

**NOTICE OF MEETING
BENTON COUNTY QUORUM COURT
COMMITTEE OF THE WHOLE**

WHEN: Tuesday, February 18, 2020

TIME: 6:00 P.M.

PLACE: Benton County Administration Building
Third Floor Meeting Room
215 East Central
Bentonville, AR 72712

NOTICE IS HEREBY GIVEN THAT A COMMITTEE OF THE WHOLE MEETING WILL BE HELD **TUESDAY, FEBRUARY 18, 2010 AT 6:00 P.M.** IN THE QUORUM COURT MEETING ROOM, PER COMMITTEE CHAIR KURT MOORE

PUBLIC COMMENTS:

- Public Comments are allowed after discussion by the committee members on each item on the agenda. Public comments are limited to a total of 15 minutes for each item and are limited to three (3) minutes per person.

LIAISON REPORTS:

AGENDA

- 1) Discussion: Changing March and April Quorum Court meeting dates**
- 2) Discussion Relating to 2nd Amendment Sanctuary Proposals**

OTHER BUSINESS

ANNOUNCEMENTS

PUBLIC COMMENTS

ADJOURNMENT

March 2020

March 2020

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April 2020

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Mar 1	2	3 PRIMARY ELECTION DAY	4	5	6	7
8	9	10 FINANCE	11	12	13	14
15	16	17 COMMITTEE OF THE WHOLE	18	19	20	21
22	23	24	25	26	27	28
SPRING BREAK						
				26 QC REGULAR MEETING DATE		
29	30	31 QUORUM COURT PROPOSED CHANGE	Apr 1	2	3	4

April 2020

April 2020							May 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4						1	2
5	6	7	8	9	10	11	3	4	5	6	7	8	9
12	13	14	15	16	17	18	10	11	12	13	14	15	16
19	20	21	22	23	24	25	17	18	19	20	21	22	23
26	27	28	29	30			24	25	26	27	28	29	30
							31						

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Mar 29	30	31	Apr 1	2	3	4
5	6	7	8	9	10	11
12	13	14 FINANCE COMMITTEE	15	16	17 QC NOTIFICATION DEADLINE FOR APRIL 23rd	18
19	20	21 COMMITTEE OF THE WHOLE	22	23 QC REGULAR MEETING DATE	24	25
26	27	28	29	30 QUORUM COURT PROPOSED CHANGE	May 1	2

C.O.W.
1-21-2020
Public Comments ITEM

ORDINANCE NO. O-2020-_____

BE IT ENACTED BY THE QUORUM COURT OF THE COUNTY OF BENTON, STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE PROVIDING FOR PROTECTION OF CERTAIN UNALIENABLE RIGHTS, OTHERWISE KNOWN AS THE BILL OF RIGHTS SANCTUARY ORDINANCE

WHEREAS, the 2nd Amendment to the US Constitution expressly prohibits infringing on the rights of the people to keep and bear arms; and

WHEREAS, the 4th Amendment to the US Constitution prohibits unreasonable searches and seizures; and

WHEREAS, the 5th Amendment to the US Constitution prohibits any person from being deprived of liberty or property without due process of law; and

WHEREAS, the 14th Amendment to the Constitution of the United States of America states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"; and

WHEREAS, Article 2, Section 5 of the Arkansas Constitution also states "The citizens of this State shall have the right to keep and bear arms, for their common defense"; and

WHEREAS, various government entities have violated these rights through so-called "Red Flag Laws" and other means; and

WHEREAS, The Supreme Court of the United States established in Marbury v Madison that "a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument."

NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF BENTON COUNTY, ARKANSAS:

Article 1. No agent, department, employee or official of Benton County, a political subdivision of the State of Arkansas, while acting in their official capacity, shall:

1. Knowingly participate in any way in the enforcement of any Unlawful Act, as defined herein, regarding personal weapons, personal firearms, firearm accessories, or ammunition.
2. Utilize any assets, county funds, or funds allocated by any entity to the County, in whole or in part, to engage in any activity that aids in the enforcement or investigation relating to an Unlawful Act in connection with personal firearms, firearm accessories, or ammunition.
3. Knowingly participate in any search and/or seizure of any person or property without first obtaining a Warrant particularly describing the person, place, and/or things to be searched and/or seized.
4. Utilize any assets, county funds, or funds allocated by any entity to the County, in whole or in part, to engage in any activity that aids in the search and/or seizure of any person or property without first obtaining a Warrant particularly describing the person, place, and/or things to be searched and/or seized.

Article 2. An "Unlawful Act" shall consist of any federal or state act, law, order, rule, or regulation, which restricts an individual's constitutional right to keep and bear arms, including any federal or state act, law, order, rule, or regulation which bans or effectively bans, registers or effectively registers, or limits the lawful use of firearms, firearm accessories or ammunition. Any such "Unlawful Act" is invalid in Benton County, shall not be recognized by Benton County, and shall be considered null, void and of no effect in Benton County, Arkansas. This includes, but shall not be limited to the following:

1. Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services on the purchase or ownership of those items by citizens;
2. Any registration or tracking of firearms, firearm accessories, or ammunition;
3. Any registration or tracking of the owners of firearms, firearm accessories, or ammunition;
4. Any act forbidding the possession in any location, manner of carry, ownership, or use or transfer of any type of firearm, firearm accessory, or ammunition by citizens of the legal age of eighteen and over;
5. Any act ordering the confiscation of firearms, firearm accessories, or ammunition from citizens;
6. Any prohibition, regulation, and/or use restriction related to ownership or the constitutionally guaranteed lawful use or carry of firearms; and
7. Any prohibition, regulation, and/or use restriction limiting hand grips, stocks, flash suppressors, bayonet mounts, magazine capacity, clip capacity, internal capacity, bump stocks, suppressors, or types of ammunition available for sale, possession or use by citizens.
8. Any use of county funds, or funds given to the county by another entity, to participate in a "gun buyback" program or event.
9. Any use of county funds, or funds given to the county by another entity, to any other government official or entity that violates or has violated any individual's rights as outlined in the Bill of Rights of the US Constitution.

Article 3. Anyone within the jurisdiction of Benton County, Arkansas, accused to be in violation of this ordinance may be sued in the district or circuit court of the state of Arkansas for declaratory and injunctive relief, damages, and attorneys' fees. Neither sovereign nor official or qualified immunity, or any other type of immunity shall be an affirmative defense in cases pursuant to this section. The legal standard of culpability for the defendant shall be strict liability.

1. All new employment contracts with the county shall include a clause that prohibits any employee from invoking qualified immunity or any other statutory immunity as a defense against any claim of a violation of a federal or state right that is protected by the federal Bill of Rights or the Arkansas Declaration of Rights when the employee is sued under the Arkansas Civil Rights Act or 42 U.S. Code § 1983.
2. The County shall be jointly and severally liable for any violation of the Bill of Rights or Declaration of Rights.
3. A civil offense against this ordinance is a violation with a maximum fine of \$500.00 for an individual for each violation and each day the violation continues.
4. Anyone may enforce this ordinance.
5. Violation of this ordinance is a just cause for termination of employment. Any employee of Benton County found to be in violation of this ordinance shall have their employment immediately terminated for cause, and shall not be eligible for re-employment by Benton County.

Article 4. Exceptions:

1. This ordinance is not intended to prohibit or affect in any way the prosecution of any crime for which the use of, or possession of, a firearm is an aggravating factor or enhancement to an otherwise independent crime.

2. The protections provided to citizens by this ordinance do not apply to persons who have been convicted of felony crimes and had their right to possess a firearm removed at sentencing for that conviction.

Article 5. Any ordinances or parts thereof in conflict with this ordinance are hereby repealed to the extent of such conflict. Any laws, policies, decisions, or opinions in conflict with this ordinance shall be considered null and void.

Article 6. This ordinance shall take effect immediately upon passage.

PASSED: _____, 2020.

APPROVED:

BARRY MOEHRING, COUNTY JUDGE

DATE SIGNED: _____

ATTEST:

BETSY HARRELL, COUNTY CLERK

DATE ADOPTED _____

SPONSOR: _____

Votes For: _____ Votes Against: _____

Abstain: _____ Present: _____ Absent: _____

West's Arkansas Code Annotated Title 14. Local Government (Refs & Annos) Subtitle 2. County Government (Chapters 13 to 35) Chapter 14. County Government Code (Refs & Annos) Subchapter 8. Legislative Powers

A.C.A. § 14-14-805

§ 14-14-805. County quorum court--Prohibition on certain activities

Effective: August 16, 2013

[Currentness](#)

Each county quorum court in the State of Arkansas exercising local legislative authority is prohibited the exercise of the following:

- (1) Any legislative act that applies to or affects any private or civil relationship, except as an incident to the exercise of local legislative authority;
- (2) Any legislative act that applies to or affects the provision of collective bargaining, retirement, workers' compensation, or unemployment compensation. However, subject to the limitations imposed by the Arkansas Constitution and state law regarding these subject areas, a quorum court may exercise any legislative authority with regard to employee policy and practices of a general nature, including, but not limited to, establishment of general vacation and sick leave policies, general office hour policies, general policies with reference to nepotism, or general policies to be applicable in the hiring of county employees. Legislation promulgated by a quorum court dealing with matters of employee policy and practices shall be applicable only to employees of the county and shall not apply to the elected county officers of the county. Legislation applying to employee policy practices shall be only of a general nature and shall be uniform in application to all employees of the county. The day-to-day administrative responsibility of each county office shall continue to rest within the discretion of the elected county officials;
- (3) Any legislative act that applies to or affects the public school system, except that a county government may impose an assessment, where established by the General Assembly, reasonably related to the cost of any service or specific benefit provided by county government and shall exercise any legislative authority which it is required by law to exercise regarding the public school system;
- (4) Any legislative act which prohibits the grant or denial of a certificate of public convenience and necessity;
- (5) Any legislative act that establishes a rate or price otherwise determined by a state agency;
- (6) Any legislative act that defines as an offense conduct made criminal by state law, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of one thousand dollars (\$1,000) for any one (1)

specified offense or violation, or double that sum for repetition of the offense or violation. If an act prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance of the prohibited or unlawful act, in violation of the ordinance, shall not exceed five hundred dollars (\$500) for each day that it is unlawfully continued;

(7) Any legislative act that applies to or affects the standards of professional or occupational competence as prerequisites to the carrying on of a profession or occupation;

(8) Any legislative act of attainder, ex post facto law, or law impairing the obligations of contract shall not be enacted, and no conviction shall work corruption of blood or forfeiture of estate;

(9) Any legislative act which grants to any citizen or class of citizens privileges or immunities which upon the terms shall not equally belong to all citizens;

(10) Any legislative act which denies the individual right of property without just compensation;

(11) Any legislative act which lends the credit of the county for any purpose whatsoever or upon any interest-bearing evidence of indebtedness, except bonds as may be provided for by the Arkansas Constitution. This subdivision (11) does not apply to revenue bonds which are deemed not to be a general obligation of the county;

(12) Any legislative act that conflicts with the exercise by municipalities of any expressed, implied, or essential powers of municipal government; and

(13) Any legislative act contrary to the general laws of the state.

Credits

Acts of 1977, Act 742, § 73; Acts of 1979, Act 413, § 15; [Acts of 2013, Act 127, § 1, eff. Aug. 16, 2013.](#)

Formerly A.S.A. 1947, § 17-3805.

[Notes of Decisions \(14\)](#)

A.C.A. § 14-14-805, AR ST § 14-14-805

The constitution and statutes are current through the end of the 2019 Regular Session of the 92nd Arkansas General

Assembly.

End of Document

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RESOLUTION NO. R-2019-___

BE IT RESOLVED BY THE QUORUM COURT OF THE COUNTY OF BENTON, STATE OF ARKANSAS, A RESOLUTION TO BE ENTITLED:

A RESOLUTION RECOGNIZING THE IMPORTANCE OF THE SECOND AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND EXPRESSING SUPPORT FOR LAWFUL RESISTENCE TO THOSE SEEKING TO INTERFERE WITH THE RIGHTS REFLECTED THEREIN

WHEREAS, the Second Amendment to the Constitution of the United States, a portion of the “Bill of Rights” provides:

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

and

WHEREAS, Section 5 of Article II of the Constitution of the State of Arkansas, part of that document’s “Declaration of Rights” provides:

The citizens of this State shall have the right to keep and bear arms, for their common defense.

and

WHEREAS, the rights expressed above are not grants from the government to the people, but an expression of and protection for the natural rights of citizens, and

WHEREAS, there are continuing efforts to interfere with the rights noted in those provisions in other States of the United States, and

WHEREAS, the citizens of Benton County value the rights described in the cited provisions which allow for self-defense and personal enjoyment.

NOW, THEREFORE, BE IT RESOLVED BY THE QUORUM COURT OF THE COUNTY OF BENTON, STATE OF ARKANSAS THAT:

Article 1. The Quorum Court notes the recognition of the drafters of the nation’s and State’s founding documents of the significance of the rights of citizens with respect to firearms.

Article 2. The Quorum Court recognizes and lauds the actions of citizens across the United States to lawfully resist efforts to interfere with the rights relating to firearms and stands ready to add its efforts to such lawful resistance if such efforts come to Benton County

ADOPTED AND APPROVED this _____ day of _____, 2020.

APPROVED:

BARRY MOEHRING, COUNTY JUDGE
DATE SIGNED: _____

ATTEST:

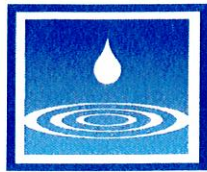
BETSY HARRELL, COUNTY CLERK

SPONSOR: _____

ADOPTED: _____

Votes for: _____ Against: _____

Abstain: _____ Present: _____ Absent: _____



RAINWATER HOLT & SEXTON, P.A. INJURY LAWYERS

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To: All County Judges

From: Mike Rainwater

Date: January 27, 2020

Subject: **Declaration of Rights - Arkansas Constitution**

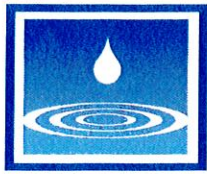
With talk about so-called “Gun Sanctuary” laws going around, please ask your Quorum Court members to read the Declaration of Rights ALREADY contained in the Arkansas Constitution.

Notice, for example, Section 2: Freedom and Independence - All men ... have certain inherent and inalienable rights; amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property, and reputation; and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

Notice, also, Section 5: Right to Bear Arms - The citizens of this State shall have the right to keep and bear arms, for their common defense.

It is not the role of a county or a city to declare constitutional rights. This is because neither a city nor a county is sovereign. Counties are political subdivisions of the state. Cities are political creatures of the state.

Please, before even considering ANY so-called “sanctuary” law ... get the advice of your Association of Arkansas Counties.



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Arkansas Constitution – Declaration of Rights

by Mike Rainwater on 04/21/06

Immediately following Article 1, which establishes and declares the permanent borders of the State of Arkansas, Article 2 declares the twenty-nine (29) categories of rights of all Arkansans.

Arkansas Constitution

Article 2: Declaration of Rights

Section 1: Source of Power - All political power is inherent in the people and government is instituted for their protection, security and benefit; and they have the right to alter, reform or abolish the same, in such manner as they may think proper.

Section 2: Freedom and Independence - All men are created equally free and independent, and have certain inherent and inalienable rights; amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property, and reputation; and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

Section 3: Equality Before the Law - The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity; nor exempted from any burden or duty, on account of race, color or previous condition.

Section 4: Right of Assembly and of Petition - The right of the people peaceably to assemble, to consult for the common good; and to petition, by address or remonstrance, the government, or any department thereof, shall never be abridged.

Section 5: Right to Bear Arms - The citizens of this State shall have the right to keep and bear arms, for their common defense.

Section 6: Liberty of the Press and of Speech - Libel - The liberty of the press shall forever remain inviolate. The free communication of thoughts and opinions, is one of the invaluable rights of man; and all persons may freely write and publish their sentiments on all subjects, being responsible for the abuse of such right. In all criminal prosecutions for libel, the truth may be given in evidence to the jury; and, if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party charged shall be acquitted.

Section 7: Jury Trial - Right to - Waiver - Civil Cases - Nine Jurors Agreeing - The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law; and in all jury trials in civil cases, where as many as nine of the jurors agree upon a verdict, the verdict so agreed upon shall be returned as the verdict of such jury, provided, however, that where a verdict is returned by less than twelve jurors all the jurors consenting to such verdict shall sign the same. (As amended by Constitutional Amendment 16, which was added on November 6, 1928, by vote of the people of Arkansas.)

Section 8: Criminal Charges - Self-Incrimination - Due Process - Double Jeopardy - Bail - No person shall be held to answer a criminal charge unless on the presentment or indictment of a grand jury, except in cases of impeachment or cases such as the General Assembly shall make cognizable by justices of the peace, and courts of similar jurisdiction; or cases arising in the army and navy of the United States; or in the militia, when in actual service in time of war or public danger; and no person, for the same offense, shall be twice put in jeopardy of life or liberty; but if, in any criminal

prosecution, the jury be divided in opinion, the court before which the trial shall be had, may, in its discretion, discharge the jury, and commit or bail the accused for trial, at the same or the next term of said court; nor shall any person be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property, without due process of law. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 9: Excessive Bail or Punishment Prohibited - Witnesses - Detention - Excessive bail shall not be required; nor shall excessive fines be imposed; nor shall cruel or unusual punishments be inflicted; nor witnesses be unreasonably detained.

Section 10: Right of Accused Enumerated - Change of Venue - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county in which the crime shall have been committed; provided, that the venue may be changed to any other county of the judicial district in which the indictment is found, upon the application of the accused, in such manner as now is, or may be prescribed by law; and to be informed of the nature and cause of the accusation against him, and to have a copy thereof; and to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be heard by himself and his counsel.

Section 11: Habeas Corpus - The privilege of the writ of habeas corpus shall not be suspended; except by the General Assembly, in case of rebellion, insurrection or invasion, when the public safety may require it.

Section 12: Suspension of Laws - No power of suspending or setting aside the law or laws of the State, shall ever be exercised, except by the General Assembly.

Section 13: Redress of Wrongs - Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay; conformably to the laws.

Section 14: Treason - Treason against the State shall only consist in levying and making war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Section 15: Unreasonable Searches and Seizures - The right of the people of this State to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Section 16: Imprisonment for Debt - No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

Section 17: Attainder - Ex Post Facto Laws - No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

Section 18: Privileges and Immunities - Equality - The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

Section 19: Perpetuities and Monopolies - Perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed; nor shall any hereditary emoluments, privileges or honors ever be granted or conferred in this State.

Section 20: Resident Aliens - Descent of Property - No distinction shall ever be made by law, between resident aliens and citizens, in regard to the possession, enjoyment or descent of property.

Section 21: Life, Liberty and Property - Banishment Prohibited - No person shall be taken, or imprisoned, or disseized of his estate, freehold, liberties or privileges; or outlawed, or in any manner destroyed, or deprived of his life, liberty or property; except by the judgment of his peers, or the law of the land; nor shall any person, under any circumstances, be exiled from the State.

Section 22: Life, Liberty and Property - Property Rights - Taking Without Just Compensation Prohibited - The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefore.

Section 23: Eminent Domain and Taxation - The State's ancient right of eminent domain and of taxation, is herein fully and expressly conceded; and the General Assembly may delegate the taxing power, with the necessary restriction, to the State's subordinate political and municipal corporations, to the extent of providing for their existence, maintenance and well being, but no further.

Section 24: Religious Liberty - All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can, of right, be compelled to attend, erect, or support any place of worship; or to maintain any ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience; and no preference shall ever be given, by law, to any religious establishment, denomination or mode of worship, above any other.

Section 25: Protection of Religion - Religion, morality and knowledge being essential to good government, the General Assembly shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 26: Religious Tests - No religious test shall ever be required of any person as a qualification to vote or hold office; nor shall any person be rendered incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths or affirmations.

Section 27: Slavery - Standing Armies - Military Subordinate to Civil Power - There shall be no slavery in this State, nor involuntary servitude, except as a punishment for crime. No standing army shall be kept in time of peace; the military shall, at all times, be in strict subordination to the civil power; and no soldier shall be quartered in any house, or on any premises, without the consent of the owner, in time of peace; nor in time of war, except in a manner prescribed by law.

Section 28: Tenure of Lands - All lands in this State are declared to be allodial; and feudal tenures of every description, with all their incidents, are prohibited.

Section 29: Enumeration of Rights of People Not Exclusive of Other Rights - Protection Against Encroachment - This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government; and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

This communication is neither legal advice nor legal counsel. It is merely legal information intended to promote meaningful, problem-solving dialogue on this or related subjects. For specific legal questions and liability concerns, before acting on this information, and before adopting any policy or protocol on this subject, obtain the specific legal *advice* of your attorney. The author grants governmental, charitable, and non-profit entities and officials thereof permission to reproduce this lawletter, provided that it is reproduced as is and is not used for profit. Copyright, 2020. Sort Code:



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RECEIVED
FEB 11 2020

To: All County Judges
From: Mike Rainwater
Date: February 6, 2020

Subject: **Proposed “Red Flag” Law ... and Due Process**

The enclosed article provides some good **talking points regarding the due process implications of any proposed “red flag” law**. I say “good” because the article simply quotes what our Governor has said on the matter.

Also enclosed is a **draft proposal of a Second Amendment County Resolution**. I drafted this in an effort to provide our counties an alternative to the Second Amendment Sanctuary Ordinances that are being proposed across the state. This is NOT an AAC or AAC Risk Management Fund publication, because the AAC and AACRMF do not take partisan positions on political matters which are merely statements of personal opinion (a resolution) about which county officials can differ (even if it is likely that all county official would likely be of the same mind).

This proposed resolution provides a really good **opportunity for your county to properly frame the issue** for your citizens: the people have the rights, the state has the power, “due process” is the way we balance rights and power in a non-emergency situation (14th Amendment) and the “objective reasonableness” is the way we strike the balance in an emergency (or potential emergency) situation (4th Amendment). This is our constitutional system of honoring the individual liberty rights of each person while at the same time doing what needs to be done to protect all the people. In this proposed resolution, I have tried to succinctly explain how the pieces fit together in our constitutional system.

I am sure most Arkansans, including most all county officials, want to step up and declare support for the traditional interpretation of the Second Amendment. The same is true for all our individual liberty rights, as well as our due process and equal protection rights. But, **the question is how can county officials best show support for the “right to keep and bear arms”?**

What we do NOT need is for a county to somehow act like it has the sovereign authority to declare its county version of the constitutional law and then ordain by county law that it will not enforce state or federal law to the contrary (which is what has already happened in one Arkansas county). This is because neither a city nor a county is sovereign. Counties are political subdivisions of the state. Cities are political creatures of the state. County officials take an oath to “support the Constitution of the United States and the Constitution of the State of Arkansas;” and **there is no authority for a county to adopt its own constitution or its own version of either the U.S. or Arkansas Constitution**. Interestingly, one of our individual liberty rights, as set forth in the Arkansas Constitution, is that a county quorum court cannot suspend or set aside the law or laws of the State. Arkansas Constitution, Article 2, Section 12, provides: Suspension of Laws - No power of suspending or setting aside the law or laws of the State, shall ever be exercised, except by the General Assembly.

As you discuss this issue with your constituents, it is a good opportunity to emphasize that **our Arkansas Constitution VERY strongly supports traditional notions about our individual liberty rights**, including but not limited to our important right to keep and bear arms.

Anyway, ... consider all of this legal information and not legal advice. Please **look to your county civil attorney for any “advice”** you need as to how your county should or will proceed on this (rather hot) political issue. As always, ... call if any questions. My cell number is 501-590-9120.

Proposed “Red Flag” Law ... and Due Process

by Mike Rainwater on February 6, 2020

Quotes of Governor Hutchinson taken from

<https://www.ualpublicradio.org/post/arkansas-governor-says-any-red-flag-law-would-need-protect-due-process>,

by Daniel Breen, Sarah Kellogg & Andrew Fleming on Aug 7, 2019

“Any red flag law would need to protect due process. ... I haven’t seen a law and I haven’t come up with an idea yet of how we can have an extreme risk protection order in place and yet sufficient due process at the same time.” Asa Hutchinson, Governor of Arkansas.

Arkansas Governor Says: Speaking on KUAR, “Gov. Asa Hutchinson [recently] expanded on ... the prospect of adopting an Extreme Risk Protection Order (ERPO) in Arkansas. An ERPO, known colloquially as a red flag law, would outline a process officials could use to temporarily remove guns from individuals who are deemed a danger to themselves or others. **Hutchinson said a red flag law would have to balance the need for protection with the due process of law. ... ‘I don’t think we’ve arrived at the right balance yet, and I haven’t seen a law, and I haven’t come up with the idea yet as to how we can have an Extreme Risk Protection Order in place and yet have sufficient due process at the same time.’”**



A ... Militia, being Necessary to ... a Free State ... : An armed citizenry is contemplated by both our U.S. Constitution and our Arkansas Constitution. The Second Amendment says: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” Article 11 of our Arkansas Constitution specifically creates an Arkansas militia – with TWO divisions: an organized division (which is now the Arkansas National Guard) and an unorganized division. Article 11, Section 1, provides: Persons Liable to [State] Military Duty - The militia shall consist of all able-bodied male persons, residents of the State, between the ages of eighteen and forty-five years; ... and shall be organized, officered, armed and equipped and trained in such manner as may be provided by law.” Article 11, Section 2, provides: “Volunteer Companies - Volunteer Companies of Infantry, Cavalry or Artillery may be formed in such manner and with such restrictions as may be provided by law.” Ark. Code Ann. 12-61-102 tells us the two-division Arkansas Militia is a military power of the State under the authority of the Governor as the Commander-in-Chief, and not a civil power. But, Ark. Code Ann. 12-61-111(b)(1) states: “Upon the request of either the judge or sheriff of a county or the mayor of a city, whenever it is made to appear to the Governor that there is a breach of the peace, riot, resistance to process of this state, [much of what we now call “terrorism”] or disaster or imminent danger thereof, the Governor may order into the active service of the state, for such period, to such extent, and in such manner as he may deem necessary, all or any part of the organized militia” and Ark. Code Ann. 12-61-111(b)(1) provides: “Whenever he shall deem it necessary, the Governor may direct the members of the unorganized militia [the volunteer division] to present themselves for and submit to registration at such time and place and in such manner as may be prescribed by regulations.” Arkansas: 1) agrees a militia is necessary to a Free State and 2) contemplates an armed citizenry.

Due Process: Due process balances the power of the state and protects the individual person from the power of the state. Due process is the legal requirement that the state must respect all legal rights that are owed to a person. A person is entitled to notice and opportunity to be heard at a hearing when they have life, liberty, or property at stake. Governor Hutchinson said, in his KUAR interview, said: “Whenever we know of somebody that’s got a massive amount of firearms, and they’re posting on the Internet that they want to go and kill somebody and commit mass murder, and they might have actually more specific information, we need to have the capacity to stop that horrific crime.” So, what exactly is the process due such a person? Answer: That person can be arrested, charged with a crime, held in jail until a first appearance without unnecessary delay, afforded the opportunity to seek release from jail upon posting a bond, offered the opportunity to plead “not guilty,” appointed legal counsel, offered evidence discovery rights, and given a trial before his peers. That is due process. Contemporaneous with an arrest, searches and seizures are allowed. That is also due process. This is what the U.S. and Arkansas Constitutions already provide. To simply go out and take a person’s gun away from them with no criminal charges and no pre-deprivation opportunity to be heard is not due process. As the Governor has said, “a red flag law would have to balance the need for protection with the due process of law.”

Terroristic Threatening is a Crime: A person “posting on the Internet that they want to go and kill somebody and commit mass murder” (to quote Governor Hutchinson’s example) is committing a crime. Ark. Code Ann. 5-13-301, entitled Terroristic Threatening, says “A person commits the offense of terroristic threatening in the first degree if ... the person threatens to cause death or serious physical injury or substantial property damage to another person.” Any person making any such threat can be arrested and given the process which is due, under already-existing constitutional and statutory law. No new so-called Red Flag law is needed in order to do that.

“SECOND AMENDMENT COUNTY” RESOLUTION

**Affirming Alpha County's Effort to
“Guard Against Any Encroachment On”
Individual Liberty Rights Enumerated in
The U.S. Bill of Rights and the Arkansas Declaration of Rights,
Including but Not Limited to
THE RIGHT TO “KEEP AND BEAR ARMS.”**

Whereas, Alpha County residents have a longstanding belief in the Bill of Rights in the United States Constitution and the Declaration of Rights in the Arkansas Constitution;

Whereas, as elected officials, we are sworn to uphold both the U. S. Constitution and the Arkansas Constitution in our Oath of Office.

Whereas, it seems that several of our time-honored, individual liberty rights enumerated in the U.S. Constitution and the Arkansas Constitution are under attack; particularly, the right to keep and bear arms.

Rights of the People

Whereas, it is plainly stated in U.S. Constitution, Amendment 9: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Whereas, it is plainly stated in the Arkansas Constitution, Article 2, Section 29: Enumeration of Rights of People Not Exclusive of Other Rights - Protection Against Encroachment - “This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government; and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.”

Right to Keep and Bear Arms

Whereas, it is plainly stated in the U.S. Constitution, Amendment 2: “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

Whereas, it is plainly stated in the Arkansas Constitution, Article 2, Section 5: Right to Bear Arms - “The citizens of this State shall have the right to keep and bear arms, for their common defense.”

Right of Due Process

Whereas, it is plainly stated in the U.S. Constitution, Amendment 5: No person shall be ... deprived of life, liberty, or property without due process of law

Whereas, it is plainly stated in the U.S. Constitution, Amendment 14, Section 1: ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law ; nor deny to any person within its jurisdiction the equal protection of the laws.

Whereas, it is plainly stated in the Arkansas Constitution, Article 2, Section 8: Criminal Charges - Self-Incrimination - Due Process - Double Jeopardy - Bail - No person shall be ... deprived of life, liberty or property, without due process of law.

Whereas, it is plainly stated in the Arkansas Constitution, Article 2, Section 13: Redress of Wrongs
-
Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay; conformably to the laws

Whereas, it is plainly stated in the Arkansas Constitution, Article 2, Section 21: Life, Liberty and Property - Banishment Prohibited - No person shall be ... deprived of his life, liberty or property; except by the judgment of his peers, or the law of the land

Right of Equal Protection

Whereas, it is plainly stated in the U.S. Constitution, Amendment 14, Section 1: ... No State shall ... deny to any person within its jurisdiction the equal protection of the laws.

Whereas, it is plainly stated in the Arkansas Constitution, Article 2, Section 2: Freedom and Independence - All men are created equally free and independent, and have certain inherent and inalienable rights; amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property, and reputation; and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed

Whereas, it is plainly stated in the Arkansas Constitution, Article 2, Section 18: Privileges and Immunities - Equality - The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

Whereas, it is plainly stated in the Arkansas Constitution, Article 2, Section 3: The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity; nor exempted from any burden or duty, on account of race, color or previous condition.

Right Against Unreasonable Search and Seizure

Whereas, it is plainly stated in the U.S. Constitution, Amendment 4: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Whereas, it is plainly stated in the Arkansas Constitution, Article 2, Section 15: Unreasonable Searches and Seizures - The right of the people of this State to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Powers of the State

Whereas, it is plainly stated in U.S. Constitution, Amendment 10: 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.

Whereas, it is plainly stated in U.S. Constitution, Article 2, Section 1: Source of Power - All political power is inherent in the people and government is instituted for their protection, security and benefit; and they have the right to alter, reform or abolish the same, in such manner as they may think proper.

**Whereas, it is plainly stated in the Arkansas Constitution, Article 2, Section 12: Suspension of Laws -
No power of suspending or setting aside the law or laws of the State, shall ever be exercised, except by the General Assembly.**

Sworn Duty of County Officials and Officers

Whereas, in order to uphold our sworn duty, we are bound to follow and enforce support of all of the provisions in the U.S. Constitution Bill of Rights and the Arkansas Constitution Declaration of Rights;

Whereas, it is our duty to do our part to guard against any unconstitutional denial of, disparagement of, or encroachment on any of the enumerated or unenumerated rights retained by the people;

NOW, THEREFORE, BE IT RESOLVED BY THE QUORUM COURT OF Alpha COUNTY, ARKANSAS:

1. SECOND AMENDMENT COUNTY: As an expression of Alpha County's desire to join the present nationwide effort to affirmatively state county government support for the U.S. Constitution, Bill of Rights, Second Amendment, and the statewide effort to affirmatively state county government support for support for the Arkansas Constitution, Declaration of Rights, Section 5, as plainly written and historically interpreted and applied, let it be resolved and known that Alpha County, Arkansas, is hereby designated a "Second Amendment County."

2. RIGHT TO KEEP AND BEAR ARMS: Alpha County shall uphold each and every provision of the Bill of Rights in the U.S. Constitution and the Declaration of Rights in the Arkansas Constitution and, specifically, Alpha County shall uphold the right of the citizens of this county to "keep and bear arms" as guaranteed by the U.S. Constitution, Amendment 2, and the Arkansas Constitution, Declaration of Rights Article 2, Section 5.

3. UNCONSTITUTIONAL LAWS ARE VOID: It is declared to be the official policy of Alpha County that the U.S. Second Amendment right and the Arkansas Article 2, Section 5, right of citizens to keep and bear arms will be honored by the officials, officers and employees of Alpha County as a constitutionally-protected individual liberty right and that any act of any legislature that plainly abrogates U.S. Constitution Amendment 2 or Arkansas Constitution Declaration of Rights, Article 2, Section 5, will be treated as void and, therefore, unenforceable in Alpha County.

4. LIBERTY RIGHTS BELONG TO THE PEOPLE: Since it is clear from both U.S. Constitution Amendment 9 and Arkansas Constitution Article 2, Section 29, that individual liberty rights belong to the people and are to be forever retained by the people and not transgressed by any of the powers delegated to either the U.S. or Arkansas governments, Alpha county shall neither interpret nor construe any legislation in any manner that would deny or disparage the Bill of Rights or the Declaration of Rights

and shall guard against any encroachments on the U.S. Bill of Rights and the Arkansas Declaration of Rights.

5. **SHALL FOREVER REMAIN INVIOLETE:** Alpha County agrees with and supports the U.S. Constitution Amendment 9 and Arkansas Constitution Article 2, Section 29 concepts that the individual liberty rights enumerated in the U.S. Bill of Rights and the Arkansas Declaration of rights are excepted out of the general powers of the government and shall forever remain inviolate.

6. **DUE PROCESS OF LAW:** Alpha County shall obey the Constitutions of the U.S. and Arkansas, including the Tenth Amendment police powers as needed to maintain order, ensure security, and keep the peace, all as limited by the Fourth Amendment right of every person to be free from unreasonable searches and seizures and the Fourteenth Amendment promise that no person will be deprived of life, liberty or property except by due process of law.

CERTIFICATION OF ADOPTION OF RESOLUTION

The undersigned Clerk of the County Court of Alpha County, Arkansas, hereby certifies that the Resolution set forth above was adopted during an open meeting on _____, 2020, by the Quorum Court with the following votes:

Aye:

Nay:

Abstentions:

Absent:

Signed this _____ day of _____, 2020.

By: _____
County Court Clerk

ORDINANCE NO 2020-2

**BE IT ENACTED BY THE QUORUM COURT OF THE COUNTY OF SCOTT,
STATE OF ARKANSAS, AN ORDINANCE ENTITLED. (Bill of Rights Sanctuary
Scott County)**

SECTION 1.

The Quorum Court of Scott County hereby Finds and declares:

SECTION 2.

- A. In order to insure the rights of the citizens of Scott County which are Protected by the United States Constitution, and the Bill of Rights of that Constitution, which reserves the right of the citizens to decide on matters which concern their lives, liberty, and property in the ordinary course of affairs.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner prescribed by law.

Amendment IV

The right of the people to secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in a militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

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

- B. The quorum Court further finds that section 1 of the Fourteenth Amendment to the Constitution of the United States states, all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Passed by congress June 13, 1866, Ratified July 9, 1868).
- C. The right of the people is further protected from infringement by State, Federal and local governments under the ninth, tenth, and fourteenth amendment of the constitution of the United States.
- D. Scott County has the right to be free from the commanding hand of the State and Federal government and has the right to refuse to cooperate with state and federal government officials in response to unconstitutional state and federal government measures, And to proclaim a Bill of Rights Sanctuary for law-abiding citizens in their cities and County.
- E. Therefore, through the enactment of this document, Scott County Arkansas is hereby declared to be a BILL of Rights Sanctuary County.

Section 3

- a. Notwithstanding any law, regulation, rule or order to the contrary, no agent, department, employee or official of Scott County, a political subdivision of the state of Arkansas, while acting in their official capacity, shall.
- b. Knowingly and willingly, participate in any way in the enforcement of any unlawful or unconstitutional act, as defined herein, regarding Freedom of religion, Freedom of speech, Freedom of the people to peaceably to assemble, Freedom of the press, Freedom to petition the government for a redress of grievances, the right of the people to keep and bear arms, will not be infringed and Amendment 1-27 of the Bill of Rights.

Section 4.

An "Unlawful Act" shall consist of any federal, State or local act, law, order, rule, or regulation, which restricts an individual's Constitutional rights. Any such "unlawful act" is invalid in Scott County and shall not be recognized by Scott County, and shall be considered null and void and of no effect in Scott County, Arkansas, and this shall include, but shall not be limited to the following:

1. Any tax, levy, fee, or stamp imposed on firearms, firearms accessories, or ammunition not common to all other goods and services on the purchase or ownership of those items by citizens;
2. Any registration or tracking of firearms, firearm accessories, or ammunition ;
3. Any registration or tracking of the owners of firearms, firearms accessories, or ammunition;
4. Any act forbidding the possession, manner of carry, ownership, or use or transfer of any type of firearm, firearm accessory, or ammunition by citizens of the legal age ;
5. Any act ordering the confiscation of firearms, firearm accessories, or ammunition from citizens;
6. Any prohibition, regulation, and or use restriction related to ownership or the constitutionally guaranteed lawful use or carry of firearms;
7. Any use of County Funds or funds given to the County by any entity, to participate in a "gun buyback" program or event is hereby illegal;
8. Any use of County Funds, or funds given to the county by any entity to any other government official or entity that violates or has violated any individuals rights as outlined in the Bill of Rights;

9. This Ordinance upon passage will be attached to the Counties Personnel Policy. Once passed all new and renewed County employees will read and sign that they understand this ordinance;
10. Any employee who refuses to adhere to this ordinance after passage is subject to termination; and
11. Any official, Department Head, or employee who is in violation of this ordinance shall be subject a fine of up to \$500.00 and or termination.

D. Exceptions:

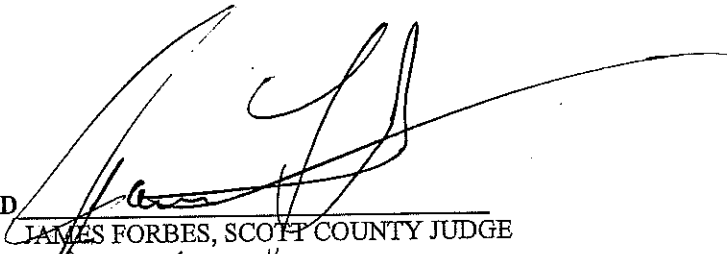
1. The right to bear arms protection as provided to citizens by this ordinance does not apply to persons who have been or may be in the future convicted of felony crimes/unless such crimes have been expunged by order of a court of competent jurisdiction.
2. This ordinance is not intended to prohibit or affect in any way the prosecution of any crime for which the use of, or possession of, a firearm is an aggregating factor or enhancement to an otherwise independent crime,
- 3.

Section 5. SEVERABILITY

- A. The provisions of this act are hereby declared to be severable, and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this ordinance.

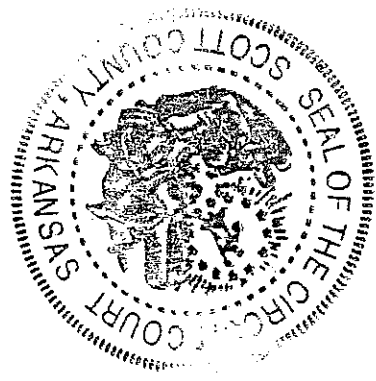
Section 6. Emergency Clause

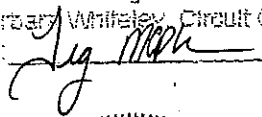
It is found by the Quorum Court of Scott County that the citizens of Scott County, Arkansas have taken notice and voiced concerns for their rights under the U.S. Constitution and Bill of Rights. Therefore an emergency is declared to exist and this ordinance known as the Bill of Rights Sanctuary Ordinance shall be in full force and effect from the date of passage and approval.

DATE 1-21-2020 APPROVED 
JAMES FORBES, SCOTT COUNTY JUDGE

ATTESTED Barbara Whiteley
Barbra Whiteley, County Clerk

SPONSORED BY JUSTICE Quorum Court



Scott County, Ar
I certify this instrument was filed
on 01/22/2020 09:30 AM
and recorded in the
Ordinance-Resolution
Book 2020 Page 1 - 6
Barbra Whiteley, Circuit Clerk
By:  D.C.

