IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, on its institutional behalf and on behalf of its members	)	
Plaintiff,	)	
v.	)	**Case No. 14-CV-2327-JAR/KGG**
SAM BROWNBACK, Governor of the State of Kansas, in his official capacity, and DEREK SCHMIDT, Attorney General of the State of Kansas, in his official capacity,	)	
Defendants.	)	

REPLY IN SUPPORT OF MOTION TO DISMISS

Plaintiff's Response to defendants' motion to dismiss (doc. 19) fails to establish that this Court has subject matter jurisdiction. The Response identifies no present and continuing violation of plaintiff's federal rights by the named defendants, without which Eleventh Amendment immunity bars this lawsuit. The Response also fails to articulate how the Complaint states a claim on which relief may be granted. Plaintiff wants this Court to address a hypothetical constitutional challenge that misinterprets both state law and federal law. Because the challenged statutes do not mean what plaintiff would have them mean, and would not apply to plaintiff or any of its members even if they meant what plaintiff supposes they mean, there is a clear lack of Article III standing. When the plain words of the challenged statutes are construed as the Kansas Attorney General has authoritatively construed them, there is no constitutional conflict to resolve. Whether the case is dismissed for lack of jurisdiction or for failure to state a claim, it cannot proceed.

Kansas has the constitutional authority to withdraw its executive branch officials from participation in the enforcement of unconstitutional federal gun control laws. The Response does not challenge the assertion in the motion to dismiss that the Second Amendment Protection Act is fully consistent with the rule of ***Printz v. U.S.***, 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997). Instead it contends that ***Printz*** is 'irrelevant', even though K.S.A. 2014 Supp. 50-1206(b) is plainly and obviously an application of the rule of ***Printz***. *See* Response at pages 28-29. ***Printz*** is not just a relevant case, it is the controlling authority on this issue. ***Printz*** would permit Kansas to turn its back on all federal gun control enforcement, not just the unconstitutional parts. Any assertion to the contrary is legally frivolous.

Kansas has the constitutional authority to prosecute any *ultra vires* or unconstitutional actions taken by federal law enforcement personnel in the course of gun control activities. The Response nowhere mentions the case of ***Wyoming v. Livingston***, 443 F.3d 1211 (10th Cir. 2006) or the doctrine of supremacy clause immunity. Without an analysis of this doctrine the challenge to K.S.A. 2014 Supp. 50-1207 obviously fails. Because the Response fails to address whether K.S.A. 2014 Supp. 50-1207 deviates from existing supremacy clause immunity law, it cannot present a *prima facie* claim that this provision violates federal law.

Kansas has the constitutional authority to incorporate into state law the clearly established limits on federal law that have been announced by the United States Supreme Court and the 10th Circuit Court of Appeals. The Response pretends that ***U.S. v. Patton***, 451 F.3d 615 (10th Cir. 2006) is of no consequence, mentioning ***Patton*** only in a dismissive footnote. *See* Response at page 28 footnote 15. The Response refuses to admit that ***Scarborough v. U. S.***, 431 U.S. 563, 97 S.Ct. 1963, 52 L.Ed.2d 582 (1977) is still the controlling authority within the 10th Circuit that exempts firearms that have never crossed a state line from federal gun control laws

enacted under the Commerce Clause. As long as ***Scarborough*** and ***Patton*** define the limits of federal law within the 10th Circuit, the Second Amendment Protection Act cannot conflict with federal law. Without such a conflict all aspects of the challenge to the Second Amendment Protection Act must fail on the merits.

The Response does not identify any federally protected right of a Brady Campaign member that is threatened by the Second Amendment Protection Act. There is no federal right to have federal officials ignore the Constitution with impunity. There is no federal right to prevent enforcement of the Second Amendment. Brady Campaign has no authority to speak for the federal executive branch to pursue a misguided remedy that wisely was not pursued by Attorney General Holder, a contention that federal law enforcement officials can violate constitutional limitations on their authority without fear of legal consequence.

Plainly this lawsuit is against the State of Kansas, challenging the authority of the Kansas Legislature to pass the Second Amendment Protection Act. Brady Campaign wants the federal courts to admonish the Kansas Legislature and the people of Kansas to leave the enforcement of their Second Amendment rights exclusively in the hands of the federal government. The Governor and the Attorney General are placeholders named to create the fictitious appearance that the remedy sought is not a naked violation of the Second, Tenth, and Eleventh Amendments. Because the State of Kansas has as much authority to enforce the Second Amendment as the federal government has, this lawsuit must fail. Federal agents who violate the Constitution are not constitutionally immune from the legal consequences of that violation.

1. ANALYSIS OF THE SECOND AMENDMENT PROTECTION ACT

The meaning and application of the Second Amendment Protection Act is a matter of state law. A court must not seek out constitutional conflict by employing a strained and unnatural

interpretation of a statute. When a conservative interpretation of a statute avoids constitutional questions, the courts should adopt that interpretation rather than seeking to generate constitutional issues. *See* ***Heller v. District of Columbia***, 670 F.3d 1244, 1250 (D.C. Cir. 2011). The Response points to no Kansas judicial decision and no official interpretation by the Kansas Attorney General that would agree with the plainly erroneous interpretations of state law offered by Brady Campaign. The statute cannot fail plaintiff's manufactured constitutional challenge because of what it does not say.

The Response fails to direct the Court's attention to the particular language of the Second Amendment Protection Act that might be construed to result in the claimed list of horrors alleged in the Complaint, and instead asks the Court to take plaintiff's word for the conclusion that these consequences will someday flow from the Act. The Response cites to a newspaper article that is not mentioned in the Complaint to support its claim that the real purpose of the Act is to interfere with constitutionally permissible federal law enforcement efforts. *See* Response at page 1, footnote 1. This reference is inappropriate because the motion addresses only the facts alleged in the Complaint. The cited article says only that Governor Brownback plans to resist *ultra vires* and unconstitutional acts by the federal executive. Brady Campaign's preference for permitting the federal executive to violate Second Amendment rights with impunity does not alter the plain purpose of the Second Amendment Protection Act, the reaffirmation of state law remedies for undeniable violations of the Constitution by federal officials.

The Response contends at page 5 that the Second Amendment Protection Act "creates conflict and confusion as to what even constitutes a firearm," asserting that its definition of a firearm is not the same as the definition appearing in the National Firearms Act. But neither is the definition of a firearm in the Gun Control Act of 1968 consistent with the NFA definition of

that term. The NFA terminology is unique to that statute, and includes within its definition of "firearm" objects that do not meet any common sense definition of an ordinary firearm. The Second Amendment Protection Act has its own definition section, K.S.A. 2014 Supp. 50-1203. That section does not include a new definition of the term "firearm". Kansas law has always defined the word "firearm" differently than the NFA definition, so the Second Amendment Protection Act cannot be blamed for the alleged "conflict and confusion". *See* ***State v. Johnson***, 8 Kan.App.2d 368, 370, 657 P.2d 1139, *rev. denied* 233 Kan. 1093 (1983). The Kansas definition of firearms "accessories" is consistent with the federal statutory definition of that term. *See* ***Auto-Ordnance Corp. v. U.S.***, 822 F.2d 1566 (Fed. Cir. 1987).

The Response continues to assert without factual or legal basis that the Second Amendment Protection Act imposes "potential civil liability for state and local officials." Any civil liability for violating the Second Amendment Protection Act would have to arise under 42 U.S.C.§1983, not state law, because Kansas law does not recognize the possibility of civil liability under state law for violation of duties owed exclusively by state officials. Injunctive relief under K.S.A. 2014 Supp. 50-1208 plainly applies only to federal actors. No liability can be implied from the circumstance that the Second Amendment Protection Act defines the scope of the lawful authority of state and local government employees. Implied statutory civil causes of action are not recognized in Kansas. *See* K.S.A. 2014 Supp. 60-5201.

There is no state law civil remedy for alleged "government torts", wrongs that can only be committed by government officials. The case of ***Prager v. State, Dept. of Revenue***, 271 Kan. 1, 20 P.3d 39 (2001) analyzed the propriety of state court lawsuits for alleged deprivation of constitutional rights by state actors. The plaintiff in the ***Prager*** case sought to recover from his former employer under multiple theories, including a KTCA claim for violation of his due

process and free speech rights when he was fired from his job with the Kansas Department of Revenue. The Kansas Supreme Court rejected the claim made under the KTCA with the following comments:

> We hold the trial court correctly dismissed Prager's First Amendment claims under the KTCA because of sovereign immunity and also for the reasons relied upon in its memorandum decision to which we previously referred. The basic premise to both reasons is whether the Kansas Legislature, when it enacted the KTCA, created a cause of action for a constitutional tort or specifically waived its immunity when such a cause of action is claimed. We hold that it did neither.
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> The language of the Kansas Constitution may be worded more broadly than the United States Constitution, but we have treated both provisions as "generally considered coextensive." *See* ***State v. Russell***, 227 Kan. 897, 899, 610 P.2d 1122 (1980), cert denied 449 U.S. 983, 101 S.Ct. 400, 66 L.Ed.2d 245 (1980). In ***Boyer v. Board of County Comr's of Johnson County***, 922 F.Supp. 476, 483 n. 5 (D.Kan.1996), aff'd 108 F.3d 1388, 1997 WL 143597 (D.Kan.1997), the court refused to permit a claim for money damages under the KTCA for violation of free speech rights under the Kansas Constitution because a constitutional tort could not have been brought against a private person; the court rejected Boyer's argument that the free speech language of the Kansas Constitution would permit her action because of its broader language.
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> For all the reasons above stated, we hold the trial court correctly dismissed Prager's attempted claim of count two for violation of his claimed constitutional rights of free speech. (*See* 271 Kan. at pp. 62, 64)

Statutorily defining the official actions that would exceed the lawful authority of state and local officials does not impose civil liability under Kansas law. The Second Amendment Protection Act does not change the fact that no state-imposed civil liability is possible for an *ultra vires* act of a municipal official.

2. PARTIES, STANDING, AND JURISDICTION

Plaintiff is unable to identify any potential connection between its members and the Second Amendment Protection Act other than fear of enforcement of the Second Amendment, and an illogical contention that Mayor Gernon might somehow be mistaken for a federal law

enforcement official even though he is not one now and does not plan to become one. These contentions do not establish either Article III standing or prudential standing.

The Response completely ignores ***Clapper v. Amnesty Intern. USA***, __US__, 133 S.Ct. 1138, 1147, 185 L.Ed.2d 264 (2013). Without a discussion of ***Clapper*** it is not possible to demonstrate Article III standing under the current legal standard. There is no imminent injury here, or even a remotely distant speculative injury to plaintiff or its members. There is no causal connection between the passage of the Second Amendment Protection Act and the potential injury alleged, because the constitutional limits described in the Second Amendment Protection Act already existed under controlling federal law. And the supposed injuries will not be redressed by the order sought, since the controlling principles of federal law will remain in effect just as they were already in force before the Second Amendment Protection Act was passed. The only difference between the law before 2013 and the law today is the possibility of a prosecution of some federal law enforcement agent who oversteps his clearly defined lawful authority. No Brady Campaign member will suffer injury from such a hypothetical future prosecution. Therefore Article III standing is plainly absent.

In ***Clapper*** the plaintiffs argued that they had standing to challenge surveillance of foreign targets because some of those targeted foreigners might engage in communications with the plaintiffs, resulting in an invasion of plaintiffs' privacy. The Supreme Court found that the remote possibility that plaintiffs could suffer invasion of their own privacy was not enough to establish Article III standing. Brady Campaign has asserted no facts that would make an alleged future injury to its members any less speculative than the claims made in ***Clapper***. In order for any Brady Campaign member to be threatened with bodily injury by a "Kansas firearm", there must first be some "Kansas firearms" produced, then those firearms must be obtained by

criminals, and then the criminals must employ their "Kansas firearms" in the presence of one or more Brady Campaign members. All that has been alleged is that a Missouri criminal once brought federally regulated firearms from Missouri to Kansas.

The Response also contends that firearms have been manufactured in Kansas in the past, before adoption of the Second Amendment Protection Act, under federal licenses. *See* Response at page 22, footnote 11. But these are not unregulated and unlicensed "Kansas firearms" authorized by the Second Amendment Protection Act. The existence of federally licensed firearms made in Kansas and sold outside Kansas in interstate commerce is not traceable to the passage of the Second Amendment Protection Act, and those weapons are unaffected by the challenged law. None of these allegations creates any foreseeable prospect that a Brady Campaign member will be adversely affected by passage of the Second Amendment Protection Act, any more than the unsuccessful allegations made in ***Clapper*** established the necessary injury.

Contrary to the assumption underlying the Response, Article III standing has never been upheld solely based on allegations of emotional distress "injury" at the prospect that a plaintiff's view of the Constitution is not being followed:

> [A]ssertion of a right to a particular kind of Government conduct, which the Government has violated by acting differently, cannot alone satisfy the requirements of Art. III without draining those requirements of meaning.
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> Although respondents claim that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered by them as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees. That is not an injury sufficient to confer standing under Art. III, even though the disagreement is phrased in constitutional terms. It is evident that respondents are firmly committed to the constitutional principle of separation of church and State, but standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy. (*See* ***Valley Forge***

> ***Christian Coll. v. Americans United for Separation of Church & State, Inc.***, 454 U.S. 464, 483, 485-86, 102 S. Ct. 752, 764, 765-66, 70 L. Ed. 2d 700 (1982)).

To the same effect *see* ***Hobby Lobby Stores, Inc. v. Sebelius***, 723 F.3d 1114 *aff'd sub nom.* ***Burwell v. Hobby Lobby Stores, Inc.,*** 134 S. Ct. 2751, 189 L. Ed. 2d 675 (2014); ***Schaffer v. Clinton***, 240 F.3d 878, 884 (10th Cir. 2001); ***Schmidt v. Cline***, 127 F. Supp. 2d 1169, 1172 (D. Kan. 2000). Fear of possible future injury is not the same as a real likelihood of real injury, for purposes of Article III standing.

The Second Amendment Protection Act has adopted 10th Circuit case law as state law. Before 2013 federal gun control laws enacted under the Commerce Clause were not applied within the 10th Circuit to firearms that never crossed a state line. The only federal gun control law that applied to guns that never crossed state lines was the National Firearms Act, which is a taxation and registration law. State criminal laws were already being applied to punish federal agents who acted beyond their statutory and constitutional authority, within the limits of the judicially crafted doctrine of supremacy clause immunity. These are statements of federal law, not state law. These principles of federal law are honored and respected by the Second Amendment Protection Act, even though they are neither honored nor respected by the Response filed by Brady Campaign.

There is no federal statute and no federal constitutional provision that grants a federal right to be free of state laws that protect rights granted under the Second Amendment. There is nothing constitutionally objectionable to the incorporation into state law of controlling principles of federal law:

> It is precisely this understanding—the correct understanding—of the federal Equal Protection Clause that the people of the State of Michigan have adopted for their own fundamental law. By adopting it, they did not simultaneously offend it. (*See* ***Schuette v. BAMN***, 134 S. Ct. 1623, 1639, 188 L. Ed. 2d 613 (2014), Scalia, concurring)

The Response does not explain why Kansas should be prohibited from enforcing the preexisting federally created limitations on federal jurisdiction and constitutional authority. No rule of constitutional law makes the federal government the sole enforcer of the Constitution. No rule of constitutional law precludes the enforcement of the Second Amendment by state criminal sanction. Just as Kansas has the authority to punish violations of the First, Fourth, Fifth, and Eighth Amendments, it also has the power to punish violations of the Second Amendment.

The allegations concerning Mayor Gernon's alleged exposure to prosecution under the Second Amendment Protection Act are both fanciful and illogical. At page 15 footnote 7 the Response contends that Mayor Gernon must *per se* be treated as a federal agent enforcing federal gun laws if he lacks authority to enforce federal gun laws in his roles as mayor and as physician/educator at the University of Kansas School of Medicine. This conclusion has never been suggested by anyone who speaks for the State of Kansas. The suggested conclusion is plainly contrary to federal law, which does not presume that every local official who participates in operations governed by federal law must therefore be a federal employee or agent. *See* ***Vandeventer v. Guimond***, 494 F. Supp. 2d 1255 (D. Kan. 2007). Nothing in any of the roles described would call upon Mayor Gernon to participate in the enforcement of federal gun control laws. Mayor Gernon may wish to be treated as a federal law enforcement official, but the State of Kansas will not grant that wish.

On page 23 the Response cites ***Qwest Corp. v. City of Santa Fe, New Mexico***, 380 F.3d 1258 (10th Cir. 2004) for the conclusion that there is a federal right to sue to litigate a claim that a state law is preempted by a federal statute. But there is no claim of statutory preemption set forth in the Complaint. Federal gun laws do not preempt state gun control laws. Neither the 1934

National Firearms Act nor the 1968 Gun Control Act purport to preempt or displace continuing state authority to legislate on the subject of gun control. *See* 18 USCA § 927.

The Response at page 11 footnote 5 seeks to distinguish ***Peterson v. Martinez***, 707 F.3d 1197, 1205-1206 (10th Cir. 2013) but relies on a misstatement of law to do so, asserting that the Kansas Attorney General is delegated authority under the Second Amendment Protection Act to prosecute criminal violations of its provisions, and claiming that the Kansas Attorney General is "the enforcer of the act." K.S.A. 2014 Supp. 50-1208 refers only to the Kansas Attorney General's authority to commence a civil suit for injunctive relief against federal agents and includes no grant of authority to commence a criminal prosecution. The complaint does not contend that the potential pursuit of declaratory or injunctive relief, which is a remedy that has always been available to the Kansas Attorney General, is an unconstitutional feature of the Second Amendment Protection Act. Neither the Governor nor the Attorney General is alleged to play any role in initiating or pursuing a possible criminal prosecution, which is the hypothetical nonparty constitutional grievance stated. The only participation of the Governor is the fact that he signed the law after the legislature passed it. Contrary to the assertion made in the Response, the Governor of Kansas does not give orders to the Kansas Attorney General to commence criminal prosecutions under the Second Amendment Protection Act.

Elsewhere in the Response plaintiff relies on the general executive authority of Governor Brownback and Attorney General Schmidt in support of blanket standing to answer a lawsuit challenging the constitutionality of any Kansas law, contrary to the rule of the most recent 10th Circuit precedent expressly rejecting this argument:

> Here, the Oklahoma officials' generalized duty to enforce state law, alone, is insufficient to subject them to a suit challenging a constitutional amendment they have no specific duty to enforce. *See* ***Women's Emergency Network v. Bush***, 323 F.3d 937, 949-50 (11th

> Cir.2003) ("Where the enforcement of a statute is the responsibility of parties other than the governor (the cabinet in this case), the governor's general executive power is insufficient to confer jurisdiction."); *see* also ***Waste Mgm't. Holdings, Inc. v. Gilmore***, 252 F.3d 316, 330-31 (4th Cir.2001) (concluding governor's general duty to enforce the laws of Virginia insufficient when he lacks a specific duty to enforce the challenged statutes); ***Okpalobi v. Foster***, 244 F.3d 405, 422-25 (5th Cir.2001) (en banc) (constitutional challenge to state tort statute against Governor and Attorney General not viable under the Ex Parte Young doctrine because no enforcement connection existed between Governor or Attorney General and the statute in question); ***1st Westco Corp. v. Sch. Dist. of Phila***., 6 F.3d 108, 112-13, 116 (3d Cir.1993) ("If we were to allow [plaintiffs] to join ... [the State officials] in this lawsuit based on their general obligation to enforce the laws ..., we would quickly approach the nadir of the slippery slope; each state's high policy officials would be subject to defend every suit challenging the constitutionality of any state statute, no matter how attenuated his or her connection to it."). (*See* ***Bishop v. Oklahoma***, 333 F. App'x 361, 365, 2009 WL 1566802 (10th Cir. 2009), *affirmed following remand sub nom* ***Bishop v. Smith***, 760 F.3d 1070, 2014 WL 3537847 (10th Cir. 2014))

If the requirements of the Eleventh Amendment are satisfied by this lawsuit, then there is no more Eleventh Amendment.

Prudential standing principles are especially relevant in this lawsuit, where Brady Campaign seeks to pursue relief that the United States Attorney General has declined to pursue, based on a theory of constitutional law that cannot be sustained. Brady Campaign wants this Court to declare that federal law enforcement officers are free to violate the Second Amendment and to act beyond the limits of their clearly defined jurisdiction with absolute impunity, free from even the limitations of the judicial doctrine of supremacy clause immunity. If that issue is to be considered on the merits, then it should be pursued by the Department of Justice, not by a private lobbying organization. Brady Campaign has failed to brief the issues seriously, failing even to mention the most important precedents, which should be the clearest indicator that it is not a proper litigant to pursue resolution of this issue.

3. FAILURE TO STATE A CLAIM

The standard for considering a motion to dismiss for failure to state a claim is well settled:

> "[A]ll well-pleaded allegations of the complaint are accepted as true and viewed in a light most favorable to the nonmoving party. *While factual assertions are taken as true, legal conclusions are not*. To survive dismissal under Rule 12(b)(6) for failure to state a claim, plaintiffs must "nudge[ ] their claims across the line from conceivable to plausible." ***Bell Atl. Corp. v. Twombly***, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). "A claim has facial plausibility when the [pleaded] factual content ... allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." A***shcroft v. Iqbal***, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)." [Emphasis supplied; *see* ***Berneike v. CitiMortgage, Inc.***, 708 F.3d 1141, 1144-1145 (10th Cir. 2013)].

For the reasons discussed above, there is no substantive merit to any of the purported federal claims described in the Complaint. Because no existing federal law conflicts with the Second Amendment Protection Act there is no preemption and no violation of the Supremacy Clause. When federal courts repeatedly state that federal power extends up to a well-defined line and not beyond it, state law can enforce that limitation without violating either the Supremacy Clause or the Due Process Clause. Because only federal agents can be charged with a criminal violation of the Second Amendment Protection Act, and due process will be afforded to them in the same way it applies to any other federal agent charged with a crime in state court, there can be no violation of due process. The Second Amendment Protection Act is not vague under either federal or state law standards, because its application requires nothing more than reliance on a handful of existing federal precedents.

The Response seeks to evade the legal burden that must be met in a facial attack on the constitutionality of a law by citing to cases involving regulation of free speech and alleged violations of First Amendment rights. A different rule applies to First Amendment cases. There are no First Amendment issues raised in the complaint. A facial attack on the constitutionality of

a statute that does not regulate speech can only succeed "by "establish[ing] that no set of circumstances exists under which the Act would be valid," i.e., that the law is unconstitutional in all of its applications." *See* ***Washington State Grange v. Washington State Republican Party***, 552 U.S. 442, 449, 128 S.Ct. 1184, 1191, 170 L.Ed.2d 151 (2008). The Complaint does not contend that the Second Amendment Protection Act regulates speech, and it does not allege that the Act violates federal law in every one of its potential applications. If neither condition is met, then the Second Amendment Protection Act cannot be facially unconstitutional. Since the Act does not apply to individual members of Brady Campaign on the facts alleged, it cannot be unconstitutional as applied to them.

The Response does not even establish that the Second Amendment Protection Act would be unconstitutional in any application to any person, let alone that it would be unconstitutional in every application. Kansas has the constitutional authority to withdraw its executive branch officials from participation in the enforcement of federal gun control laws, under ***Printz v. U.S.***, 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997). The fact that Kansas has chosen only to withdraw cooperation in the enforcement of unconstitutional federal law enforcement activities is even admitted by the Response. *See* Response at p. 29, footnote 16, conceding that Kansas continues to cooperate in the enforcement of NFA regulations.

Kansas has the constitutional authority to prosecute *ultra vires* and unconstitutional actions taken by federal law enforcement personnel in the course of gun control activities, under the doctrine of supremacy clause immunity as interpreted in ***Wyoming v. Livingston***, 443 F.3d 1211 (10th Cir. 2006). Even if a Kansas prosecutor overzealously applied the law to prosecute a federal officer whose conduct was protected by supremacy clause immunity, that prosecution would not invalidate the law any more than a grant of any other kind of immunity invalidates a

law. Supremacy clause immunity has never been applied to declare a state criminal statute unconstitutional. Invocation of immunity makes a law inapplicable, not unconstitutional.

Kansas has the constitutional authority to incorporate into state law the clearly established limits on federal law that have been announced by the United States Supreme Court and the 10th Circuit Court of Appeals, as enunciated in ***U.S. v. Patton***, 451 F.3d 615 (10th Cir. 2006). The response establishes no existing conflict between any federal statute and the Second Amendment Protection Act, merely by contending that the ***Patton*** case describes only the limits of existing federal law rather than constitutionally constraining hypothetical future laws. When and if some future Congress decides to press the issue and adopt a more invasive law, the resulting litigation will almost certainly be decided under the Second Amendment rather than the Commerce Clause. Without having that hypothetical act of Congress before us, there is no way this Court can decide its constitutionality. And of course the attitude of the Ninth Circuit Court of Appeals concerning the present state of either federal gun control laws or the Constitution has no significance to an issue concerning Kansas legislation, where the Tenth Circuit has spoken definitively.

CONCLUSION

The Complaint should be dismissed. There is no legal conflict between the plaintiff organization and the named defendants that could be decided in a federal court. The controlling cases establish beyond dispute that there is no conflict between the Second Amendment Protection Act and any existing federal law. If the enactment of new federal laws or the abandonment of longstanding federal precedents interpreting present laws generates a conflict, any real constitutional issue that may arise at that time can be litigated in an appropriate forum between the real parties in interest to the future dispute.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2014, I electronically filed the foregoing with the clerk of the court by using CM/ECF system which will send a notice of electronic filing to the following:

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