

December 19, 2019

National Sheriffs' Association
1450 Duke Street
Alexandria, VA 22314

To Members of the National Sheriffs' Association:

On behalf of Everytown for Gun Safety Support Fund and Moms Demand Action for Gun Sense in America, we write to ask for your support in condemning the dangerous wave of so-called "Second Amendment Sanctuary" resolutions passed by county and other local boards in various states. These resolutions typically declare that the local board or sheriff intends to refuse their constitutional responsibility to enforce democratically-enacted gun violence prevention laws passed by their state legislatures. While such resolutions have no legal force or effect, they threaten to undermine the rule of law all across the country. Sheriffs, county boards, and other local politicians take an oath to uphold and enforce the law; they are not empowered – as the resolutions wrongly suggest – to decide for themselves which laws are constitutional and which are not. The resolutions are also dangerous: they are likely to have a chilling effect on people who otherwise might use a life-saving gun safety law to prevent a suicide, homicide, or mass shooting, and also likely will result in more guns in the hands of people with criminal or other dangerous histories.

Since 2013, a groundswell of support for stronger gun laws has swept across the country, resulting in the enactment of hundreds of gun safety measures that are making our communities safer, from New Mexico and Nevada to Florida and Maryland. These measures have passed in red states, blue states, and everywhere in between, and are supported by the overwhelming majority of Americans. For example, twelve states and D.C. have passed Extreme Risk (or "red flag") laws – in addition to the five already in place – enabling family members and law enforcement to ask a court to temporarily remove firearm access when there is evidence someone poses an immediate threat to themselves or others. Multiple states have also enacted laws closing the online and gun show background check loophole and laws requiring domestic abusers to surrender their firearms.

While these popular, democratically-enacted laws are making our communities safer, a disturbing and anti-democratic backlash has begun to spread, fueled by the gun lobby. Numerous county boards across the nation have passed so-called "Second Amendment Sanctuary" resolutions. A typical resolution declares that a county will not abide by "unconstitutional" laws, will "prohibit its employees from enforcing the unconstitutional actions of the state government,"¹ and "will not authorize or appropriate government funds for the purpose of enforcing laws that unconstitutionally infringe on the people's right to keep and bear arms."² Often, but not always, these resolutions are coupled with public statements by local sheriffs declaring that they will not enforce laws that they believe or decide are unconstitutional.

¹ Effingham County, Illinois.

² Mohave County, Arizona.

As Virginia's Attorney General recently and rightly stated,³ these resolutions have no legal effect whatsoever; they are not worth the paper they are printed on. They do, however, publicly and wrongly suggest that local politicians and sheriffs have the power to decide for themselves if laws are constitutional and, if they decide they are not, to ignore them.

That is not how the law and checks and balances work in this country. Legislatures pass laws and Governors sign them. And, when presented with a valid challenge, courts – not sheriffs, county boards, or local politicians – determine whether those laws are constitutional. As Chief Justice Marshall famously wrote for the United States Supreme Court in *Marbury v. Madison*, “[i]t is emphatically the province and duty of the Judicial Department to say what the law is.”⁴ That is how we maintain the rule of law in America.

Local politicians and sheriffs declaring their counties “Second Amendment sanctuaries” seek to disregard the will of the voters of their states, circumvent the legislative process, and short-circuit the judicial function by declaring themselves arbiters of the law. They may say that they are “defending the constitution,” but the reality is that they are trampling on it. They may say they are exercising “prosecutorial discretion,” but by threatening to never enforce a law based on their own opinion that it violates the Second Amendment they are expressing an intent to violate their oaths to uphold and enforce the laws of their state.

These politicians and sheriffs are also wrong about the constitutionality of these laws. Courts have repeatedly upheld red flag laws from legal challenge;⁵ no court has held that any such law is unconstitutional under the Second Amendment or due process. The same holds true with background checks; repeated challenges under the Second Amendment have all failed.⁶ And even if a new law is currently being challenged in court, that does not give local politicians and sheriffs the license to ignore it until the legal case is decided. Unless and until a court issues an injunction, duly enacted laws must be enforced unless and until a court issues a decision striking them down. That is how our system of checks and balances and separation of powers works.

Furthermore, while these resolutions are legally meaningless, they are reckless and dangerous and may lead to gun violence that could be prevented. Imagine a mother whose son possesses a cache of firearms, but is watching him become mentally unstable and erratic. The mother may want to request an extreme risk order to have her son's firearms temporarily removed while she seeks help for him. In many states, only law enforcement can request an extreme risk order. If the mother lives in an area where a county board or sheriff has announced they will not pursue or enforce such orders based on their personal opinion that the law is unconstitutional, the mother may be too scared or confused to request one from her sheriff, with deadly results.

³ “AG Herring on 2nd Amendment Sanctuary Resolutions: ‘No Legal Effect Whatsoever,’” Dec. 5, 2019, ABC 8 News WRIC.

⁴ *Marbury v. Madison*, 1 Cranch 137, 177 (1803).

⁵ “Red Flag Laws: Extreme Risk Protection Orders Are Essential and Constitutional,” Apr. 29, 2019, Medium.com, Everytown Law.

⁶ “Requiring Background Checks for All Gun Sales: Critical for Public Safety and Clearly Constitutional,” Sept. 9, 2019, Medium.com, Everytown Law.

The judicial system has remedies for lawless and defiant government officials. One is called a writ of mandamus, and it allows citizens to go to court and get an order directing a government official to carry out non-discretionary legal obligations imposed by law. In addition, as Washington's Attorney General Bob Ferguson⁷ and New Mexico's Attorney General Hector Balderas reminded local officials in their states, a sheriff or city refusing to carry out a common-sense safety measure – such as conducting a background check on the purchase of an assault weapon or executing an extreme risk protection order as to someone who presents a danger – also face the risk of being sued and held financially responsible if that person then uses the firearm to kill or injure.

Ironically, in the past, the gun lobby has held itself out as a supporter of the rule of law. Wayne LaPierre, Executive Vice President of the NRA, criticized the Obama administration by stating that “[o]ur liberties cannot long survive a regime that destroys the rule of law,” and asked of former Attorney General Holder, “[w]hat about his duty to uphold the Constitution and to fairly and impartially carry out laws enacted by Congress?”⁸ Yet, now that an increasing number of states have passed proven gun safety laws over the NRA's opposition, the gun lobby hypocritically encourages local politicians to thumb their noses at the rule of law and ignore their duty to follow duly enacted statutes. This dangerous hypocrisy is a threat to the American system of government, as well as the safety and security of people everywhere.

Local politicians and sheriffs who refuse to enforce duly enacted state laws are violating their oaths, shirking their duties, subverting the democratic process, and contravening the separation of powers. Duly enacted laws are presumed to be constitutional. And local officials are obligated to carry out those laws unless and until they are repealed or a court strikes them down. Our constitutional democracy requires nothing less.

We ask that you join us in condemning these actions in the strongest possible terms and in reaffirming that it is every sheriff's constitutional and legal duty to carry out and enforce duly enacted laws – including gun safety laws – whether or not they personally agree with those laws.

Sincerely,



Eric Tirschwell
Managing Director, Everytown Law
Everytown for Gun Safety Support Fund

Copies Sent To: Major County Sheriffs of America
International Association of Chiefs of Police
Major Cities Chiefs Association
National League of Cities
National Association of Counties

⁷ Attorney General Bob Ferguson, “Open Letter to Washington's Sheriffs and Police Chiefs Refusing to Enforce Initiative 1639,” Feb. 12, 2019; “AG Directs Sheriffs, Chiefs to Enforce Law,” Apr. 5, 2019, Albuquerque Journal.

⁸ Wayne LaPierre, “Stop Obama's Lawlessness,” Sept. 22, 2014, Daily Caller.