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On Target? Assessing Gun Sanctuary Ordinances That Conflict with State Law

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ON TARGET? ASSESSING GUN SANCTUARY ORDINANCES THAT CONFLICT WITH STATE LAW

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I. INTRODUCTION

Effingham County, Illinois, is literally at the crossroads. Interstate highways 70 and 57 can take you north, south, east, or west. And if you do not catch the idea from the intersection, you will get it when you drive by the "Cross at the Crossroads," high enough to be the tallest cross in the country and low enough to not mess with federal aviation requirements.[1] Effingham County is at

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[1] Thomas Harper, Contributor, *America's Largest Cross*, ATLAS OBSCURA, https://www.atlasobscura.com/places/world-s-largest-cross (last visited Mar. 25, 2020).

an ideological crossroads as well, where the mostly rural county population of about 30,000[2] lives in a state of almost 13 million people.[3] The county's politics run Republican,[4] while the state is more predictably Democratic.[5]

Sometimes the political and ideological differences have little impact. School funding measures can bring Democrats and Republicans together[6] and so can capital projects.[7] But on other issues Effingham County heads one way while the state heads another. As a state, Illinois has long had restrictions on owning

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2 *Quick Facts: Effingham County, Illinois*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/effinghamcountyillinois/LND110210 (last visited Mar. 25, 2020).

3 *Quick Facts: Illinois*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/IL (last visited Mar. 25, 2020).

4 All of the current countywide elected officials are Republican. KERRY J. HIRTZEL, 2019 EFFINGHAM COUNTY REFERENCE BOOK 4 (2019), http://www.co.effingham.il.us/sites/default/files/county-clerk/Website%20Reference%20Book.pdf. The majority of the county board, elected in geographic districts within the county, are also Republican. Dawn Schabbing, *Republicans Sweep County Board Races*, EFFINGHAM DAILY NEWS (Nov. 7, 2018), https://www.effinghamdailynews.com/news/local_news/republicans-sweep-county-board-races/article_e162cf3d-0fbe-5c00-86bb-864dfe754cec.html.

5 All of the statewide office holders in Illinois are Democrats. *How Illinois Democrats Won a Statewide Sweep and 2 Pivotal Congressional Seats in the Midterm Elections*, CHI. TRIB. (Nov. 7, 2018, 9:05 AM), https://www.chicagotribune.com/politics/elections/ct-met-illinois-election-day-live-updates-20181106-story.html.

6 School funding has been the subject of rare bipartisanship at the national level. *See* Andrew Ujifusa, *Funding Flexibility Enhanced Under New K-12 Law*, EDUC. WK. (Jan. 5, 2016), https://www.edweek.org/ew/articles/2016/01/06/funding-flexibility-enhanced-under-new-k-12-law.html; *see also* Charles Joughin, *Early Childhood Education Was a Big Winner in the Bipartisan Funding Bill Passed by Congress*, FIRST FIVE YEARS FUND (Oct. 5, 2018), https://www.ffyf.org/early-childhood-education-was-a-big-winner-in-the-bipartisan-funding-bill-passed-by-congress/. For two small slices of bipartisanship on school funding at the state level, see John Hanna, *Kansas Tells Court It Should OK School Support Spending Law Because of Bipartisan Support*, WICHITA EAGLE (Apr. 15, 2019, 8:14 PM), https://www.kansas.com/news/politics-government/article229291064.html, and a thoughtful first person assessment by a former governor of Missouri, Jay Nixon, *Education Should Be Bipartisan*, POLITICO (Oct. 1, 2013, 10:21 PM), https://www.politico.com/story/2013/10/education-should-rise-above-partisanship-097674.

7 Infrastructure projects can also cause legislators to reach across the aisle at the national level. *See* Jim Puzzanghera, *Rebuilding Crumbling Infrastructure Has Bipartisan Support. But Who Gets to Pay for It?*, L.A. TIMES (Dec. 2, 2018, 3:00 AM), https://www.latimes.com/business/la-fi-infrastructure-congress-trump-20181202-story.html; David Schaper, *Bridging the Partisan Divide: Can Infrastructure Unite Democrats and Republicans?*, NPR (Nov. 12, 2018, 4:04 PM), https://www.npr.org/2018/11/12/666971627/bridging-the-partisan-divide-can-infrastructure-unite-democrats-and-republicans. The same is true at the state level. Dan Petrella, *Gov. J.B. Pritzker Signs $40 Billion State Budget Passed with Bipartisan Support*, CHI. TRIB. (June 5, 2019, 7:25 PM), https://www.chicagotribune.com/politics/ct-met-illinois-budget-pritzker-signed-law-20190605-story.html; *see also* Paul Dwyer, *Maine Legislature Special Session Yields Transportation Bond, but Republicans Hold Up Gov. Mills' Other Three Bonds*, WABI (Aug. 26, 2019, 8:22 PM), https://www.wabi.tv/content/news/Special-session—558373131.html.

firearms,[8] and tougher restrictions have been proposed.[9] In the spring of 2018, when the Illinois legislature was considering five new gun control measures, Effingham County took a different route, declaring itself a "gun sanctuary."[10] In the months after Effingham County's actions, many Illinois counties enacted similar sanctuary ordinances, and now almost two-thirds of the state's 102 counties have some form of this law.[11]

The wave of sanctuary ordinances has spread well beyond Illinois, with jurisdictions in at least 12 states passing similar laws.[12]

The Second Amendment sanctuary movement has gained attention from media outlets as diverse as *Rolling Stone*,[13] *CNN*,[14] and *The Wall Street Journal*,[15] but has received little attention from either courts or scholars. This Article is a start at filling that gap. This Article will examine Second Amendment sanctuary ordinances and their origins, the history of the broader sanctuary concept, the power struggle between state and local governments, and the impact of the sanctuary ordinances. The Article concludes that the spreading movement of gun sanctuaries might have no legal impact but may still have influence. The influence is neither as powerful as sanctuary supporters might wish, nor as frightening as opponents may fear. In the end, the movement may be a model for political action for groups that have a majority point of view in their geopolitical sub-unit and are at the same time members of a larger political unit with a much different point of view.

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8 Since 1967, Illinois has required gun owners to have a Firearms Owners Identification card. 430 ILL. COMP. STAT. ANN. 65/1 (West 2020).

9 Several measures were proposed after the Parkland, Florida, shooting. Katherine Q. Seelye & Jess Bidgood, *What Are States Doing About Gun Violence After the Florida Shooting?*, N.Y. TIMES (Feb. 6, 2018), https://www.nytimes.com/2018/02/26/us/gun-control-laws.html.

10 Kelsey Landis, *26 Illinois Counties Have Passed 'Gun Sanctuary' Resolutions. Are They Constitutional?*, ST. J.-REG. (July 8, 2018, 5:38 PM), https://www.sj-r.com/news/20180708/26-illinois-counties-have-passed-gun-sanctuary-resolutions-are-they-constitutional.

11 Kathryn Rosenberg-Douglas, *Second Amendment 'Sanctuary County' Movement Expands as Organizers Take Aim at New Gun Laws*, CHI. TRIB. (Apr. 17, 2019, 5:00 AM), https://www.chicagotribune.com/news/breaking/ct-met-second-amendment-sanctuary-county-movement-illinois-20190416-story.html.

12 Eric Lutz, *The Right's Latest Tactic on Gun Laws? Just Don't Enforce Them*, ROLLING STONE (May 28, 2019, 11:50 AM), https://www.rollingstone.com/politics/politics-features/second-amendment-sanctuaries-nra-839552/.

13 *Id.*

14 Andrea Diaz & Marlena Baldacci, *In Rural Illinois, Officials Are Creating 'Sanctuary' Counties to Protect Gun Owners from New Laws*, CNN (May 8, 2018, 7:30 PM), https://www.cnn.com/2018/05/08/us/illinois-sanctuary-counties-gun-owners-trnd/index.html.

15 Jacob Gershman & Dan Frosch, *Rural Sheriffs Defy New Gun Measures*, WALL ST. J. (Mar. 10, 2019, 11:00 AM), https://www.wsj.com/articles/rural-sheriffs-defy-new-gun-measures-11552230000.

II. THE MOVEMENT TOWARD SECOND AMENDMENT SANCTUARY JURISDICTIONS

While Effingham County gets credit for starting the Second Amendment sanctuary movement,[16] Effingham County got the core of its idea from up Interstate 57 in Iroquois County.[17]

Iroquois County is closer to Chicago but has an even smaller population than Effingham County.[18] In the spring of 2018, Iroquois County board members passed a resolution opposing five gun regulation bills being considered in the Illinois General Assembly.[19] The resolution cited the bill numbers and the topics of each of the five pieces of legislation, and the action taken was to voice opposition to the five bills or any other bills that could come up that would restrict the right to bear arms.[20] The resolution also urged the governor to veto any of the bills if they should pass.[21] This resolution was similar to resolutions on a wide range of topics regularly passed by local governmental units, urging some action or inaction on the part of the state legislature.[22]

Iroquois County Board Member Chad McGinnis had the idea for the ordinance.[23] He was upset by how legislators, many from Chicago, were filing bills after the Parkland school shooting.[24] His resolution was drafted to send a message to those legislators, and the message seemed to be, "Dear legislators, think about rural Illinois before you rush to enact gun control measures."[25] While the board considered using the word "sanctuary" in their resolution, they decided

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16 Rosenberg-Douglas, *supra* note 11.

17 Landis, *supra* note 10.

18 *Quick Facts: Iroquois County, Illinois*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/iroquoiscountyillinois (last visited Mar. 25, 2020). As of population estimates dating July 1, 2019, Effingham County beats Iroquois by 6,604 people. *See Quick Facts: Effingham County, Illinois*, *supra* note 2.

19 Thomas Kral, *Iroquois County Board Passes Resolution Opposing Gun Control*, GUN RTS. 4 ILL. (Mar. 14, 2018), https://www.gunrights4illinois.com/blog/iroquois-county-board-passes-resolution-opposing-gun-control/ (providing the full text of Iroquois County's resolution).

20 *Id.*

21 *Id.*

22 For a particularly thoughtful and transparent city agenda for state and national legislation, see the Culver City, California, legislative and policy platform. *Culver City Legislative and Policy Platform*, CULVER CITY, https://www.culvercity.org/home/showdocument?id=7240 (last visited Mar. 25, 2020).

23 Landis, *supra* note 10.

24 *Id.*

25 *Id.*

against it.[26] "The whole point was to get a seat at the table . . . and talk real solutions."[27]

Iroquois County was indeed heard. "I never imagined my resolution would do what it did. I lit the spark and the fuel was already laid."[28] With the spark from Iroquois County, it was Effingham County's turn to fan the flame.

Effingham County Board Member David Campbell learned of the Iroquois County resolution and brought it to Effingham County State's Attorney Bryan Kibler.[29] Campbell indicated that he wanted to be "a little more provocative" than the Iroquois ordinance, and was considering how some cities had indicated they would not cooperate with federal authorities on immigration enforcement.[30] The State's Attorney suggested using the same word used by those cities—sanctuary.[31]

The Effingham County resolution is almost identical to the Iroquois County resolution; it has the same list of five pending bills that are opposed, it calls upon the Illinois General Assembly to reject the bills and any other restrictions of Second Amendment rights, and it asks the governor to veto any such bills if they were to pass.[32]

But the Effingham County resolution adds one clause—that provocative edge that David Campbell was looking for:

> Be it further resolved that if the Government of the State of Illinois shall infringe upon the inalienable rights granted by the Second Amendment, Effingham County shall become a "sanctuary county" for all firearms unconstitutionally prohibited by the government of the State of Illinois, in that, Effingham County will prohibit its employees from enforcing the unconstitutional actions of the state government.[33]

While the Effingham County State's Attorney and Sheriff agreed that the resolution was symbolic, and would not control the Sheriff's decision-making,[34] the resolution spread, and spread.

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26 *Id.*

27 *Id.*

28 *Id.*

29 Rosenberg-Douglas, *supra* note 11.

30 *Id.*

31 *Id.*

32 *See id.*; Kral, *supra* note 19.

33 *See* Rosenberg-Douglas, *supra* note 11.

34 Graham Milldrum, *Effingham County Now a 'Sanctuary' for Gun Owners*, EFFINGHAM DAILY NEWS (Apr. 16, 2018), https://www.effinghamdailynews.com/news/local_news/effingham-county-now-a-sanctuary-for-gun-owners/article_325483da-d0cd-53dc-a983-61abf873834d.html.

By July 2018, 26 counties in Illinois had passed a sanctuary ordinance.[35] By April 2019, 64 of the state's 102 counties had passed the resolution. In New Mexico, 25 of the state's 33 counties passed such resolutions.[36] In Colorado, 32 of the 64 counties have passed a sanctuary ordinance, as have 4 out of 16 counties in Nevada, and 8 of 36 counties in Oregon.[37] Ten municipalities in Rhode Island have passed sanctuary ordinances.[38]

The sanctuary ordinances appear most frequently when there is a perceived threat to gun owners' rights. In Illinois the threat was new laws proposed after the Parkland, Florida, shootings.[39] In other states it has been a shift in political power. Just two weeks after a shift in party control in the Virginia statehouse, nine counties enacted gun sanctuary resolutions.[40] And in Kentucky, after a Republican governor lost to a Democrat, at least one county is considering a sanctuary ordinance.[41]

In fact, passing a sanctuary ordinance has such little news value after a county in Tennessee got national attention for passing a sanctuary ordinance only because of a homophobic slur that was used during the board meeting.[42] The Sevier County, Tennessee board made news when one of the county commissioners said, in addition to the slur, "I'm not prejudiced, but by golly a

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35 Landis, *supra* note 10.

36 Daniel Trotta, *Defiant U.S. Sheriffs Push Gun Sanctuaries, Imitating Liberals on Immigration*, REUTERS (Mar. 4, 2019, 6:10 AM), https://www.reuters.com/article/us-usa-guns-sanctuary/defiant-us-sheriffs-push-gun-sanctuaries-imitating-liberals-on-immigration-idUSKCN1QL0ZC.

37 Matt Vasilogambros, *Gun-Rights Counties Vow to Resist New Restrictions*, PEW: STATELINE (Apr. 2, 2019), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/04/02/gun-rights-counties-vow-to-resist-new-restrictions.

38 Christopher Brooks, *Historically Speaking: What's Behind Movement of Second Amendment Sanctuaries?*, MORNING CALL (Aug. 25, 2019, 11:00 AM), https://www.mcall.com/opinion/mc-opi-second-amendment-sanctuary-counties-states-20190825-xtc4wvm2xfgrbjrbrr3sa7vcs4-story.html.

39 *See* Kral, *supra* note 19 and accompanying text.

40 Gregory S. Schneider, *In Virginia, and Elsewhere, Gun Supporters Prepare to Defy New Laws*, WASH. POST (Nov. 23, 2019), https://www.washingtonpost.com/local/virginia-politics/in-virginia-and-elsewhere-gun-supporters-prepare-to-defy-new-laws/2019/11/23/4a95fcc2-0c86-11ea-bd9d-c628fd48b3a0_story.html.

41 Billy Kobin, *'This Map Will Evolve Quickly': Kentucky Counties Pass Resolutions Supporting Gun Rights*, COURIER J. (Jan. 7, 2020, 12:21 PM) ("A handful of Kentucky counties have passed resolutions declaring local governments 'Second Amendment sanctuaries,' and dozens of others are poised to vote on the issue."); Shamarria Morrison, *Second Amendment Sanctuary*, WPSD LOCAL 6 (Dec. 18, 2019), https://www.wpsdlocal6.com/newsletter_stories/second-amendment-sanctuary/article_8a21f07e-2187-11ea-a20c-c3753e1da4fe.html.

42 Tyler Whetstone & Travis Dorman, *Official's Homophobic Slur Ignites Explosive Reaction Against Tennessee Tourism Hot Spot*, KNOXVILLE NEWS SENTINEL (Oct. 23, 2019), https://www.msn.com/en-us/news/us/officials-homophobic-slur-ignites-explosive-reaction-against-tennessee-tourism-hot-spot/ar-AAJaEAu.

white male in this country has very few rights, and they're getting took more every day."[43] The sanctuary resolution passed unanimously.[44] One source identifies 25 counties in Tennessee that have passed sanctuary resolutions.[45]

One step up the geopolitical food chain, three states—Alaska, Idaho and Kansas—have enacted statewide gun sanctuary laws.[46] These legislative actions represent a difference of opinion between states and the federal government and are beyond the scope of this paper. But the passage of these acts is a measure of the appeal of this movement.

With the rapid spread of these sanctuary resolutions, it would be a good guess that there is a group of some kind advocating for this action. The advocacy group Brady United Against Gun Violence ("Brady") has shown a connection between the National Rifle Association ("NRA") and a New Mexico Sheriff's group.[47] While the Brady report has been cited to show a link between the NRA and the sanctuary movement,[48] the link appears to be direct only in terms of opposing new state gun laws. The link between the NRA and the Sheriffs' group on the issue of sanctuary is much more tenuous. The reality appears to be that the sanctuary movement is more of an organic response to a political situation. One of the reasons for the success of the movement may be the very clever use of the term sanctuary, turning what had been a term of progressive immigration politics into a tool for more conservative activists. The next section of this paper examines what the term sanctuary has meant historically, and what it has come to mean now.

III. THE IDEA AND USE OF SANCTUARY OVER TIME

The term "sanctuary," meaning a place of refuge or protection,[49] is a part of our culture. In popular culture, there is the famous shouting of "Sanctuary!

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43 *Id.*

44 *Id.*

45 *A Full Tennessee Map of Second Amendment Sanctuaries Starts to Take Shape: Movements Towards Denying Unconstitutional Firearm Laws Are Spreading from Corner to Corner*, GUN RTS. WATCH (Jan. 1, 2020, 7:00 PM), https://gunrightswatch.com/news/2020/01/01/tennessee/a-full-tennessee-map-of-second-amendment-sanctuaries-starts-to-take-shape/.

46 Brooks, *supra* note 38.

47 BRADY UNITED AGAINST GUN VIOLENCE, ROGUE SHERIFFS IN NEW MEXICO: WHO DO THEY SERVE? (2019), https://s3.amazonaws.com/brady-static/Report/RogueSheriffsInNewMexico-WhoDoTheyServe.pdf.

48 Eric Trotta, *Emails Show NRA Link to U.S. Sheriffs Who Promoted Gun 'Sanctuaries,'* REUTERS (May 20, 2019, 7:34 PM), https://www.reuters.com/article/us-usa-guns-sanctuary/emails-show-nra-link-to-u-s-sheriffs-who-promoted-gun-sanctuaries-idUSKCN1SQ2H0; *see also* Lutz, *supra* note 12.

49 *Sanctuary*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/sanctuary (last visited Mar. 25, 2020).

Sanctuary!" by Quasimodo in the 1939 movie *The Hunchback of Notre Dame*.[50] And if that's not ringing a bell, maybe the quote is familiar from the 1996 Disney cartoon version of the same movie.[51] Whether from movies, politics, or some other source, there is a notion of sanctuary, which comes with deep historical roots and many modern branches.

A. Ancient Origins of Sanctuary

Although the term "sanctuary" is closely associated with protection in a church, the origins of fleeing to a protected space are broader. Sanctuary was provided in ancient Egypt[52] and in pagan temples as well.[53] The first recorded laws about sanctuary were passed in ancient Rome in the 390s.[54] Sanctuary was available in England until the late 1500s and early 1600s, when it was ultimately abolished.[55] And early American colonies extended sanctuary to those who were being persecuted for religious or political reasons.[56]

So, the concept of sanctuary has been around for a long time. But what has it meant? In the Middle Ages, it was the provision of refuge or protection for any crime—including capital offenses.[57] The sanctuary seeker may have had to pay a fine, surrender all his belongings to the church, and perform some kind of penance—but he was safe from physical punishment and a death sentence.[58]

B. Sanctuary in the United States in the 1980s

In the 1980s, sanctuary gained a new meaning and function in the U.S. As political power struggles led to increasing violence in El Salvador, many Salvadorans came to the U.S.[59] And when these people fleeing violence were told they could not stay in the U.S., activist groups organized and often provided services including shelter.[60] Activists from faith-based organizations sought to demonstrate a higher standard than that set by the U.S. government, and housed

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50 THE HUNCHBACK OF NOTRE DAME (RKO Radio Pictures 1939).

51 THE HUNCHBACK OF NOTRE DAME (Walt Disney Pictures 1996).

52 KARL SHOEMAKER, SANCTUARY AND CRIME IN THE MIDDLE AGES, 400–1500, at xi (2011).

53 *Id.* at 11.

54 *Id.* at 5.

55 Valerie J. Munson, *On Holy Ground: Church Sanctuary in the Trump Era*, 47 SW. L. REV. 49, 51 (2017); *see also* SHOEMAKER, *supra* note 52, at 1.

56 Munson, *supra* note 55, at 52.

57 SHOEMAKER, *supra* note 52, at ix.

58 *Id.*

59 Hector Perla & Susan Bibler Coutin, *Legacies and Origins of the 1980s US–Central American Sanctuary Movement*, 26 REFUGE 7, 9 (2009).

60 *Id.* at 12.

Central American citizens in churches.[61] The efforts to house people in need were in direct contravention to U.S. law and led to both indictments and convictions.[62]

Unlike the ancient idea of sanctuary, which was acknowledged by the law, the work of these activists openly challenged the law. And yet the term sanctuary was the regularly chosen description of these safe places. The ancient concept of sanctuary often came at a price of a fine or relinquishing worldly goods. Some sanctuary seekers in the 1980s paid a much different price. These sanctuary seekers were often asked to participate in the public debate by providing testimony about their experiences.[63] The result was an increased awareness on the part of U.S. residents and policymakers, and eventually some change in the law.[64]

Parallel to the provision of safe spaces by church groups, some communities began to enact laws that protected against required disclosure to federal authorities of immigration status when residents were dealing with local police or public service providers.[65] The policies could be described as "don't ask, don't tell," and the adopters were often labeled "sanctuary cities."[66] The policies were often adopted to allow all crime victims to be able to contact law enforcement without fear that the crime victim herself would be detained.[67] The federal government responded, years later, by amending the Immigration and Nationality Act to prohibit state and local governments from stopping their employees from assisting the federal government in the area of immigration.[68]

The term "sanctuary," in ancient times, denoted a legally accepted way of avoiding a perceived injustice. This original practice of sanctuary ended before the Revolutionary War started. But the idea of sanctuary survived and took on two new forms in the 1980s. One new form was an action contrary to law, supported by those who wanted to change the law, and who did achieve some of their desired changes. The other new form was the local jurisdiction seeking to carve out an area of control where it could refuse to take action that would support a federal law enforcement effort.

C. Current Use of the Term "Sanctuary" in the United States

With the idea of sanctuary redefined by actions in the 1980s, the United States has now entered another era where activists disagree with existing laws.

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61 *Id.*

62 Rose Cuison Villazor, What Is a "Sanctuary"?, 61 SMU L. Rev. 133, 141 (2008).

63 Perla & Coutin, *supra* note 59, at 12.

64 *Id.* at 13.

65 Cuison Villazor, *supra* note 62, at 149.

66 *Id.* at 148–149.

67 *Id.* at 143.

68 *Id.* (citing Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 133, 110 Stat. 3009 (1996)).

Organizers have again turned to the idea of sanctuary. The idea of sanctuary may seem to have sprung up again overnight with the election of President Donald J. Trump, but the movement had started before then. In 2006, Elvira Arellano, a Mexican citizen, took refuge in a church in Chicago to avoid a deportation order and separation from her young son, a U.S. citizen.[69] Ms. Arellano's situation revived the sanctuary movement, this time with a sharper focus on issues of family separation.[70]

With advocates for immigrants increasingly active and organized, one Republican candidate for president made immigration control a centerpiece of his campaign. Mr. Trump announced his candidacy with a focus on what he perceived as threatening people coming to the U.S. from Mexico.[71] And shortly after his election, President Trump issued executive orders limiting travel to the U.S. from certain countries, and starting the process of building a southern border wall.[72] The new President's ideas and actions landed in a political climate that was already organized to take action in the form of sanctuary.

The idea of sanctuary has changed shape again. What in the 1980s was a shelter provided by religious organizations and a "don't ask, don't tell" policy in some cities, expanded to include even more private organizations and public bodies.

Churches have continued to be a significant part of the sanctuary movement since 2017. But they have been joined now by other non-governmental actors. Dozens of colleges have declared themselves to be "sanctuary" campuses.[73] These campuses have adopted a range of policies, often including a policy against cooperating with federal authorities in efforts to seize students.[74] Workplaces have joined the movement as well. In January 2017, Honey Butter Fried Chicken was the first Chicago restaurant to declare itself a

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69 *Id.* at 144.

70 *Id.* at 144–45.

71 *Here's Donald Trump's Presidential Announcement Speech*, TIME (June 16, 2015), https://time.com/3923128/donald-trump-announcement-speech/ ("When Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.").

72 SELA COWGER ET AL., THE FIRST 100 DAYS: SUMMARY OF MAJOR IMMIGRATION ACTIONS TAKEN BY THE TRUMP ADMINISTRATION, MIGRATION POL'Y INST. 2–3 (Apr. 2017), https://www.migrationpolicy.org/sites/default/files/publications/Trump100Days-FINAL.pdf.

73 Daniel Funke, *Here's Where the Sanctuary Campus Movement Stands*, USA TODAY (Dec. 19, 2016, 3:10 PM), https://www.usatoday.com/story/college/2016/12/19/heres-where-the-sanctuary-campus-movement-stands/37425537/; Rose Cuison Villazor & Pratheepan Gulasekaram, *Sanctuary Networks*, 103 MINN. L. REV. 1209, 1242–43 (2019).

74 Villazor & Gulasekaram, *supra* note 73, at 1242.

sanctuary restaurant.[75] Now there are more than 30 such restaurants in the Chicago area, among hundreds of such restaurants nationwide.[76]

In addition to private entities, more governmental bodies have declared themselves to be sanctuary jurisdictions since the last presidential election.[77] Because there is no single definition of a sanctuary jurisdiction, counting them can be hard. But it is fair to say that over 100 cities or counties and ten states have declared themselves to be sanctuary jurisdictions.[78] It is also difficult to characterize the ways in which these jurisdictions express or enact their status as sanctuaries, but the concept has broadened since the sanctuary jurisdictions of the 1980s, particularly in the provision of free legal services to immigrants who are challenging their removal.[79]

With the number of governmental and non-governmental sanctuaries increasing, it is appropriate to ask what impact, if any, these declarations are having. Often the sanctuary decision is made as a way to send a message, more than a way to have a direct and concrete impact.[80] But the spread of these declarations is itself one measure of an impact, a least by way of measuring popular support for the ideas associated with sanctuary.

Sanctuary-related actions that affect one individual at a time are difficult to measure. But some actions have had results for a group of people. Mayor Libby Schaff of Oakland, California, cited her city's sanctuary ordinance when she publicly announced an anticipated federal roundup of undocumented immigrants in her city.[81] U.S. Immigration and Customs Enforcement officials stated that they arrested 150 people and would have arrested more but for the actions of Mayor Schaff.[82] And the impact of sanctuary could be measured by the administrative responses to sanctuary declarations. Within his first week as

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75 Alexia Elejalde-Ruiz, *Chicago's Honey Butter Fried Chicken Signs on to 'Sanctuary Restaurant' Movement*, CHI. TRIB. (Jan. 4, 2017, 4:59 PM), https://www.chicagotribune.com/business/ct-sanctuary-restaurants-honey-butter-0105-biz-20170104-story.html.

76 SANCTUARY RESTAURANTS, https://sanctuaryrestaurants.org/ (last visited Mar. 25, 2020).

77 *See* KRSNA AVILA ET AL., IMMIGRANT LEGAL RES. CTR., THE RISE OF SANCTUARY: GETTING LOCAL OFFICERS OUT OF THE BUSINESS OF DEPORTATIONS IN THE TRUMP ERA 8–9 (2018), https://www.ilrc.org/sites/default/files/resources/rise_of_sanctuary-lg-20180201.pdf.

78 Bryan Griffith & Jessica M. Vaughan, *Map: Sanctuary Cities, Counties, and States*, CTR. FOR IMMIGR. STUD. (Feb. 5, 2020), https://cis.org/Map-Sanctuary-Cities-Counties-and-States.

79 Villazor & Gulasekaram, *supra* note 73, at 1242.

80 Michael Kagan, *What We Talk About When We Talk About Sanctuary Cities*, 52 U.C. DAVIS L. REV. 391, 397 (2018).

81 Meagan Flynn, *Oakland Mayor Libby Schaaf Tipped Off Immigrants About ICE Raid and Isn't Sorry She Did*, WASH. POST (Feb. 28, 2018), https://www.washingtonpost.com/news/morning-mix/wp/2018/02/28/oakland-mayor-libby-schaaf-tipped-off-immigrants-about-ice-raid-and-isnt-sorry-she-did/.

82 *Id.*

President, Trump issued an executive order directing federal law enforcement grants to be withheld from sanctuary jurisdictions.[83]

From its ancient origins as a legally recognized protection from prosecution, the idea of sanctuary has contracted and expanded again. Sanctuary is no longer a legal method to escape prosecution, but now a way to attempt to protect someone from what is perceived to be an unjust law—and a way to make a public statement about that law as well. It is that kind of sanctuary that was sought by those who perceive Second Amendment rights as being threatened.

IV. FEDERAL VS STATE VS LOCAL: WHO SHOULD REGULATE GUNS?

Understanding advocacy for gun freedoms requires an understanding of what levels of government regulate gun ownership and use. The starting place is the Second Amendment, a limitation on infringement of the right to bear arms.[84] Advocates for gun owners have often been in the position of arguing against national laws because those laws impose limitations.[85] Based on this kind of advocacy it would be easy to characterize gun rights advocates as opponents of national legislation and supporters of more local level government action. But that characterization misses important complexity.

Two recent Supreme Court cases—*District of Columbia v. Heller*[86] and *McDonald v. City of Chicago*[87]—involved challenges to local gun regulations. In these cases, advocates successfully relied on the U.S. Constitution to undo local gun regulations.[88]

Similarly, advocates for gun owners' rights to leave home with their firearms have used the Constitution to argue for "concealed carry" laws.[89] Advocates successfully pushed for a state level protection for gun owners' rights.[90] So while gun owner rights advocates may be seeking to protect individual rights, they have chosen to do so not through local control, but through regulation at the state or national level.

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83 Kagan, *supra* note 80.

84 U.S. CONST. amend. 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.").

85 *See, e.g.*, *What Is the Charleston "Loophole"?*, NRA INST. FOR LEGIS. ACTION, https://www.nraila.org/get-the-facts/what-is-the-charleston-loophole/ (last visited Mar. 25, 2020); *BATFE, Firearm Importation & Federal Firearm Law Reform*, NRA INST. FOR LEGIS. ACTION, https://www.nraila.org/get-the-facts/batfefederal-firearms-law-reform/ (last visited Mar. 25, 2020).

86 554 U.S. 570 (2008).

87 561 U.S. 742 (2010).

88 *See generally McDonald*, 561 U.S. 742; *Heller*, 554 U.S. 570.

89 Moore v. Madigan, 702 F.3d 933, 934–35 (7th Cir. 2012).

90 *Id.* at 935.

The Constitution is the source of protection of gun owner rights, and *Heller* and *McDonald* lock in a strong role for protection in federal courts. But this current role for federal enforcement fits a bit uncomfortably into a legal topic that has long been regulated by state and local governments.[91]

With the Constitution setting the framework (or the floor) for protection of gun owners' rights, there is still a role for local regulation. But what is the appropriate level for that regulation, state, county, municipal, or all of the above? To answer that question, we can look to (1) the history of the creation of these governmental units, (2) preemption in general, and (3) current debate on the sweet spot for regulatory power over gun ownership.

A. Which Came First: Cities or States?

The first way to determine who has power among competing governmental bodies may be to ask who got there first. Around the year 800, the largest human settlement north of Mexico was in what is now Cahokia, Illinois.[92] Cahokia was the center of a networked civilization of 10,000 to 20,000 people in multiple settlements,[93] so it could be called a state or nation made of smaller communities. With the arrival of Europeans, St. Augustine, Florida, is the country's oldest city, having been founded in 1565.[94] And presumably cities, which may or may not have had any governmental power, were a natural way for people to gather for trade, security, and other shared objectives. But after the American Revolution, it was not individuals or cities who formed the new government, but a collection of people representing states. And it is states that now set the standards for formation of local governments. It may be that, between states and cities, who came first is a chicken and egg question.

But counties are different. The term county comes from the French title "comte" ("count" in English) and refers to a ruler and a region that is a subdivision of a larger government.[95] While there are variations among counties in the U.S., most share a common geographical element—they are subdivisions of a state. Unlike cities, towns, and villages, which can spring up in any particular place, the state is divided into counties that cover the entirety of the state.[96] In

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91 Joseph Blocher, *Firearm Localism*, 123 YALE L.J. 82, 108 (2013).

92 *Cahokia Mounds State Historic Site*, UNESCO WORLD HERITAGE CTR., https://whc.unesco.org/en/list/198/ (last visited Mar. 25, 2020).

93 *Id.*

94 *Our History*, CITY ST. AUGUSTINE, https://www.citystaug.com/693/Our-History (last visited Mar. 25, 2020) ("Founded in 1565, St. Augustine is the oldest continuously occupied settlement of European and African-American origin in the United States.).

95 *Comte*, COLLINS DICTIONARY, https://www.collinsdictionary.com/us/dictionary/french-english/comte (last visited Mar. 25, 2020).

96 *County*, NAT'L GEOGRAPHIC: RES. LIBR., https://www.nationalgeographic.org/encyclopedia/county/ (last updated June 10, 2011).

other words, every part of a state is covered by a county, whether that territory belongs to a city or not. And unlike legislative districts, which also divide and cover the whole state, counties do not usually exist as a way to communicate to the source of power in the state. Counties are administrative divisions of the state which may have powers like collecting local real estate taxes, providing law enforcement through a sheriff's office, and providing a court system.[97] Important to understanding positions on the rights of gun owners, counties are often the only unit of government for rural areas.[98] While residents of cities, towns, and villages can address grievances at local, county, or state levels, residents of rural areas have one less layer of government between them and the adoption of any regulation that may affect their lives.[99] This places counties in an interesting pinch between being controlled by the state and being a key intermediary between the resident and the state.

Based on what units of government came first, municipal governments may have a claim that they pre-date states, but counties have no such argument. Counties are the creation of states, a sub-unit of government that derives its power to act only from the state. This birth order does not determine everything, but it does form the backdrop of arguments on where power is and should be located.

B. State Power and Preemption

In our federal system, the national government has limited, specified powers.[100] And the states are theoretically all-powerful. Despite how the powers of the nation and the states are described, the enumerated powers of the federal government are both important and expanding.[101] The federal government cannot

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97 *Id.*

98 For example, Jackson County, Illinois, this Author's home county, has a population of roughly 60,000 people, with about half of the population living in either of the two larger cities of Carbondale and Murphysboro. *QuickFacts: Murphysboro City, Illinois; Carbondale City, Illinois; Jackson County, Illinois*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/murphysborocityillinois,carbondalecityillinois,jackson countyillinois/PST045219 (last visited Mar. 25, 2020). Of the nine remaining small municipalities in Jackson County, the largest is De Soto, with a population of 1,500. *De Soto, Illinois Population 2020*, WORLD POPULATION REV., https://worldpopulationreview.com/us-cities/de-soto-il-population/ (last updated Aug. 28, 2019). This leaves a large portion of the county's population with the county government as the only local government.

99 *See supra* note 98 and accompanying text.

100 Erin Adele Scharff, *Hyper Preemption: A Reordering of the State-Local Relationship?*, 106 GEO. L.J. 1469, 1475 (2018).

101 *Id.*

regulate everything, but its power reaches broadly, whether it is through the commerce clause or through requirements attached to federal spending.[102]

The relationship between the federal government and the states could be compared to a babysitter and the children she is watching. The babysitter has some authority, but it's not complete, and the kids know where the Cheetos are. So if the federal/state relationship is similar to a babysitter and kids, the state and local relationship is more like a mom and her kids. Mom has ultimate authority. She sets the bedtime, and she can lock up the Cheetos. States rule.

Local governments—the cities, towns, villages, and counties—have their powers set by the state. This structure is often described as "Dillon's rule," after the legal commentator who described the limits in the early 1900s.[103] And while many communities have greater authority through "home rule," even those powers are set in place and subject to limits by the state.[104]

Preemption is the state's best power tool. When the state regulates, the local governments have to back off. Smoking, for example, has been subject to competing regulation at local and state levels. In a regulatory competition that made national news, Helena, Montana, enacted a local ordinance that banned smoking in workplaces and public spaces.[105] Six months later, Montana enacted a law that prohibited local regulation of smoking that was more restrictive than state law.[106] There was no question that the state could take this action. What made news about this reversal in regulation was that it led to a study of the impact of second-hand smoke on the incidence of heart attacks in Helena.[107] The news was that heart attacks dropped significantly during the six months between local regulation and state deregulation.[108]

The Montana smoking laws are an example of specific preemption, where a state enacts a law in direct competition with a local ordinance. But preemption can also be more broad and thwart local regulation by simply prohibiting the local government from acting, or by creating barriers to those

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102 *See, e.g.*, Gail L. Sunderman & James S. Kim, *The Expansion of Federal Power and the Politics of Implementing the No Child Left Behind Act,* 109 TCHRS. C. REC. 1057 (2007).

103 *See generally* JOHN FORREST DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS (5th ed. 1911).

104 Scharff, *supra* note 100, at 1476.

105 Richard P. Sargent et al., *Reduced Incidence of Admissions for Myocardial Infarction Associated with Public Smoking Ban: Before and After Study*, 328 BMJ 977 (2004); Rosemary Ellis, Opinion, *The Secondhand Smoking Gun*, N.Y. TIMES (Oct. 15, 2003), https://www.nytimes.com/2003/10/15/opinion/the-secondhand-smoking-gun.html.

106 Curt Woodard, *Montana Governor to Overturn Smoking Ban*, PLAINVIEW DAILY HERALD (Apr. 10, 2003, 7:00 PM), https://www.myplainview.com/news/article/Montana-Governor-to-Overturn-Smoking-Ban-8819158.php.

107 Sargent et al., *supra* note 105.

108 *Id.*

who would challenge the state law, which is what Professor Erin Adele Scharff calls "hyper-preemption."[109]

C. *The Current Debate Over Which Level of Government Should Regulate Guns*

Authority to regulate gun ownership involves federal, state, and local governments, and each of those levels has tried to grab its share of power.

The federal government has the Second Amendment, reinvigorated by *District of Columbia v. Heller*[110] and *McDonald v. City of Chicago*.[111] These cases set a floor, a minimum standard for protection of individual rights.[112] At the national level, the debate about gun regulation has at least two sides, but one set of rules, and one federal government to make, interpret, and enforce the laws.

Outside of the national lawmaking process, there are more governmental bodies, with actors at each level asserting power. This particular power struggle is captured by a debate between two law professors, Joseph Blocher of the Duke University School of Law and Michael O'Shea of the Oklahoma City University School of Law.[113] Blocher notes the tradition of local regulation of firearms and advocates for a standard that would give deference to local regulation.[114] O'Shea sees the states as the better source of power to protect individual rights to firearms.[115]

Blocher's argument for local control recognizes a cultural split between those who grow up with guns as a part of life and those who grow up without guns and hope to avoid them.[116] Blocher, while acknowledging the flaws of his assessment, describes the divide as between urban and rural.[117] Blocher reports the long history of local regulation of gun use.[118] He then asserts that such regulation could fit well within other constitutional protections that acknowledge and support local standards, such as regulation of obscenity.[119]

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109 Scharff, *supra* note 100, at 1469.

110 554 U.S. 570 (2008).

111 561 U.S. 742 (2010).

112 Michael P. O'Shea, *Why Firearm Federalism Beats Firearm Localism*, 123 YALE L.J. ONLINE 359, 360 (2014).

113 The Author recommends reading the remainder of this paragraph in the emphatic tone of a boxing announcer to create the sense of a fight.

114 Blocher, *supra* note 91.

115 O'Shea, *supra* note 112.

116 Blocher, *supra* note 91, at 90–107.

117 *Id.*

118 *Id.* at 108–21.

119 *Id.* at 124–32. The most interesting of the articles Blocher cites are Mark D. Rosen, *The Surprisingly Strong Case for Tailoring Constitutional Principles*, 153 U. PA. L. REV. 1513 (2005),

O'Shea, who has conservative credibility as a Federalist Society contributor,[120] agrees that there is a cultural split, but sees practical problems with local control over gun ownership and use.[121] O'Shea observes that most Americans commute regularly, move beyond our immediate home for any number of reasons, and in doing so, cross numerous local jurisdictional boundaries.[122] If a gun owner is seeking self-defense, O'Shea argues, her rights should not be chilled by a patchwork of differing local codes.[123]

The debate is interesting, partly because it upends traditional conservative and liberal positions. Blocher, the advocate for more gun control, is arguing for devolution of power to local governments. O'Shea, the conservative, is arguing for the primacy of a larger and more remote government. But even the advocate for more regulation at the local level acknowledges that this constitutional dust-up is an academic question when there is state preemption of local regulation.[124] This interesting shift in positions about the proper locus of power is reflected in the advocacy community as well. The National Rifle Association, which had previously supported local control, chose to change strategies.[125] In 1981, in response to a handgun ban in suburban Morton Grove, Illinois, the National Rifle Association began advocacy for state-level preemption laws that would prohibit local gun bans.[126] The advocacy was effective, with the majority of states adopting laws that preempted local handgun bans.[127]

Arizona was one of those states that prohibited local governments from regulating firearms.[128] Then, in 2016, Arizona went one step further and enacted an extremely broad preemption law, covering all areas where the state regulates, including firearms.[129] The law provides for speedy removal of state funding from local governments that are determined by the Arizona Attorney General to have overstepped their powers.[130] A local Tucson ordinance on destroying some

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and Richard C. Schragger, *The Role of the Local in the Doctrine and Discourse of Religious Liberty*, 117 HARV. L. REV. 1810 (2004).

120 *Prof. Michael O'Shea*, FEDERALIST SOC'Y, https://fedsoc.org/contributors/michael-o-shea (last visited Apr. 6, 2020).

121 O'Shea, *supra* note 112.

122 *Id.* at 368–71.

123 *Id.* at 369.

124 Blocher, *supra* note 91, at 133.

125 *Id.*

126 *Id.*

127 *Id.* (citing Lisa M. Hepburn & Jon S. Vernick, *State and Federal Gun Laws: Trends for 1970–99*, *in* EVALUATING GUN POLICY: EFFECTS ON CRIME AND VIOLENCE 345, 363 (Jens Ludwig & Philip J. Cook eds., 2003)).

128 Scharff, *supra* note 100, at 1509.

129 *Id.* at 1495–96.

130 *Id.*

handguns that came into city possession may have provided the incentive for the broad state measure.[131] The Arizona Supreme Court reviewed actions taken by the Arizona Attorney General against Tucson, imposed some limitations on how the Attorney General could work within the statute, and otherwise upheld the broad preemption law.[132]

Over time, the regulation of gun owners in the United States has been subject to pulls and pushes from many directions. The role for the U.S. Constitution, while always foundational, has taken on a new vigor thanks to recent Supreme Court decisions. Also moving power up the food chain, gun owner advocates, who historically supported local regulation, shifted their support to state regulation as a way to undo local handgun bans. And while professors debate whether state or local governments are the sweet spot for regulation, states have continued down a path toward asserting more power at the expense of local control. This is the gun regulation environment that helped to set the stage for the Second Amendment sanctuary movement.

V. THE IMPORTANCE OF VOICE: THE REAL POWER OF A SECOND AMENDMENT SANCTUARY

In the end, does a Second Amendment sanctuary do anything? Comparing this movement to the larger idea of sanctuary, its legal impact is small. But there may well be an impact beyond the local level and beyond this immediate time period.

The legal impact of a Second Amendment sanctuary pales in comparison to what sanctuary used to mean. This kind of sanctuary is certainly not the ancient variety, where people accused of crime could seek permanent and legal protection within the walls of a temple or church. This type of sanctuary is not even the 1980s-style sanctuary, where those who were under threat of deportation were able to shelter in a structure associated with a religious sect and avoid the law. That kind of shelter did not have the blessing of the law, but it had at least a wink and a nod in that churches were not raided to drive out the undocumented. The current movement shelters no individuals who are being pursued by authorities. The current Second Amendment sanctuary movement is made of declarations of policy by local governments—local governments who fear further regulation by the state. And if the state were to enact new regulation, it would be just that regulation that preempts local action. For all of the trappings of a change in law, the direct legal impact fails.

But there are similarities between the 1980s immigration sanctuaries and the Second Amendment sanctuaries beyond just the clever borrowing of a loaded word. In the 1980s immigration sanctuary movement, part of the effort was to

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131 *Id.* at 1509.

132 *Id.* at 1510–15 (discussing State *ex rel.* Brnovich v. City of Tucson, 399 P.3d 663, 679 (Ariz. 2017)).

educate about the plight of those threatened with deportation. The speeches made by those seeking shelter were a powerful communication tool. And for those who were a part of a religious group who offered shelter, the message about the impact of our laws was something that became more direct and immediate. A story about immigration on the national news could be powerful, but buying groceries for the woman who is living in your church hall sends a more immediate message. In that same way, having a decision made about firearm regulation at the local level makes the issue more real. It is likely that most people don't know their member of Congress and could not name their state senator or house member. But the smaller the governmental unit, the more likely it is that people will know each other. A resident of a rural county might not know all the members of the county board, but she would know where their children went to high school because it would be one of the few schools or the only school in the county.

Today's Second Amendment sanctuary movement also shares more than just a word with today's immigration sanctuary movement. Each movement is more about making a statement than having a legal impact. While there are some areas where immigration sanctuary cities can withdraw from cooperation with federal immigration authorities, it is just as often that the declaration was made knowing that there would be no impact beyond the making of the statement. Certainly, the policies of restaurants that are immigration sanctuaries will have little, if any, impact on those who work or dine there, but there is value in making the statement. In the same way, counties which declare themselves to be Second Amendment sanctuaries know that their stance will have no legal impact due to preemption, but there is value in making the statement.

Professor Heather Gerken has coined a phrase that describes just the kind of value presented by the Second Amendment sanctuary movement. She calls it "federalism-all-the-way-down."[133] She describes this concept as "minority rule without sovereignty."[134] Her idea of minority is not a concept of ethnic origin, but strictly one of those who are fewer in number on a given political issue.[135] Gerken advocates for this concept of federalism, which extends beyond governmental bodies that have power to parts of government that have some limited power but have no power on a particular topic on which they wish to have an impact. As one example, she points to Mayor of San Francisco Gavin Newsome's decision to advance marriage equality by performing same-sex marriages in his city.[136] San Francisco had no legal authority, no sovereignty, to take these actions, but Gerken writes that the city asserted its right to be a part of the decision-making process by taking these actions.[137] This variation on our

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133 Heather K. Gerken, *Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 8 (2010) (internal quotation marks omitted).

134 *Id.*

135 *See generally id.*

136 *Id.* at 42.

137 *Id.* at 43.

concept of federalism allows a body without power to take a stand, to express itself to those who do make the decision. And because the political body asserting itself has no power to take action, there is little cost to the sovereign body. The sovereign body can assert its control, respond in some way to the powerless body, or, at the very least, take notice of the view expressed.[138]

This "federalism-all-the-way-down" is exactly what is going on in local jurisdictions that pass Second Amendment sanctuary ordinances. Because of preemption, the local bodies lack power, and despite that, they use their voice to convey a message to those who do have power.

One advantage of this expanded concept of federalism is that it gives greater voice to a layer of government that is more trusted by the governed. Thomas Jefferson wrote that a government closer to home and more easily watched would be less corrupt.[139] And revered political scientist V.O. Key wrote that people have more confidence in a government that is close to them, one composed of their friends and neighbors.[140] This confidence in local government can be measured in polling that asks whether a government is headed in the right or wrong direction. Polling has shown that Illinoisans, consistently over the last ten years, have felt that the national and state governments were headed in the wrong direction, but the local governments were headed in the right direction.[141] For most of that time, this positive opinion of local government has been held by majorities from both the Democratic and Republican parties.[142]

This faith in or respect for local government matters, particularly because it stands in contrast to the opinion of state and national governments. If a democratic process is valuable, then a democratic body that people appreciate may have an edge in engaging people in that process. When citizens can participate not just by voting, but also by talking with a local elected official at the grocery store or a high school track meet,[143] democracy feels more real. And

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138 *Id.* at 46–47.

139 JOHN JACKSON ET AL., PAUL SIMON PUB. POL'Y INST., THE CLIMATE OF OPINION IN ILLINOIS 2008–2019: GRIDLOCK BROKEN? 25–26 (2019); Letter from Thomas Jefferson to Gideon Grainger (Aug. 13, 1800), https://founders.archives.gov/documents/Jefferson/01-32-02-0061 ("[O]ur country is too large to have all [its] affairs directed by a single government. [P]ublic servants at such a distance, & from under the eye of their constituents, will, from the circumstance of distance, be unable to administer & overlook all the details necessary for the good government of the citizen; and the same circumstance by rendering detection impossible to their constituents, will invite the public agents to corruption, plunder & waste . . . .").

140 JACKSON ET AL., *supra* note 139, at 27 (citing V.O. KEY, POLITICS, PARTIES AND PRESSURE GROUPS (4th ed. 1958)).

141 *Id.* at 17–28.

142 *Id.* at 25–27.

143 The Author—having served as a city council member in Carbondale, Illinois, and as Lieutenant Governor of Illinois—can verify that unplanned political discourse with citizens occurred much more frequently when she served at the local level than at the state level.

having at least one level of government that expresses a voter's values may increase that voter's willingness to participate in political processes.[144]

So even without a legal impact, a Second Amendment sanctuary movement can have value. It can make a statement and serve as a method of political participation by a unit of government that is more trusted than the governments that actually have power over gun regulation. But these positive attributes may also come at some cost, at least theoretically.

The potential costs of Second Amendment sanctuaries could be confusion, a reduced respect for the law, and actions consistent with any confusion and loss of respect for the law. As the wave of sanctuary counties was beginning, Criminal Justice Professor Trish Oberweis of Southern Illinois University Edwardsville noted the possibility of confusion for local law enforcement officers.[145] That possibility seemed even more real when Neal Rohlfing, the Sheriff of Monroe County, Illinois, stated that if the state passed new gun control laws, his department would not enforce them.[146] Mr. Rohlfing's interpretation certainly differed from that of the State's Attorney in the first county to enact a sanctuary ordinance, who acknowledged that the ordinance was symbolic.[147]

In addition to confusion, there is the potential danger that local law enforcement will be more easily seen as being politicized.[148] And not surprisingly, gun control advocates see the possibility that local law enforcement officers will not enforce the law as an "extremely dangerous" idea.[149]

But what exactly are those dangers, and have they come to pass? So far there has been no reported evidence of confusion or failure to enforce a valid law. But that should not cause our guard to be let down. Our country's history certainly contains examples of group action, sometimes governmental, that violated established law at the cost of lives.

Abraham Lincoln, many years before he became president, warned of the dangers of mob action and lynchings.[150] He noted that even though some innocent people were killed by mob violence, the greater danger was that those

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144 Danielle Root & Liz Kennedy, *Increasing Voter Participation in America*, CTR. FOR AM. PROGRESS (July 11, 2018, 12:01 AM), https://www.americanprogress.org/issues/democracy/reports/2018/07/11/453319/increasing-voter-participation-america.

145 Landis, *supra* note 10.

146 *Id.*

147 *Id.*

148 Lutz, *supra* note 12 (noting that Multnomah County Sheriff Michael Reese expressed these concerns).

149 *Id.* (internal quotation marks omitted).

150 Abraham Lincoln, The Perpetuation of Our Political Institutions: Address Before the Young Men's Lyceum of Springfield, Illinois (Jan. 27, 1838), http://www.abrahamlincolnonline.org/lincoln/speeches/lyceum.htm.

who are "lawless in spirit, are encouraged to become lawless in practice."[151] For this reason, he urged all Americans to abide by all laws, even while working to change bad laws.[152] Well after the Civil War, President Ulysses S. Grant was dealing with just this kind of local insurrection against sate authority.[153]

Overall, the Second Amendment sanctuary movement borrows some of the best features of the current immigration sanctuary movement. It uses a democratic process, a body elected by people who have faith in that level of government, and it speaks. It gives a voice to people in a geopolitical unit who may have fewer options to be heard, and it gives them a voice even with the understanding that it may have no impact whatsoever. And although there is a risk of misunderstanding, there is also the chance of making democracy function just a little bit more effectively.

VI. CONCLUSIONS

From a modest start in a mostly rural county in Illinois, Second Amendment sanctuary ordinances have been adopted around the country. They have been adopted largely in jurisdictions where the local population values gun ownership more than the state in which the jurisdiction is located. The sanctuary ordinances, almost by definition, have no legal impact. They are a response to what is perceived as over-regulation by the state, which means that the state law is in a position to preempt any local action. So, in the end, the ordinances are not a way for gun rights advocates to effect change or subvert new restrictive laws. For that reason, those who support more restrictive gun laws should not fear the immediate impact of the sanctuary ordinances.

But even with no legal impact, there is value in the Second Amendment sanctuary ordinances. The value is in allowing democracy to function just a little bit better. Second Amendment sanctuary ordinances are adopted by local jurisdictions, governments that are more trusted than state or national governments. The ordinances send a message of protest to the state government and on behalf of a population that may have one less layer of intermediation between citizen and state.

This voice, this package that looks like a law but does nothing, should be an alert to state lawmakers. The message sent by these ordinances is one about the substantive issue of firearms regulation. But the ordinances are also a message about process, a process that, in the opinion of the local jurisdictions, is failing them. The ordinances give the local jurisdictions the sound and the feeling of standing up to an unjust law. State lawmakers should pay attention and understand that in a time of sharp divides on partisan and cultural issues, state law can exacerbate those rifts.

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151 *Id.*

152 *Id.*

153 RON CHERNOW, GRANT 760 (2017).

People have caused horrible violence to each other with firearms. The violence leads some people to seek more restrictions on gun ownership, while others do all they can to keep the guns that they feel keep them safe. State legislation on guns impacts both of those sets of people. State lawmakers may not have a desire to seek compromise or may not be able to find compromise even if they seek it. But they are in control of their own processes and how they engage people throughout their states in making law.

Inclusive lawmaking is not likely the legislative norm. And legislators representing districts in a distinct political minority are easy to overlook. But the spread of Second Amendment sanctuary ordinances shows the importance of being heard, even when the voice is not, in the end, persuasive. And in a time of increasing division among people, a lesson in the importance of listening to and understanding other voices is more critical than ever.

Even if we listen to each other, we may not find compromise. But we may reinforce a shared value that can bind us together—respect for the democratic process.