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**Testimony of Attorney General Kris Kobach  
Written Proponent for HB 2803  
House Committee on Federal and State Affairs  
March 7, 2024**

Chairman Carpenter and members of the Committee:

Thank you for the opportunity to provide written testimony in support of House Bill No. (HB) 2803, which would create the Kansas Gun Rights Preservation Act.

Among other things, HB 2803:

- Would prohibit agencies or political subdivisions of the State of Kansas, as well as their employees, from knowingly and willingly participating in the enforcement of any federal act, law, executive order, administrative order, rule or regulation regarding a firearm, firearm accessory, or ammunition against a law-abiding citizen;
- Would prohibit agencies or political subdivisions of the State of Kansas, as well as their employees, from utilizing state funds to engage in any such activity;
- Imposes substantial monetary fines on agencies or political subdivisions whose employees violate the Act;
- Provides a process by which an aggrieved law-abiding citizen can obtain relief in court;
- Declares that sovereign immunity is not an affirmative defense in any action filed pursuant to the Act; and
- Would still allow state law enforcement to provide material aid and support to federal law enforcement to prosecute felony crimes substantially similar to those in article 57, 58, or 63 of Chapter 21 of the Kansas Statutes Annotated that includes possession of firearm or other weapon if the charges are not solely such possession.

The Second Amendment is a sacred individual right that allows citizens the right to protect themselves and their loved ones. No other right is possible to without the right to self-defense. Unfortunately, we live in a time when the federal government and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) treat this right as being worth less than the paper it was written on. It is incumbent in such an environment for states such as Kansas use every legal tool available to protect this right for their citizens.

HB 2803 will uphold Kansans' fundamental right to keep and bear arms as protected by both the U.S. and Kansas Constitutions.<sup>1</sup> Further, they will help protect innocent "individuals and small businesses that have had their lives shattered [and] their employees left jobless" because of overreach by ATF.<sup>2</sup> This overreach is only getting stronger and my office is engaging in the legal battle against these actions.

As this committee is aware, my office joined a multi-state federal lawsuit against the ATF because of a rule it proposed that would subject pistol stabilizing braces to the National Firearms Act ("NFA"). The rule at issue is an "abrupt reversal of ATF's longstanding position that these items are not subject to NFA controls or [other federal laws and regulations]"<sup>3</sup> and "require millions of Americans to choose between the loss of their lawful (and lawfully acquired) firearms, the loss of their privacy [(due to a registration requirement)], and the risk of criminal penalties."<sup>4</sup> My office is also part of a coalition challenging ATF's new definition of a "frame" or "receiver" that would regulate even partially complete, disassembled, or nonfunctional frames or receivers<sup>5</sup>.

As the committee also may be aware, I sent a comment letter to ATF on December 7, 2023 that opposed an ATF rule 2023 that made anyone "who sells a firearm 'predominantly for profit' liable to civil, administrative, or even criminal penalties—unless the seller acquires a federal license."<sup>6</sup> This proposed rule would not simply regulate "large

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<sup>1</sup> See U.S. CONST. amend. II; KAN. CONST. Bill of Rights, § 4.

<sup>2</sup> ATF's Assault on the Second Amendment: When is Enough Enough?: Joint Hearing Before the Subcomm. On Economic Growth, Energy Policy, and Regulatory Affairs of the House Committee on Oversight and Accountability and the Subcomm. On Crime and Federal Government Surveillance of the House Committee on the Judiciary, 118 Cong. 15 (Mar. 23, 2023) (statement of Mr. Matthew Larosiere), available at <https://www.congress.gov/118/chrg/CHRG-118jhr51632/CHRG-118jhr51632.pdf>.

<sup>3</sup> Complaint ¶ 5, *Firearms Regulatory Accountability Coalition v. Garland*, 1:23-cv-00024-DLH-CRH (D.N.D.).

<sup>4</sup> *Id.*

<sup>5</sup> Complaint (Dkt. 22), *Morehouse v. ATF*, 3:22-cv-00116-PDW-ARS (D.N.D.).

<sup>6</sup> Comment Letter of the Attorneys General for the States of Kansas, Iowa, Montana, Alabama, Alaska, Arkansas, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming, and the Arizona State Legislature in response to ATF's Request for Comments on its Proposed Rule titled, *Definition of "Engaged in the Business as a Dealer in Firearms,"* 88 Fed

commercial enterprises that sell firearms.”<sup>7</sup> Indeed, it “seeks to require a license of every individual who sells a firearm for *anything* the Bureau sees as a profit to include currency, exchange of another firearm, or a service.”<sup>8</sup> As I said,

“The proposed regulation clearly violates the Second Amendment. For as long as this country has existed, individual law-abiding Americans have sold firearms to friends and family. Doing so would become extremely difficult if this regulation were to take effect. My colleagues and I will do everything necessary to stop this from happening.”<sup>9</sup>

While I will certainly use every legal tool in my arsenal to challenge ATF’s unlawful and unconstitutional overreach, success is not a guarantee whenever we are in court. The citizens of Kansas need protection in the event that our legal challenges do not work out the way we hope and the state legislature has the authority to provide that protection.

I am pleased to say that HB 2803 is a step in the right direction to protect Kansans’ Second Amendment rights. HB 2803 is a necessary tool to help protect Kansan’s right to self-defense from the ATF’s continued overreaches by prohibiting state taxpayer money from being utilized for such activity. It also ensures that state law enforcement will continue to support legitimate federal law enforcement efforts such as targeting who use firearms to commit violent crimes. In short, it strikes the appropriate balance between protecting rights and public safety. I therefore urge this committee to favorably pass HB 2803 out of committee. Thank you for your consideration.

Sincerely,



Kris W. Kobach  
Kansas Attorney General

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Reg. 61,993 at 1 (Sept. 8, 2023) (Docket No.: ATF 2023-19177), available at <https://ag.ks.gov/media-center/news-releases/2023/12/07/kobach-leads-coalition-demanding-biden-drop-unconstitutional-atf-rule>.

<sup>7</sup> *Id.* at 2-3.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> Press Release, Kobach leads coalition demanding Biden drop unconstitutional ATF rule, Office of Kansas Attorney General Kris W. Kobach (Dec. 7, 2023), available at <https://ag.ks.gov/media-center/news-releases/2023/12/07/kobach-leads-coalition-demanding-biden-drop-unconstitutional-atf-rule>.