

# A MATTER OF EXPECTATIONS: INTERPRETING THE STATUTORY PREEMPTION OF LOCAL ASSISTANCE TO FEDERAL FIREARMS REGULATORS\*

*This Note examines Alaska's relationship to the federal regulatory process. Specifically, the Note analyzes an Alaskan preemption statute that prevents local officials from restricting the sale of firearms. The Note begins by examining a Justice Scalia footnote in *Printz v. United States*, a recent Supreme Court decision invalidating portions of the Brady Handgun Violence Prevention Act. That footnote suggests that Congress does not have the power to force state compliance with federal regulation. This Note discusses how the *Printz dicta*, along with the lack of legislative history, creates uncertainty in interpreting the Alaska preemption statute. The Note applies a plain-meaning interpretation of the statute but concludes that such an interpretation is inevitably flawed. The Note concludes that the Alaska statute does not bar the voluntary participation of local officials in federal firearms regulation, and that this conclusion is consistent with *Printz*.*

## I. INTRODUCTION

In the era between the New Deal and the current decade, commentators regarded the Supreme Court's doctrinal approach to Commerce Clause regulatory legislation as a "fixed and fundamental point" on the constellation of "the modern legal consciousness."<sup>1</sup> Shattering the languor of post-New Deal federalism doctrine, this decade's Supreme Court jurisprudence<sup>2</sup> has energized

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1. 1 BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* 120 (1991). See generally *id.* at 105-30. But see H. Jefferson Powell, *The Oldest Question of Constitutional Law*, 79 VA. L. REV. 633, 664-81 (1993) (describing persistent difficulties of reconciling principles of federalism with federal regulation).

2. The Supreme Court has invalidated several federal statutes because it found such statutes to be inconsistent with federalism. See *Printz v. United*

anew the debate over the states' relationship to the federal regulatory process.<sup>3</sup> By virtue of its vast natural resources and its native communities, Alaska and its citizens traditionally have lived with a substantial degree of federal regulation.<sup>4</sup> The development of the

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States, 117 S. Ct. 2365 (1997) (invalidating a federal requirement that local law enforcement officers perform background checks on putative gun purchasers); *Seminole Tribe v. Florida*, 517 U.S. 44 (1996) (holding exercise of federal jurisdiction over suits to enforce negotiating duties under federal Indian gaming law violates Eleventh Amendment); *United States v. Lopez*, 514 U.S. 549 (1995) (holding federal criminal statute prohibiting the possession of a gun near a school was unconstitutional because the statute was not sufficiently related to interstate commerce); *New York v. United States*, 505 U.S. 144 (1992) (striking down federal statutory requirement that states develop waste disposal plans for, or take title to, radioactive waste because federal provision constituted impermissible encroachment into state governance). The Court also has discussed principles of federalism in disposing of related questions. See *City of Boerne v. Flores*, 117 S. Ct. 2157 (1997) (discussing federalism in connection with invalidation of a portion of Religious Freedom Restoration Act); *Idaho v. Coeur d'Alene Tribe of Idaho*, 117 S. Ct. 2028 (1997) (interpreting Eleventh Amendment to bar exercise of federal jurisdiction over suits for injunctive and declaratory relief against state officials' interference with property interests in submerged lands).

3. See, e.g., Steven G. Calabresi, "A Government of Limited and Enumerated Powers": In Defense of *United States v. Lopez*, 94 MICH. L. REV. 752, 752 (1995) (discussing the revolutionary character of *Lopez*); Daniel A. Farber, *The Constitution's Forgotten Cover Letter: An Essay on the New Federalism and the Original Understanding*, 94 MICH. L. REV. 615, 618-26 (1995) (observing emergence of dual sovereignty analysis in the Court); Charles Fried, *The Supreme Court, 1995 Term - Foreword: Revolutions?*, 109 HARV. L. REV. 13, 14-15 (1995) (rejecting characterization that *Lopez* was revolutionary); Clayton P. Gillette, *The Exercise of Trumps by Decentralized Governments*, 83 VA. L. REV. 1347 (1997) (discussing whether trumps of centralized authority are most effective at preventing its overreaching); Vicki C. Jackson, *Federalism and the Uses and Limits of Law: Printz and Principle?*, 111 HARV. L. REV. 2181, 2181 (1998) (describing "phoenix-like" rise of post-New Deal federalism-based constraints on federal legislation); Kathleen M. Sullivan, *The Supreme Court, 1995 Term - Comment: Dueling Sovereignities: U.S. Term Limits, Inc. v. Thornton*, 109 HARV. L. REV. 78, 80 (1995) (commenting on Court's federalism jurisprudence); Symposium, *The Law and Economics of Federalism*, 82 MINN. L. REV. 249 (1997) (evaluating institutional adequacy of federalism-based structures of governance).

4. One example is the pervasiveness of regulation of Alaska land, as recently discussed in the context of regulating subsistence hunting. See David S. Case, *Subsistence and Self-determination: Can Alaska Natives Have a More "Effective Voice"?*, 60 U. COLO. L. REV. 1009, 1015-17 (1989); see also David G. Shapiro, Note, *Jurisdiction and the Hunt: Subsistence Regulation, ANILCA, and Totemoff*, 14 ALASKA L. REV. 115 (1997) (discussing preemptive effect of a comprehensive federal land regulation scheme upon a state prosecution for spotlight hunting).

debate over federalism will continue to hold particular significance for Alaska.

Part of the resurgent debate has been fueled by the Court's re-examination of the federal regulatory process.<sup>5</sup> For example, the Court has invalidated federal statutory requirements that states develop programmatic solutions to problems of joint state and federal interest.<sup>6</sup> Most recently, in *Printz v. United States*,<sup>7</sup> a divided Court invalidated parts of the Brady Handgun Violence Prevention Act<sup>8</sup> in a five to four decision.<sup>9</sup> In the process, the Court rejected the premise that Congress had any power to compel state officials to execute federal regulatory regimes.<sup>10</sup> The *Printz* Court, however, did not address explicitly whether Congress might enlist voluntary participation by state officials in the administration of a federal regulatory scheme.<sup>11</sup> The Court did suggest, however, that state officials who voluntarily choose to help administer such schemes could be precluded from doing so by statutes preempting local firearms regulation in general.<sup>12</sup>

Alaska has a local preemption statute that prevents local officials from restricting the right to own, possess, or transport firearms.<sup>13</sup> Proponents of firearms regulation have pointed out that thirty-nine other states have similar local preemption statutes.<sup>14</sup> The Court's unelaborated endorsement of such statutes in *Printz* provides little guidance about how to interpret those statutes in light of voluntary local participation in federal regulatory schemes. Indeed, the majority clearly was divided on this question. The result of the Court's foray into this area has been to inject confusion into a vibrant debate about federal authority<sup>15</sup> and to cloud the ba-

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5. See *supra* note 2.

6. See *New York v. United States*, 505 U.S. at 177.

7. 117 S. Ct. 2365 (1997).

8. Pub. L. No. 103-159, §§ 101-106, 107 Stat. 1536-44 (1993) (codified as amended at 18 U.S.C. §§ 921-925A (1994); 42 U.S.C. § 3759 (1994)).

9. See *Printz*, 117 S. Ct. at 2365.

10. See *id.* at 2380.

11. See *id.* at 2384.

12. See *id.* at 2384 n.18.

13. See ALASKA STAT. § 29.35.145(a) (Michie 1996).

14. See Handgun Control, Inc., *State Firearms Legislation: Selected Summary By State* (visited Oct. 1, 1998) <<http://www.handguncontrol.org/b-main.htm>>; cf. Addendum to Letter from Stephen P. Halbrook, Counsel for Sheriff Jay Printz, to President Bill Clinton and Attorney General Janet Reno (June 30, 1997) (on file with *Alaska Law Review*) (citing 19 preemption statutes).

15. See *supra* notes 2-3 and accompanying text.

sis for the practical application of statutes like the Alaska preemption statute.<sup>16</sup>

Part II of this Note discusses the uncertainty created by the *Printz* Court's statements regarding local participation in federal firearms regulation schemes and how those difficulties are compounded by the sparse legislative history of the Alaska statute. Part III reconstructs a practical basis for construing the applicability of the Alaska preemption statute by evaluating its text. Part IV examines the federal nexus between the reconstructed text and the federal firearms regulation regime in order to evaluate the degree to which a state official may interact with or assist federal governmental entities that seek to enforce federal firearms regulations generally. Part IV's analysis of the statutory text suggests that local law enforcement officials in Alaska voluntarily may assist federal government officials in enforcing federal firearms regulations. Moreover, local officials under certain circumstances may have a duty to cooperate with federal enforcement of firearms regulations. This Note concludes that such cooperation is consistent with *Printz*, the Alaska Constitution, the Alaska preemption statute, and with doctrinally sound federalism principles.

## II. UNCERTAINTY OF INTERPRETIVE AUTHORITY FOR ALASKA'S LOCAL FIREARMS REGULATION PREEMPTION STATUTE

In *Printz*, the Supreme Court suggested that states legitimately could prohibit local cooperation with federal firearms regulation by enacting express state statutory proscriptions.<sup>17</sup> In a very brief footnoted comment, Justice Scalia's opinion for the Court contemplated whether Montana law prohibited Sheriff Jay Printz from voluntarily participating in the administration of the

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16. Evidence against *Printz's* ability to provide a principled and persuasive basis for analyzing federalism-based issues is abundant. As such, the Court's *Printz* analysis already has been rejected or questioned as precedent by several lower federal courts. See *West v. Anne Arundel County*, 137 F.3d 752 (4th Cir. 1998) (holding *Printz* did not determine whether Fair Labor Standards Act applied to state and local government salary determinations); *McGarry v. Director, Dept. of Revenue*, 7 F. Supp. 2d 1022, 1025-26 (W.D. Mo. 1998) (holding that, notwithstanding *Printz*, application of Americans with Disabilities Act is not precluded by Tenth Amendment); *City of New York v. United States*, 971 F. Supp. 789, 798 (S.D.N.Y. 1997) (explaining that, rather than "reviv[ing] a substantive analysis under the Tenth Amendment," *Printz* holding evolved from "structural defects in the . . . statute[]" because it contained no "analysis of whether the state functions that were affected were core functions of the states").

17. See *Printz*, 117 S. Ct. at 2384 n.18.

Brady regulatory regime.<sup>18</sup> Without elaborating on his reasoning, Justice Scalia concluded that Montana law “clearly” prohibited Sheriff Printz from “taking on these federal responsibilities.”<sup>19</sup> Justice Scalia also stated that a similarly written Arizona statute might prohibit Arizona sheriffs from voluntarily taking part in the Brady plan.<sup>20</sup> Justice Scalia’s opinion for the Court suggests Supreme Court imprimatur of state restraints upon municipalities, counties, or other state political subdivisions.<sup>21</sup> The operation of these restraints in the manner that Justice Scalia contemplates easily could eviscerate the ability of the federal government to administer effectively any federal firearms regulatory scheme without a dramatic expansion of the regulatory role of the federal government.<sup>22</sup>

Justice O’Connor’s concurrence qualified Justice Scalia’s enthusiastic endorsement of state restraints on local firearms regulation in the face of federal regulation. Justice O’Connor made clear that she did not believe that the Court’s holding swept away the goals of the Brady Act.<sup>23</sup> She underscored that, with respect to the Brady Bill, “[s]tates and chief law enforcement officers may voluntarily continue to participate.”<sup>24</sup> Moreover, she pointed out that

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18. *See id.*

19. *Id.* With certain inapplicable exceptions, the relevant Montana statute provides that

no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

MONT. CODE ANN. § 45-8-351 (1995).

20. *See Printz*, 117 S. Ct. at 2384 n.18. The Arizona statute provides that a “political subdivision of this state shall not require the licensing or registration of firearms or prohibit the ownership, purchase, sale or transfer of firearms.” ARIZ. REV. STAT. § 13-3108 (B) (1989).

21. Certainly Justice Scalia’s comments are not central to the holding, and hence are safely considered dicta. However, dismissing or trivializing his observations as dicta is a serious mistake. Lower courts adrift in an ocean of novelty may graft onto dicta as the polestars of judicial navigation. The effect could be substantial, and sometimes harmful. *See* Phillip M. Kannan, *Advisory Opinions by Federal Courts*, 32 U. RICH. L. REV. 769, 784-98 (1998) (evaluating harms and benefits of judicial use of dicta). Practitioners likewise may fall into the same traps. *See, e.g.*, Letter from Stephen P. Halbrook to Elanor D. Acheson (Nov. 12, 1997) (on file with *Alaska Law Review*) (misunderstanding Justice Scalia’s comments to constitute part of the Court’s holding).

22. *See Printz*, 117 S. Ct. at 2396 (Stevens, J., dissenting).

23. *See id.* at 2385 (O’Connor, J., concurring).

24. *Id.*

the Court had not held that congressional imposition of “purely ministerial reporting requirements” upon state officials was invalid.<sup>25</sup> Justice O’Connor’s concurrence noted specific reservations about the reach of the Court’s five to four decision. It is implausible to think that Justice Scalia’s footnoted comment has settled the issue.

Although Justice O’Connor disagreed with Justice Scalia’s observation, she failed to elaborate the basis for her disagreement,<sup>26</sup> and consequently failed to delimit *Printz* with much precision.<sup>27</sup> For example, she failed to define the doctrinal elements of what constitutes a purely ministerial reporting requirement.<sup>28</sup> As an example of such reporting requirements, Justice O’Connor cited without elaboration a federal statute that requires state law enforcement agencies to report cases of missing children to the U.S. Department of Justice.<sup>29</sup> Although useful as a comparative marker, Justice O’Connor’s invocation of the missing children statute fails to provide the exactness necessary to define a coherent approach to the application of dual sovereignty principles. In addition, her statement about the ability of state and local officials to continue participating in the Brady scheme does not address the manner in which those actors permissibly may do so. Nothing in her statement expressly bars a state preemption statute like Alaska’s from precluding local officials from voluntary participation in a federal regulatory program.<sup>30</sup> To be sure, in the absence of Justice O’Connor’s restraint on the majority opinion, the implied rejection of federal regulation could jeopardize a multitude of federal regulatory schemes enacted pursuant to Congress’s

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25. *See id.*

26. *See id.*

27. *See supra* note 16 and accompanying text.

28. *See Printz*, 117 S.Ct. at 2385 (O’Connor, J., concurring).

29. *See id.* (discussing applicability of Court’s opinion to 42 U.S.C. § 5779(a) (1994)).

30. The U.S. Department of Justice has taken the position that the parts of the Brady Act unaffected by the Court’s ruling in *Printz* “plainly contemplate, though they do not require, that state and local law enforcement officials will conduct background checks.” Letter from Elanor D. Acheson, Assistant Attorney General, Office of Policy Development, U.S. Department of Justice, to Stephen P. Halbrook, Attorney for Sheriff Jay Printz (Nov. 5, 1997), at 6 (on file with *Alaska Law Review*). *But see* Letter from Stephen P. Halbrook to Elanor D. Acheson (Nov. 12, 1997) (on file with *Alaska Law Review*) (arguing that background checks are inconsistent with laws such as Montana Code Section 45-8-351).

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authority to regulate interstate commerce.<sup>31</sup> Nevertheless, standing alone, the Court's opinion in *Printz* does not offer sufficient guidance to interpret the Alaska preemption statute in a coherent and meaningful way.

Analyzing the effect of the Alaska municipal firearms regulation statute also is challenging because the statute itself does not have any antecedents. The 1985 statute did not replace an earlier analogue. Instead, the provision was part of a larger state bill that sought to update and reorganize the Alaska municipal code.<sup>32</sup> The text of the preemption statute reads:

(a) A municipality may not, except by ordinance ratified by the voters, restrict the right to own or possess firearms within a residence or transport unloaded firearms.

(b) This section applies to home rule and general law municipalities.<sup>33</sup>

The preemption provision was not part of the original proposal and was added before the House Judiciary Committee reported the bill out of the committee.<sup>34</sup> The relative novelty of the statute and its sparse legislative history has discouraged judicial review. No reported case has construed the contours or operation of the statute. Doctrinally, the statute appears to be an orphan.

The statute lacks doctrinal footing from any judicial source, but that fact in itself would not normally bar its application. Were there some administrative source of authority construing the statute and implementing its mandate, its contours more easily might be discerned within the context of the state's administrative law.<sup>35</sup>

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31. See, e.g., *Mansell v. Mansell*, 490 U.S. 581, 588-92 (1989) (preempting California community property laws that required waiver of military retirement pay); *Perry v. Thomas*, 482 U.S. 483, 492 (1987) (preempting California wage law by Federal Arbitration Act); *Exxon Corp. v. Hunt*, 475 U.S. 355, 375 (1986) (preempting New Jersey tax on intrastate chemical and oil industries to fund cleanup of toxic wastes); *Edgar v. MITE Corp.*, 457 U.S. 624, 639 (1982) (preempting Illinois anti-takeover statute); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 159, 160-61, 173-74 (1978) (preempting Washington laws designed to reduce possibility of oil tanker spill).

32. See 1985 Senate J. 872, S. 14-HB 72, 1st Legis. Sess. (Alaska).

33. See ALASKA STAT. § 29.35.145 (Michie 1996).

34. Compare H. Bill 72, 14th Leg., 1st Legis. Sess. § 29.10.200 (Alaska) (as referred to the House Committees on Community and Regional Affairs, Judiciary, and Finance on Jan. 16, 1985) with H. Bill 72, 14th Leg., 1st Legis. Sess. §§ 29.10.200, 29.35.145 (Alaska) (as reported out of the House Judiciary Committee on May 2, 1985).

35. Alaska has three different standards of review for state administrative actions that do not involve questions of fact. A reasonable basis test applies to questions of law within the scope of an agency's expertise. See *Rose v. Commer-*

However, no state regulation has been promulgated under the authority of the preemption statute. In addition, the state of Alaska generally does not report its administrative adjudicatory proceedings. Therefore, there are no reported rulings of either a judicial or administrative nature to provide guidance as to the applicability of the statute. In an absence of such direct doctrinal or administrative interpretations of the preemption statute, Alaska state courts traditionally examine statutory text to determine whether it is ambiguous or so plain as to require no interpretation from the courts.<sup>36</sup>

### III. RECONSTRUCTING THE TEXT OF THE ALASKA STATUTE

#### A. The Deceptive Simplicity of “Plain Meaning”

Determining whether a statute is ambiguous or whether a court may interpret and apply the statute according to its “plain meaning” requires the court first to construe the text.<sup>37</sup> The Alaska preemption statute provides that “[a] municipality may not, except by ordinance ratified by the voters, restrict the right to own or possess firearms within a residence or transport unloaded firearms.”<sup>38</sup> The statute further states that it “applies to home rule and general law municipalities.”<sup>39</sup> The statutory text is very similar to that of the Montana and Arizona statutes cited by the Court in *Printz*.<sup>40</sup> But differences among the statutes and among the jurisdictions to which they apply indicate the need to evaluate independently the elements of the Alaska statute in order to construct its meaning within the context of Alaska law. Accordingly, a “plain meaning” construction of the Alaska statute presumably

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cial Fisheries Entry Comm’n, 647 P.2d 154, 161 (Alaska 1982). Administrative regulations are subject to judicial review under a “reasonable and not arbitrary” standard. *See Handley v. State Dep’t of Revenue*, 838 P.2d 1231, 1233 (Alaska 1992). The courts use a “substitution of judgment” standard for questions of law where no agency expertise is involved. *See id.*

36. *See In re Babcock*, 387 P.2d 694, 696 (Alaska 1963) (citing *State v. Duggan*, 6 A. 787, 788 (R.I. 1886)). Justice Scalia has helped revive an interest in “textualist” statutory interpretation by articulating a theory that posits a strong relationship between textualism and democratic theory. *See Antonin Scalia, Common-Law Courts in a Civil-Law System: The Role of the United States Federal Courts in Interpreting the Constitution and Laws*, in *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* 3, 9-47 (Amy Gutmann ed., 1997).

37. *See Babcock*, 387 P.2d at 696.

38. ALASKA STAT. § 29.35.145(a) (Michie 1996).

39. *Id.* at § 29.35.145(b).

40. *Cf. supra* notes 19 & 20.



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would first take into account the elements of the statute without consulting the judicially-created doctrine of other states.<sup>41</sup>

Therefore, a sensible interpretation of the Alaska statute according to “plain meaning” principles might result in something like the following:

A municipality could regulate the ownership or possession of firearms or the transport of unloaded firearms only if it first obtained through referendum the approval of the municipality’s voters for the ordinance authorizing the regulation.

Certainly, an interpreter of the statute could stop there and proceed with the next step of the analysis – that of determining whether the statute implicated local officials who voluntarily facilitated the federal government’s regulation of firearms. The following analysis will illustrate the inadequacy of the “plain meaning” approach to the interpretation of the Alaska preemption statute.

## B. The Elements of the Alaska Preemption Statute

1. *Applicability to Municipalities.* The first element of the Alaska preemption statute defines the class of actors to whom the statute applies. Accordingly, the statute addresses itself to municipalities. Under the Alaska State Constitution, all local powers must either be exercised by boroughs or cities.<sup>42</sup> The source of legal authority for different boroughs or cities will vary according to whether the locality has adopted a home rule charter or is a unified municipality<sup>43</sup> and thereby has assumed “all legislative powers not prohibited by law or charter.”<sup>44</sup> Those localities adopting a home rule or unification charter are considered “home rule” municipalities.<sup>45</sup> On the other hand, general law municipalities are localities without a charter and are authorized to exercise legislative powers only as specifically prescribed by the state legislature.<sup>46</sup> The Alaska statute

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41. See *Babcock*, 387 P.2d at 696.

42. See ALASKA CONST. art. X, § 2.

43. Under Alaska law, a unified municipality is “a single unit of home rule government” uniting “[a] borough and all cities in the borough.” ALASKA STAT. § 29.06.190 (Michie 1996). Boroughs and cities seeking to form a unified municipality must establish a unification charter. See *id.* §§ 29.06.190-.390. An elected commission drafts the charter, then submits the charter for ratification by the voters throughout the borough. See *id.* §§ 29.06.270, 29.06.360. The ratification of the charter “operates to dissolve all municipalities in the area.” *Id.* § 29.06.370.

44. ALASKA STAT. § 29.04.010 (Michie 1996).

45. See *id.*

46. See *id.* § 29.04.020.

preempting local firearms regulation was written expressly to apply to both types of municipalities.<sup>47</sup> The statute could be construed as binding municipal officers acting in their official capacities. Accordingly, a statutory construction that constrained the actions of municipal officers also would apply to the police chief of any Alaska municipality but not to state troopers or other officers of statewide law enforcement agencies.<sup>48</sup>

2. *The Ratification Requirement.* The second significant element of the statute addresses an exception to the general prohibition on local firearms regulation. A municipality seeking to impose a regulatory regime first must obtain voter ratification of the ordinance authorizing such a program.<sup>49</sup> The voter ratification requirement is not unique to firearms regulation. In *Libby v. City of Dillingham*,<sup>50</sup> the Alaska Supreme Court invalidated a municipal ordinance that purported to exempt the city's board of trustees from a statutory requirement that the city obtain voter ratification to sell or lease city property.<sup>51</sup> The statutory requirement of voter ratification in *Libby* stated that

no ordinance for the sale, lease, or disposition of real property or interest in real property valued at \$25,000 or more is valid unless ratified by a majority of the qualified voters voting at a regular or special election at which the question of the ratification of the ordinance is submitted.<sup>52</sup>

The municipal properties statute in *Libby* detailed at length the procedural requirements of voter ratification.<sup>53</sup> Specifically, the statute in *Libby* went to great pains to prescribe the scope of the requirement, the class of voters included, the kind of election at issue, the requirement of presentment, the notice requirements for ratification, the requirement of a majority of votes for ratification, and, perhaps most importantly, the governmental body charged with providing for the administration of the statute's procedural

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47. See *id.* §§ 29.35.145(b), 29.10.200(33).

48. Note that not all police officers in Alaska act under the authority of a municipality. In Alaska, "state police and enforcement officers are employed . . . and removable by commissioners serving at the pleasure of the Governor." *Theodore v. Alaska*, 407 P.2d 182, 188 (Alaska 1965).

49. See ALASKA STAT. § 29.35.145(a).

50. 612 P.2d 33 (Alaska 1980).

51. See *id.* at 42.

52. *Id.* at 36 n.5 (quoting ALASKA STAT. § 29.48.260(c)(4) (Michie 1996) (repealed 1985)).

53. See *id.* (quoting ALASKA STAT. § 29.48.260(c)).

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requirements.<sup>54</sup> In sharp contrast, the Alaska preemption statute fails to define a process of voter ratification that would presumably validate restrictions on the ownership, possession, or traffic of firearms within the state.<sup>55</sup>

By detailing the procedural requirements of ratification,<sup>56</sup> *Libby* underscores by contrast the deficiencies in the Alaska preemption statute and spotlights the difficulties of interpreting the ratification requirement in the preemption statute merely through strict adherence to the text. For example, courts might construe the ratification requirement in the preemption statute as commanding that a majority of votes in a given election be cast in favor of a firearms regulation ordinance.<sup>57</sup> But this interpretive leap may assume both too little and too much. Opponents of the ordinance might promote an interpretation requiring the majority of registered voters in a given jurisdiction to approve the ordinance, regardless of whether the actual turnout during the election was less than complete.<sup>58</sup> On the other hand, it is possible to imagine a

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54. *See id.*

55. *Compare id. with* ALASKA STAT. § 29.35.145 (Michie 1996).

56. *See* *Libby v. City of Dillingham*, 612 P.2d at 42 (quoting ALASKA STAT. § 29.48.260(c)).

57. *See, e.g.,* *Area G Home and Landowners Org. v. Anchorage*, 927 P.2d 728, 738-39 (Alaska 1996) (upholding separate voting component of dual majority ratification scheme to expand service area of police department); ALASKA STAT. § 29.48.260(c)(4) (prescribing ratification scheme predicated on majority vote); Alaska Statehood Act, Pub. L. No. 85-508, § 8(b), 72 Stat. 339, 343-44 (1958) (requiring majority of votes for given proposed amendment to the Alaska Constitution).

58. Effectively, opponents of the ordinance might construe ratification to require a supermajority of the votes actually cast. The case for interpreting the ratification to require a supermajority arguably would be strong since the ordinance's purported purpose would be to limit a right guaranteed by the Alaska Constitution. *See* ALASKA CONST. art. I, § 19 ("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. The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State."); *cf.* Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637 (1989); William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 DUKE L.J. 1236 (1994). The United States Congress recently experimented with similar requirements when the House of Representatives promulgated a rule requiring a three-fifths vote to approve a bill that would raise federal income taxes. *See* Rules of the House of Representatives (104th Cong.), Rule XXI (5) (c), *reprinted in* 141 Cong. Rec. H23 (daily ed. Jan. 5, 1995). Several commentators have questioned whether such requirements were constitutional. *See* Jed Rubenfeld, *Rights of Passage: Majority Rule in Congress*, 46 DUKE L.J. 73 (1996); *An Open Letter to Congressman Gingrich*, 104 YALE L.J. 1539 (1995) (signed by Bruce Ackerman

voting scheme where proponents could not muster an at-large majority in favor of the ordinance but could win approval through a representational voting scheme that assigned one vote to each ward within a municipality.<sup>59</sup> Nothing in the statute plainly precludes either process or any other ratification process *per se* because the statute simply fails to provide any guidance to municipalities who wish to present a firearms regulation ordinance for ratification.<sup>60</sup>

Failure to prescribe a process for ratification also could lead to an anomalous construction of the statute in another way. Specifically, the statute's silence on the ratification process grants general law municipalities the authority to enact the substance of firearms regulation, yet fails to provide the necessary procedural mechanism to enact any firearms regulation at all. The failing of the statute is especially nettlesome because general law municipalities may exercise only such authority as the state legislature vests upon them.<sup>61</sup> Since the preemption statute fails to specify a ratification procedure and the Alaska code itself lacks any general provision prescribing ratification procedures,<sup>62</sup> general law municipalities lack any positive statutory authority to promulgate such procedures. If true, the result would be that general law jurisdictions lack the authority to enact any firearms regulation ordinance. This outcome would render inert Section (b) of the preemption statute, which expressly applies the ratification requirement to both "home rule and general law municipalities," since section (b) then expressly would appear to limit authority that the Alaska legislature had never vested in the general law municipality.

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and sixteen others). *But see* John O. McGinnis & Michael B. Rappaport, *The Constitutionality of Legislative Supermajority Requirements: A Defense*, 105 YALE L.J. 483 (1995). For the purposes of this Note, resolution of whether such schemes are appropriate or implicitly sanctioned by the Alaska preemption statute are of limited importance.

59. For example, a ward-based system would be likely to give numerical minorities an advantage over an at-large system, similar to the advantage numerical minorities gain by single-member districting in legislative bodies. *See* LANI GUINIER, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY* 53 (1994); *see also* John F. Banzhaf III, *One Man, 3.312 Votes: A Mathematical Analysis of the Electoral College*, 13 VILL. L. REV. 304, 321 (1968).

60. *See supra* note 55 and accompanying text.

61. *See* ALASKA STAT. § 29.04.020 (Michie 1996).

62. *See supra* note 55 and accompanying text.

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A reasonable alternative interpretation that avoids disintegrating the statutory text<sup>63</sup> is that the ratification requirement itself serves as a grant of authority to promulgate ratification procedures. Once the existence of the statutory authority to promulgate ratification procedures becomes clear, the most fundamental question remains whether ratification may take place only by a plurality or whether a minority of voters could ratify during a given election.<sup>64</sup> Conversely, a related controversy may focus on whether a minority of voters could block ratification.<sup>65</sup> These questions, however, do not acknowledge that the context in which the term "ratification" is used may import some elements necessary even to text-based interpretations of the statute.<sup>66</sup> Accordingly, the ratification requirement's relationship to majoritarian decision-making can be evaluated using principles of statutory interpretation that are, although contextually-informed, nevertheless consistent with the principles of textualism.<sup>67</sup> Therefore, the ratification requirement cannot fairly be read to construe the grant of authority so broadly as to make the process of ratification a shibboleth.<sup>68</sup> A minority of one cannot block ratification and neither can it suffice to enact an otherwise unanimously rejected ordinance. Whatever the precise limits of this authority may be, they are not essential to resolving the question-in-chief, which is whether certain acts by state

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63. The most fundamental principles of statutory construction oppose interpretation of statutes that would eviscerate the meaning of other provisions. See *M.R.S. v. Alaska*, 897 P.2d 63, 66-67 (Alaska 1996) ("It is an established principle of statutory construction that all sections of an act are to be construed together so that all have meaning and no section conflicts with another."); *In re E.A.O.*, 816 P.2d 1352, 1357 (Alaska 1991) (holding that apparent contradictions in a statute should be harmonized to avoid vitiating one provision in favor of the other).

64. See generally *GUINIER*, *supra* note 59.

65. See generally *supra* note 58.

66. See *Muller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 787-88 (Alaska 1996) (adopting a sliding scale to apply the rule with increasing vigor according to the degree of textual ambiguity in light of antecedent statutory definition or judicial construction); see also RICHARD A. POSNER, *THE PROBLEMS OF JURISPRUDENCE* 262-69 (1990) (*inter alia*, "A normal English speaker does not . . . ignore . . . external ambiguity. He consults the totality of his relevant experience . . . . Meaning depends on context."); CASS R. SUNSTEIN, *AFTER THE RIGHTS REVOLUTION: RECONCEIVING THE REGULATORY STATE* 113-14 (1990) (arguing that the meaning of words depends "on both culture and context"). But see Bradley C. Karkkainen, "Plain Meaning": Justice Scalia's Jurisprudence of Strict Statutory Construction, 17 HARV. J.L. & PUB. POL'Y 401, 407-09 (1994) (harmonizing Justice Scalia's textualism to the necessities of understanding statutes in context).

67. See POSNER, *supra* note 66.

68. See *id.*

or local officials always trigger the need for the ratification of a proposed ordinance if such acts assist federal government regulation of firearms.

3. *The Bundle of Rights.* The ratification procedure involves presentment and ratification of an ordinance to carve out an exception to the general rule that municipalities may not “restrict” various rights related to the ownership, possession, or transport of firearms.<sup>69</sup> Therefore, ratification of the ordinance becomes an issue only once the municipality or the local police, as the case may be, have decided to restrict firearms-related rights. The character of the action constituting a “restriction” of such rights intrinsically is tied to the nature of such rights. Within the context of the Brady Act, the most immediate and relevant right impacted is the right to own a firearm.

Since the Alaska Constitution speaks only to the individual right to “keep and bear arms,” the right to *own* a firearm *per se*, does not have any special constitutional significance distinct from the ownership of other forms of personal property.<sup>70</sup> Alaska state law recognizes that ownership of property is not a singular concept but “consists of a bundle of separate rights, powers and privileges.”<sup>71</sup> Property rights normally are regulated and limited on the basis of various policy reasons.<sup>72</sup> To the extent such property rights relate to “public health or safety, or to provide for the general welfare,”<sup>73</sup> the state of Alaska and its political subdivisions have the constitutional authority to regulate property rights, including those relating to firearms, under the state’s general police powers.<sup>74</sup> So

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69. See ALASKA STAT. § 29.35.145(a) (Michie 1996).

70. Compare *id.* with ALASKA CONST. art. I, § 19. The Alaska Constitution presumably applies protection of firearm property rights with the same force as applied to other instances of property ownership. See, e.g., ALASKA CONST. art. I, § 7 (guaranteeing due process and just compensation); *id.* art. I, § 14 (establishing protection against unreasonable search and seizure of property).

71. *Cool Homes, Inc. v. Fairbanks North Star Borough*, 860 P.2d 1248, 1254 (Alaska 1993).

72. See generally *Moore v. Regents of the Univ. of Cal.*, 793 P.2d 479, 509-10 (Cal. 1990) (Mosk, J., dissenting) (discussing various forms of regulation over rights constituting ownership of property).

73. *Ravin v. Alaska*, 537 P.2d 494, 509 (Alaska 1975).

74. See *id.* at 509; *Louis K. Liggett Co. v. Baldridge*, 278 U.S. 105, 111-12 (1928); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926). In the context of land use, the police power over property may be limited by constitutional protections requiring the state to pay compensation when a “taking” has been effected. See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1027 (1992).

the appropriate question is not whether the state or its instrumentalities may regulate the exercise of different components in the “bundle of rights” constituting the right to own firearms, but it is how extensive such regulation may be.

State statutes and municipal ordinances regulating the use of property are often challenged on the ground that they constitute a “taking” of private property without “substantive due process.”<sup>75</sup> Since most such challenges originate in the states, property owners frequently bring such cases under the Fourteenth Amendment of the United States Constitution.<sup>76</sup> In *Lucas v. South Carolina Coastal Council*, the United States Supreme Court distinguished “regulatory ‘takings’ – which require compensation – from regulatory deprivations that do not require compensation.”<sup>77</sup> Although the Court did not address those cases in which regulations of property rights were barred,<sup>78</sup> focusing on whether compensation must be made for the taking of property,<sup>79</sup> its opinion is instructive for purposes of comparison. Justice Scalia’s opinion for the Court eloquently elaborated an important principle that distinguished the regulation of land from the regulation of private property as follows:

Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the . . . inquiry into the nature of the owner’s estate shows that the proscribed use interests were not part of his title to begin with. This accords . . . with our “takings” jurisprudence, which has traditionally been guided by the understandings of our citizens regarding the content of, and the State’s power over, the “bundle of rights” that they acquire when they obtain title to property. It seems to us that the property owner necessarily expects the uses of his property to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers; “[a]s long recognized, some values are enjoyed under an implied limitation and must yield to the police power.” And in the case of personal property, by reason of the State’s traditionally high degree of control over commercial dealings, he ought to be aware of the possibility that new regulation might even render his property economically worthless (at

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75. See ROBERT A. CUNNINGHAM ET AL., *THE LAW OF PROPERTY* § 9.2, at 513 (1993).

76. See *id.*

77. See *Lucas*, 505 U.S. at 1026.

78. The police power inheres in the states as described in the Tenth Amendment. The Tenth Amendment states that “[t]he 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.” U.S. CONST. amend. X.

79. See *Lucas*, 505 U.S. at 1026.

least if the property's only economically productive use is sale or manufacture for sale).<sup>80</sup>

As was the case with interpreting the ratification requirement, meaning depends on context. Justice Scalia's opinion for the Court demonstrates the degree of latitude that states and municipalities have, in the proper context, when they seek to limit real property rights without requiring the government to pay compensation.<sup>81</sup> Given the wide berth cut around the state police power by the Court in *Lucas*, it would be inconsistent to construe this power any more narrowly in cases involving personal property.

That kind of inconsistency would be especially troubling in light of Alaska law construing the constitutional provision that protects the right to bear arms in Alaska. Although the Alaska Constitution always had included a constitutional provision similar to the Second Amendment of the United States Constitution, Alaska amended its constitution in 1994 to add a provision that would protect the right to keep and bear arms from being "denied or infringed by the State or a political subdivision of the State."<sup>82</sup> Both the legislative history and the statement of support for the amendment as presented in the 1994 official election pamphlet emphasized that the amendment would not invalidate otherwise valid firearms regulations.<sup>83</sup> Adhering to the stated purposes of the recently amended constitutional provision,<sup>84</sup> the Alaska courts have rejected an absolutist interpretation of the individual right of the citizens of Alaska to keep and bear arms.<sup>85</sup> The courts have plainly held that Article I, section 19 of the Alaska Constitution "was not intended to eliminate government regulation of people's possession and use of firearms."<sup>86</sup> Instead, the constitutional provision has been interpreted to allow the government "to enact and enforce laws prohibiting people from possessing firearms when there is a significant risk that they will use those firearms in a criminal or dangerous fashion."<sup>87</sup>

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80. *See id.* at 1027 (citations omitted).

81. *See id.*

82. ALASKA CONST. art. I, § 19.

83. *See Gibson v. Alaska*, 920 P.2d 1300, 1301-02 (Alaska Ct. App. 1997) (describing the legislative and proposed amendment ratification history of the constitutional amendment).

84. *See id.*

85. *See id.* at 1301.

86. *See id.*

87. *See id.*; *see also Morgan v. Alaska*, 943 P.2d 1208, 1212 (Alaska Ct. App. 1997). Similar provisions have been construed likewise in other states. *See, e.g., Robertson v. City of Denver*, 874 P.2d 325, 346 (Colo. 1994) ("[T]he right to bear arms is not absolute; the Colorado Constitution limits that right. . . . Thus, stat-



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## C. State Law Application of a Reconstructed Alaska Preemption Statute

Applying the principles articulated by Justice Scalia in *Lucas* requires that rights of ownership and possession of firearms not be interpreted in a vacuum.<sup>88</sup> Instead, an individual seeking to acquire title to firearms within the territorial jurisdiction of Alaska must “necessarily expect[] the uses of his property to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers.”<sup>89</sup> This expectation is part and parcel of the title acquired and determines the contours of the rights inherent in ownership.<sup>90</sup>

Again, a fair interpretation of the Alaska preemption statute must avoid reading either the right to own a firearm or the state’s countervailing police power in absolute terms.<sup>91</sup> To avoid making a nullity out of either element,<sup>92</sup> a fair interpreter must consult the principle undergirding the exercise of the state’s police power. In this case, the Alaska courts have determined that the state’s power to regulate an individual’s property rights with respect to firearms rests on a legitimate state interest to address a “significant risk that they will use those firearms in a criminal or dangerous fashion.”<sup>93</sup> To the extent that local officials base regulation upon this risk, the regulation will be consistent with the reasonably apprehended nature of the firearms purchaser’s bundle of rights.<sup>94</sup>

In cases where municipalities regulate in the absence of this risk, the regulation will frustrate the reasonable expectations of the putative owner regarding the rights inhering in the acquisition of title to firearms. Restraining localities’ ability to diminish this bundle of rights is ultimately what the preemption statute is about.<sup>95</sup> As demonstrated, a reading of Alaska law that avoids negating any constitutional or statutory provision relating to the regulation of firearms leads away from the conclusion that any attempt at firearms regulation by a municipality triggers the ratifica-

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utes enacted pursuant to the state’s police power may validly restrict or regulate the right to possess arms where the purpose of such possession is not a constitutionally protected one.”).

88. See *supra* notes 66, 80-81 and accompanying text.

89. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1027 (1992).

90. See *id.*

91. See *id.*; *Gibson*, 920 P.2d at 1301-02.

92. See *M.R.S. v. Alaska*, 897 P.2d 63, 66-7 (Alaska 1996); *In re E.A.O.*, 816 P.2d 1352, 1357 (Alaska 1991).

93. *Gibson*, 920 P.2d at 1301.

94. See *Lucas*, 505 U.S. at 1027.

95. See *supra* Part III.B.3.

tion requirement.<sup>96</sup> To the contrary, a fair reading of the relevant state provisions suggests that the ratification requirement in the Alaska preemption statute is triggered whenever a municipal officer acts to regulate the ownership and use of firearms in the absence of a significant risk that the regulated individual will use those firearms in a criminal or dangerous fashion. Thus interpreted, the reconstructed preemption statute demonstrates that the application of sound statutory interpretation leads to a result that better harmonizes the statute with existing Alaska law than would be attained by the application of plain meaning alone.

#### IV. THE FEDERAL NEXUS

This inquiry into the contours of the Alaska preemption statute began with Justice Scalia's suggestion that state preemption statutes like those in Montana and Arizona<sup>97</sup> could operate to bar local officials from voluntarily participating in federal firearms regulation regimes.<sup>98</sup> As will be discussed more fully below, analysis of Justice Scalia's comment in the *Printz* opinion reveals that the Court's position on this issue is not settled, and that *Printz* provides little guidance on the issue of statutory preemption.<sup>99</sup> Moreover, a detailed textual analysis of the Alaska preemption statute suggests that the statute imposes no restraints on municipalities that regulate firearms as long as there is a substantial risk the regulated individual will use the weapon in a dangerous or criminal fashion.<sup>100</sup> Consequently, a municipality's authority to regulate firearms, although not absolute, does not depend solely on voter ratification of a proposed ordinance.<sup>101</sup> In the absence of any interaction with a federal regulatory regime, Alaska municipalities have some independent authority to regulate firearms under their general police power.<sup>102</sup>

It is clear, however, that regardless of whether municipalities have such independent authority, the Court's holding in *Printz* stands for the premise that municipalities may not be compelled to administer a federal regulatory program.<sup>103</sup> On the other hand, Justice O'Connor's suggestion that states and municipalities

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96. *See id.*

97. *See* MONT. CODE ANN. § 45-8-351 (1995); ARIZ. REV. STAT. § 13-3108 (B) (1989).

98. *See supra* note 19 and accompanying text.

99. *See supra* Part II.

100. *See supra* Part III.C.

101. *See id.*

102. *Cf.* Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1027 (1992).

103. *See* Printz v. United States, 117 S. Ct. 2365, 2384 (1997).

may willingly participate with the federal government's firearms regulation regime<sup>104</sup> is especially tenable as applied to Alaska since both Alaska state and federal law provisions regulating firearms are coextensive.<sup>105</sup> For example, a municipality might choose to review an applicant to purchase firearms in order to prevent convicted felons from purchasing firearms.<sup>106</sup> Such screening would be authorized under Alaska state law regardless of the fact that Section 922 (s) (1) of the federal Gun Control Act of 1968 also makes it a federal crime to transfer a handgun to an individual without taking certain steps to determine whether the individual is a convicted felon.<sup>107</sup> *Printz* assures that the federal government could not compel the municipality to perform the screening function,<sup>108</sup> but does not directly answer whether a state or locality may prevent an official from sharing such information with federal authorities once the locality has acquired the information.<sup>109</sup>

Although *Printz* makes clear that Congress does not have the authority to compel states to administer a gun-screening program, Congress does have the authority to enact regulations affecting individuals and their commercial activity.<sup>110</sup> Once an act of Congress is passed pursuant to a legitimate exercise of its power to regulate interstate commerce,<sup>111</sup> that act becomes the supreme law of the land.<sup>112</sup> Consistent with the principle of supremacy, Congress may exercise its power to regulate even in areas where such regulation would preempt contrary state legislation or even effectively change state policies.<sup>113</sup> Most importantly, the states may not interpose to

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104. See *id.* at 2385 (O'Connor, J., concurring).

105. Compare 18 U.S.C. §§ 922 (s)(1)(A)(I), 922 (s)(3)(B) (1994) with ALASKA STAT. § 11.61.200 (Michie 1996).

106. See ALASKA STAT. § 11.61.200(a)(2).

107. See 18 U.S.C. § 922(s)(1).

108. See *Printz*, 117 S. Ct. at 2384.

109. See *supra* Part II.

110. See *New York v. United States*, 505 U.S. 144, 166 (1992).

111. See U.S. CONST. art I, § 8 ("The Congress shall have the Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.").

112. See *id.* art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

113. See *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992); *New York v. United States*, 505 U.S. 144, 166-67 (1992); *Philip Morris, Inc. v. Harshbarger*, 122 F.3d 58, 67-68 (1st Cir. 1997).

hamper or prevent the vindication of rights guaranteed by federal law.<sup>114</sup>

Interposition may result from the implementation of local or statewide policies that interfere with the voluntary exchange of information with federal authorities. In *City of New York v. United States*,<sup>115</sup> the U.S. District Court for the Southern District of New York considered whether a city policy could prohibit municipal officials from cooperating with federal immigration agents unless, among other requirements, aliens about whom the immigration agents were seeking information were suspected of “engaging in criminal activity,” and had authorized the city to verify their immigration status.<sup>116</sup> New York City argued, relying on *Printz*, that states and localities could prevent their officials from cooperating with federal immigration officers.<sup>117</sup> The district court pointed out that Justice O’Connor’s concurrence expressly had distinguished “purely ministerial reporting requirements” as well as several other federal regulatory schemes that required participation by local and state officials from provisions that “directly compel state officials to administer a federal regulatory program.”<sup>118</sup> If anything, concluded the district court, the federal requirements addressed in *City of New York*, which proscribed the imposition of “gag orders” regarding a person’s immigration status, were “even less intrusive on state sovereignty than those mandatory reporting statutes” contemplated by Justice O’Connor.<sup>119</sup> Accordingly, the district court concluded that the coercive element the Supreme Court had invalidated in *Printz* was absent from the federal statutes because these statutes would not commandeer New York City officials to administer a federal program.<sup>120</sup> Finally, the district court rejected as unhelpful and inappropriate any analysis relying on distinguishing “core” or “traditional” governmental functions.<sup>121</sup> In construing *Printz*, therefore, the district court relied principally on the degree of federal intrusion exerted upon the municipality and on whether the federal government was commandeering the

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114. See *Printz v. United States*, 117 S. Ct. 2365, 2382 n.16 (1997); *New York*, 505 U.S. at 179; *Mille Lacs Band of Chippewa Indians v. Minnesota*, 124 F.3d 904, 928 n.44 (8th Cir. 1997).

115. 971 F. Supp. 789 (S.D.N.Y. 1997).

116. See *id.* at 792.

117. See *id.* at 796.

118. See *id.* (quoting *Printz*, 117 S. Ct. at 2385 (O’Connor, J., concurring)).

119. See *id.* at 792-93, 796.

120. See *id.* at 796.

121. See *id.* at 798.

resources of the local government in pursuit of the federal regulatory objective.<sup>122</sup>

Put in this context, the Alaska preemption statute does not bar the voluntary participation of local officials in the regulation of firearms. It is hard to imagine, for example, how voluntary participation in a federal regulation scheme could be any more intrusive upon state sovereignty than the federal bar on immigration status gag orders,<sup>123</sup> or the requirement of reporting missing children mentioned by Justice O'Connor in her *Printz* concurrence.<sup>124</sup> If the municipality's participation is truly voluntary, none of the elements of coercion that the Court cited as the basis of its opinion in *Printz* would apply.<sup>125</sup> The degree of federal intrusion would be so minimal that a request to participate in a federal firearms regulation program by local officials may, in certain cases, be seen as a form of commandeering federal resources for the municipality's benefit.<sup>126</sup>

That a voluntary scheme would entail a minimal degree of federal intrusion does not mean that the municipality or the state always must volunteer to participate in the process of federal law enforcement. After all, the federal government may regulate "even in areas where such regulation would preempt contrary state legislation or even effectively change state policies."<sup>127</sup> As such, *City of New York* serves as a reminder to heady neo-federalists that non-compliant state and local authorities cannot, by failing to volunteer or by actively opposing federal regulation, interpose themselves between the federal government and its legitimate objects of regulation.<sup>128</sup>

## V. CONCLUSION

The Alaska preemption statute has remained uninterpreted by the courts for more than a decade. Justice Scalia's provocative footnote in *Printz v. United States* suggested a possible interpretive approach. However, Justice Scalia's footnote and his historical analysis in *Printz* help to illustrate how a surface gloss on the statu-

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122. See *id.* at 792-96.

123. See *supra* note 118 and accompanying text.

124. See *Printz v. United States*, 117 S. Ct. 2365, 2385 (1997) (O'Connor, J., concurring).

125. Cf. *id.* at 2380.

126. See *supra* note 106 and accompanying text.

127. *New York v. United States*, 505 U.S. 144, 166-67 (1992); see also *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992); *Philip Morris, Inc. v. Harshbarger*, 122 F.3d 58, 67-68 (1st Cir. 1997).

128. See *City of New York*, 971 F. Supp. at 792.

tory text leads to a dissatisfying interpretation of the statute. In this case, an interpretation faithful to the text, prevailing constitutional doctrine, and the development of Alaska law leads to a different conclusion than that suggested by Justice Scalia's footnote. A close reading of the Alaska preemption statute indicates that even under *Printz*, the statute does not prohibit voluntary municipal participation in federal firearms regulation or require voter ratification prior to the enforcement of all local firearms regulations. Instead, the reconstructed text indicates that municipalities seeking to enact firearms regulations in the absence of a significant risk that the regulated individual will use firearms in a dangerous or criminal way must enact those ordinances through the process of voter ratification. Attributing a greater mandate to the statute might risk stretching the meaning of the text and the legitimacy of the interpretive approach thereby employed beyond their breaking point.

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