

**Board of County Commissioners
Chautauqua County, Kansas**

Resolution No. 2020-01

**A RESOLUTION TO PROTECT AND DEFEND
THE INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS**

Preamble

WHEREAS, the Constitution of the United States of America (“Constitution”) is the supreme law of the land;¹

WHEREAS, the second amendment to the Constitution (“Second Amendment”) codifies the pre-existing individual right of the people to keep and bear arms;²

WHEREAS, the Second Amendment guarantees that the individual right to keep and bear arms shall not be infringed;³

WHEREAS, the federal government has no power to compel the states or the political subdivisions of the states to administer or enforce federal regulatory programs;⁴

¹ This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. *U.S. Const.* art. VI, cl. 2.

² [It] has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right. . . . As we said in *United States v. Cruikshank*, 92 U.S. 542, 553, 23 L.Ed. 588 (1876), “[t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. . . . (*D.C. v. Heller*, 554 U.S. 570, 592, 128 S. Ct. 2783, 2797–98, 171 L. Ed. 2d 637)(2008)(emphasis in original).

³ “The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it “shall not be infringed.” ” *Heller*, 554 U.S. at 592.

⁴ “The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty.” *Printz v. United States*, 521 U.S. 898, 935, 117 S. Ct. 2365, 2384, 138 L. Ed. 2d 914 (1997).

WHEREAS, the Second Amendment is binding upon the states by virtue of the fourteenth amendment to the Constitution (“Fourteenth Amendment”);⁵

WHEREAS, a law that violates the constitution when it is enacted is *void ab initio*;⁶ and

WHEREAS, it is the sworn duty of each official elected by the citizens of Chautauqua County to uphold the Constitution and to protect and defend the rights of the people in Chautauqua County;

IT IS THEREFORE RESOLVED AS FOLLOWS:

1. The Preamble set forth above is incorporated into this resolution as if here fully set forth.
2. Officials elected by the citizens of Chautauqua County have no authority to enforce any federal law or regulatory scheme that unconstitutionally infringes on the individual right to keep and bear arms guaranteed by Second Amendment.
3. Officials elected by the citizens of Chautauqua County have no authority to enforce any state law or regulatory scheme that unconstitutionally infringes on the individual right to keep and bear arms guaranteed by Second Amendment, which is binding on the states by virtue of the Fourteenth Amendment.
4. The Chautauqua Board of County Commissioners shall pass no ordinances or resolutions that infringe upon the individual right to keep and bear arms guaranteed by the Second Amendment.
5. The Chautauqua Board of County Commissioners shall not participate in any federal or state program that conditions participation on an unconstitutional infringement upon the individual right to keep and bear arms guaranteed by the Second Amendment.

⁵ [A] provision of the Bill of Rights that protects a right that is fundamental from an American perspective applies equally to the Federal Government and the States. We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*. (*McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 791, 130 S. Ct. 3020, 3050, 177 L. Ed. 2d 894 (2010))(internal citations omitted).

⁶ [A]n unconstitutional act is not a law, and can neither confer a right or immunity nor operate to supersede any existing valid law. *Chicago, I. & L.R. Co. v. Hackett*, 228 U.S. 559, 566, 33 S. Ct. 581, 584, 57 L. Ed. 966 (1913)

6. Miscellaneous.

- a. Effective Date.** This resolution shall become effective as of January 6, 2020.
- b. Severability.** Should any section, clause, or provision of this resolution be declared invalid by a court of competent jurisdiction, such declaration shall not affect the validity of this resolution as a whole, or any part thereof, other than the part declared to be invalid.

Commissioners present and voting were:

Rodney Shaw	<u>yes present</u>
Parker Massey	<u>yes by phone</u>
Jack Carpenter	<u>yes</u>

Dated this 6th day of January, 2020.

**BOARD OF COUNTY COMMISSIONERS
OF CHAUTAUQUA COUNTY, KANSAS**

Rodney Shaw
Rodney Shaw
Chairman

Parker Massey
Parker Massey

Jack Carpenter
Jack Carpenter

ATTEST:

Niki Collier
Niki Collier, Chautauqua County Clerk

