

**JOHN J. RUBIN
13803 W. 53RD ST
SHAWNEE, KS 66216**

913-558-4967

**TESTIMONY OF FORMER REP. JOHN RUBIN
IN SUPPORT OF SB 254**

**BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
JUNE 2, 2017**

Chairman Estes and committee members, I appreciate this opportunity to testify today as a private citizen and former member of the House and the lead sponsor and proponent of 2012 HB 2199, the Kansas Second Amendment Protection Act (“SAPA,” K.S.A. 2016 Supp. 50-1204), and a strong proponent of SB 254, the bill before you today for consideration, which seeks to correct an inadvertent drafting oversight in SAPA that has caused unfortunate hardship and criminal exposure to two honorable, law-abiding Kansas citizens, Shane Cox and Jeremy Kettler, who relied on it to their detriment.

I was proud to draft and sponsor SAPA, which proclaims loudly and clearly that not only the Second Amendment but the Tenth Amendment to the United States Constitution are alive and well in Kansas, and which for the first time puts real teeth into protecting the precious individual right of every Kansan to keep and bear arms under the United States and Kansas Constitutions.

Predicated upon the clear and unequivocal constitutional rights guaranteed in the U.S. and Kansas Constitutions to every Kansas citizen to keep and bear arms, SAPA established two circumstances under which the federal government has no enforceable authority to regulate, restrict or ban Kansas-made and owned firearms or accessories, and prohibits any state or federal attempt to do so.

First, it declares that any firearms, firearms accessories (clearly defined in section 3 of SAPA to include sound suppressors) or ammunition (terms defined in section 3 of the bill) that are commercially or privately manufactured in Kansas, owned in Kansas, and remain within the borders of Kansas have clearly not traveled in interstate commerce. As such, they are not subject to any current or future federal act, law, treaty, executive order, rule or regulation under the authority of Congress to regulate interstate commerce or any other constitutional theory. (Section 4.) Thus no state official, employee or agent may enforce any federal act, law, treaty, executive order, rule or regulation regarding any such Kansas-made firearm, accessory or ammunition. (Section 6(b).) Moreover, any federal official, agent, employee or contractor who enforces or attempts to enforce any federal act, law, treaty, executive order, rule or regulation upon any such Kansas-made firearm, accessory or ammunition commits a severity level 10 nonperson felony under the Kansas criminal code and is subject to prosecution for same. (Section 7.) Please note that SAPA has never been constitutionally challenged, and remains fully effective and enforceable in the state of Kansas to this date.

However, an unfortunate oversight occurred during the drafting of SAPA. Neither I, other legislators and staff working with me on SAPA, nor conferees supporting SAPA realized that a pre-existing Kansas Statute, K.S.A. 2016 Supp. 21-6301(a)(4), criminalized the possession or use of sound suppressors in Kansas. Had this pre-existing statute been identified at the time, I can assure you that I and support staff would have specifically added language to SAPA providing that this provision does not apply to Kansas-made sound suppressor accessories complying with the provisions of SAPA on and after its effective date, which was April 25, 2013. That was clearly my intent in drafting and sponsoring SAPA, and, I believe, the understanding and legislative intent of the Legislature at the time SAPA was passed.

Subsequent to enactment and the effective date of SAPA, two law-abiding Kansas citizens with honorable military connections relied on its terms to manufacture, in the case of Shane Cox, the father of an active duty military member, and purchase and own, in the case of Jeremy Kettler, a veteran, Kansas-made and owned sound suppressors without regard to registration requirements contained in the National Firearms Act. They believed, as do I, that their actions in this regard were entirely legal under SAPA, and thus made no attempt to hide their activities or circumvent National Firearms Act requirements. However, they have subsequently been found guilty in Federal court and sentenced for the illegal manufacture and sale of sound suppressors, in the case of Mr. Cox, and the illegal purchase and possession of such sound suppressors, in the case of Mr. Kettler, in violation of the registration requirements of the National Firearms Act, despite the explicit provisions of SAPA upon which they relied. These convictions were, at least in part, based on holdings by the court that, under the rules of statutory construction utilized by the courts, the specific pre-existing language of K.S.A. 2016 Supp. 21-6301 criminalizing possession and use of sound suppressors in Kansas takes precedence over the more general language of the subsequently-enacted SAPA with regard to Kansas-made sound suppressors, absent specific language in SAPA superseding the prior statutory provisions. This is clearly a miscarriage of justice, and fundamentally unfair to Mr. Cox and Mr. Kettler, who believed they were acting legally in good faith reliance on the statutory protections we in the Legislature afforded them under SAPA.

The bill before you for consideration today corrects this drafting oversight which has occasioned a gross miscarriage of justice in the Cox and Kettler case, by amending K.S.A. 2016 Supp. 21-06301 (a)(4) to provide that that section does not apply to or affect any person possessing or using any sound suppressors satisfying the description of a Kansas-made firearm accessory under SAPA (section 1(i)(1) of the bill), retroactive to the effective date of SAPA, April 25, 2013 (section 1(i)(2) of the bill).

I urge you to vote to favorably report SB 254 in order to correct the gross miscarriage of justice that has occurred in the Cox and Kettler case, and in order to continue to reaffirm the clear legislative intent reflected in SAPA to stand in strong support of the Second and Tenth Amendment rights of all Kansas citizens, by declaring that there is no constitutional basis for the federal government to regulate, restrict or ban Kansas-made and owned firearms, accessories or ammunition, both because this is not a specifically enumerated power of the United States, and because such firearms, accessories and ammunition are not in interstate commerce.