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Secretary of State



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## STATE OF KANSAS

### Statement of Kansas Secretary of State Kris Kobach in Response to Attorney General Eric Holder's Letter Regarding SB 102

May 2, 2013

On April 26, 2013, U.S. Attorney General Eric Holder sent a letter to Kansas Governor Brownback concerning SB 102, the Second Amendment Protection Act. In that letter, Holder declares SB 102 to be unconstitutional and suggests that federal officials will disregard it. Holder's understanding of the United States Constitution is incorrect.

As one of the co-authors of SB 102 and as a former professor of constitutional law, I ensured that it was drafted to withstand any legal challenge. SB 102 states that a firearm that is assembled in Kansas, that is stamped "Made in Kansas," and that never leaves the State of Kansas is not subject to regulation by the federal government. It was drafted with the intent to assert Kansas's authority as a co-equal sovereign under the United States Constitution to regulate a subject matter that is outside of Congress's jurisdiction under the Interstate Commerce Clause of Article I, Section 8. It was also drafted to stave off unconstitutional legislation pending in Congress that not only infringes upon the Second Amendment rights of Kansas citizens, but also exceeds Congress's constitutional power to regulate interstate commerce.

In his letter, Holder makes the simplistic and incorrect claim that "SB 102 directly conflicts with federal law and is therefore unconstitutional." He rests his claim on the Supremacy Clause of Article VI. However, what he fails to mention is the basic constitutional rule that *a federal law that exceeds Congress's power has absolutely no ability to preempt a contrary state law.*

For the past 80 years, Congress has used the interstate commerce power as a conduit for asserting regulatory authority over numerous specific subjects that have nothing to do with interstate commerce—including firearms. While some federal regulations of firearms are permissible exercises of the interstate commerce power, others clearly are not. One of the things that the federal government cannot do is regulate firearms that have never travelled in interstate commerce and that have no substantial effect on interstate commerce—firearms covered by SB 102.

Holder also threatens that "the United States will take all appropriate action, including litigation if necessary, to prevent the State of Kansas from interfering with the activities of federal officials enforcing federal law." With respect to any litigation, we will happily meet Mr. Holder in court. With respect to his concern that federal officials must be allowed to enforce

federal law, Mr. Holder's statement is a curious one. He was evidently not concerned that ATFE officials be allowed to enforce federal law when his agency oversaw the "Fast and Furious" operation to walk guns into the hands of Mexican cartels. And he is not concerned about the fact that the Obama Administration is directly ordering ICE officials to violate federal law through the executive amnesty for illegal aliens that DHS Secretary Janet Napolitano launched in June 2012. Holder's lawyers are currently attempting to defend that violation of federal law in court.

In conclusion, the State of Kansas stands firmly on the principles laid out in the United States Constitution. SB 102 is fully supported by the Second Amendment, the Tenth Amendment, and the limited scope of the Interstate Commerce Clause. The Obama Administration has repeatedly violated the United States Constitution for the past four-and-a-half-years. That abuse cannot continue. The State of Kansas is determined to restore the Constitution and to protect the right of its citizens to keep and bear arms.

A handwritten signature in black ink, appearing to read "Kris W. Kobach". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

Kris W. Kobach