



The Rise of Second Amendment Sanctuaries

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A new sanctuary movement is sweeping the country. For decades, the sanctuary label was used almost exclusively in the immigration context to refer to states and localities that limited their participation in federal immigration enforcement.¹ In recent years, however, gun-rights advocates have also seized upon the label in their effort to designate certain communities as “sanctuaries” for firearms. In just the past year, more than 400 local governments—mostly counties—have adopted resolutions declaring themselves “Second Amendment sanctuaries.”² Through these resolutions, these Second Amendment sanctuaries are expressing support for gun rights. They are attacking proposed gun control legislation. And more importantly, some of them are declaring that no governmental resources or personnel will be used to enforce laws that “unconstitutionally” or “unnecessarily” infringe upon the Second Amendment rights of individuals to keep and bear arms.

The rise of Second Amendment sanctuaries in recent years is hardly surprising. They are a direct response to growing interest in gun control regulations at the state level and have proliferated largely among rural conservative counties located in states where Democrats are gaining control. As such, Second Amendment sanctuary resolutions could be understood to be largely symbolic—an effort by certain communities to express their opposition to legislation at the state level. This is also why supporters of expansive gun rights have chosen to adopt the sanctuary label from their immigration counterparts. If liberals can challenge federal immigration enforcement through immigration sanctuaries, then why can’t conservative do the same with respect to gun laws through Second Amendment sanctuaries?

But as formal acts taken by local governments, it is not yet clear what legal effects Second Amendment sanctuaries have. After all, many resolutions do not simply express support for gun rights or the Second Amendment; they also commit the local government to take or refuse

¹ See, e.g., Christopher N. Lasch et al., *Understanding “Sanctuary Cities,”* 59 B.C. L. REV. 1703 (2018); see also Pratheepan Gulasekaram, Rick Su, & Rose Cuisson Villazor, *Anti-Sanctuary and Immigration Localism*, 119 COLUM. L. REV. 837 (2019).

² See Shawn Fields, *Second Amendment Sanctuaries*, 115 NW. L. REV. 437, 454-55 (2020).

to take specific actions *as* governments. Moreover, by drawing comparisons to immigration sanctuaries, Second Amendment sanctuaries seem to be interested in more than just expressing opposition to gun restrictions. Rather, the goal for some seems to be the creation of a refuge where gun laws will not be enforced at all, or at least not by the local officials who serve there. Immigration sanctuaries have long imposed limits on local law enforcements participation in federal immigration enforcement. Can Second Amendment sanctuaries do the same with respect to gun restrictions? And does the answer to this question apply equally to Second Amendment and immigration sanctuaries?

This Issue Brief addresses the legality of Second Amendment sanctuaries. Part I surveys Second Amendment sanctuary resolutions, which vary from state to state and locality to locality, and identifies common strands and particular provisions worth considering. Part II analyzes the legal effect of these provisions. It does so through various legal frameworks: the federal constitution, state constitutions, and the common law. It also considers a number of legal doctrines: federalism, home rule, and law enforcement discretion. Moreover, this Part explores the various ways that Second Amendment sanctuary resolutions can be interpreted or put into effect. Part III compares Second Amendment and immigration sanctuaries. It examines the legal standing of the two sanctuary movements, and whether arguments made in favor of one applies to the other. This Part also probes the local interests underlying their declaration.

In short, I conclude that Second Amendment sanctuaries face legal obstacles that immigration sanctuaries do not, especially in their resistance to enforcing state laws. This does not mean that states can easily compel officials of sanctuary jurisdictions to zealously enforce state laws, or in precisely the same manner that they would do themselves through state officials—some amount of administrative discretion is granted to local law enforcement officials and strict supervision by the state is difficult. Yet, the legal analysis does suggest that Second Amendment sanctuaries lack the power to unilaterally nullify state gun laws in their jurisdiction. Nor are local officials immune from state efforts to compel their participation or face sanctions, like removal from office. All of this sets Second Amendment sanctuaries apart from immigration sanctuaries.

I. Second Amendment Sanctuary Resolutions

In declaring their towns, cities, or counties Second Amendment sanctuaries, local officials and their residents are doing more than simply making a political statement. They are also taking legislative actions that have legal implications. Second Amendment sanctuaries are the result of resolutions adopted by the legislative bodies of local governments. And in the vast majority of cases, these resolutions have been adopted by boards of county commissioners. The specific language of these resolutions varies, and their sponsors often describe the underlying goal and purpose in different ways. Yet as this Part outlines, there are common strands that can be found in nearly all resolutions, reflecting the broader movement of which Second Amendment sanctuaries are a part. Moreover, there are noteworthy trends that suggest where this

movement might be headed. To get a sense of the scope and significance of the Second Amendment sanctuary movement, this Part details the commonalities and variations among the resolutions that have been adopted in recent years.

At the most basic level, all Second Amendment sanctuary resolutions express support for the right of individuals to keep and bear arms. As the name of these resolutions suggests, the source of this right is based primarily on the Second Amendment of the federal Constitution. But many of these resolutions also rely on similar provisions in their state constitutions.³ While constitutional rights connected to firearms specifically are the predominant focus, some Second Amendment sanctuaries also invoke other rights in federal and state constitutions. These include rights against unreasonable searches and seizure, due process with respect to the deprivation of property, compensation for takings of property, and rights against excessive fines or cruel and unusual punishment.⁴

In addition, nearly all Second Amendment sanctuary resolutions express opposition to gun control legislation that would, in their view, infringe upon the right to keep and bear arms. Most resolutions express this opposition generally. In some, however, specific laws are identified. The resolution in Heard County, Georgia, for example, names SB 281, a bill that was being considered by the state legislature that would, among other things, ban the sale of semi-automatic weapons.⁵ Archuleta County, Colorado, specifically references “red flag laws,” which permit the police or family members to petition a court to remove firearms from an individual who poses a danger to himself or others.⁶ While many Second Amendment sanctuaries oppose gun control legislation without reservation, some expressly condition their opposition to efforts that “unconstitutionally restrict” gun rights,⁷ suggesting that their opposition depends on the constitutionality of the gun control law in question. Moreover, it is worth noting that Second Amendment sanctuary resolutions seem to be focused primarily on gun control legislation at the state level, reflecting the lack of progress for similar legislation at the federal level.

³ See, e.g., Wabash County, Illinois, Resolution 2019-03 (citing as support Ill. Const. Art.1, § 22); Effingham County, Illinois, Resolution (2018) (same); Haralson County, Georgia, A Resolution to Declare Haralson County, Georgia to be a “Second Amendment Sanctuary County” (2020) (citing Ga. Const. Art. I, § 1); Baker County, Florida, [Resolution 2020-04](#) (citing Fl. Const. Art. I, § 8); Archuleta County, Colorado, [Resolution 2019-36](#), 4 (citing Co. Const. Art. II, § 3); Tazewell County, Virginia, Resolution 19-008 (citing Va. Const. Art. I, § 13); Apache County, Arizona, Resolution 2020-03 (citing Az. Const. Art. II, § 26).

⁴ See, e.g., Effingham County, Illinois, Resolution (2018) (Citing the Fourth, Fifth, and Eighth Amendment of the U.S. Constitution).

⁵ Heard County, Georgia, A Resolution Declaring Heard County as a Second Amendment Sanctuary (2020).

⁶ Archuleta County, Colorado, Resolution 2019-36.

⁷ See, e.g., Lincoln County, NC, [A Resolution Declaring Lincoln County a Second Amendment Sanctuary](#) (2020).

A number of Second Amendment sanctuary resolutions stop here, which have led many to conclude that these resolutions are largely symbolic and intended to serve an expressive function. Indeed, other than declaring their support for gun rights and opposition to gun control legislation, many Second Amendment sanctuaries “resolve” to do nothing more than send a copy of their resolution to the state legislature.⁸ This “expressive” interpretation of Second Amendment sanctuary resolutions is further supported by the policy judgements and factual findings that many of them make. The resolution adopted by Needles City in California comments on the unique circumstances of its community and the importance of firearms for self-defense, protection of livestock, and generation of local revenues through their sale.⁹ Will County, Illinois, urges the state legislature to focus on violent criminal offenders rather than law-abiding gun owners,¹⁰ while Archuleta County, Florida, implores the legislature to focus on mental health.¹¹ The goal here appears to be convincing the state legislature to abandon or at least narrow the scope, substance, or focus of the gun control bills that it is currently considering.

But an equally large number of Second Amendment sanctuaries also outline specific actions to be taken by the local governments themselves. The most common pertain to the use and allocation of local resources. Gordon County, Georgia, for example, “pledges not to allocate any funds that could be used to violate . . . the Second Amendment Rights of our citizens to keep and bear arms.”¹² Similarly, Apache County, Arizona, resolves not to “authorize or appropriate government funds, resources, employees, agencies, contractors, buildings, detention centers, or offices for the purpose of enforcing laws that unconstitutionally infringe on the people’s right to keep and bear arms.”¹³ Most of these restrictions on the use of local funds, resources, and personnel refer to enforcement activities that are unconstitutional. But the language of some resolutions also hints at non-enforcement of laws that go beyond those that are deemed to be constitutional violations. Consider Lincoln County, North Carolina, which prohibits the use of county resources and personnel to “restrict . . . or aid or assist in the enforcement of the *unnecessary and unconstitutional* restriction of the rights under the Second Amendment.”¹⁴

⁸ See, e.g., Henderson County, IL, Resolution Opposing the Passage of Any Bill where the 101st Illinois General Assembly and any future Illinois General Assembly Desires to Restrict the Individual Rights of United States Citizens as Protected by the Second Amendment of the United States Constitution (2019); Heard County, Georgia, A Resolution Declaring Heard County as a Second Amendment Sanctuary (2020); Holmes County, FL, Resolution 20-01; Baker County, FL, Resolution 2020-04.

⁹ See Needles County, CA, Resolution 2019-45.

¹⁰ See Will County, IL, Resolution 19-01.

¹¹ See Archuleta County, Colorado, Resolution 2019-36

¹² Gordon County, GA, Resolution of the Gordon County Commission (2020).

¹³ Apache County, Arizona, Resolution 2020-03; see also, e.g., Archuleta County, Colorado, Resolution 2019-36; Needles County, CA, Resolution 2019-45.

¹⁴ See Lincoln County, NC, A Resolution Declaring Lincoln County a Second Amendment Sanctuary (2020)

Though open to interpretation, the language here suggests that the county's non-enforcement provision might apply to gun control laws that are thought to be unnecessary in addition to those deemed unconstitutional.

In fact, aside from Lincoln County, there are signs that some Second Amendment sanctuaries do not intend to limit their restrictions to gun laws that are judicially determined to be a violation of the Second Amendment or some other federal or state constitutional right. Rather, their resolutions seem to make "constitutional" determinations on their own. Heard County, mentioned above, not only expresses opposition to SB 281 in its resolution, but specifically declares that the bill "is an infringement on the rights of law-abiding Heard County citizens to keep and bear arms."¹⁵ After announcing its opposition to HB 19-1117—a red flag law being considered in Colorado—Archuleta County further resolved not to appropriate county resources "to initiate what it believes to be unconstitutional seizures" under the law.¹⁶ The resolution in Haralson County, Georgia, declares null and void all laws that violate the federal constitution's Second Amendment and gun rights protected by the state constitution, but also talks about laws that "violate the true meaning and intent of those constitutions,"¹⁷ perhaps suggesting the possibility of an interpretation other than those that a court might reach.

It might be argued, of course, that some of these statements are merely expressive, and not necessarily determinative of how the Second Amendment sanctuaries will act. Even then, there are a small minority of resolutions that not only appear to make their own constitutional findings but use these findings to restrict governmental action. Nowhere is this clearer than a resolution under consideration by Benton County, Arkansas. The resolution declares invalid any "Unlawful Act" concerning firearms and prohibits all local officials from participating in its enforcement. An Unlawful Act is initially defined as any law that "restricts an individual's constitutional right to keep and bear arms," but then the proposed resolution goes on to find that Unlawful Acts include, but are not limited to, nine specific types of regulations—from fees and taxes on firearms, ammunition, or accessories, to mandatory registration or tracking of the same.¹⁸ Resolutions like those in Benton County appear to not only defend the constitutional right to keep and bear arms, but also define the scope of that right.

In short, Second Amendment sanctuary resolutions fall along a spectrum. All of them express support for gun rights and opposition to gun control regulations, with most targeting state laws in particular. About half go beyond these expressive declarations to further prohibit the use of

¹⁵ See Heard County, Georgia, A Resolution Declaring Heard County as a Second Amendment Sanctuary (2020).

¹⁶ Archuleta Cty. Commission, [Res. 2019-36](#), 4 (Colo. 2019).

¹⁷ See Haralson County, Georgia, A Resolution to Declare Haralson County, Georgia to be a "Second Amendment Sanctuary County" (2020).

¹⁸ See Benton County, AK, [Proposed Ordinance](#).

local resources or personnel to enforce gun control laws that “unconstitutionally” infringe upon Second Amendment or other constitutional rights. A smaller number of those resolutions go even further in defining what might constitute a constitutional violation in the view of their proponents.

II. The Legality of Second Amendment Sanctuaries

The central question raised by the recent wave of Second Amendment sanctuary ordinances is whether they are legal. The answer, however, depends on how localities intend to put these ordinances into effect. As we have seen, the various components Second Amendment sanctuary resolutions may include suggest different ways in which they could be implemented. Moreover, their breadth and brevity leave many questions unanswered. Who determines the constitutionality of a gun control law for the purposes of these resolutions? Do the restrictions on county participation apply to both federal and state laws? As the following analysis reveals, the legality of Second Amendment sanctuary resolutions depends in large part on how these questions are answered.

Of course, before we get to the legal questions surrounding Second Amendment sanctuary resolutions, it is important to keep in mind what appears to be their primary purpose: to send a political message. The timing and geography of these resolutions is not haphazard. Their adoptions tend to be concentrated in politically divided states with growing Democratic influence and in response to proposed gun control legislation that has a good chance of enactment. After all, the Second Amendment sanctuary movement began in Virginia right after the election of a Democratic majority that favored gun control, and after a mass shooting in Virginia Beach that spurred a political response. The counties that spearheaded the movement were largely rural and were responding to constituents who wanted to send a message to the state about their opposition to gun control measures. This is perhaps why Second Amendment sanctuary ordinances have largely taken the form of “resolutions,” which are usually used to express the opinion or will of a legislative body.

But although the bulk of Second Amendment sanctuary resolutions are dedicated to expressions of support for the Second Amendment and concern about gun control, they also contain substantive provisions that specifically limit the role of counties and county officials with respect to the implementation of firearm restrictions. The question then is whether counties can refuse to enforce gun control legislation within their jurisdiction—whether they can, as the name of these resolutions suggests, offer “sanctuary” to those who violate these laws.

A. Who Decides?

The first step in answering this question is to examine what these resolutions mean by the term “unconstitutional” with respect to the Second Amendment or analogous state constitutional provisions. Second Amendment sanctuary resolutions commonly prohibit the use of county

resources or personnel to enforce “unconstitutional” restrictions on the right to bear arms. But none of the resolutions make clear whose interpretation of constitutionality the counties will follow. The first step in assessing the legality of Second Amendment sanctuary resolutions, then, requires us to address this basic question: When it comes to the constitutionality of a gun control law, who decides? Answered one way, these resolutions are reduced to legal truism, which suggest that they are largely symbolic and expressive. Answered another way, they give rise to a constitutional crisis. The truth is probably somewhere in the middle, with the ambiguity and uncertainty being two of the goals of these resolutions.

The simplest way to interpret what Second Amendment sanctuary resolutions mean with regard to “unconstitutional” restrictions are those that have been determined by a court to be unconstitutional. Under this view, these resolutions stand for the uncontroversial proposition that counties will not enforce any gun control laws that are deemed by a court to violate the Second Amendment or similar provisions of a state constitution. To be sure, this is not to say that the determination of what is constitutional is an easy one. Although the U.S. Supreme Court has recognized the Second Amendment grants an individual right to bear arms,¹⁹ many questions remain with respect to what kind of gun control regulation would constitute a “reasonable restriction” in accordance with that right.²⁰ There are even less judicial precedents when it comes to state constitutional provisions regarding firearms: whether they also grant individuals the right to bear arms, and whether those rights are more extensive than the federal constitutional floor provided by the Second Amendment. It could be, in fact, that the goal of Second Amendment sanctuary resolutions is to express local support for the judicial development of these constitutional standards. It makes sense, then, that these resolutions would be grounded specifically in the Second Amendment and analogous state constitutional provisions and explicitly target for non-enforcement “unconstitutional” laws that violate those rights.

If refusing to enforce gun control laws held by a court to be “unconstitutional” is all that Second Amendment sanctuaries intend to do, then one can argue that as a legal matter they are superfluous. After all, no governmental entity or official has the authority to infringe upon rights guaranteed by the U.S. Constitution, just as no state government or official can violate the limits imposed by their own state constitutions. As a result, under this interpretation, Second Amendment sanctuary resolutions simply restate existing constitutional law. Counties are not permitted to violate constitutional rights protected by the federal and state constitutions. They cannot refuse to abide by an order of the courts in enjoining the violation of constitutional

¹⁹ See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008).

²⁰ See, e.g., Eric Ruben & Joseph Blocher, *From Theory to Doctrine: An Empirical Analysis of the Right to Keep and Bear Arms after Heller*, 67 DUKE L.J. 1433, 1434-35 (2018); Fields, *supra* note 2, at 490-95.

provisions. Indeed, one could say that in these cases, there would be no law for the counties to enforce if that law is struck down as unconstitutional.²¹

There is, of course, another way to interpret Second Amendment sanctuary resolutions. Rather than waiting for or deferring to a judicial determination, it could be that Second Amendment sanctuaries intend to determine what is “unconstitutional” entirely on their own. Or perhaps these resolutions are blanket declarations by the counties that any restrictions on the right to keep or bear arms is a per se violation of the Second Amendment and state constitutional rights, and thus will not be enforced irrespective of what a court might ultimately decide. Both of these interpretations draw support from the structure and text of the Second Amendment sanctuary resolutions themselves. First, it would explain why these resolutions speak of the Second Amendment less like a developing constitutional doctrine and more as an affirmation of an unfettered individual right to keep and bear arms. Second, this interpretation accords with the atmosphere surrounding the enactment of Second Amendment sanctuary resolutions—the perception by county leaders, local residents, and the general public that they are momentous undertakings rather than a mere restatement of an established legal truism. Third, it tracks the political alignment of the Second Amendment sanctuary movement with the “Constitutional Sheriffs” movement, which asserts that local sheriffs have the legal authority to decide the constitutionality of state and federal laws on their own.²² Last, it would explain the use of the term “sanctuary,” which suggests that the jurisdictions in which these resolutions are effectuated will offer protections from enforcement activity that will take place elsewhere.

Such an interpretation of Second Amendment sanctuary resolutions—that the counties themselves will decide whether a gun control law will be enforced based on their own determination of its constitutionality—is not without historic precedent. States have previously declared federal laws null and void within their jurisdictions as a violation of constitutional law, as Virginia and Kentucky did by enacting resolutions in 1798 against the Alien and Sedition Act.²³ The president and the U.S. attorney general have refused to defend laws duly enacted by Congress based on their own interpretation of their constitutionality, as President Obama and Attorney General Holder announced with respect to the Defense Against Marriage Act.²⁴ Indeed, the issue of marriage equality has also given rise to instances of *local* nullification.

²¹ Second Amendment sanctuaries may have more standing to refuse to enforce a state gun control law if a similar measure has been struck down as unconstitutional in another state, especially by a federal court in the same circuit. Of course, the ordinary course of action would be to challenge the state law they are refusing to enforce directly.

²² See, e.g., Ashley Powers, *Lone Stars*, NEW YORKER (Apr. 30, 2018) (describing the constitutional sheriff movement).

²³ See, e.g., Douglas Bradburn, *A Clamor in the Public Mind: Opposition to the Alien and Sedition Acts*, 65 WM. & MARY Q. 565 (2008).

²⁴ See Charlie Savage & Sheryl Gay Stolberg, *In Turnabout, U.S. Says Marriage Act Blocks Gay Rights*, N.Y. TIMES (Feb. 24, 2011).

In 2004, then-mayor of San Francisco Gavin Newsom ordered the city to begin issuing marriage licenses to same-sex couples on the theory that the state law prohibition violated the state constitution.²⁵ In 2015, after the Supreme Court recognized a federal constitutional right to marriage for same-sex couples in *Obergefell v. Hodges*, then-County Clerk Kim Davis of Rowan County, Kentucky, refused to issue any marriage licenses on the ground that forcing her to issue them to same-sex couples violated her religious free exercise rights under the Constitution.²⁶

Yet, as these precedents suggest, such efforts at state, local, and executive nullification based on nonjudicial determinations of constitutionality are also often associated with constitutional crises. By and large, the legal theory underlying these efforts have failed. The sole exception is the refusal by presidential administrations to defend federal laws in court. But in those cases, the ultimate determination of the law's constitutionality was still left to the judiciary; other parties stepped up to defend those laws in court, and the whole issue revolved around the constitutional separation of powers between Congress, the executive, and the courts. None of those considerations are implicated in Second Amendment sanctuary resolutions. It is more likely that courts will treat Second Amendment sanctuaries like other state and local nullification's efforts, ultimately ruling them unconstitutional, which in the past has led state and local officials to abandon their nullification efforts.

Of course, it is far too early to conclude whether Second Amendment sanctuary resolutions are intended to be local nullification efforts of state or federal gun control regulations. On the one hand, given their emphasis on "unconstitutional" violations of the Second Amendment and state constitutional provisions, it could be that the counties adopting these resolutions will defer to judicial determinations in deciding their own enforcement activities. On the other hand, given that these resolutions do not make clear whose decision on constitutionality triggers the non-enforcement provisions, it could be that certain counties will refuse to enforce even judicially upheld gun control regulations on the basis of one or more county official's judgment about their constitutionality, whether a sheriff, councilor, commissioner, prosecutor, etc. In short, Second Amendment sanctuary resolutions may be simply statements of a constitutional truism or harbingers of a constitutional crisis.

B. Which Level of Government?

The text of most Second Amendment sanctuary resolutions does not make distinctions between federal and state gun control laws. Given this, the simplest interpretation would be that the non-enforcement provisions contained within these resolutions apply equally to both, irrespective of the level government that adopts the firearm restrictions. But from a

²⁵ See David Stout, *San Francisco City Officials Perform Gay Marriage*, N.Y. TIMES (Feb. 12, 2004).

²⁶ See Alan Blinder & Richard Perez-Pena, *Kentucky Clerk Defies Justice on Marriages*, N.Y. TIMES (Sept. 2, 2015).

constitutional perspective, the level of government matters. On the one hand, because of the federalism structure in the United States, states and state officials cannot be compelled to enforce federal law. As subdivisions of the state, counties then have the discretion to decide whether to participate in the enforcement of a federal gun control law. On the other hand, the federalism restrictions imposed upon the federal government do not apply to the state's control over their local governments. Indeed, as subdivisions of the state, counties are ordinarily presumed to be under the direct control of state governments and created for the purpose of carrying out state policies and enforcing its laws. Any limitations on the applicability of state laws on counties and their officials will have to be found in state constitutions, and in most states, the independence and autonomy of counties from state control are quite limited.

The United States is structured as a federal system in which the federal government and the states are recognized as dual and independent sovereigns. One consequence of this is that the federal government cannot “commandeer” states or their officials to carry out a federal program or enforce federal law. Indeed, one of the seminal cases announcing the “anti-commandeering” doctrine arose not only in the context of gun control, but also involved counties. In *Printz v. United States*, the Supreme Court held that the federal government could not compel state and local officials to assist in conducting background checks on handgun purchasers.²⁷ The Court did not question the constitutionality of the federal law; *Printz* was decided before the Supreme Court recognized the Second Amendment as an individual right. Nor did the Court make a distinction between state and local officials, as Justice John Paul Stevens urged in his dissent.²⁸ Of course, rather than mandating participation, the federal government can always incentivize state and local participation by offering conditional grants and other assistance. But those conditions must be structured to ensure that state and local governments have a meaningful choice, thereby preserving their ability to refuse.²⁹

All of this suggests that Second Amendment sanctuaries are on firm legal ground in refusing to enforce *federal* gun laws irrespective of their constitutionality. But the analysis is entirely different when it comes to the non-enforcement of *state* laws. First, the anti-commandeering defense is not applicable. The anti-commandeering doctrine is based on the federalism relationship between the federal government and the states. It offers no protections for localities as localities.³⁰ Indeed, the only reason local governments have been able to invoke this doctrine at all is by assuming the legal identity of the state, as creatures of the state.³¹ This is not a legal standing that Second Amendment sanctuaries can assume in challenging the state.

²⁷ *Printz v. U.S.*, 521 U.S. 898 (1997).

²⁸ *See id.* at 965 (Stevens, J., dissenting).

²⁹ *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 565 U.S. 1033 (2011).

³⁰ *See* Gulasekaram, et al., *supra* note 1, at 853-54.

³¹ *See id.* at 851-53. *But see* Fields, *supra* note 2, at 485-89.

Second, unlike the relationship between county sheriffs and the federal government, counties and county officials are the primary law enforcement arm of the state. This is important because one purpose behind the anti-commandeering doctrine is to ensure that federal officials take responsibility for enforcing federal laws. In the context of federal gun control legislation, that responsibility falls on federal law enforcement officials, like the FBI and federal prosecutors, or specialized officers like members of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). With respect to state laws, however, primary law enforcement responsibility, especially in areas outside of municipalities with police departments, is largely in the hands of county sheriffs and county prosecutors. This is why county sheriffs and county prosecutors are often legally construed as state officials, created to serve the interests and policies of the state from which they derive their authority.³² The fact that county officials are almost everywhere elected by local residents means that their political interests are likely to be aligned with local preferences. But if a conflict between state and local interests arises, the legal role of county officials technically requires them to follow the mandate of the state.³³

In short, while Second Amendment sanctuaries have the legal authority to refuse to enforce federal gun laws, the basis of that legal authority is not directly applicable to state laws. This is perhaps why Second Amendment sanctuary resolutions are based so explicitly on the constitutional rights of their residents. After all, the prohibition against federal commandeering applies irrespective of the constitutionality of the underlying law. But because this structural claim is inapplicable against the state, Second Amendment sanctuaries had to find another source of authority to counter that of the state, which they found in the individual rights of their residents.

C. Home Rule

If federal anti-commandeering claims do not insulate Second Amendment sanctuaries from state efforts to compel their participation in the enforcement of state gun laws, might state constitutional provisions provide an alternative avenue for securing such protections? Local governments are creatures of the state. But many states have also adopted “home rule” for their localities in their state constitutions.³⁴ Home rule typically provides broad delegations of state power to localities and some degree of protection from state interference. In these home rule states then, would Second Amendment sanctuaries have the structural protections to resist state efforts to compel them to enforce state gun laws?

³² See, e.g., *Prince George’s Cty. v. Aluisi*, 354 Md. 422, 432-34 (1999).

³³ See, e.g., *Curtis v. Eide*, 244 N.Y.S.2d 330, 331 (“Towns and counties are involuntary subdivisions of the state created for the most part for convenience and for more expeditious state administration. Villages and cities are corporations organized by the voluntary action of local inhabitants and limited by statute or charter.”); *Lawson v. Lincoln Cty.*, 292 Ga. App. 527, 529, 664 S.E.2d 900, 902 (2008) (noting that the sheriff is subject to the control of the state legislature).

³⁴ See generally David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255 (2003).

It may be possible that Second Amendment sanctuaries could invoke home rule to justify their refusal to enforce state laws. Such an argument might draw similarities between the federal-state relationship in our federalism system and the state-local relationship that home rule creates. Second Amendment sanctuaries then might assert that just as the federal government cannot commandeer states to enforce federal laws, the states cannot compel home rule localities to enforce state laws. Indeed, in some states there are explicit constitutional provisions and judicial interpretations that might be used to support such an argument. In Missouri, for example, the state constitution prohibits the state from “creating or fixing the powers, duties, or compensation of any municipal office or employment” of a home-rule city.³⁵ Similarly, in Ohio, “the powers, duties, and functions of municipal officers are matters of local government, which may not be influenced or controlled by [state] laws.”³⁶

But despite this possibility, it is important to note that home rule arguments are not easily made. First, home rule protections from state law tend to be narrowly construed.³⁷ Most home rule states do not insulate local laws from state preemption.³⁸ Among the few that do, that “immunity” tends to be limited to matters of purely local concern and not involving any statewide interest.³⁹ This means that any effort by Second Amendment sanctuaries to affirmatively recognize a right to keep or bear arms can be preempted by a state law that limits those rights. Even in states that provide for “home rule immunity,” in which state laws do not preempt local laws on matters of municipal affairs, Second Amendment sanctuaries will likely need to convince a court that gun control is not a matter of statewide concern in order to ignore state laws—a difficult proposition. Moreover, while states like Missouri and Ohio seem to offer further structural protections against state interference in setting the “powers, duties, and functions” of municipal officials, those protections have been upheld solely in the context of state laws that directly govern the organization, structure, and responsibility of municipal officers.⁴⁰ They have not yet been applied to generally applicable laws governing private conduct or the responsibility of local officials to enforce state laws more generally.

Nor are home rule claims readily available to all Second Amendment sanctuaries. First, not all states have adopted home rule. In fact, the states where the Second Amendment sanctuary movement first began—Virginia and North Carolina—also happen to be states where constitutional home rule does not exist. Instead, these states follow “Dillon’s Rule,” which

³⁵ MO. CONST. art. VI, § 22.

³⁶ *Lorain St. R.R. Co. v. Pub. Utils. Comm’n*, 148 N.E. 577, 580 (Ohio 1925) (Marshall, C.J., concurring); see also *State ex rel. Strain v. Huston*, 29 N.E.2d 375, 376 (Ohio Ct. App. 1940).

³⁷ Rick Su, *Have Cities Abandoned Home Rule?*, 44 FORDHAM URB. L.J. 181, 193 (2017).

³⁸ See *id.* at 201.

³⁹ See Paul A. Diller, *Reorienting Home Rule: Part 2- Remedying the Urban Disadvantage through Federalism and Localism*, 77 LA. L. REV. 1045, 1067 (2017).

⁴⁰ See *id.* at 1083-84.

stipulates that state statutes alone determine the power, authority, and responsibility of local government.⁴¹ Second, home rule is often not equally allocated to all local governments within a state. For example, counties and townships are often excluded from home rule status altogether or granted a form with less powers and protections than cities.⁴² As a result, structural protections like those recognized in Missouri and Ohio are granted exclusively to chartered home rule cities. This is important in the Second Amendment sanctuary context because the vast majority of these sanctuary resolutions have been adopted by counties.

Even if a Second Amendment sanctuary is covered as a home rule jurisdiction, there is still doubt about whether home rule would allow them to formally refuse to enforce state law. The strongest argument in favor of such a position is to interpret home rule as creating a *local* anti-commandeering doctrine—one that prevents the state from directly commandeering local officials to enforce state law.⁴³ There is some support for this argument, namely caselaw in which courts have prevented a state from creating or restructuring local offices or imposing additional administrative responsibilities on local officials. But extending these cases into situations where the state is simply mandating the local enforcement of a generally applicable state law will likely be difficult. After all, the federal anti-commandeering doctrine is premised on the idea that federal law enforcement officials should be primarily responsible for the enforcement of federal law. But for states, local law enforcement are their primary law enforcement officials. The laws that sheriffs and police departments enforce are primarily those of the state. And the authority that local law enforcement officials wield is drawn directly from the state.

Of course, despite the fact that local law enforcement officials are primarily responsible for enforcing state law, they are also politically accountable to local constituents. Sheriffs are elected by county residents. Police chiefs are chosen by mayors who are elected by city residents. Thus, even if local law enforcement officials are formally tasked with the state’s law enforcement responsibilities, the way they carry out those responsibilities are also subject to the interests of the local communities in which they serve. Might that provide them some discretion in how state laws are enforced, or how the enforcement of a particular law is prioritized alongside others? It is to this theory that we now turn.

D. Prosecutorial and Law Enforcement Discretion

Thus far, our examination of the legality of Second Amendment sanctuary resolutions has centered on their reliance on constitutional provisions and their targeting of “unconstitutional” restrictions. But it may also be possible to interpret these resolutions as local policy judgments

⁴¹ See *Commonwealth v. County Bd. of Arlington*, 217 Va. 558, 573 (1977); *Lanvale Properties, LLC v. County of Cabarrus*, 366 N.C. 142, 153 (2012).

⁴² See Rick Su, *Democracy in Rural America*, 98 N.C. L. REV. 837, 863–64 (2019–2020).

⁴³ See Gulasekaram, et al., *supra* note 1, at 860–64.

about law enforcement priorities or exercises of prosecutorial discretion. Here, I broaden our analysis of Second Amendment sanctuary resolutions to assess whether they might be understood as traditional exercises of law enforcement discretion.

To be sure, local policy judgments ordinarily do not trump those made at the state or federal level. This is why most local laws can be preempted by state and federal laws. Yet, our decentralized system of law enforcement also accords substantial discretion to local officials in how they carry out their responsibilities. Law enforcement authorities routinely make judgments about which criminal violations to prioritize and how local law enforcement resources are allocated. Moreover, local prosecutors in the United States have long exercised discretion over whether to file charges, and which charges to file.⁴⁴ This discretion has been repeatedly upheld as a core feature of our common law system, especially when exercised on an individual basis and with respect to the interests of the community.

The first question, then, is whether Second Amendment sanctuaries can be understood to be an exercise of police or prosecutorial discretion. Admittedly, this discretion is not explicitly invoked in the text of Second Amendment sanctuary resolutions. Yet, there are signs of this justification in their language and structure. By denying the use of local funds for gun control enforcement, Second Amendment sanctuaries seem to be exercising discretion over how law enforcement resources are allocated and the kinds of criminal offenses that should be prioritized. The resolutions that specifically decline to enforce “unnecessary” gun control restrictions suggest not just concerns about the constitutionality of these laws, but also local judgment about their need in a given community. Moreover, there are political links between the Second Amendment sanctuary movement and the “Constitutional Sheriffs” movement, which might suggest that these resolutions are intended to draw upon the role and authority of sheriffs, and not just that of the county government that enacted them.

But even if Second Amendment sanctuary resolutions can be understood to be an exercise of traditional law enforcement or prosecutorial discretion, questions remain about how these resolutions intend that discretion to be exercised. First, it is not clear if this discretion can be exercised through a blanket policy. The traditional use of law enforcement and prosecutorial discretion is on a case-by-case basis, where judgments are made about criminal charges as applied to a specific individual. There is considerable dispute, however, whether sheriffs or prosecutors can refuse to enforce an entire body of law. Second Amendment sanctuaries would not be the first example of such blanket policies. In recent years, for example, a number of elected prosecutors have campaigned on a platform of non-enforcement with respect to certain crimes, like low-level drug offenses or sex crimes, or vowed not to seek certain criminal

⁴⁴ See generally Stephanos Bibas, *The Need for Prosecutorial Discretion*, 19 TEMP. POL. & CIV. RTS. L. REV. 369 (2010).

sentences, like the death penalty.⁴⁵ There are also accounts of sheriffs categorically refusing to investigate certain crimes, like state anti-gambling laws as applied to electronic bingo operations.⁴⁶

The law is not yet settled with respect to these exercises of law enforcement and prosecutorial discretion, but early developments cut against discretion being used in this manner. In Florida, the state supreme court upheld the governor's decision to remove a county prosecutor from two dozen murder cases because of her categorical stand against seeking the death penalty.⁴⁷ Similarly, in ruling that Alabama's anti-gambling laws forbid casinos stocked with electronic bingo machines despite granting exemptions for "traditional bingo," the state's supreme court also chastised "failure of some local law-enforcement officials in this State to enforce the anti-gambling laws of this State they are sworn to uphold" and leading one commentator to suggest that impeachment proceedings be implemented against those officials for any continued non-enforcement.⁴⁸

Second, it is not clear that county governments have the power to exercise law enforcement or prosecutorial discretion directly or compel sheriffs and prosecutors to exercise such discretion. Of course, many local sheriffs and prosecutors have expressed support for Second Amendment sanctuary resolutions. But it is important to note that these resolutions are not policies adopted by the sheriffs or prosecutors themselves. And despite the fact that most sheriffs and prosecutors also serve county-wide, they do not serve or work for the county government. Indeed, state courts have long recognized the independence of sheriffs and prosecutors from county legislatures.⁴⁹ Given this, the strongest argument that can be made in support of Second Amendment sanctuaries is that they are not dictating how the sheriff or prosecutors carry out their duties, but simply refusing to appropriate their own funds—county funds—to sheriffs and prosecutors offices for the purpose of gun control enforcement. And given the fact that the operating budgets of most sheriff and prosecutor offices are derived from county appropriations, such conditions are simply incentivizing sheriffs and prosecutors to follow the county's non-enforcement policy. Courts, however, have not generally been receptive to this

⁴⁵ See Kerrell Murray, *Populist Prosecutorial Discretion*, 96 N.Y.U. L. REV. __ (forthcoming Apr. 2021).

⁴⁶ Recent Cases, *State v. \$223,405.86: Alabama Supreme Court Approves the State's Prosecution of Electronic Bingo in Macon County*, 130 HARV. L. REV. 1064, 1065, 1068-69 (2017).

⁴⁷ See *Ayala v. Scott*, 224 So.3d 755 (Fla. 2017).

⁴⁸ *State v. \$223,405.86*, 203 So.3d 816, at 844 (Ala., 2016).

⁴⁹ See, e.g., *Carver v. Sheriff of LaSalle Cty.*, 203 Ill. 2d 497, 512, 787 N.E.2d 127, 136 (2003) ("[S]heriffs answer to the electorate of the county from which they are elected, not the county board."); *Hicks v. Board of Supervisors*, 69 Cal.App.3d 228, 241 (1997) ("The [county] board of supervisors has no power to control the district attorney in the performance of his investigative and prosecutorial functions, and may not do so indirectly by requiring that he perform his essential duties through investigators who are subject to the control of another county officer.")

kind of use of the county's appropriation power.⁵⁰ They have cast the county's appropriation decisions as more of an administrative responsibility and less an exercise of legislative authority. Courts have also specifically struck down efforts to impose conditions like this in the past, especially when it appeared to be an effort by the county to exert control over offices that are not a part of the county government itself.⁵¹

Third, both blanket policies and county authority are undermined by the fact that in most states, sheriffs and prosecutors are considered to be "constitutional officers," whose duties and responsibilities are set out by the state constitution and designated as officers of the state.⁵² What this means is that their common law discretion needs to be balanced against their constitutional obligations. State constitutions typically delegate to the state legislature the authority to define the duties of the sheriff,⁵³ and those duties often include the enforcement of the state's laws.⁵⁴ Moreover, state constitutions and statutes frequently authorize state officials to remove sheriffs or prosecutors for intentional or willful neglect of their duties.⁵⁵ To be sure, legal obligations and common law discretion must be balanced. But it is likely that blanket, county-led non-enforcement policies like Second Amendment sanctuary resolutions will be construed as falling outside of the bounds of traditional law enforcement and prosecutorial discretion.

⁵⁰ See, e.g., *Chalan v. Wayne Cty. Bd. of Comm'rs*, 286 N.W.2d 62, 66 (Mich. Ct. App. 1979) ("Where the Legislature has statutorily imposed on the county executive officers various duties and obligations, the county boards of commissioners must budget sums sufficient to allow the executive officers to carry out their duties and obligations."); Ill. Att'y Gen. Op. No. 84-003, at 9, 12 (1984) ("The county board cannot use its financial and budgetary powers to regulate, control, or otherwise interfere in the internal operations of the various county offices.").

⁵¹ See, e.g., *Weitzenfeld v. Dierks*, 312 So.2d 194, 196 (Fla. 1975).

⁵² See, e.g., *Roop v. Whitt*, 768 S.E.2d 692, 696 (Va. 2015) ("By contrast, constitutional officers, including sheriffs, are creations of the constitution itself."); *Prince George's Cty. v. Aluisi*, 354 Md. 422, 434 (1999) ("Sheriffs and deputy sheriffs are state officials, not local government officials, and their duties are determined by state law, not locally enacted ordinances."); *People ex rel. Leonard v. Papp*, 386 Mich. 672, 683 (1972) ("The prosecutor is a constitutional officer whose duties are as provided by law.").

⁵³ See, e.g., COLO. CONST. art. 14, § 8.5; TEX. CONST. art. V § 23; VA. CONST. art. 7, § 4.

⁵⁴ See, e.g., IDAHO CODE § 31-2227 ("[I]t is hereby declared to be the policy of the state of Idaho that the primary duty of enforcing all the penal provisions of any and all statutes of this state, in any court, is vested in the sheriff and prosecuting attorney of each of the several counties."); TEX. CODE CRIM. PROC. ANN. art. 2.17 ("Each sheriff shall be a conservator of the peace in his county, and shall arrest all offenders against the laws of the State, in his view or hearing, and take them before the proper court for examination or trial.").

⁵⁵ See, e.g., FLA. CONST. art. IV, § 7(a) ("[T]he governor may suspend from office ... any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension.").

In short, Second Amendment sanctuaries are not easily justified as an exercise of law enforcement of prosecutorial discretion. The analysis of them as such, however, does raise an interesting question: If many sheriffs and prosecutors support the goals behind Second Amendment sanctuary resolution, then why are these resolutions being enacted at all? A similar result can be achieved if sheriffs and prosecutors simply exercise their discretion on a “case-by-case” basis. In other words, local recalcitrance might be just as effective, and draw far less attention and legal opposition, than a formal declaration of sanctuary.

III. Distinguishing Second Amendment and Immigration Sanctuaries

Second Amendment and immigration sanctuaries share the same name, but aside from that, what else do they have in common? This section compares these two sanctuary movements and their legal justifications. It concludes that while the two share similarities in rhetorical framing and political strategy, they are divided by substantial differences in their legal framing. As a result, many of the legal vulnerabilities of Second Amendment sanctuaries are not shared by immigration sanctuaries.

Of course, the fact that comparisons are now being drawn between Second Amendment and immigration sanctuaries is no mere accident. Indeed, by all accounts, prompting this comparison was precisely the reason that Second Amendment advocates chose to adopt the sanctuary label. The two movements may fall on opposite sides of the partisan divide, and most supporters of Second Amendment sanctuaries would likely oppose immigration sanctuaries. But from a political perspective, this co-option makes sense. If liberals can use immigration sanctuaries to oppose the enforcement of federal immigration laws, then conservatives should be able to create Second Amendment sanctuaries to limit the enforcement of federal and state gun laws. Either both succeed or both fail. Any effort to distinguish the two could be dismissed as hypocrisy.

But despite the political efficacy of such an argument, there are important legal distinctions between the types of sanctuary laws. These differences draw from the types of laws that they are targeting, the reasons given for their opposition and the types of local governments that have adopted them.

First, Second Amendment and immigration sanctuaries differ in their constitutional standing. Immigration sanctuaries rely on their legal status as “creatures of the state.” They draw upon the fact that immigration regulation is a national issue and its enforcement a federal responsibility. By assuming the constitutional standing of their state, immigration sanctuaries argue that they are structurally protected from federal commandeering, and thus have the discretion to choose whether and when they participate in federal immigration enforcement efforts. They assert that the burden of immigration enforcement should fall primarily, if not exclusively, on the federal government.

Of course, Second Amendment sanctuaries can raise similar claims in refusing to enforce federal laws. After all, the anti-commandeering arguments that immigration sanctuaries rely on were developed in part in the gun control context. But as against *state* gun laws, the constitutional standing assumed by immigration sanctuaries are not only unavailable to Second Amendment sanctuaries, but actually cut against them. Unlike the federalism relationship between the federal government and the states, the state-local relationship is not one of dual and independent sovereigns. As a result, Second Amendment sanctuaries cannot assume the legal status of the state in challenging the state. Nor does the federal Constitution prohibit state commandeering of local governments. Indeed, the very status of local governments as state creatures—the status that immigration sanctuaries use to oppose federal commandeering—cuts against local governments being able to oppose state mandates to enforce state laws. It is precisely because of this that local governments have thus far failed in challenging state anti-sanctuary laws, even while they have repeatedly succeeded in enjoining federal anti-sanctuary efforts.⁵⁶ It is likely that Second Amendment sanctuaries would be subject to state anti-sanctuary legislation in the same way.

Second, the reasons that Second Amendment and immigration sanctuaries give for refusing to enforce gun control and immigration laws also differ, and not just because they involve different issues and different interests. More importantly, their rationales are not equally connected in the structural sense with respect to the traditional role and duties of local governments. One of the central arguments that immigration sanctuaries give in refusing to participate in immigration enforcement is that doing so would undermine their ability to carry out their law enforcement and social service responsibilities. If local officials are actively checking immigration status, unauthorized immigrants might be less likely to report crimes as victims or offer assistance as witnesses. They might be more reluctant to take family members to hospitals, send their children to school, or take advantage of social services, even if the beneficiary of these services are U.S. citizens. Local officials may be held politically accountable for enforcement activities, like immigration checkpoints and neighborhood raids, that disrupt the lives of all residents, even if the local government is not primarily responsible for how immigration laws are written or how they are enforced. In other words, the rationales for immigration sanctuaries accord with the same structural arguments that gave rise to the anti-commandeering doctrine in the first place.

In contrast, the current arguments for Second Amendment sanctuaries do not directly concern the ability of local governments to perform their ordinary duties and responsibilities. This is not to say that they are unconcerned about the interests and welfare of their residents; the foundation of the Second Amendment, after all, is the protection of their residents' right keep and bear arms. But this reasoning is not directly connected to the role of local governments in

⁵⁶ See, e.g., *City of El Cenizo v. Texas*, 890 F.3d 164 (2018).

law enforcement, providing governmental services, or its duties more generally. Indeed, the reasons why local governments exist, and counties in particular, is to enforce state laws. Perhaps the argument can be made that residents who are in violation of state gun laws would also be less willing to report crimes, serve as witnesses, or seek governmental assistance for fear of being discovered. Yet it is not clear that this would indeed be true, given the nature of how guns are bought and kept, or that any such discouragement would be to the same degree. In any event, these arguments are not presently being made in support of Second Amendment sanctuary resolutions.

Perhaps this is the reason that legal defenses of Second Amendment sanctuaries are based less on their institutional interests as local governments, and more on the individual rights of their residents. In other words, Second Amendment sanctuaries seem to be largely challenging gun laws on behalf of their residents, rather than on behalf of themselves as governments. This accords with an alternative theory of local governments not just as administrative subdivisions of the state, but as political or corporate associations of their residents.⁵⁷ But this also raises a third distinction between Second Amendment and immigration sanctuaries—namely, the type of local governments that are leading these respective movements.

Simply stated: the vast majority of Second Amendment sanctuaries are counties, while most immigration sanctuaries are cities. This alignment makes sense politically because of their partisan orientation: counties largely govern conservative rural areas, while cities tend to be urban and liberal. But this distinction is also important as a matter of law. As chartered “municipal corporations,” it is cities that are usually understood to retain a dual identity as both state creatures and associations of their residents.⁵⁸ This dual identity is a remnant of the now-curious fact that early American law treated cities as corporations undistinguished from what we would know as private corporations.⁵⁹ In contrast, however, counties were never understood to possess an independent corporate identity at all. They had always been understood to be administrative subdivisions of the state, lacking any independent corporate identity, and wholly created in order to implement state policies.⁶⁰ As noted earlier, this makes them particularly susceptible to state control. It also casts doubt on their ability to raise individual rights claims directly on behalf of their residents, especially against the state.⁶¹

⁵⁷ See GERALD E. FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* 37 (2001).

⁵⁸ See *Hunter v. Pittsburgh*, 207 U.S. 161, 179-80 (1907).

⁵⁹ See Frug, *supra* note 57, at 36.

⁶⁰ See Su, *supra* note 42, at 861-62; see also 1 JOHN F. DILLON, *COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS* 29 (3d rev. ed. 1881).

⁶¹ See, e.g., *Columbia Cty. v. Bd. of Trs. of Wis. Ret. Fund*, 116 N.W.2d 142, 146 (Wis. 1962) (holding that counties and towns, as quasi municipal corporations rather than municipal corporations, do not have the legal standing to challenge the constitutionality of a state law). It should be noted that some municipal corporations are denied the ability to sue the state as well. For example, in *City of New York v. State of New*

In short, significant legal differences currently exist between Second Amendment and immigration sanctuaries. They differ in their constitutional standing, their administrative rationale, and their legal identity as local governments. None of this, of course, undermines the political benefits that Second Amendment sanctuaries derive from drawing comparisons to immigration sanctuaries.

Conclusion

Modeled after the immigration sanctuary movement, a growing wave of cities and counties have adopted Second Amendment sanctuary resolutions in support of the right to bear arms. Given the widespread attention they have drawn, the messaging goals of these resolutions have largely been met. But the legal effect of these resolutions—especially those that forbid the use of local resources to enforce “unconstitutional” gun control regulations—remain uncertain. No government is permitted to enforce laws that are deemed unconstitutional by courts. Further, there is no obligation for state and local officials to enforce federal laws, including those regulating firearms. But local governments do not determine the constitutionality of state or federal laws on their own, nor is there much ground for them to categorically refuse to enforce state laws based on their own determination of the laws’ constitutionality.

To be sure, county sheriffs and prosecutors have wide discretion in how they carry out their enforcement responsibilities, especially when that discretion is exercised on a case-by-case basis. But there is considerable controversy over whether that discretion can be exercised in a categorical manner to allow sheriffs and prosecutors to choose the laws they will not enforce. In fact, such categorical refusal appears to be grounds for removal in many states. Moreover, the traditional independence of sheriffs and prosecutors vis-à-vis local governments like counties suggests that this discretion cannot be mandated through a local ordinance or resolution. From this perspective, non-enforcement mandates in Second Amendment sanctuary resolutions cannot be easily justified as an exercise in law enforcement or prosecutorial discretion.

In short, the legal effect of Second Amendment sanctuary resolutions is questionable. Nevertheless, it is worth noting that our system of state law enforcement is highly decentralized, and local officials tend to follow the will of their constituents rather than that of the state. Given this trend, even if Second Amendment sanctuary resolutions are not legally effective in blocking the enforcement of gun control regulations, it is likely that underenforcement will still be an issue in jurisdictions that adopt these resolutions. State and federal policymakers should take this into account in the design and implementation of gun control measures.

York, the New York Court of Appeals held that even if residents of New York City could raise an equal protection claim against how state funding for public education is apportioned, New York City lacked the ability to sue the state directly given that they are but a subdivision of the state government. See [City of N.Y. v. State of N.Y.](#), 86 N.Y.2d 286 (1995).

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