

# Pa. state senator to feds: Gun control to be nullified in commonwealth

by Jon Campisi |  
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A state Senate Republican has now become the second Pennsylvania lawmaker to call for legislation safeguarding the commonwealth against any potential gun control laws enacted at the federal level.

State Sen. John H. Eichelberger Jr., this week announced his plans to introduce legislation that would guard Keystone State residents against federal intrusion where future firearms regulations are concerned.

“Many, including myself, believe that Pennsylvania’s constitutional protections of the right to bear arms are much clearer and stronger than those contained in the federal document,” Eichelberger said in a statement released by the Pennsylvania Senate Republicans. “I also believe it is a clear principle of law that a state constitution may not offer less protection than the U.S. Constitution, but it can afford greater protections.”

The lawmaker noted that Pennsylvania’s provisions regarding the right to possess and bear arms – Article I, Section 21, in the Constitution of the Commonwealth of Pennsylvania – predate the U.S. Constitution.

Pennsylvania was actually the first state to address the right to bear arms in its constitution, according to Eichelberger.

“By the time the Second Amendment to the United States Constitution was adopted, Pennsylvania had already reaffirmed the right to bear arms as a fundamental individual freedom,” reads a news release from the Pennsylvania Senate Republicans. “The year before the ratification of the federal Bill of Rights, Pennsylvania’s protections were made even stronger, by adding the clear and unequivocal phrase, *‘shall not be questioned.’*”

The full text of Pennsylvania’s constitutional provision reads as follows: “The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.”

Eichelberger said his legislation would make clear that Pennsylvania would not assist the federal government in “watering down individual rights protected by its constitution.”

The proposal would prohibit the use of any state or local resources, including personnel, buildings, and equipment, to enforce any new federal restriction on the purchase or ownership of any firearms and gun accessories that are currently legal products in the commonwealth.

Eichelberger’s announcement comes on the heels of a similar announcement by state Rep. Daryl Metcalfe, one of the most vocal gun rights proponents in the commonwealth, who stated in

January that he planned to introduce House Bill 357, (a reference to the .357 magnum handgun), that would nullify any potential future federal gun control laws.

On Jan. 23, Metcalfe, a Republican representing portions of southwestern Pennsylvania, announced that his proposal would prohibit enforcement of any new federal gun registration, restriction or prohibition requirement for privately owned firearms, magazines and ammunition within the commonwealth.

Metcalfe's bill, which he said was modeled after similar proposed legislation in Texas and Wyoming, and which is titled the "Right to Bear Arms Protection Act," would also require the commonwealth, including the Attorney General, to intercede on behalf of state citizens against any federal attempt to register, restrict or ban the purchase or ownership of guns and accessories that are currently legal in Pennsylvania.

"Passage of my legislation will send the message that there will never be additional gun control, anywhere in Pennsylvania," Metcalfe said in a statement at the time.

Gun control is undoubtedly a hot-button issue these days, with calls for new gun regulations arising out of recent mass shootings, including the deadly elementary school massacre in Connecticut.

According to the Second Amendment Foundation, 44 states in the union have their own constitutional provisions enumerating individual citizens' right to keep and bear arms.

Six states are lacking such a provision, according to the SAF. They are California, Iowa, Maryland, Minnesota, New Jersey and New York.

In the Empire State, however, Article 2, Section 4, of the New York Civil Rights Law reads almost identical to the federal Second Amendment. Still, this is not part of the state's original founding document, but rather contained within a statutory law.

# **The Fulton County News**

## **Eichelberger Introduces Gun Rights Bill**

State Sen. John H. Eichelberger Jr. (R-30) announced Monday his plan to introduce legislation to safeguard the protections contained in the Pennsylvania Constitution against attempts by the federal government to dilute them.

“Many, including myself, believe that Pennsylvania’s constitutional protections of the right to bear arms are much clearer and stronger than those contained in the federal document,” stated Eichelberger. “I also believe it is a clear principle of law that a state constitution may not offer less protection than the U.S. Constitution, but it can afford greater protections.”

Pennsylvania’s provisions regarding the right to bear arms predate the federal constitution. In fact, Pennsylvania was the first state to address the right to bear arms in its constitution. By the time the Second Amendment to the United States Constitution was adopted, Pennsylvania had already reaffirmed the right to bear arms as a fundamental individual freedom. The year before the ratification of the federal Bill of Rights, Pennsylvania’s protections were made even stronger, by adding the clear and unequivocal phrase, “shall not be questioned.” The language, in Article I, Section 21, has carried through since that time: “The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.”

Eichelberger noted: “My legislation would make it clear that the commonwealth will not assist the federal government in watering down individual rights protected by its constitution. The bill would prohibit the use of any state or local resources, including personnel, buildings and equipment, to enforce any new federal restriction on the purchase or ownership of any firearms and accessories which are currently legal products in Pennsylvania.”

## Obama's gun actions absolutely legal, profoundly right

By Laurence H. Tribe

CNN

<http://www.cnn.com/2016/01/05/opinions/tribe-obama-action-on-guns/>

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Laurence Tribe: Some gun advocates wrongly slammed Obama's executive action as unconstitutional.

But he's within legal authority

He says Obama is restoring integrity of Brady Act while upholding 2nd Amendment rights, not usurping powers of paralyzed Congress

Laurence H. Tribe is Carl M. Loeb University professor and professor of constitutional law at Harvard Law School. Watch President Obama as he joins Anderson Cooper and a live audience for a CNN prime-time event: "Guns in America," at 8 p.m. ET Thursday.

(CNN)Earlier Tuesday, in a deeply moving speech that brought many, including the President himself, to tears, President Obama unveiled several executive actions intended to curtail the prevalence of gun violence in our nation. Beyond the concrete actions he described, he may have hoped to educate and persuade the public, quoting Martin Luther King Jr. about the "fierce urgency of now."

Most Americans will recognize the common-sense steps announced today cannot prevent all gun abuse but will still welcome them as ways of reducing the continuing scourge of gun violence in this country.

Most but not all: Even these mild measures have been savaged by some, including those seeking the Republican presidential nomination, who insist that the President's decision to act on his own initiative, rather than waiting for an increasingly dysfunctional Congress to tighten gun safety regulations, is unconstitutional -- even tyrannical.

But if we take the time to examine exactly what President Obama is proposing, a crucial step that these critics seem to have skipped, we cannot avoid the conclusion that the measures he has outlined are well within his legal authority.

They are of course driven by the appalling frequency of mass shootings, including the recent tragedies in South Carolina and San Bernardino, and by the grim reality that approximately 30,000 Americans die from gun violence each year.

Some commentators have analyzed Tuesday's executive actions in the shadow of Congress' shameful failure in 2013, after the Sandy Hook massacre, to pass even limited laws to keep guns out of the hands of those who clearly shouldn't have them.

Congress' inaction, despite strong public support for stricter gun control, undoubtedly reflects the outsized influence of the "gun rights" lobby. But we can't infer from Congress' inertia that the President lacks authority to take today's actions on his own.

There may be extraordinary situations in which congressional dysfunction strengthens the President's hand, but there's no need to decide whether this is among them. Given the legal modesty of the measures announced by the President, Congress' silence is simply irrelevant.

Some of what the President plans to do involves nothing beyond urging Congress to increase appropriations for enforcing existing laws. Other steps are purely administrative: using appropriated agency funds to modernize the electronic background check system with the best private assistance available, hire more personnel to process background checks, and encourage research into "smart gun" technology. Such prudent measures in no way impinge upon congressional prerogatives.

Critics have focused primarily on the President's proposal to close the Internet loophole and the infamous "gun show loophole," which lets sales at these temporary clearinghouses escape all federal background check requirements and thereby undercuts the entire web of federal regulations.

Gun control advocates have long lamented such gaps. And merely closing irrational holes in its fabric -- holes that have too long let some gun sellers flout the clear meaning and purpose of federal statutes -- is a way for the President to carry out Congress' design, not revise it.

The 1993 Brady Act requires everyone "engaged in the business" of selling firearms to conduct background checks. It says someone is "engaged in the business" of selling firearms if he does so "as a regular course of trade," a description that undoubtedly applies to all vendors who make their living selling firearms physically or online, at gun shows or anyplace else.

As Attorney General Loretta Lynch put it, "It is not where you are located, but ... what you are doing that determines whether you are engaged in the business of dealing in firearms."

Why we're still debating guns in 2016

Yet, largely as a result of the NRA's democracy-distorting political clout, background checks have never been required online or at gun shows. By closing these infamous loopholes, Obama is restoring the integrity of the Brady Act, not usurping the powers of a nearly inert Congress.

That the President would have preferred that Congress take decisive action, and more expansive action than he can take himself via executive action, doesn't mean that any of the measures pushes the edge of any legal envelope.

There is even less substance to accusations that the President's actions will violate the individual right to bear arms guaranteed by the Second Amendment. The Supreme Court has recently given meaningful force to that guarantee in two landmark cases: *McDonald v. City of Chicago* and *District of Columbia v. Heller*.

Those decisions, however, invalidated only unusually restrictive local measures and established simply that Americans have a personal right to keep a firearm in their own homes for the purpose of self-defense, a position with which both the President and I have long agreed.

But as the President rightly emphasized Tuesday, the Second Amendment does not confer an unlimited, absolute right any more than does the First Amendment.

The right to bear arms is subject to reasonable regulation and always has been. And the very fact that the right is enshrined in the Constitution ensures that reasonable measures to minimize gun violence don't put us on a slippery slope to ultimate government confiscation of everyone's weapons.

Although closing the gun-show and Internet loopholes by executive order may be legally modest, such steps are profoundly consequential as a policy matter. Permitting what amounted to unbounded "black sites" where firearms traffic could go undetected and unregulated has always been crazy.

By expanding the scope of the background check system and modernizing its administration, the President is making all of us a bit safer and is sensibly addressing a national crisis that our paralyzed politics has thus far been powerless to resolve.

I'm not one who has been shy in legally opposing the President's policies when I believe them to fall outside the Constitution's bounds. But having carefully reviewed the actions the President announced Tuesday, I have no question that they fall squarely within the scope of his authority.