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What does the Second Amendment mean?

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By Jeremy Quattlebaum, Student Voices staff writer

The school shooting in Newton, Conn., has renewed debate over gun laws in this country. At the heart of the issue is the Second Amendment, one of the most contentious parts of the U.S. Constitution. The shortest of the amendments at 27 words, it addresses the right to carry firearms

"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."

That one sentence, filled with vague language, has led to the evolution of two views on how to interpret laws.

The first viewpoint argues that the right to bear arms is restricted to members of militias, which were common during the time of the revolution and instrumental in maintaining law and order in many towns and villages. The argument follows that militias, not individual citizens, have the constitutionally granted freedom to carry firearms. This viewpoint puts emphasis on the "well regulated Militia" clause of the sentence, stating that the founders believed that militias, not the individual, were responsible for protecting citizens from threats to their freedom from the government

Writing the dissent in the 2008 Supreme Court case District of Columbia v. Heller, Justice John Paul Stevens wrote, "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia... Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

The second viewpoint is much broader, and argues that the Second Amendment gives individuals, regardless of their membership in militias, the right to carry firearms. This argument puts greater emphasis on the second half of the amendment, emphasizing the clause "the right of the people to keep and bear Arms." The reference to the militia is considered a setup to the rationale for allowing every individual the right to carry weapons - that as individuals, operating independently or in a militia, are fundamental in keeping the nation free.

In the majority opinion in Heller, Justice Antonin Scalia wrote, "The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Amendment could be rephrased, 'Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.'"

Second Amendment - The Text

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.

Second Amendment - The Meaning

Right to Bear Arms: The principal debate surrounding the Second Amendment concerns whether the right to use and buy guns belongs to individuals or only to a militia. Although the courts generally have held that the right applies to individuals, they have permitted the government to limit some rights of gun manufacturers, owners and sellers. Today, questions about the Second Amendment center around bans on assault weapons, mandatory background checks, waiting periods, and other restrictions on gun sales or use.

With the passage of the Fourteenth Amendment and subsequent Supreme Court rulings, states were prohibited from making or enforcing laws that infringe on most of the rights set out in the Bill of Rights.

However, this prohibition does not extend to the Second Amendment. This means that the Second Amendment applies only to actions by the federal government. It does not protect people from state actions that interfere with their right to bear arms. As a result, gun control legislation varies widely among the fifty states.

The Second Amendment and Firearm Regulation

“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.”

– Second Amendment to the United States Constitution, 1791

Prior to the American Revolution, the British made attempts to disarm local groups of armed citizens, known as militias. Remembering this while drafting the Bill of Rights, the Second Amendment outlawed such kinds of forceful disarming of the people in the future. Whether the amendment intended to give any other individual rights beyond stopping the government from disarming these militias, however, went unexamined by the Supreme Court for over 200 years.

In 2008, the Supreme Court finally interpreted the Second Amendment in *District of Columbia v. Heller*. The plaintiff in *Heller* was not a member of any militia (like the National Guard), but argued that he was entitled by the Second Amendment to keep a gun at the ready to defend himself in his home. In a 5–4 decision, the Court held that the amendment preserved a long-standing natural right to self-defense, in addition to prohibiting the disarming of militias. The Court therefore held unconstitutional the District of Columbia’s ban on possession of handguns. However, the Supreme Court pointed out that, like the First Amendment’s right of free speech, the Second Amendment’s right to bear arms was not unlimited. People were entitled to use handguns for legitimate, lawful, and historical purposes such as defending their homes, but guns could still be reasonably regulated. Though they did not draw a line that made clear exactly what restrictions were permissible, the Court offered the following guidance:

1. “...[W]e do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*.”
2. “...[T]he Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.”
3. “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”
4. “...[T]he sorts of weapons protected [by the Second Amendment] [are] those “in common use at the [current] time.”

Today there is a national conversation about increasing regulation of firearms in the wake of several mass shootings. The Supreme Court’s decision in *Heller* sets out what the “right to bear arms” means legally, and the above quotations are currently being interpreted by lower courts addressing challenges to gun regulations.

THE SECOND AMENDMENT Common Interpretation

By Nelson Lund and Adam Winkler

Modern debates about the Second Amendment have focused on whether it protects a private right of individuals to keep and bear arms, or a right that can be exercised only through militia organizations like the National Guard. This question, however, was not even raised until long after the Bill of Rights was adopted.

Many in the Founding generation believed that governments are prone to use soldiers to oppress the people. English history suggested that this risk could be controlled by permitting the government to raise armies (consisting of full-time paid troops) only when needed to fight foreign adversaries. For other purposes, such as responding to sudden invasions or other emergencies, the government could rely on a militia that consisted of ordinary civilians who supplied their own weapons and received some part-time, unpaid military training.

The onset of war does not always allow time to raise and train an army, and the Revolutionary War showed that militia forces could not be relied on for national defense. The Constitutional Convention therefore decided that the federal government should have almost unfettered authority to establish peacetime standing armies and to regulate the militia.

This massive shift of power from the states to the federal government generated one of the chief objections to the proposed Constitution. Anti-Federalists argued that the proposed Constitution would take from the states their principal means of defense against federal usurpation. The Federalists responded that fears of federal oppression were overblown, in part because the American people were armed and would be almost impossible to subdue through military force.

Implicit in the debate between Federalists and Anti-Federalists were two shared assumptions. First, that the proposed new Constitution gave the federal government almost total legal authority over the army and militia. Second, that the federal government should not have any authority at all to disarm the citizenry. They disagreed only about whether an armed populace could adequately deter federal oppression.

The Second Amendment conceded nothing to the Anti-Federalists' desire to sharply curtail the military power of the federal government, which would have required substantial changes in the original Constitution. Yet the Amendment was easily accepted because of widespread agreement that the federal government should not have the power to infringe the right of the people to keep and bear arms, any more than it should have the power to abridge the freedom of speech or prohibit the free exercise of religion.

Much has changed since 1791. The traditional militia fell into desuetude, and state-based militia organizations were eventually incorporated into the federal military structure. The nation's military establishment has become enormously more powerful than eighteenth century armies. We still hear political rhetoric about federal tyranny, but most Americans do not fear the nation's armed forces and virtually no one thinks that an armed populace could defeat those forces in battle. Furthermore, eighteenth century civilians routinely kept at home the very same weapons they would need if called to serve in the militia, while modern soldiers are equipped with weapons that differ significantly from those generally thought appropriate for civilian uses. Civilians no longer expect to use their household weapons for militia duty, although they still keep and bear arms to defend against common criminals (as well as for hunting and other forms of recreation).

The law has also changed. While states in the Founding era regulated guns—blacks were often prohibited from possessing firearms and militia weapons were frequently registered on government rolls—gun laws today are more extensive and controversial. Another important legal development was the adoption of the Fourteenth Amendment. The Second Amendment originally applied only to the federal government, leaving the states to regulate weapons as they saw fit. Although there is substantial evidence that the Privileges or Immunities Clause of the Fourteenth Amendment was meant to protect the right of individuals to keep and bear arms from infringement by the states, the Supreme Court rejected this interpretation in *United States v. Cruikshank* (1876).

Until recently, the judiciary treated the Second Amendment almost as a dead letter. In *District of Columbia v. Heller* (2008), however, the Supreme Court invalidated a federal law that forbade nearly all civilians from possessing handguns in the nation's capital. A 5-4 majority ruled that the language and history of the Second Amendment showed that it protects a private right of individuals to have arms for their own defense, not a right the states to maintain a militia.

The dissenters disagreed. They concluded that the Second Amendment protects a nominally individual right, though one that protects only "the right of the people of each of the several States to maintain a well-regulated militia." They also argued that even if the Second Amendment did protect an individual right to have arms for self-defense, it should be interpreted to allow the government to ban handguns in high-crime urban areas.

Two years later, in *McDonald v. City of Chicago* (2010), the Court struck down a similar handgun ban at the state level, again by a 5-4 vote. Four Justices relied on judicial precedents under the Fourteenth Amendment's Due Process Clause. Justice Thomas rejected those precedents in favor of reliance on the Privileges or Immunities Clause, but all five members of the majority concluded that the Fourteenth Amendment protects against state infringement of the same individual right that is protected from federal infringement by the Second Amendment.

Notwithstanding the lengthy opinions in *Heller* and *McDonald*, they technically ruled only that government may not ban the possession of handguns by civilians in their homes. *Heller* tentatively suggested a list of "presumptively lawful" regulations, including bans on the possession of firearms by felons and the mentally ill, bans on carrying firearms in "sensitive places" such as schools and government buildings, laws restricting the commercial sale of arms, bans on the concealed carry of firearms, and bans on weapons "not typically possessed by law-abiding citizens for lawful purposes." Many issues remain open, and the lower courts have disagreed with one another about some of them, including important questions involving restrictions on carrying weapons in public.

NOT A SECOND CLASS RIGHT: THE SECOND AMENDMENT TODAY

By Nelson Lund

The right to keep and bear arms is a lot like the right to freedom of speech. In each case, the Constitution expressly protects a liberty that is not to be insulated from the ordinary political process. Neither right, however, is absolute. The First Amendment, for example, has never protected perjury, fraud, or countless other crimes that are committed through the use of speech. Similarly, no reasonable person could believe that violent criminals should have unrestricted access to guns, or that any individual should possess a nuclear weapon.

Inevitably, courts must draw lines, allowing government to carry out its duty to preserve an orderly society, without unduly infringing the legitimate interests of individuals in expressing their thoughts and protecting themselves from criminal violence. This is not a precise science or one that will ever be free from controversy.

One judicial approach, however, should be unequivocally rejected. During the nineteenth century, courts routinely refused to invalidate restrictions on free speech that struck the judges as reasonable. This meant that speech got virtually no judicial protection. Government suppression of speech can usually be thought to serve some reasonable purpose, such as reducing social discord or promoting healthy morals. Similarly, most gun control laws can be viewed as efforts to save lives and prevent crime, which are perfectly reasonable goals. If that's enough to justify infringements on individual liberty, neither constitutional guarantee means much of anything.

During the twentieth century, the Supreme Court finally started taking the First Amendment seriously. Today, individual freedom is generally protected unless the government can make a strong case that it has a real need to suppress speech or expressive conduct, and that its regulations are tailored to that need. The legal doctrines have become quite complex, and there is room for disagreement about many of the Court's specific decisions. Taken as a whole, however, this body of case law shows what the Court can do when it appreciates the value of an individual right enshrined in the Constitution.

The Second Amendment also raises issues about which reasonable people can disagree. But if the Supreme Court takes this provision of the Constitution as seriously as it now takes the First Amendment, which it should do, there will be some easy issues as well.

- *District of Columbia v. Heller* (2008) is one example. The "right of the people" protected by the Second Amendment is an individual right, just like the "right[s] of the people" protected by the First and Fourth Amendments. The Constitution does not say that the Second Amendment protects a right of the states or a right of the militia, and nobody offered such an interpretation during the Framing era. Abundant historical evidence indicates that the Second Amendment was meant to leave citizens with the ability to defend themselves against unlawful violence. Such threats might come from usurpers of governmental power, but they might also come from criminals whom the government is unwilling or unable to control.
- *McDonald v. City of Chicago* (2010) was also an easy case under the Court's precedents. Most other provisions of the Bill of Rights had already been applied to the states because they are "deeply rooted in this Nation's history and tradition." The right to keep and bear arms clearly meets this test.
- The text of the Constitution expressly guarantees the right to bear arms, not just the right to keep them. The courts should invalidate regulations that prevent law-abiding citizens from carrying weapons in public, where the vast majority of violent crimes occur. First Amendment rights are not confined to the home, and neither are those protected by the Second Amendment.
- Nor should the government be allowed to create burdensome bureaucratic obstacles designed to frustrate the exercise of Second Amendment rights. The courts are vigilant in preventing government from evading the First Amendment through regulations that indirectly abridge free speech rights by making them difficult to exercise. Courts should exercise the same vigilance in protecting Second Amendment rights.
- Some other regulations that may appear innocuous should be struck down because they are little more than political stunts. Popular bans on so-called "assault rifles," for example, define this class of guns in terms of cosmetic features, leaving functionally identical semi-automatic rifles to circulate freely. This is unconstitutional for the same reason that it would violate the First Amendment to ban words that have a French etymology, or to require that French fries be called "freedom fries."

In most American states, including many with large urban population centers, responsible adults have easy access to ordinary firearms, and they are permitted to carry them in public. Experience has shown that these policies do not lead to increased levels of violence. Criminals pay no more attention to gun control regulations than they do to laws against murder, rape, and robbery. Armed citizens, however, prevent countless crimes and have saved many lives. What's more, the most vulnerable people—including women, the elderly, and those who live in high crime neighborhoods—are among the greatest beneficiaries of the Second Amendment. If the courts require the remaining jurisdictions to stop infringing on the constitutional right to keep and bear arms, their citizens will be more free and probably safer as well.

THE REASONABLE RIGHT TO BEAR ARMS

By Adam Winkler

Gun control is as much a part of the Second Amendment as the right to keep and bear arms. The text of the amendment, which refers to a “well regulated Militia,” suggests as much. As the Supreme Court correctly noted in *District of Columbia v. Heller* (2008), the militia of the founding era was the body of ordinary citizens capable of taking up arms to defend the nation. While the Founders sought to protect the citizenry from being disarmed entirely, they did not wish to prevent government from adopting reasonable regulations of guns and gun owners.

Although Americans today often think that gun control is a modern invention, the Founding era had laws regulating the armed citizenry. There were laws designed to ensure an effective militia, such as laws requiring armed citizens to appear at mandatory musters where their guns would be inspected. Governments also compiled registries of civilian-owned guns appropriate for militia service, sometimes conducting door-to-door surveys. The Founders had broad bans on gun possession by people deemed untrustworthy, including slaves and loyalists. The Founders even had laws *requiring* people to have guns appropriate for militia service.

The wide range of Founding-era laws suggests that the Founders understood gun rights quite differently from many people today. The right to keep and bear arms was not a libertarian license for anyone to have any kind of ordinary firearm, anywhere they wanted. Nor did the Second Amendment protect a right to revolt against a tyrannical government. The Second Amendment was about ensuring public safety, and nothing in its language was thought to prevent what would be seen today as quite burdensome forms of regulation.

The Founding-era laws indicate why the First Amendment is not a good analogy to the Second. While there have always been laws restricting perjury and fraud by the spoken word, such speech was not thought to be part of the freedom of speech. The Second Amendment, by contrast, unambiguously recognizes that the armed citizenry must be regulated—and regulated “well.” This language most closely aligns with the Fourth Amendment, which protects a right to privacy but also recognizes the authority of the government to conduct reasonable searches and seizures.

The principle that reasonable regulations are consistent with the Second Amendment has been affirmed throughout American history. Ever since the first cases challenging gun controls for violating the Second Amendment or similar provisions in state constitutions, courts have repeatedly held that “reasonable” gun laws—those that don’t completely deny access to guns by law-abiding people—are constitutionally permissible. For 150 years, this was the settled law of the land—until *Heller*.

Heller, however, rejected the principle of reasonableness only in name, not in practice. The decision insisted that many types of gun control laws are presumptively lawful, including bans on possession of firearms by felons and the mentally ill, bans on concealed carry, bans on dangerous and unusual weapons, restrictions on guns in sensitive places like schools and government buildings, and commercial sale restrictions. Nearly all gun control laws today fit within these exceptions. Importantly, these exceptions for modern-day gun laws unheard of in the Founding era also show that lawmakers are not limited to the types of gun control in place at the time of the Second Amendment’s ratification.

In the years since *Heller*, the federal courts have upheld the overwhelming majority of gun control laws challenged under the Second Amendment. Bans on assault weapons have been consistently upheld, as have restrictions on gun magazines that hold more than a minimum number of rounds of ammunition. Bans on guns in national parks, post offices, bars, and college campuses also survived. These decisions make clear that lawmakers have wide leeway to restrict guns to promote public safety so long as the basic right of law-abiding people to have a gun for self-defense is preserved.

Perhaps the biggest open question after *Heller* is whether the Second Amendment protects a right to carry guns in public. While every state allows public carry, some states restrict that right to people who can show a special reason to have a gun on the street. To the extent these laws give local law enforcement unfettered discretion over who can carry, they are problematic. At the same time, however, many constitutional rights are far more limited in public than in the home. Parades can be required to have a permit, the police have broader powers to search pedestrians and motorists than private homes, and sexual intimacy in public places can be completely prohibited.

The Supreme Court may yet decide that more stringent limits on gun control are required under the Second Amendment. Such a decision, however, would be contrary to the text, history, and tradition of the right to keep and bear arms.

The five extra words that can fix the Second Amendment

By John Paul Stevens April 11, 2014

John Paul Stevens served as an associate justice of the Supreme Court from 1975 to 2010. This essay is excerpted from his new book, "Six Amendments: How and Why We Should Change the Constitution."

Following the massacre of grammar-school children in Newtown, Conn., in December 2012, high-powered weapons have been used to kill innocent victims in more senseless public incidents. Those killings, however, are only a fragment of the total harm caused by the misuse of firearms. Each year, more than 30,000 people die in the United States in firearm-related incidents. Many of those deaths involve handguns.

The adoption of rules that will lessen the number of those incidents should be a matter of primary concern to both federal and state legislators. Legislatures are in a far better position than judges to assess the wisdom of such rules and to evaluate the costs and benefits that rule changes can be expected to produce. It is those legislators, rather than federal judges, who should make the decisions that will determine what kinds of firearms should be available to private citizens, and when and how they may be used. Constitutional provisions that curtail the legislative power to govern in this area unquestionably do more harm than good.

The first 10 amendments to the Constitution placed limits on the powers of the new federal government. Concern that a national standing army might pose a threat to the security of the separate states led to the adoption of the Second Amendment, which provides that "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."

For more than 200 years following the adoption of that amendment, federal judges uniformly understood that the right protected by that text was limited in two ways: First, it applied only to keeping and bearing arms for military purposes, and second, while it limited the power of the federal government, it did not impose any limit whatsoever on the power of states or local governments to regulate the ownership or use of firearms. Thus, in *United States v. Miller*, decided in 1939, the court unanimously held that Congress could prohibit the possession of a sawed-off shotgun because that sort of weapon had no reasonable relation to the preservation or efficiency of a "well regulated Militia."

When I joined the court in 1975, that holding was generally understood as limiting the scope of the Second Amendment to uses of arms that were related to military activities. During the years when Warren Burger was chief justice, from 1969 to 1986, no judge or justice expressed any doubt about the limited coverage of the amendment, and I cannot recall any judge suggesting that the amendment might place any limit on state authority to do anything.

Organizations such as the National Rifle Association disagreed with that position and mounted a vigorous campaign claiming that federal regulation of the use of firearms severely curtailed Americans' Second Amendment rights. Five years after his retirement, during a 1991 appearance on "The MacNeil/Lehrer NewsHour," Burger himself remarked that the Second Amendment "has been the subject of one of the greatest pieces of fraud, I repeat the word 'fraud,' on the American public by special interest groups that I have ever seen in my lifetime."

In recent years two profoundly important changes in the law have occurred. In 2008, by a vote of 5 to 4, the Supreme Court decided in *District of Columbia v. Heller* that the Second Amendment protects a civilian's right to keep a handgun in his home for purposes of self-defense. And in 2010, by another vote of 5 to 4, the court decided in *McDonald v. Chicago* that the due process clause of the 14th Amendment limits the power of the city of Chicago to outlaw the possession of handguns by private citizens. I dissented in both of those cases and remain convinced that both decisions misinterpreted the law and were profoundly unwise. Public policies concerning gun control should be decided by the voters' elected representatives, not by federal judges.

In my dissent in the *McDonald* case, I pointed out that the court's decision was unique in the extent to which the court had exacted a heavy toll "in terms of state sovereignty. . . . Even apart from the States' long history of firearms regulation and its location at the core of their police powers, this is a quintessential area in which federalism ought to be allowed to flourish without this Court's meddling. Whether or not we can assert a plausible constitutional basis for intervening, there are powerful reasons why we should not do so."

"Across the Nation, States and localities vary significantly in the patterns and problems of gun violence they face, as well as in the traditions and cultures of lawful gun use. . . . The city of Chicago, for example, faces a pressing challenge in combating criminal gangs. Most rural areas do not."

In response to the massacre of grammar-school students at Sandy Hook Elementary School, some legislators have advocated stringent controls on the sale of assault weapons and more complete background checks on purchasers of firearms. It is important to note that nothing in either the *Heller* or the *McDonald* opinion poses any obstacle to the adoption of such preventive measures.

First, the court did not overrule *Miller*. Instead, it “read *Miller* to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.” On the preceding page of its opinion, the court made it clear that even though machine guns were useful in warfare in 1939, they were not among the types of weapons protected by the Second Amendment because that protected class was limited to weapons in common use for lawful purposes such as self-defense. Even though a sawed-off shotgun or a machine gun might well be kept at home and be used for self-defense, neither machine guns nor sawed-off shotguns satisfy the “common use” requirement.

Thus, even as generously construed in *Heller*, the Second Amendment provides no obstacle to regulations prohibiting the ownership or use of the sorts of weapons used in the tragic multiple killings in Virginia, Colorado and Arizona in recent years. The failure of Congress to take any action to minimize the risk of similar tragedies in the future cannot be blamed on the court’s decision in *Heller*.

A second virtue of the opinion in *Heller* is that Justice Antonin Scalia went out of his way to limit the court’s holding not only to a subset of weapons that might be used for self-defense but also to a subset of conduct that is protected. The specific holding of the case covers only the possession of handguns in the home for purposes of self-defense, while a later part of the opinion adds emphasis to the narrowness of that holding by describing uses that were not protected by the common law or state practice. Prohibitions on carrying concealed weapons, or on the possession of firearms by felons and the mentally ill, and laws forbidding the carrying of firearms in sensitive places such as schools and government buildings or imposing conditions and qualifications on the commercial sale of arms are specifically identified as permissible regulations.

Thus, Congress’s failure to enact laws that would expand the use of background checks and limit the availability of automatic weapons cannot be justified by reference to the Second Amendment or to anything that the Supreme Court has said about that amendment. What the members of the five-justice majority said in those opinions is nevertheless profoundly important, because it curtails the government’s power to regulate the use of handguns that contribute to the roughly 88 firearm-related deaths that occur every day.

There is an intriguing similarity between the court’s sovereign immunity jurisprudence, which began with a misinterpretation of the 11th Amendment, and its more recent misinterpretation of the Second Amendment. The procedural amendment limiting federal courts’ jurisdiction over private actions against states eventually blossomed into a substantive rule that treats the common-law doctrine of sovereign immunity as though it were part of the Constitution itself. Of course, in England common-law rules fashioned by judges may always be repealed or amended by Parliament. And when the United States became an independent nation, Congress and every state legislature had the power to accept, to reject or to modify common-law rules that prevailed prior to 1776, except, of course, any rule that might have been included in the Constitution.

The Second Amendment expressly endorsed the substantive common-law rule that protected the citizen’s right (and duty) to keep and bear arms when serving in a state militia. In its decision in *Heller*, however, the majority interpreted the amendment as though its draftsmen were primarily motivated by an interest in protecting the common-law right of self-defense. But that common-law right is a procedural right that has always been available to the defendant in criminal proceedings in every state. The notion that the states were concerned about possible infringement of that right by the federal government is really quite absurd.

As a result of the rulings in *Heller* and *McDonald*, the Second Amendment, which was adopted to protect the states from federal interference with their power to ensure that their militias were “well regulated,” has given federal judges the ultimate power to determine the validity of state regulations of both civilian and militia-related uses of arms. That anomalous result can be avoided by adding five words to the text of the Second Amendment to make it unambiguously conform to the original intent of its draftsmen. As so amended, it would read:

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms *when serving in the Militia* shall not be infringed.”

Emotional claims that the right to possess deadly weapons is so important that it is protected by the federal Constitution distort intelligent debate about the wisdom of particular aspects of proposed legislation designed to minimize the slaughter caused by the prevalence of guns in private hands. Those emotional arguments would be nullified by the adoption of my proposed amendment. The amendment certainly would not silence the powerful voice of the gun lobby; it would merely eliminate its ability to advance one mistaken argument.

It is true, of course, that the public’s reaction to the massacre of schoolchildren, such as the Newtown killings, and the 2013 murder of government employees at the Navy Yard in Washington, may also introduce a strong emotional element into the debate. That aspect of the debate is, however, based entirely on facts rather than fiction. The law should encourage intelligent discussion of possible remedies for what every American can recognize as an ongoing national tragedy.

Handout: Is it Constitutional?

Below are four proposals to reduce gun violence. For each, determine whether you would personally support the proposal and give your reasoning. Next, determine whether, based on the guidance provided by the Supreme Court in *Heller* (points 1–4 on the previous page), the Court would find each proposal to be constitutional or unconstitutional and give your reasoning.

Proposal #1

A law that makes it illegal for handguns to be carried in public unless the gun is unloaded.

<p>Would you personally support this proposal?</p> <p>Yes _____ No _____</p>	<p>If challenged, would the Supreme Court find this law to be constitutional?</p> <p>Yes _____ No _____</p>
<p>What is your reasoning?</p>	<p>What is your reasoning?</p>

Proposal #2

A law to ban all high-capacity magazines (magazines that allow a gun to hold more than ten bullets at once). The government has also done a study showing that very few people use high-capacity magazines for hunting.

<p>Would you personally support this proposal?</p> <p>Yes _____ No _____</p>	<p>If challenged, would the Supreme Court find this law to be constitutional?</p> <p>Yes _____ No _____</p>
<p>What is your reasoning?</p>	<p>What is your reasoning?</p>

Proposal #3

A law that bans gun ownership for people who are currently living in the same house as another person who is a felon. Felons are currently banned from owning guns unless their home state restores their rights.

Would you personally support this proposal? Yes _____ No _____	If challenged, would the Supreme Court find this law to be constitutional? Yes _____ No _____
What is your reasoning?	What is your reasoning?

Proposal #4

A law that bans the manufacture or sale of any new weapon that can fire more than six rounds per minute.

Would you personally support this proposal? Yes _____ No _____	If challenged, would the Supreme Court find this law to be constitutional? Yes _____ No _____
What is your reasoning?	What is your reasoning?



RED FLAG GUN LAWS

CENTRAL QUESTION



Should governments enact “red flag” gun laws?

INTRODUCTION



On August 3, 2019, a gunman opened fire at a Walmart in El Paso, Texas, killing 22 people and injuring 24 others. Approximately 13 hours later, another gunman murdered nine people and injured 27 in a crowded district of Dayton, Ohio.¹ As these two tragedies rocked the American people, policymakers reopened the debate about what could be done to reduce gun violence in the future. In this *Close Up in Class Controversial Issue in the News*, we explore the idea of red flag laws, examine some of the gun laws currently in place, and ask you to weigh the pros and cons of the paths forward.

BACKGROUND



The Second Amendment to the Constitution reads, “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.”² Although this language is vague and subject to much debate, the Supreme Court has interpreted the Second Amendment as an individual right to own a gun for traditionally lawful purposes, such as self-defense—an interpretation the Court outlined in *District of Columbia v. Heller* (2008). However, the Court also ruled that there can be regulations on the right to bear arms, such as bans on concealed weapons (which vary by state) or limits on gun possession by criminals and the mentally ill.³

Federal law—most notably, the Gun Control Act of 1968 (GCA) and its subsequent amendments—allows the federal government to regulate the transfer and possession of guns. As of 2019, the GCA forbids the following people from possessing guns:

- Convicted felons
- Fugitives from justice
- People under restraining orders
- People who have been convicted of domestic violence charges

- Unlawful drug users or addicts
- People who have been committed to mental institutions
- Undocumented immigrants or people who have renounced their U.S. citizenship
- Dishonorably discharged U.S. servicemen⁴

To help ensure that restricted persons do not obtain guns, the Federal Bureau of Investigation (FBI) maintains the National Instant Criminal Background Check System (NICS). Before finalizing a gun sale, licensed gun dealers use NICS to check records from three databases: (1) the National Crime Information Center, which contains information on wanted persons and protection orders; (2) the Interstate Identification Index, which contains criminal history records; and (3) the NICS Index, which contains information submitted by local, state, and federal agencies as well as mental health institutions and other sources.⁵ However, private gun sales—transactions between unlicensed collectors or hobbyists and buyers from the same state—do not require a NICS background check.⁶



How have recent mass shooters obtained their guns?

State and local governments also play a significant role in regulating the transfer and possession of guns. As of 2019, 21 states and the District of Columbia have expanded background checks to include at least some private sales.⁷ At least nine states and the District of Columbia have laws that ban high-capacity ammunition magazines.⁸ States also determine the necessary requirements for carrying a concealed weapon within their jurisdictions. Although every state allows the carrying of a concealed weapon in some form, 35 states generally require a state-issued permit to do so, and nearly every state places restrictions on where a concealed weapon may be carried.⁹

THE CURRENT CONTROVERSY



Should governments enact “red flag” gun laws?

In the aftermath of the El Paso and Dayton tragedies, some policymakers began focusing their attention on the potential of red flag laws. A red flag law—also known as an extreme risk protection order—allows a court to issue an order to temporarily confiscate the guns of an individual who is deemed to be a risk to himself/herself or to others. Depending on the state, a red flag law allows family members, household members, and/or law enforcement officers to request the court order. The petitioner must present evidence of why the individual in question poses a threat to himself/herself or to others.¹⁰

As of August 2019, red flag laws exist at the state level only, in 17 states and the District of Columbia. Prior to the 2018 shooting at Marjory Stoneman Douglas High School in Parkland, Florida, five states (California, Connecticut, Indiana, Oregon, and Washington) had red flag laws. After the Parkland shooting, 12 more states (Colorado, Delaware, Florida, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New York, Rhode Island, and Vermont) and the District of Columbia passed red flag laws.¹¹



How do red flag laws work in each state?

Following the El Paso and Dayton shootings, Senator Lindsey Graham, R-S.C., announced that he and Senator Richard Blumenthal, D-Conn., would introduce legislation to create a federal grant program to assist in enforcing existing red flag laws and to “encourage” other states to adopt red flag laws. According to Senator Graham, the grants would be given to law enforcement agencies so they could hire and consult with mental health professionals to better determine which cases require action.¹²

"We must make sure that those judged to pose a grave risk to public safety do not have access to firearms and that if they do, those firearms can be taken through rapid due process," said President Donald Trump, who expressed his support for red flag laws in August 2019.¹³ He and other supporters of red flag laws argue that such policies are a commonsense reform that would help law enforcement agencies respond effectively to the warning signs displayed by homicidal or suicidal people. Opponents, however, fear that red flag laws give the government the power to seize citizens' property without due process, thus violating the Constitution and creating a dangerous precedent for the future.



SHOULD GOVERNMENTS ENACT “RED FLAG” GUN LAWS?



YES: Red flag laws help law enforcement respond to the warning signs displayed by dangerous people.

Before he took the lives of nine people in Dayton, Connor Betts had a history of routinely discussing slaughter with friends. He once held a knife near another student’s throat, and he was suspended from school for compiling a list of people he wanted to kill.¹⁴

Before he murdered 17 students in Parkland, Nikolas Cruz was the subject of dozens of 911 calls and at least two separate tips to the FBI, including one regarding a YouTube comment left by a user named “nikolas cruz” that read: “Im [sic] going to be a professional school shooter.”¹⁵

“It was no surprise to anyone who knew him to hear that he was the shooter,” said Emma González, a survivor of the Parkland shooting.¹⁶ Added Senator Graham: “He did everything but take out an ad in the paper, [saying] ‘I’m going to shoot somebody.’ You know, you can’t just let that keep going and going. There will be another one tomorrow.”¹⁷

In both of these tragic cases, as well as in the cases of other mass shooters, the warning signs were there. Yet no one stepped in to take away the guns that would eventually be used on innocent people. This is why red flag laws are so important. They empower family members, household members, and/or law enforcement officers to present serious evidence in court in order to temporarily confiscate guns that dangerous individuals could use on themselves or others.

The trouble with current law is that the federal background check system prevents convicted felons or persons who have been committed to a mental institution from purchasing a gun from a licensed dealer—but it does not deny persons who have an undiagnosed mental illness or persons who have served no jail time but have talked with friends about wanting to kill. In fact, of the 114 mass shootings committed in the United States between 1982 and 2019, at least 74 percent involved guns that were purchased legally.¹⁸

“All these guys bought the gun legally,” said Senator Graham of the shooters in Parkland, El Paso, and Dayton. “[But] if you get kicked out of school for threatening your schoolmates, with a rape list and a kill list, maybe you shouldn’t buy a gun. That’s the heart of the matter here.”¹⁹

Thus, every state must make it a priority to enact a red flag law. These laws require petitioners to present serious evidence of danger, such as threats or acts of violence or a violation of a domestic violence emergency protective order.²⁰ If such policies go nationwide, they will be invaluable in preventing tragedy in the future.



NO: Red flag laws are an unconstitutional violation of due process guarantees.

The Fifth Amendment to the Constitution guarantees that no person shall “be deprived of life, liberty, or property, without due process of law.” The 14th Amendment reiterates the importance of this principle, promising, “Nor shall any state deprive any person of life, liberty, or property, without due process of law.”²¹

It is admirable that lawmakers want to eliminate the scourge of gun violence in the United States. But when doing so, they must remember that red flag laws are a dangerous violation of due process—the bedrock principle that requires the government to respect all legal rights that are owed to a person.

In every state that has a red flag law, the court order to confiscate a gun can be issued *ex parte* (without notice to the individual in question). In four states (Colorado, Delaware, Nevada, and Vermont), only a preponderance of the evidence—meaning “more likely than not”—is needed for an *ex parte* order.²² “Because it’s a civil process, you aren’t entitled to a public defender, or even afforded the opportunity to defend yourself,” wrote Missouri state Representative Tony Lovasco. “Once a protective order is issued, law enforcement are dispatched to search your property and seize your weapons—without criminal charges ever being filed, or even probable cause that an actual crime has been committed.”²³

“To make matters worse, red flag hearings can be adjudicated based on uncorroborated claims made by a single individual,” wrote Representative Lovasco. “Perhaps it’s an angry spouse, jealous co-worker, or disgruntled neighbor. All it takes is for someone to make a convincing argument that you are a danger to yourself or others, and your property is taken from you and you lose the right to defend yourself.”²⁴

There are those who say that Second Amendment rights are of little importance to them, as they do not plan to ever own a gun. But this debate is about so much more than guns. It is a question of whether or not the government can seize your constitutionally protected property, ignore constitutional rights in the name of “public safety,” and presume you guilty until proven innocent.

“Red flag laws stand for the proposition that people can have their rights and property taken from them on the basis of mere allegations,” wrote Matthew Larosiére, director of legal policy at the Firearms Policy Coalition. “And even if you don’t believe the right to keep and bear arms exists at all, or it is of little importance to you, do you really want this government to extend a relaxed notion of seizure and inverted due process to other areas of law? Because history shows it will.”²⁵

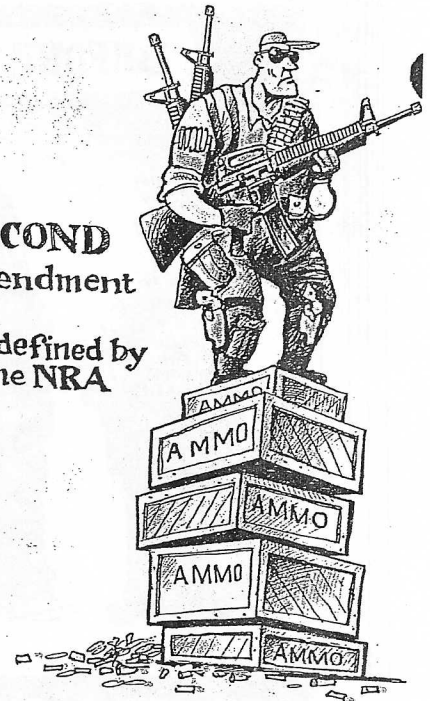
TWO VIEWS OF GUN CONTROL:
Political cartoons (right and facing page), illustrate opposing sides of the debate.

SECOND Amendment
as defined by the founding fathers



© DAVE GRANLUND
POLITICAL CARTOONS.COM

SECOND Amendment
as defined by the NRA



Why We're Still Arguing About GUN CONTROL

The tragedy in Las Vegas has reignited the debate over America's gun laws BY PATRICIA SMITH

The hail of gunfire in Las Vegas went on for a full 10 minutes. During that time, more than a thousand bullets rained down on a helpless crowd of 22,000 people at an outdoor country music festival. Stephen Paddock, 64, had turned his room on the 32nd floor of the Mandalay Bay Hotel into a killing perch. By the time the onslaught ended, 58 people were dead and more than 500 wounded in the worst mass shooting in modern U.S. history.

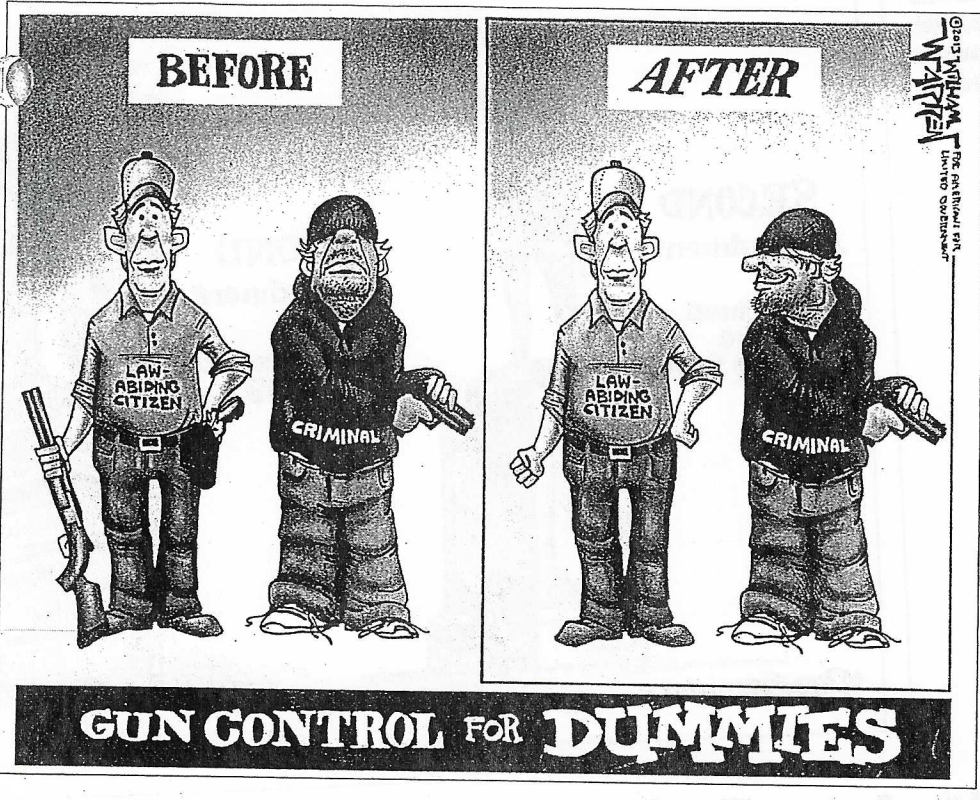
When police finally stormed Paddock's room and discovered that he'd killed himself, they found more than 20 guns, rifle scopes, high-capacity magazines that can hold up to 100 bullets at a time, and at least one bump stock, a device that allows a semiautomatic rifle to fire faster, at a rate similar to that of a fully automatic weapon.

As authorities try to figure out what motivated Paddock, the tragedy has reignited the national debate over the Second Amendment and gun control. The U.S. has more guns per capita than any other developed country—and far more gun violence. The question is whether stricter gun control laws would help. Congress, like the nation, has long been divided. Here's what you need to know to understand the ongoing debate.

1 What is gun control?

Gun control is a broad term that covers many kinds of restrictions. It can include regulations on what kinds of firearms can be bought and sold, who can possess or sell them, and where and how they can be stored or carried.

Gun control can involve the responsibilities a seller has to check a buyer's background and whether a gun sale should be reported to the government. The term also covers limits on types of ammunition and the



But following the Las Vegas attacks, a Politico poll found that 64 percent of Americans want tighter gun laws, while 29 percent oppose more regulation. There's more consensus on some specific measures: A recent Pew Research Center poll found that 83 percent of Democrats and 81 percent of Republicans support background checks for all gun purchases.

4 What are the arguments against gun control?

Gun rights advocates see weapons possession as a matter of individual rights. They say that people have the right to arm themselves

size of magazines (the part of the gun that holds ammunition).

In recent years, gun control debates have focused on three issues:

- background checks for buyers
- the laws regulating who can carry weapons in public
- the kinds of guns and gun accessories available for purchase.

In the aftermath of the Las Vegas shooting, attention has focused not only on assault rifles, which are military-style weapons capable of firing multiple bullets quickly, but also on devices that can be attached to semiautomatic guns to make them fire more quickly.

2 What's the state of federal gun control today?

Federal law prohibits specific groups of people from owning firearms. The list includes convicted felons, those diagnosed with certain types of mental illness, and undocumented immigrants.

Since 1994, licensed gun dealers have been required to conduct background checks on potential buyers through an F.B.I. database. This is meant to prevent the sale of guns to someone who's prohibited from owning one.

But many small-scale gun sellers claim to be "hobbyists," who aren't required to conduct background checks. Because many of these sellers do business at gun shows, this is often referred to as "the gun show loophole." Another problem: Most people with serious mental illness never receive a diagnosis, so they can still own guns legally.

3 Where does the American public stand?

Gun control has long been one of the most sharply divisive issues in the U.S. In general, Democrats and city dwellers tend to favor tighter restrictions on guns. Republicans and people in rural areas, where guns are more common, tend to favor protecting gun rights.

for hunting, self-defense, and sport—or just because they want to.

Gun owners say weapons can actually make society safer by giving people the power to defend themselves.

"The only thing that stops a bad guy with a gun is a good guy with a gun," Wayne LaPierre of the National Rifle Association (N.R.A.), the country's most powerful gun-rights group, famously said in 2012.

The debates often come down to the Second Amendment, which was adopted in 1791. Americans have long argued over its wording: "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."

For generations, the U.S. Supreme Court avoided answering the question of whether the Second Amendment guaranteed an *individual's* right to bear arms or just the people's collective right, through a militia. But in 2008 and 2010, the Court ruled that the Second Amendment protects an

*Before the creation of a national army, local militias provided protection for many Americans.

Liam Warren/Americans for Limited Government

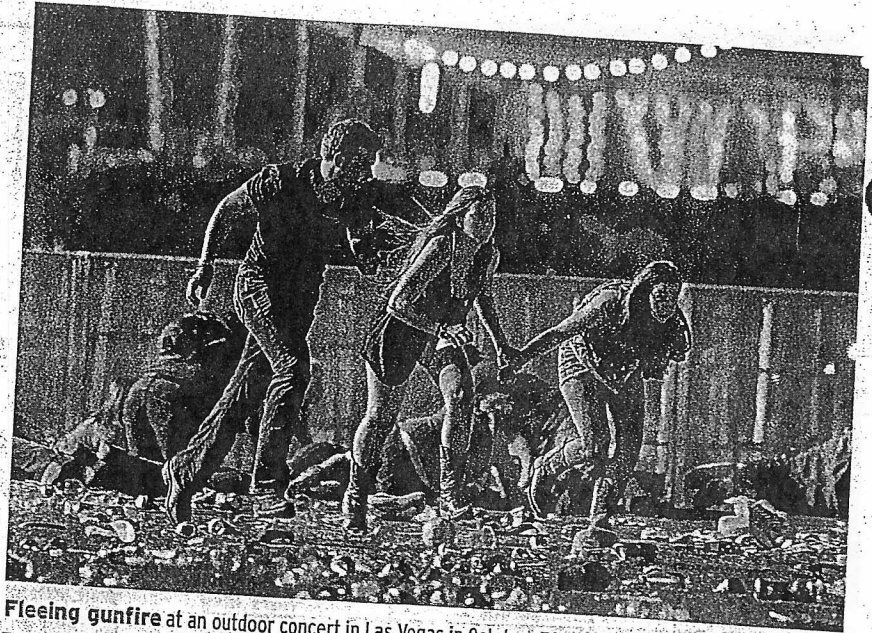
individual's right to keep a firearm. But since the Court did say some level of regulation was appropriate, the rulings have only fueled the debate over what limits the government can place on gun ownership.

5 What are the arguments in favor?

While gun rights advocates say arming people makes for a safer society, people who favor gun control say the opposite is true: The more people carry weapons, the more likely it is that someone will use one to kill.

In 2015, there were more than 36,000 gun-related deaths in the U.S. About two-thirds were suicides and about a third were homicides.

Gun control supporters cite figures that equate high rates of gun ownership with more gun violence. According to a 2007 report called the Small Arms Survey, there were 89 guns per 100 people in the U.S., more than in any other country. (Yemen, second on the list, had 55 guns per 100 people.) At the same time, gun-



Fleeing gunfire at an outdoor concert in Las Vegas in October; 58 people were killed.

related homicide rates are more than 25 times higher in the U.S. than in any other high-income country.

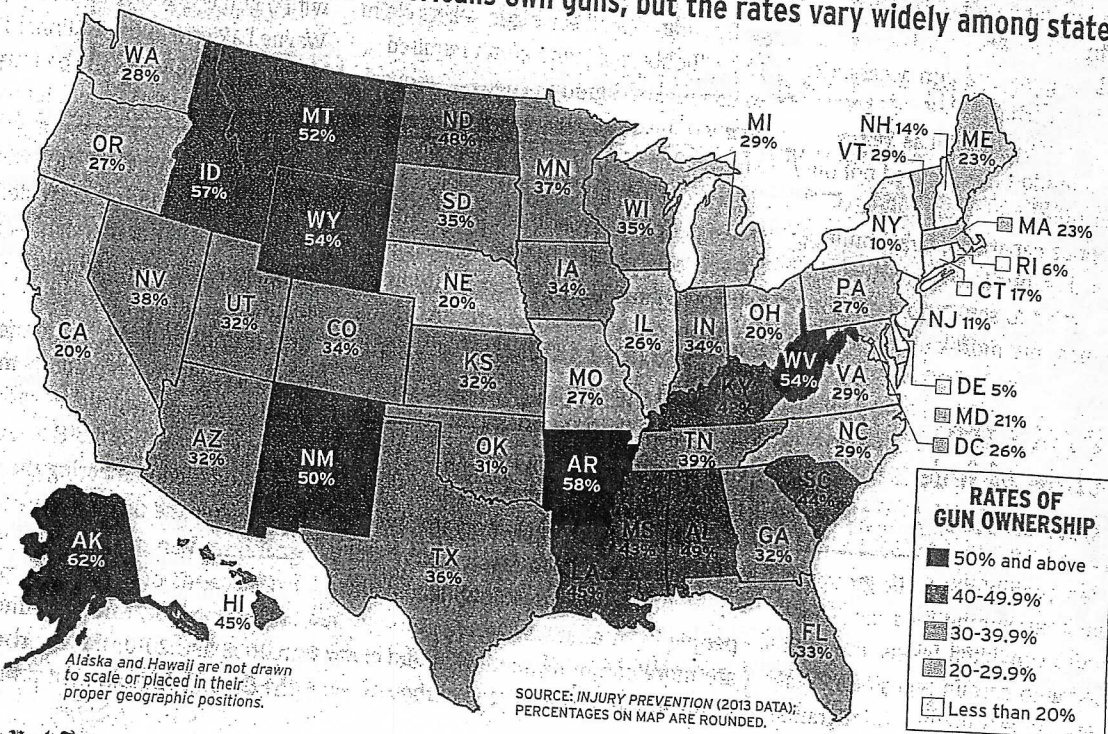
Supporters say tougher laws in other countries keep gun deaths down. Australia, for example, had 13 mass shootings from 1979 to 1996. After a gunman killed 35 people in 1996, the country passed strict laws

banning many weapons. It hasn't had a mass shooting since.

Gun control advocates say closing gun control loopholes would still allow law-abiding people to have firearms, while resulting in far fewer deaths. In other words, they argue, it's not a question of disarming the public, but a matter of where to draw sensible limits.

GUN OWNERSHIP BY STATE

Overall, about 30 percent of Americans own guns, but the rates vary widely among states



JUD BECKER/GETTY IMAGES (LAS VEGAS); JIM McMAHON (MAP)



Shooting practice in Newberg, Oregon; guns are part of the culture in many places around the U.S.

6 Why are gun laws so controversial?

For many politicians, particularly those in rural states, supporting gun rights is critical to getting re-elected. Also, the N.R.A. and other gun-rights groups are powerful and well-funded, and many

politicians don't want to anger them. Fearing that any additional restrictions will lead to an outright ban on weapons, the gun lobby has become more unyielding in recent years, opposing measures like more-stringent background checks, which it once supported.

Over the past generation, American politics has become more partisan and regional divisions more rigid. Republicans have become more uniformly opposed to gun laws at a time when they control Congress and most statehouses.

7 What have states done?

Most gun control exists at the state level. Some states require a license or permit to own a gun, but most don't. California, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, and Rhode Island have the most restrictive laws.

But in other parts of the country, many states have recently passed laws making it easier to buy or carry guns. Wisconsin has eliminated its 48-hour waiting period to buy handguns. Ohio now allows concealed weapons to be brought into day care facilities and airports.

The wide variety of regulations in different states allows guns to flow freely across state lines. For example, New York has very strict gun laws, but

more than two-thirds of guns used in crimes in New York City come from states with weaker gun laws.

8 Now what?

For decades, any measure to restrict guns has essentially been dead on arrival in the U.S. Congress. Republican lawmakers—often with the support of conservative Democrats—have blocked any attempt to pass new gun laws, even after mass shootings at Virginia Tech in 2007; at an elementary school in Newtown, Connecticut, in 2012; and at an Orlando, Florida, nightclub last year.

With the tragedy in Las Vegas, lawmakers may have found an area of agreement: banning the sale of bump stocks—the device the Las Vegas shooter used to make his semiautomatic gun fire like an automatic weapon. (Automatic weapons are much more tightly regulated under federal law.)

"I own a lot of guns, and as a hunter and sportsman, I think that's our right as Americans, but I don't understand the use of this bump stock," says Senator John Cornyn, a Texas Republican. "It seems like it's an obvious area we ought to explore and see if it's something Congress needs to act on."

But gun control advocates say much broader action is needed.

"Most of the gun violence that happens in this country is not because of bump stocks," says Chelsea Parsons of the Center for American Progress, a Washington think tank. "Banning bump stocks is not a sufficient congressional response to this tragedy."

But in a deeply divided Congress, it may be the best place to start. "For decades, compromise between Republicans and Democrats on this issue has been elusive," Republican Congressman Carlos Curbelo of Florida told CNN. "This might be a small but a very important step." •

With reporting by Sheryl Gay Stolberg, Tiffany Hsu, and David Brooks of The New York Times.

COUNTRIES WITH THE MOST MASS SHOOTINGS 1966-2012



SOURCE: JAMES LANFORD/UNIVERSITY OF ALABAMA. NOTE: FOR THE STUDY, A MASS SHOOTING IS DEFINED AS ONE WITH FOUR OR MORE VICTIMS.

Is It Too Easy to Get a Gun?

Every year, 4.5 million new guns and 2 million used guns are sold in the United States

A gun show in Chantilly, Virginia, in July



► VOTE NOW! WWW.UPFRONTMAGAZINE.COM

YES Five years ago, I survived America's most deadly mass shooting, when a Virginia Tech student killed 32 people and wounded 17 on the school's campus. The shooting opened the door to my education about the loopholes that make it too easy for dangerous people to get guns.

Anyone can walk into a gun show or surf the Internet to find a "private sale" and pay cash for a gun. Private sellers don't always require buyers to show ID or answer questions, and these sellers don't conduct background checks.

That's because while federal law requires professional gun dealers to be licensed and to conduct background checks, private sellers are considered hobbyists and aren't covered by those rules.* So even though federal law blocks dangerous people—such as convicted felons, domestic abusers, and some of the mentally ill—from buying guns, the law doesn't cover private sales and gun shows, which account for 40 percent of gun sales.

Anyone can walk into a gun show or surf the Internet and pay cash for a gun.

I've gone to gun shows in Virginia, Minnesota, Ohio, and Texas and bought handguns, Tec-9's, Mac-11's, shotguns, rifles, even an AK-47—all without undergoing a background check to determine whether I should be allowed to buy a firearm.

Congress must stop allowing guns to get in the wrong hands by passing a law that would require background checks on *all* gun sales. For too long, our elected officials in Washington have put the gun lobby's agenda ahead of the citizens they represent.

Americans overwhelmingly support background checks and reasonable restrictions on gun ownership. Failing to take action will inevitably lead to other senseless—and preventable—tragedies. •

—COLIN GODDARD

The Brady Center to Prevent Gun Violence

NO "To preserve liberty, it is essential that the whole body of people always possess arms, and be taught alike especially when young, how to use them."

In this one sentence, Richard Henry Lee of Virginia, one of the Founding Fathers, summed up why our constitutional right to bear arms is critical. Our Founders understood that if individual citizens can easily arm themselves, they are protected from the lawless and from government oppression.

That is why the Founders set our right to self-defense in stone with the Second Amendment. It states "the right of the people to keep and bear arms shall not be infringed"—and the government has no business doing so. Americans don't need a license to use their right to free speech, and the same should go for their right to bear arms.

There are already too many restrictions limiting Americans' access to guns. Federal and state background checks, licensing procedures, and waiting periods are just some of the burdensome regulations.

And less gun regulation does not mean more crime. Vermont, for example, doesn't require gun owners to get a permit or register their firearms, and for more than a century

it's allowed citizens to carry concealed weapons without a license. Despite all this, a 2010 study named Vermont the second-safest state in the country.

Restrictions on gun ownership ought to be focused on those with a history of violent crime. Let's make it easier, rather than harder, for our citizens to own and operate firearms and protect what's theirs. •

—CONGRESSMAN PAUL C. BROWN
Republican of Georgia

Americans don't need a license to use their right to free speech. The same should go for their right to bear arms.

*States can adopt tougher restrictions for gun sales; seven states have done so: Colorado, Connecticut, Delaware, Illinois, Maryland, New York, and Oregon.

Second Amendment TIMELINE

Automatic firearms are regulated

1934

Following an attempt on the life of President-elect Franklin D. Roosevelt with a handgun in 1933, Congress passes the National Firearms Act of 1934. The nation's first federal gun control law taxes the manufacture, sale, and transfer of fully automatic firearms and "gangster-type weapons," including machine guns and sawed-off shotguns. It also requires FBI background checks and local law enforcement notification for people who wish to purchase these weapons.



Franklin D. Roosevelt, 1933

Photo: Library of Congress

Federal regulation of gun sales begins

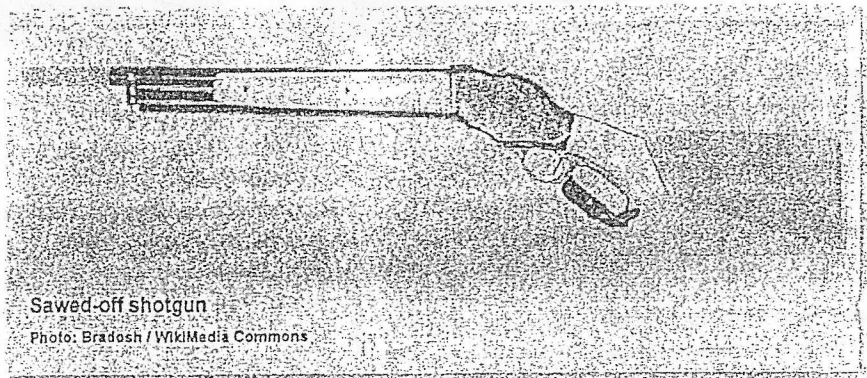
1938

The Federal Firearms Act of 1938 requires gun sellers to obtain a license from the Internal Revenue Service to sell guns and to maintain a record of purchases. The act also prohibits convicted felons from purchasing firearms or ammunition. However, the law makes no provision for criminals who provide false information when they purchase weapons.

Mandatory registration of shotguns is approved

1939

In *United States v. Miller*, the U.S. Supreme Court upholds the mandatory registration of sawed-off shotguns under the National Firearms Act as constitutional. Rejecting a challenge that cites the Second Amendment, the Court rules that these types of guns are not part of any ordinary military equipment, that their use cannot contribute to the common defense, and that their possession does not have any relationship to the preservation of a militia.



Sawed-off shotgun

Photo: Bradosh / Wikimedia Commons

Congress enacts expanded gun regulations

1968

In 1927, Congress had passed legislation that banned mailing such concealable weapons as cane guns and pen guns, but until 1968 there is no law that regulates the mailing of rifles, shotguns, or handguns. Following the assassination of President John F. Kennedy in 1963 and the gun-related assassinations of Reverend Martin Luther King Jr. and Senator Robert Kennedy in 1968, Congress enacts the Gun Control Act. The act regulates imported guns, expands licensing and record keeping requirements, bans mail-order sales of guns and ammunition, raises the age at which one can legally buy a gun, and prevents convicted felons, mentally ill people, and illegal drug users from buying guns.

The Bureau of Alcohol, Tobacco, and Firearms is created

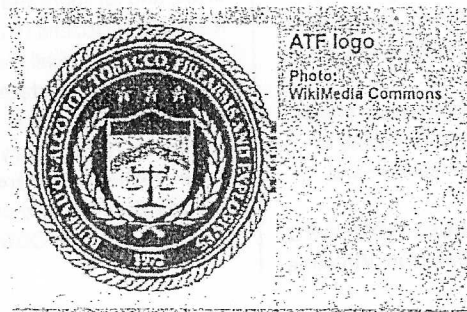
1968

Displeased with the lack of vigorous enforcement of federal gun control laws, Congress separates the Bureau of Alcohol, Tobacco, and Firearms (ATF) (since renamed the Bureau of Alcohol, Tobacco, Firearms, and Explosives) from the Internal Revenue Service and forms it as a separate law enforcement organization within the U.S. Department of Justice.

The Firearm Owner's Protection Act is passed

1987

Congress responds to complaints from gun owners by repealing some federal restrictions on the purchase of out-of-state rifles and shotguns with the Firearm Owner's Protection Act. Proponents of the act argue that the laws did little to reduce crime. The act also permits citizens to transport "unloaded and inaccessible" guns from one state to another, regardless of local laws.



ATF logo

Photo: Wikimedia Commons

Second Amendment TIMELINE

Government seeks to make school zones gun-free

1990

The Gun-Free School Zones Act makes it a federal crime to knowingly bring a gun within a thousand feet of a school, or to fire a gun within that zone. However, in *United States v. Lopez* (1995), the U.S. Supreme Court rules that Congress overstepped its constitutional authority under the commerce clause when it passed this act. The Court finds that the punishment of gun possession and gun use near schools is a matter for each state to regulate on its own.

Drug Free School Zone

Photo: iStockphoto/InCommunicado



The Brady Law requires background checks

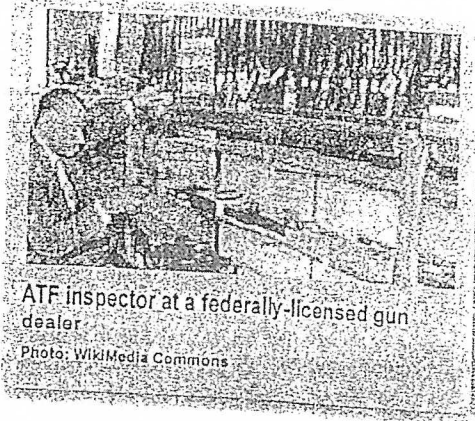
1994

The Brady Law is named for former Presidential press secretary James Brady, who was seriously wounded during the 1981 assassination attempt on President Ronald Reagan. The law requires federally licensed firearm dealers to perform background checks with law enforcement officials before selling a firearm. During the background check, officials confirm whether the buyer falls within a category of individuals prohibited from owning or possessing a firearm by state law or the 1968 Gun Control Act. In *Printz v. United States* (1997) the U.S. Supreme Court holds that the Brady Law's waiting-period requirement is constitutional, but finds that the mandatory background checks required of local authorities are unconstitutional.

Semiautomatic weapons are banned

1994

The Violent Crime Control and Law Enforcement Act of 1994 bans nineteen types of semiautomatic weapons and ammunition clips holding more than ten rounds (except for military or police use). It also bans handgun possession by anyone under age eighteen and increases the requirements for federal gun dealer licenses.



ATF inspector at a federally-licensed gun dealer

Photo: Wikimedia Commons

Domestic violence offender gun ban is enacted

1996

Despite increasing opposition in Congress to gun control laws, advocates manage to amend an omnibus spending bill to prohibit anyone convicted of a domestic violence offense from owning or possessing a gun.

Smith & Wesson reaches a settlement

2000

In the first settlement of its kind, the gun manufacturer Smith & Wesson reaches a settlement in many of the lawsuits brought against it by municipalities around the country, including Atlanta; Berkeley, California; Bridgeport, Connecticut; Camden, New Jersey; Detroit; Gary, Indiana; Englewood, New Jersey; Los Angeles, Miami-Dade; San Francisco; St. Louis; and Washington, D.C. The settlement binds Smith & Wesson to change the way it designs and distributes its guns. The company is required to install safety mechanisms including child safety locks and "smart gun" technology and sell only to authorized dealers who can prove that the guns they sell are not disproportionately used in crimes.



Smith and Wesson Factory, Springfield, Massachusetts, circa 1908

Photo: Library of Congress



Seal of United States Congress

Photo: Wikimedia Commons

Should gun laws be looser or stricter?

DEBATING DEMOCRATIC PRINCIPLES

In 2008 the Supreme Court ruled that the Second Amendment protects a long-standing natural right to self-defense, in addition to prohibiting the disarming of militias. This means the government cannot ban the possession of handguns. However, the Supreme Court pointed out that reasonable regulation of guns is allowed. Although the Court did not explain which restrictions were allowed, it gave examples such as banning weapons not typically possessed by law-abiding citizens, prohibiting the possession of guns by felons and the mentally ill, and forbidding the carrying of firearms in places such as schools.

YES

TEAM A

Gun Laws Should Be Stricter

Each year, more than 8,000 murders are committed with guns. There are too many guns in our society, and they are too easy to buy. Since guns are more lethal than other weapons, we need to regulate them more strictly. A criminal with a gun can do much more harm to many more people than someone with another type of weapon.

Moreover, guns are more likely to harm the owner or his family than to harm a criminal. Guns can fall into the wrong hands, and children with access to guns can cause horrible accidents. It is a tragedy when innocent lives are lost due to gun violence. The Constitution allows for reasonable restrictions.

NO

TEAM B

Gun Laws Should Be Looser

Gun control infringes on a basic Constitutional right to protect oneself. Guns are used by law-abiding citizens for self-defense and protection. The police cannot protect everyone all the time and citizens must be prepared to protect themselves. Criminals may be deterred from robbing or harming someone if the potential victim has a gun.

Criminals will always get guns even if we make them illegal. Outlawing guns could even open up a large new black market where criminals buy and sell illegal guns. Guns are not responsible for injuries and deaths; the people who misuse them are. We should hold those people responsible.

EXPLORING THE ESSENTIAL QUESTION

Evaluating Arguments and Counterarguments Consider each proposal below. Think about the arguments, the Constitution, and your personal experiences. Do you think that these proposals should become law? Draw a line across your paper, with one end labeled YES and the other labeled NO. Place the number of the proposal along your line to indicate whether you want the proposal to become law. Note the reasons that support your position. Your teacher will ask you and your classmates to indicate your support for each proposal by standing along a virtual continuum in the classroom. Be prepared to defend your position.

1. Ban all assault weapons.
2. Allow people to carry concealed weapons more easily.
3. Require all guns to be registered to their owner.
4. Require biometric technology that allows only the owner to operate a gun.
5. Allow people to bring guns into schools and government buildings.
6. Ban high-capacity magazines that allow guns to fire many times without reloading.
7. Add a tax to bullets that would make them very expensive.
8. Allow teachers that volunteer and pass gun exam to be armed at school.
9. Ban College students living in the dorms or attending class from owning handguns
10. Close the Gun show Loophole and require background checks for all gun purchases