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Testimony of Senator Eric Brakey

L.D. 1451, "An Act to Prohibit State and Local Enforcement of Federal Firearms Laws"

Before the Maine Legislature's Joint Standing Committee on Criminal Justice and Public Safety

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Senator Beebe-Center, Representative Salisbury, and members of the Joint Standing Committee on Criminal Justice and Public Safety, I am Eric Brakey, Senator from Androscoggin, representing the people of Auburn, New Gloucester, Poland, and Durham. I am before you today to present L.D. 1451, "An Act to Prohibit State and Local Enforcement of Federal Firearms Laws."

This legislation seeks to prohibit the use of state, county, and municipal resources for the enforcement of all federal firearm laws (1) restrict a person's right to own, possess and purchase firearms, and (2) have no parallel within Maine state statutes.

In other states where this policy has become law (including Missouri, our sister state), this proposal is called the "Second Amendment Preservation Act" (SAPA). Despite the name, this legislation is at least as concerned with the 10th Amendment as any other item in the Bill of Rights.

**"The powers not delegated to the United States by the Constitution,
nor prohibited by it to the States, are reserved to the States respectively,
or to the people."**

Amendment X, U.S. Constitution

The Maine people, through this elected legislature and ballot referendums, have played an active role in our state's firearm laws.

When out-of-state financiers (like NYC billionaire Mike Bloomberg) have failed to convince majorities to change our laws and erode protections for the individual right to keep and bear arms, they have turned instead to the federal government — seeking to push their agendas upon us from the top down.

But whether the policy is targeted at prohibiting particular firearms or prohibiting particular people from possessing them, the State of Maine has no legal obligation to expend any resources enforcing federal laws and regulations.

Five U.S. Supreme Court cases have firmly established the “Anti-Commandeering Doctrine” as a principle of American constitutional law. This is a legal principle that prohibits the federal government from “commandeering” state personnel or resources for federal purposes.

Five Anti-Commandeering U.S. Supreme Court Decisions

1. In **Prigg v. Pennsylvania (1842)**, the court found that Northern states could not be compelled to implement or carry out the Fugitive Slave Act.
2. In **New York v. United States (1992)**, Justice Sandra Day O'Connor wrote in the majority opinion:

“As an initial matter, Congress may not simply “commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program... While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’ instructions.”

3. In **Printz v. United States (1997)**, a case regarding mandates in the Brady Gun Bill, Justice Antonin Scalia wrote for the majority:

“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.”

4. In **Independent Business v. Sebelius (2012)**, the Court held the federal government cannot compel states to expand Medicaid by threatening to withhold funding for Medicaid programs already in place. Justice John Roberts argued that allowing Congress to essentially punish states that refused to go along violates constitutional separation of powers.
5. In **Murphy v. NCAA (2018)**, the Court held that Congress can't take any action that “dictates what a state legislature may and may not do” even when the state action conflicts with federal law. Justice Samuel Alito wrote, “a more direct affront to state sovereignty is not easy to imagine.” He continued:

“The anticommandeering doctrine may sound arcane, but it is simply the expression of a fundamental structural decision incorporated into the Constitution, i.e., the decision to withhold from Congress the power to issue orders directly to the States ... Conspicuously absent from the list of powers given to Congress is the power to issue direct orders to the governments of the States. The anticommandeering doctrine simply represents the recognition of this limit on congressional authority.”

This being the case, whatever vague assertions opponents may make about the Supremacy Clause, please understand that this proposal is backed up by 180 years of U.S. Supreme Court opinions.

Now that the legal basis is established, let's consider the practical effect on Maine people.

One particular federal law, which this legislation seeks to nullify, is the prohibition against any person who uses cannabis from possessing a firearm under the Controlled Substances Act.

According to a 2022 report prepared for the Maine Office of Cannabis Policy,¹ an estimated 25%-30% of Maine residents have used cannabis since the start of the pandemic. As such, this means that over a quarter of Maine's adult population (acting in full legal compliance with our state laws) are prohibited under federal law from exercising their 2nd Amendment rights.

Further, this prohibition when considered alongside the federal government's denial of access to banking services for Maine's largest agricultural industry,

¹ Maine Office of Cannabis Policy Cannabis Markets & Associated Outcomes - Survey Findings and Implications. Spring 2022.

creates a clear threat to public safety. Taken together, Maine cannabis businesses are at heightened risk for robbery, as criminals know they are forced to hold large stacks of cash and prohibited from possessing the means to defend themselves.

(In the Health Coverage, Insurance, and Financial Services Committee, we are currently exploring policy possibilities to ensure access to banking services for the cannabis industry.)

There are (and will continue to be) many debates in this committee room about policies regarding the right to keep and bear arms. All this legislation asks is that we preserve the democratic rights of Maine people — through their elected representatives and popular referendums — to be the ones making these determinations.

Just as the state has established preemption over localities regarding firearm laws, we must insist on that same authority with Washington, D.C. Whatever firearm policies are enacted and enforced in Maine should be decided by the Maine people, not far-away officials and bureaucrats.

This legislation would not prohibit the state from cooperating with the federal government in the enforcement of any firearm law that is reflected in Maine statutes. It would only protect our law-making process from being circumvented by denying the federal government use of state resources to enforce their unconstitutional policies, which we do not recognize.

Thank you for your time and consideration for this matter today. I hope you will vote to protect the rights of the Maine people. I will gladly take questions.