

RESOLUTION 2019-___

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF
ARCHULETA COUNTY, COLORADO, DECLARING ARCHULETA COUNTY TO BE
A SECOND AMENDMENT PRESERVATION COUNTY**

WHEREAS, §30-11-101, C.R.S. provides that counties have the authority to adopt and enforce ordinances and resolutions regarding health, safety, and welfare issues; and,

WHEREAS, §30-11-103, C.R.S provides that the powers of a county as a body politic and corporate shall be exercised by a board of county commissioners; and,

WHEREAS, the Second Amendment to the United States Constitution, adopted in 1791 as part of the Bill of Rights, protects the inalienable and individual right of the people to keep and bear arms; and,

WHEREAS, the Supreme Court in the *District of Columbia v. Heller*, 554 U.S. 570 (2008), “[t]he Second Amendment...is the very product of an interest balancing by the people...(which) surely elevates above all other interests the rights of law-abiding, responsible citizens to use arms in defense of hearth and home.”; and,

WHEREAS, the Supreme Court in *McDonald v. Chicago*, 561 U.S. 742 (2010), affirmed that the right of an individual to “keep and bear arms,” as protected under the Second Amendment, is incorporated by the Due Process Clause of the Fourteenth Amendment against the “infringement by the States”; and,

WHEREAS, the Supreme Court, in *United States v. Miller*, 307 U.S. 174 (1939), opined that firearms that could “contribute to the common defense” are protected by the Second Amendment; and,

WHEREAS, Article II, Section 3 of the Constitution of Colorado provides that all “persons have certain inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness”; and,

WHEREAS, Article II, Section 13 of the Constitution of Colorado provides that the “right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question”; and,

WHEREAS, Article II, Section 11 of the Constitution of Colorado provides that no “ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation...shall be passed by the general assembly”; and,

WHEREAS, Article II, Section 7 of the Constitution of Colorado provides that the “people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures”; and,

WHEREAS, Article II, Section 15 of the Constitution of Colorado provides that “[P]rivate property shall not be taken or damaged, for public or private use, without just compensation,” which the Colorado Supreme Court has indicated includes a legal interference with the physical use, possession, disposition, or enjoyment of the property, including temporarily; and,

WHEREAS, House Bill 19-1177 infringes upon the inalienable rights of the citizens of Archuleta County by allowing for family members and law enforcement to petition for the temporary removal of weapons *ex parte* and without notice to lawful gun owners, contemplating search warrants that order peace officers to forcibly enter premises and seize a citizen’s property with no evidence of a crime and shifting the burden of proof to gun owners accused under this law to prove themselves not a danger by clear and convincing evidence after an order for removal; and,

WHEREAS, by allowing for confiscation of concealed handgun permits by court order, House Bill 19-1177 inserts the judiciary into the purview of the elected Sheriff in administering his or her concealed handgun permit program under existing Colorado law; and,

WHEREAS, House Bill 19-1177 is off target in that it fails to address the heart of the mental health crisis in our community, to wit: the failure of communities to fund and provide services to the people in need, instead of penalizing them and criminalizing otherwise lawful conduct; and,

WHEREAS, the Archuleta County Sheriff and the Board of County Commissioners of Archuleta County (the “Board”) have come to recognize that government needs to be more, not less, judicious in how we use force in encounters with those suffering mental health issues; and,

WHEREAS, the best way to prevent gun violence is to address the growing mental health crisis, and not to limit the inalienable rights of law-abiding citizens; and,

WHEREAS, the members of this Board took an oath to support and defend the United States Constitution, the Constitution of the State of Colorado and the laws of the State of Colorado and by implication question the constitutionality of legislation that potentially infringes upon constitutional rights; and,

WHEREAS, the Archuleta County Sheriff, a constitutional officer of the State of Colorado, took an oath to support and defend the United States Constitution, the Constitution of the State of Colorado and the laws of the State of Colorado.

NOW, THEREFORE, BE IT RESOLVED by the Archuleta County Board of County Commissioners by the authority granted the Board by the laws of the State of Colorado and people of Archuleta County, Colorado to stand and defend their rights and liberties, which are guaranteed by the United States and Colorado Constitutions, we hereby declare this Resolution to be a Second Amendment Preservation Resolution.

BE IT FURTHER RESOLVED that this Board does hereby pledge not to appropriate funds, resources, employees, or agencies to initiate what it believes to be unconstitutional seizures in unincorporated Archuleta County and also affirms its support for the duly elected Sheriff of Archuleta County, Colorado and decisions he makes to refuse to initiate any unconstitutional actions against citizens.

BE IT FURTHER RESOLVED that in coordination with the Archuleta County Sheriff, the Board commits to resist the bill in its current and subsequent forms to protect the Second Amendment rights of all lawful gun owners in the state, and not just in Archuleta County. We invite all like-minded counties to join us in this effort.

BE IT FURTHER RESOLVED that the Board demands that the legislature cease and desist any further actions restricting the Second Amendment rights of citizens and instead address the real and fundamental challenges of mental illness in our communities.

BE IT FURTHER RESOLVED neither the United States Congress nor the Colorado General Assembly should enact legislation that contradicts the Second Amendment.

APPROVED AND ADOPTED in Pagosa Springs, Colorado this ____ day of _____, 2019.

**BOARD OF COUNTY
COMMISSIONERS, ARCHULETA
COUNTY, COLORADO**

By: _____
Ronnie Maez, Chairman

ATTEST:

By: _____
Mary Helminski,
Deputy County Clerk and Recorder