

RESOLUTION NO. 008

**A RESOLUTION BY THE DELTA COUNTY BOARD OF COUNTY
COMMISSIONERS, DELTA COUNTY, COLORADO, DECLARING DELTA 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 inference 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 Delta 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, improperly 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 woefully off target in that it fails to address the heart of the mental health crisis in our community, to wit: the failure to fund and provide services to the people in need, instead of penalizing them and criminalizing otherwise lawful conduct; and

WHEREAS, The Board finds that making appropriate mental health and substance abuse services available to all persons should be a focus of any attempts at preventing the possible dangers of firearm possession by persons suffering from mental health or substance abuse issues; and

WHEREAS, the Delta County Sheriff and 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 infringes upon constitutional rights; and

WHEREAS, the Delta 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; and

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

BE IT FURTHER RESOLVED this Board does hereby pledge not to appropriate funds, resources, employees, or agencies to initiate unconstitutional seizures in Delta County.

BE IT FURTHER RESOLVED this Board affirms its support for the duly elected Sheriff of Delta County, Colorado and in his or her sound discretion and affirms its resolve to support decisions by the Sheriff regarding enforcement of laws related to the possible infringement of Second Amendment rights.

BE IT FURTHER RESOLVED this Board encourages all appropriate agencies to take reasonable steps to ensure the availability of appropriate mental health and substance abuse services.


BE IT FURTHER RESOLVED that in coordination with the Delta County Sheriff, this Board commits to actively resist House Bill 19-1177 in its current and subsequent forms and to protect the Second Amendment rights of all lawful gun owners in Delta County.

BE IT FURTHER RESOLVED this Board affirms its support for the constitutionally guaranteed rights to due process of the citizens of Delta County.

BE IT FURTHER RESOLVED the Board demands that the legislature and the governor's office cease and desist any attempts at restricting the Second Amendment rights of citizens and instead address the real and fundamental challenges of mental illness in our communities.

ADOPTED this 19th day of March, 2019.

ATTEST:



Terri Stephenson *Ludy Hays*
Delta County Clerk and Recorder *Deputy*

[SEAL]



BOARD OF COUNTY COMMISSIONERS OF
DELTA COUNTY, COLORADO:



Don Suppes, Chair



J. Mark Roeber, Vice Chair



Mike Lane, Commissioner