill of Rights would be worthless, as are the bills of rights of many nations of the world that have adopted, or even improved upon, the mere words of ours." Id. "The purpose of the separation and equilibration of powers in general . . . was not merely to assure effective government but to preserve individual freedom." Id at 727. "While the separation of powers may prevent us from righting every wrong, it does so in order to ensure that we do not lose liberty." Id at 710.

"The federal system rests on what might at first seem a counterintuitive insight, that 'freedom is enhanced by the creation of two governments, not one. Bond v. United States, 564 U.S. 211, 220-21 (2011) (quoting Alden v. Maine, 527 US. 706, 758 (1999)).

"[F]ederalism secures to citizens the liberties that derive from the diffusion of sovereign power." Bond, 564 U.S. at 221 (2011) (quoting New York v. United States, 505 U.S. 144, 181 (1992)). "Federalism also protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions." Id. Moreover, "federalism enhances the opportunity of all citizens to participate in representative government." FERC v, Mississippi, 456 U.S. 742, 789 (1982) (O'Connor, J. , concurring in part and dissenting in part), By preserving room for experimentation in the States, federalism also supports policy innovation that can address many of society's most pressing problems, New State Ice Co. v. Liebmann, 285 U.S. 262, 310-11 (1932) (Brandeis, J., dissenting).

Likewise, the Tenth Amendment directly limits the Federal Government's ability to shift the balance of power within the federal system away from the States. See Printz v. United States, 521 U.S. 898, 919-20 (1997). Thus, "[t]he principles of limited national powers and state sovereignty are intertwined. . . . Impermissible interference with state sovereignty is not within the enumerated powers of the National Government, and action

that exceeds the National Government's enumerated powers undermines the sovereign interests of the States." Bond, 564 U.S. at 225 (citations omitted).

The Constitution of the United States created a system of "dual sovereignty" in which the States retained "a residuary and inviolable sovereignty." Printz, 521 U.S. at 918 (quoting Gregory v. Ashcroft, 501 U.S. 452, 457 (1991) and The Federalist No. 39, at 245 (J. Madison)). "[T]he Framers rejected the concept of a central government that would act upon and through the States, and instead designed a system in which the State and Federal Governments would exercise concurrent authority over the people—who were, in Hamilton's words, 'the only proper objects of government.'" Id. at 919-20 (quoting The Federalist No. 15, at 109). "[T]he preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government, The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." Texas v. White, 74 U.S. 700, 725, 19 L. Ed. 227 (1868), overruled in part by Morgan v. United States, 13 U.S. 476, 28 L. Ed. 1044 (1885). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." Gregory v. Ashcroft, 501 U.S. 452, 458 (1991).

"[S]tate legislatures are not subject to federal direction," Printz, 521 U.S. at 912 (citing New York v. United States, 505 U.S. 144 (1992)); see also id. at 925 ("[T]he Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs."). The federal government has been down this road before on a gun issue, so it should know better. See id. In Printz, the Supreme Court held that certain interim provisions of the Brady Handgun Violence Protection Act, commanding state and local law enforcement officers to conduct background checks on prospective handgun purchasers and to perform certain related tasks, violated the Tenth Amendment. Id. at 902, 935. Guided by text, structure, history, and original public meaning, the Court aptly observed that the "extensive mutual assistance the States and Federal Government voluntarily provided one another in the early days of the Republic" rested on there being "consent" to such cooperation. Id. at 910-11. Thus, "without the consent of the States," the Court explained, "Congress could [not] impose these responsibilities." Id.; see also id. at 915 ("If it was indeed Hamilton's view that the Federal Government could direct the officers of the States, that view has no clear support in Madison's writings, or as far as we are aware, in text, history, or early commentary elsewhere."). That was because "the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States." Id. at 920 (quoting New York, 505 U.S. at 166). "The Constitution thus contemplates that a State's government will represent and remain accountable to its own citizens." Id.

Accordingly, the State of Missouri has every right under our system of government and the Tenth Amendment to place limitations on what state and local officials may do. The Department of Justice has identified no conflict with federal law from the Second Amendment Preservation Act's restrictions on state activities and hiring practices. Indeed, any such conflict would raise concerns that the federal government was unconstitutionally commandeering Missourians and their State government.

The Department of Justice's June 16, 2021 letter also directly conflicts with its own policy toward "sanctuary cities." On his first day in office, President Biden rescinded President Trump's executive order that prohibited federal grant awards to sanctuary jurisdictions that refused to cooperate with the federal government to enforcement immigration laws. Exec. Order 13993, 86 Fed. Reg. 7051 (Jan. 20, 2021), rescinding Exec. Order 13768, 82 Fed. Reg. 8799, 8801 (Jan. 25, 2017). In April, the Office of Justice Programs reportedly repealed the Department of Justice's policy that required recipients of a law enforcement grant to cooperate with U.S. Immigration and Customs Enforcement as a condition of their funding. See Sarah N. Lynch, Exclusive U.S. Justice Department Ends Trump-Era Limits on Grants to 'Sanctuary Cities,' REUTERS, Apr. 28, 2021, available at <https://www.reuters.com/world/us/exclusive-us-justice-department-ends-trump-eralimits-grants-sanctuary-cities-2021-04-28/> (last accessed June 17, 2021). President Biden and the Department of Justice have decided to reward states and cities that refuse to cooperate with enforcing constitutional immigration laws that protect our citizens against foreign threats, but now they attack Missouri for refusing to cooperate with enforcing unconstitutional gun confiscation laws that put our citizens in danger and degrade their rights. You cannot have it both ways.