

[Appendix 2]

[“Second Amendment Falls Short: Needs-Based Defense No Longer Sufficient to Preserve Citizens’ Right to Self-Defense,”](#) Bob Barr, *The Heritage Foundation*, February 1, 2021.

The Second Amendment stands at a critical crossroad in America. The future of gun rights in America will likely be decided not decades from now, but within the next few years. It is imperative that conservatives, in particular, who historically have been strongly supportive of the right to keep and bear arms, understand not just the practical benefits to our society from a robust Second Amendment, but the philosophical foundations of gun rights as premised on the protection of our God-given, natural rights. Only with this well-armed, well-rounded expertise will supporters of the Second Amendment be properly equipped to mount a successful defense of such rights that increasingly are in danger from activists and politicians of all stripes and at all levels.

An Overview

A primary reason why America is at such a pivotal point with gun rights is the inaction of the United States Supreme Court. Since its first major Second Amendment case of the modern era in 1939,¹ the Supreme Court waited more than 70 years before substantively addressing the scope of the Amendment. In 2008, the Court issued a striking, albeit limited, victory for the right to keep and bear arms when, in *District of Columbia v. Heller*,² by a bare majority, it held that the Second Amendment in fact protects an *individual* right, striking down a District law banning the possession of operable firearms in the home. The Court expanded on its *Heller* decision two years later in *McDonald v. Chicago*,³ applying its holding beyond the District of Columbia to all 50 states through the Fourteenth Amendment. Since these cases, however, the Supreme Court has largely returned to its preferred state of quiescence with respect to the Second Amendment.⁴

In the absence of a Second Amendment legal framework going beyond the barebones structure outlined by *Heller* and *McDonald*, lower courts, as well as state and local governments, have been left to their own devices in interpreting and applying these foundational cases. The results have been varied and inconsistent. Some states have removed barriers to the exercise of the right to keep and bear arms, going so far as implementing “constitutional carry,” in which the Constitution is considered the only

“license” needed to carry a firearm outside one’s domicile.⁵ Other states have gone in the opposite direction, severely restricting the carrying of firearms outside the home. Until the Supreme Court returns to the question of the Second Amendment and definitively clarifies its earlier rulings in *Heller* and *McDonald*, this patchwork of gun laws will continue to exist across the nation, vexing both gun rights advocates and everyday gun owners seeking to exercise their Second Amendment rights.

Conservatives would be wise, however, not to place trust entirely on the courts as the battle over gun rights plays out. The Supreme Court’s reticence on definitively affirming the practical effects of the *Heller* ruling, coupled with its general reluctance to expand further than the immediate merits of any new case and disappointing leadership from other conservatives on the bench, are just a few reasons why it may ultimately fall short of being the panacea for gun rights that many conservatives hope it to be.⁶

Lower Court Limbo. Lower courts in particular have proved to be unreliable and overly cautious defenders of gun rights, hesitant to tread beyond the question of whether the Second Amendment is an individual right (answered in *Heller*), and whether it is, in fact, incorporated to states (answered in *McDonald*), leaving individuals, businesses, and state and local governments across the country in what amounts to a “Second Amendment limbo.”

Conservatives should therefore increase their focus on a vigorous defense of gun rights at the local and state level, whence offending laws and court opinions continue to emanate. As superficial as it sounds, conservatives would not need last-resort judicial relief for gun rights if these laws did not exist in the first place. To build the foundation for such vigorous defenses—which can withstand the finely-honed tactics of anti-gun zealots developed through decades of practice—conservatives first must understand the historical and philosophical genesis of the Second Amendment. Only then will they be able to effectively advocate for gun rights going forward.

While the addition of three Supreme Court justices with solid Second Amendment *bona fides* provides firearms advocates with renewed hope for judicial support extending beyond the bare bone parameters of *Heller* and *McDonald*, an efficacious defense of the Second Amendment still requires broad-based understanding of the historical and philosophical underpinnings of the Second Amendment to ensure that the issue is “lifted” to the level at which the Court will take such cases—and then actually decide them. This will significantly determine the future of gun rights in the coming years.

A keen understanding of, and appreciation for, the Second Amendment going beyond its functional good in protecting the right to keep and bear firearms provides many benefits in addition to a sturdier foundation for future legal challenges.

- A deeper knowledge of the Second Amendment’s moral and philosophical foundations will allow conservatives to parry the misinformation and intentional emotional manipulation of the anti-gun crowd as it relates to gun violence—especially following mass shooting tragedies.
- Conservatives will be more effective in building public support for the Second Amendment through education on both the practical reasons for expansive gun rights (e.g., crime/safety, hunting, collections, etc.), as well as the individual’s natural rights inherent in it. Widespread public support for reclaiming gun rights, and against attempts to limit them, will help deter future gun-control laws.
- Conservatives will be better able to recognize candidates for public office whose support of gun laws will cave at the slightest bit of public pressure from those candidates who will truly champion the Second Amendment as inseparable from the breath of liberty that keeps America free.

Law Enforcement Challenges. One of the most challenging hurdles conservatives will face during this process are conflicts with law enforcement. While “law and order” conservatives traditionally have been and remain highly skeptical of government generally, this wariness often and understandably is in a sense overlooked when considering the role of and support for law enforcement; so long as, of course, law enforcement operates within appropriate constitutional bounds.

The successes enjoyed by liberal politicians in cities and states across America in passing anti-gun legislation puts today’s law-and-order conservatives in a difficult position. More often now, support for law enforcement in upholding gun-control laws requires tacit sanction of police actions and policies that may very well fall outside these “appropriate constitutional bounds.”

The intersection between support for law enforcement and for the individual right to keep and bear arms has not always been blurred or complex. Throughout much of our history, the civilian populace across America almost uniformly supported both police *and* the individual’s right to gun ownership. There was a widespread understanding that for our society to function as envisioned by our forebears and as reflected in the representative democracy codified in the Constitution, it was necessary to have and maintain both a law enforcement apparatus *and* a citizenry willing and capable of protecting itself against criminals—this last principle reflected in, and protected by, the Second Amendment to that Constitution.

It is only recently in our history that cleavages between these two principles, the need for police and the need for private gun ownership, have emerged. Especially among conservatives—that is, individuals whose philosophy of governance is based on the principle that that “government is best which governs least”—robust support of the Second Amendment should proceed hand-in-hand with being supportive of the police.

Put another way, being a strong supporter of the Second Amendment is not in any manner inconsistent with supporting our men and women in blue.

A Test of Loyalties. However, in early 21st-century America, this commonsense notion is being put to the test. In recent months alone, the COVID-19 pandemic (and the ongoing social unrest originally spawned by the May 25, 2020, death of George Floyd at the hands of the Minneapolis Police Department) has caused government at all levels in the United States to take steps impacting the civil liberties of American citizens in ways never before witnessed in modern times. These measures largely were premised on broad “emergency decrees” issued as “policy” by the Trump Administration, such as student loan repayment moratoriums and certain travel restrictions—but far more problematically as *mandatory* decrees by state governors and city and county officials across the country.⁷

Some of these edicts have impacted Second Amendment rights in multiple ways, directly and indirectly. The concerns thus raised are made more complex given that these limitations at times are enforced (and, at times, abused) by law enforcement, the very segment of our society most deeply supported by conservatives, who remain at the same time traditionally and consistently more supportive of firearms rights than liberals.

Whether these emergency measures will be widely endured and accepted in the long term presents a fundamental dilemma as to whether the simmering tension between conservative support for law enforcement and concomitant support for the Second Amendment will fray even further as police are obliged to enforce additional encroachments on citizens’ rights, pursuant to edicts from state and local officials in response to COVID-19. Many of these encroachments, including restrictions on Second Amendment rights, are both widely unpopular and constitutionally problematic. This is the real danger: Fear-driven compliance and deference to law enforcement will become habit-forming for conservatives to accept greater and greater limitations on their constitutionally protected liberties, including firearms rights.

Will strongly pro-Second Amendment individuals and groups remain so, and will they continue to value those rights, even over support for law enforcement? Will more moderate conservatives drift further from Second Amendment support in the face of broader police powers and increasing militarization of society as a result of the fears driven by the pandemic?

Answers to these questions specific to the COVID-19 pandemic are representative of the larger debate about the future of the Second Amendment’s place and importance in our society. If our practical defenses to the Second Amendment can be undone by a temporary health emergency, then conservatives must find better ways to defend and support it.

Gun Rights in the Context of America's History

In order to understand the Second Amendment in 21st-century America, and even in post-COVID-19 America, it is important to understand America in the 18th century, specifically the role firearms played in the very founding of the United States. The American Colonies' split from Great Britain was long in the making and multi-faceted in its execution. The oft-studied refrain, "No taxation without representation," did accurately reflect one of the precipitating reasons for the American Revolution, but taxes were far from the sole causal factor.

Gun and ammunition control measures foisted on the American colonies during the period 1774–1775 were every bit as important in the ultimate decision to declare independence from the Crown, as were other measures, such as denying the right to jury trial, limits on freedom of speech, use of military forces for local law enforcement, and abusive and warrantless searches of colonists' homes and businesses.⁸

In fact, royal edicts that limited or completely destroyed the ability of citizens of the Thirteen Colonies to obtain firearms—and even more important from a practical standpoint in that era, gun powder—were viewed in America as tantamount to absolute subjugation to government forces—and therefore cause by itself for revolt.⁹ Of course, the British authorities understood perfectly that an armed country would be far more difficult, if not impossible, to fully subjugate than one whose citizens had limited access to pistols, muskets, gun powder, and ammunition. Therefore, denying access to these tools for defense and resistance became a primary goal of the Crown in the two years leading to the Declaration of Independence.¹⁰

The First Amendment to our Constitution—protecting among other rights, freedom of expression and religion—was premised on actions by the British Crown denying or limiting the exercise of those rights in the American Colonies.¹¹ In precisely the same way, the Second Amendment had its genesis in Great Britain's efforts to enforce strict gun-control measures on the Colonies.¹²

The Second Amendment thus stood, and always has, for the proposition that the right to keep and bear arms is the clearest and most practical method of defending one's self and property against those who would take them away. It represents the fundamental right of the individual by which freedom and self-preservation are secured. While not guaranteeing a "right to rebellion," the right secured by the Second Amendment to our Constitution does properly reflect the fundamental notion that in order for the bundle of our individual and inalienable rights to have meaning (which they necessarily do), there must be a way for them to be *protected*. And one way for this to happen (among

others, such as the ability to have legal process for the protection of property and contract rights) is having the ability to protect oneself with a firearm.¹³ Efforts by liberals and other gun-control advocates to characterize the Second Amendment as reflective of the need for hunting or some activity other than individual or collective self-defense, are inapposite *ab initio*.

If one were to consider the government solely responsible to “keep us safe,” “protect us,” and defend us, would the Second Amendment’s guarantee of the right to keep and bear arms have been necessary?

It is a fundamental rule of construction in considering the meaning of legal terms, including those in the Constitution, the supreme law of the land,¹⁴ that a presumption of purpose is to be afforded each provision enumerated therein. Put another way, a provision *in* the Constitution is presumed to be included for a purpose and not be deemed mere surplusage of other provisions in the Constitution.¹⁵ Thus, the language in the Second Amendment *must* be afforded some meaning and purpose, specifically, to defend one’s person,¹⁶ which necessarily is predicated on the principle that there is a *need* to defend one’s person. And if it were the responsibility of the State—that is, the police—to “defend and protect” each individual, there would be no necessity to provide in the Constitution for individuals’ rights to do so.

The Responsibility of Self-Defense. Notwithstanding this fundamental and commonsense principle, many—perhaps most—people mistakenly have come to believe that it *is* solely the government’s responsibility to “keep us safe.”¹⁷ This is accurate only in a limited sense: By having systems of checks and balances in place, good governments ensure a certain measure of security for society generally, and an order for individuals and institutions to engage in lawful transactions and endeavors. There also is a certain predictability and sense of comfort in knowing that thieves can be apprehended after the fact, thereby allowing businesses and people to continue their personal, social, and economic pursuits, which are the fundamental goals of civilized society.

In further consideration of where responsibility for defense of oneself rests, it is axiomatic that government cannot *keep* us safe no matter what, even were it to assign one security officer to each citizen, or even two. Government cannot be everywhere at every moment, nor should we want it to, as this would require a truly oppressive and omni-present government.¹⁸

By reason and by nature, the responsibility of personal protection falls first on the shoulders of the individual. Our Founding Fathers knew this (living in an era in which there were no “police departments” and in which the British military authorities served not only as defenders of the colonies against attacks from abroad as well as from within, but also to perform what we now consider “domestic law enforcement”

functions).¹⁹ In fact, the notion of a “professional” police force as the “first responder” to a crime or emergency, which now is so deeply ingrained in the United States and throughout Western society, only took hold in cities across the country in the late 19th century.²⁰ Moreover, every state still recognizes the important role of the citizenry in policing, by way of laws allowing “citizen arrest” in certain circumstances, as well in the continued use of the common law “posse comitatus” to buttress law enforcement capabilities in extreme circumstances.²¹ Our courts, too, have recognized this principle.²² The United States Supreme Court has ruled clearly that the police have no *duty* to protect the public (unless an individual is in the government’s custody).

Fundamentally, our constitutional republic was instituted to protect individual liberties, in order that individuals may go about life unfettered from the government so long as they do not violate the liberties of others.²³ Our government was not instituted to “keep us safe” in the sense of giving the government a monopoly on self-defense or the legitimate use of force to defend the rights and liberties of others. Our government was instituted first and foremost to protect individual liberty and keep government power in check.²⁴ The first generation of Americans, free from the shackles of British control, certainly never depended on the government to protect their families from evildoers or nature itself. They did not depend on the government to provide for every want and need—far from it. As noted by James Madison in Federalist Number 45 (and echoed throughout this collection of Founding documents), the powers of the federal government are “few and defined,”²⁵ which reflects (at least for us as Americans) a fundamental principle of government at all levels.

Thus was the Bill of Rights, incorporating the Second Amendment and the other nine amendments into our Constitution, adopted in 1791.

The Bill of Rights. It was another 217 years before the United States Supreme Court definitively and clearly stated that the “right to keep and bear arms” protects an *individual* right rather than a *collective* right. The tardy but vital recognition of this right was set forth in the High Court’s 2008 opinion in *Heller*.²⁶

Gun-control advocates have continued to use and abuse government regulatory, judicial, and electoral power in the years since *Heller*, all in an effort to deny its full and meaningful implementation.²⁷ Conservatives, however, never should shrink from supporting and openly advocating for that cherished and vital conclusion reflected in *Heller*, whether in political debate or in matters of law enforcement policy.

The importance of firearms ownership and good marksmanship by civilians (who, after all, were considered—and constituted—the “militia”²⁸) was manifest in the experience of Union soldiers during the Civil War, when in battle after battle their Confederate counterparts bested them in firearms accuracy and handling.²⁹ Following the War, and in specific recognition of the need for improved marksmanship among both civilian and

military populations, the National Rifle Association of America (NRA) was founded in 1871 for that precise purpose. As noted in 1990 by Richard Lacayo in *Time* magazine, “The N.R.A. was founded in 1871 by a group of former Union Army officers dismayed that so many Northern soldiers, often poorly trained, had been scarcely capable of using their weapons.”³⁰

Efforts to Limit Access. There were occasional legislative efforts to limit civilian access to certain categories of firearms in the decades following the Civil War, including during Reconstruction—as a means of disarming freed slaves.³¹ Efforts to limit access to certain types of guns continued during the rise of organized crime in the Prohibition era (1920–1933).³² However, it was not until the late 1960s and early 1970s, when the federally directed “wars” on crime and drugs, and the tragic spate of high-profile assassinations, that federal “gun control” became a prominent political issue.³³ It has remained a political hot button in the past half-century, despite clarification of the constitutionally guaranteed right of a law-abiding individual to possess a firearm set forth in the *Heller* case, and its companion opinion two years later in *McDonald* that ensured that this right extended to all 50 states.

Numerous lower court decisions in the past decade, touching indirectly or directly on efforts by state and local government authorities to limit or outright deny implementation of the individual right to possess a firearm set forth in *Heller*, have been presented to the Supreme Court for review as vehicles to clarify its 2008 holding.³⁴ Notwithstanding such opportunities, the Supreme Court has exhibited a pronounced hesitancy to accept and decide cases from state and lower federal courts necessary to further protect what the Court itself declared to be a fundamental right in 2008 and 2010.³⁵

Even the Second Circuit Court of Appeals decision in *New York State Rifle & Pistol Association Inc. v. City of New York*, which the Supreme Court initially decided to review in 2019, was subsequently dismissed after a majority of the Justices deemed the case to be moot by virtue of a clever procedural gambit by the City of New York—rescinding the questionable provision *after* the Court agreed to accept the case, but *before* it rendered its decision.³⁶ Therefore, what had been a facially impermissible burden on the exercise of an individual’s right to engage in the constitutionally protected action of “bearing” a firearm in the city of New York, was deemed unworthy of review by the High Court.³⁷ The Second Amendment “can” was thereby “kicked down the road” once again.

Second Amendment–related issues were instrumental in the 1994 off-year election in which the GOP regained control of the House of Representatives for the first time in four decades—and they have continued to be pivotal concerns in every federal election cycle since.³⁸

Gun Rights in the Context of Natural Rights

The state of civics education in today's public schools is grim. Only Washington, DC, and nine other states require high school students to complete one year of U.S. civics education before graduating.³⁹ It is no surprise that a commonly held belief in modern society is that rights are a creation of *man and bestowed* on citizens by governing institutions. To be fair, this was also how rights were viewed prior to the era of the American Revolution, and to this day is the view of much of the world. It was not, however, what our Founding Fathers understood *rights* to be.

While the origins of the concept of natural rights can be traced back to at least Aristotle, it was perhaps John Locke's *Two Treatises of Government* (1689), a favorite among 18th-century intellectuals, including many of our Founders, that elucidated natural rights in the context of what would serve as an important philosophical basis for America's governing framework. As for the concept of natural law, from which natural rights flow, Locke explains it to be "a liberty to follow my own will in all things...and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man." From this "liberty to follow my own will" comes the concepts of natural rights to life, liberty, and property, among others. In fact, it is these natural rights identified by Locke that reverberate in the Declaration of Independence.⁴⁰

Philosophy of Rights. In his book *America's Revolutionary Mind: A Moral History of the American Revolution and the Declaration That Defined It*,⁴¹ Dr. C. Bradley Thompson explores in detail the inextricable role natural rights played in the American Revolution. While an exhaustive deconstruction of the topic could fill a book (as indeed it has for Thompson and others), the intellectual impetus for America's revolution can largely be distilled into a fundamental disagreement of the Founding Fathers with their British overseers on the concept of "rights."

Whereas the British Crown considered the rights of their subjects to be a gift by virtue of citizenship ("Rights of Englishmen"), the Founders saw these basic freedoms as *natural rights*. "America's revolutionary mind—and the *novus ordo seculorum* it established—was built on the foundation of man's natural rights," writes Thompson.⁴²

Thompson points to the decades following the 1720s as a pivotal time for this intellectual evolution fueled by Locke and other Enlightenment philosophers, a period in which colonists dramatically changed how they saw their rights as subjects to the Crown. Rather than rights conferred by man and men's institutions (rulers and governments), they increasingly viewed their freedom as rights emanating from God and nature, existing regardless of the arbitrary doings of men.

Thomas Jefferson explores this conflict at length in his 1774 treatise, *A Summary View of the Rights of British America*. In outlining grievances against the Crown, Jefferson notes several instances where their rights as “people of England” were later undone by “arbitrary” acts, powers, and purposes. Jefferson concludes by claiming these grievances are made to the Crown from “a free people claiming their rights, as derived from the laws of nature, *and not as the gift of their chief magistrate.*”⁴³

The crucial distinction between the rights of man and natural rights is laid bare by Jefferson. Rights originating from government exist only so long as the government desires to grant them. This makes them inherently arbitrary and unreliable—especially if they are not clearly codified in written form. Rights coming from nature, however, are unalienable and immutable. They cannot be revoked. They cannot be destroyed. They exist as man exists. The Declaration of Independence, which Jefferson called “an expression of the American mind,”⁴⁴ captures the essence of how the Founding Fathers viewed their rights in its second paragraph:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

A Correct Understanding of the Bill of Rights. The Declaration of Independence, and its expression of natural rights belonging to all men, would be reflected in the drafting of the United States Constitution, and its first 10 amendments, known as the Bill of Rights. Again, contrary to conventional wisdom today, the Bill of Rights is not an enumeration of specific rights *given* to citizens by the U.S. government, which would have been to repeat the same mistakes of British rule. Rather, it is the enumeration of specific actions the government is *prohibited* from taking that would otherwise encroach upon the natural rights of citizens. For example, the First Amendment reads “Congress shall make no law” inhibiting the free expression of the people. It does *not* read that citizens have the right to free speech, assembly, and worship, which would otherwise suggest that before the drafting of the U.S. Constitution they did not. In short, the First Amendment declares that Congress cannot obstruct what already is a right possessed by the People.

This brings us to the Second Amendment. Like the First, the Second Amendment’s text creates a *negative* right, prohibiting any action by government that infringes the people’s right, in this case, to keep and bear arms. In this way, it too implies that the right to keep and bear arms is a pre-existing right of the People—not one created and granted by the Constitution or by government. Importantly, the Founders understood this constitutional protection as doing something far more fundamental than codifying a right to possess *a firearm*. It was, rather, *codifying* in written form, one of the most sacred natural rights of all—the right to self-preservation, to “life.”

“The first and strongest desire God planted in men, and wrought into the very principles of their nature, [is] that of self-preservation,” Locke wrote.⁴⁵ Locke’s perspective on self-preservation as being the pinnacle of natural law was understood and shared by the Founders. “Resistance to sudden violence, for the preservation not only of my person, my limbs, and life, but of my property, is an indisputable right of nature,” wrote John Adams.⁴⁶ Samuel Adams, in *The Rights of the Colonists*,⁴⁷ explains the “natural rights of the Colonists” are, in order, life, liberty, and property. More importantly, he concludes these rights are bound together by a “duty of self-preservation,” that is, the “right to support and defend them in the best manner [the colonists] can.”⁴⁸

From this well-documented historical perspective, we clearly can see how the Second Amendment evolved, not as a mechanism to create a collective right confined to the context of active militia service, but to *preserve* the individual, natural rights of each American to protect his or her life, liberty, and property “in the best manner” possible. Insofar as the firearm at the time was the primary tool by which one defended oneself, the Amendment spoke to protecting that instrument. By extension of the Second Amendment’s fundamental reach, it serves also as a guarantee of the right to hunt, to own firearms for sporting purposes, and to keep them as a collector.

These are all very important, practical reasons for firearm ownership—but not the *raison d’être* for why the Founders believed it was deserving of enshrinement within the Bill of Rights. It was placed there as a fundamental recognition of the need to incorporate in the founding documents for the new government explicit protection against the government taking away the primary tool with which citizens could defend themselves and their inherent, natural rights.

A Right Under Attack: Self-Defense in the Modern Era

Although the right to self-preservation through the ownership of firearms had special significance to Americans during the War for Independence, the need for self-defense, and the innate human desire for self-preservation, is no less real today than it was then. Yet the centuries since the natural right to self-defense was enshrined in the Constitution as the Second Amendment have not been friendly to it. Decades of legislation from Leftist politicians, and a waning will—or ability—of Americans to defend these rights, have left the Second Amendment in a precarious state.

Moreover, a multitude of other cultural factors, from the exploitation of gun violence for political gain to changing police tactics, have contributed to greater pressure on

lawmakers at the state and federal level to expand gun control. This all amounts to a complex, multi-faceted, and *persistent* attack on the Second Amendment—and, at its core, against the very right of citizens to defend themselves.

The “Guns-Are-for-Self-Defense-at-Home-Only” Myth

Beginning in the mid-20th century, a common tactic employed by gun-control advocates to undermine the Second Amendment was casting it as a “collective” right, one pertaining only to the organization of militia groups, thereby rendering it redundant and unnecessary in the modern era because this “militia” function was now the responsibility of states via the National Guard.⁴⁹ Liberal lawmakers used this as a pretext for passing laws limiting an individual’s access to, and use of, firearms, considering individual ownership to be outside the scope of the Constitution.⁵⁰ With the *Heller* and *McDonald* decisions, however, this strategy became less tenable for liberals, forcing them to concoct ways to explain away the Court’s rejection of one of their more superficially plausible arguments.

A new strategy was then developed. Rather than focus exclusively on removing firearms from the hands of individuals—although this remains their ultimate goal—liberal lawmakers believed they could at least contain firearm possession to private residences. This can be seen most frequently in limitations on concealed carry, either through intentionally cost-prohibitive and complex license requirements or outright bans. It can also be seen in absurdly rigid laws like those in New York City, which prompted the recent case that found its way to the Supreme Court, *New York State Rifle & Pistol Association Inc.*⁵¹ Before the municipal law was changed to avoid a Supreme Court ruling, New York City prohibited even the few residents permitted by the Big Apple’s police department to have a gun in their home from transporting it to any location outside the city’s limits, even if necessary to practice at a lawful gun range or to have a gunsmith repair it.

Gun-Control Foundational Arguments. The Left’s twisted logic behind these restrictions rests on two fundamentally wrong principles: (1) the claim that the public is necessarily endangered by the presence of guns outside private residences; and (2) the claim that the duty of protecting people *in public* falls to police, not private citizens.

By reason and by nature, the responsibility of personal protection falls first on the shoulders of the individual—regardless of where that responsibility is exercised. Our Founding Fathers and our courts, too, recognized this principle.⁵² The United States Supreme Court has ruled clearly that the police have *no duty* to protect the public

(unless, that is, an individual is in the custody of the government). Chief Justice William Rehnquist made this clear in *DeShaney v. Winnebago Cty. DSS*, writing in the majority opinion that “nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors.”⁵³

As to the first point, the data simply does not hold up to the level of scrutiny required in limiting this natural right. Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit said exactly this in his majority opinion in *Moore v. Madigan* (2012),⁵⁴ in which the court struck down the state of Illinois’ “no-issue” concealed carry law. “A blanket prohibition on carrying gun [sic] in public prevents a person from defending himself anywhere except inside his home,” said Posner. “So substantial a curtailment of the right of armed self-defense requires a greater showing of justification than merely that the public *might* benefit on balance from such a curtailment, though there is no proof it would.”⁵⁵

Indeed, whatever logic is considered to undergird the argument that the Second Amendment applies only to self-defense inside the home quickly falls apart under even the most superficial scrutiny. For example, as Posner says, “to speak of ‘bearing’ arms within one’s home would at all times have been an awkward usage,” therefore “a right to bear arms thus implies a right to carry a loaded gun outside the home.”⁵⁶ Furthermore, Posner suggests, quite logically, that in a city like Chicago, the greater danger to citizens is on crime-ridden streets in rough neighborhoods, not “on the 35th floor of the Park Tower.”⁵⁷

The intent, purpose, and scope are all manifest in a commonsense reading of the Second Amendment, none of which supports the idea that firearms were meant to be locked away in a bedroom closet lockbox. The right to self-defense does not get “put on hold” simply because a citizen steps across the threshold of his or her front door and onto the sidewalk. This is especially the case if police cannot practically or *legally* be counted on for protection. Only robust concealed and open-carry laws fulfill the state’s obligation to protect a citizen’s natural right to self-defense as required by the Second Amendment. That many conservatives afford no or only lukewarm support for firearm carry laws simply plays into the hands of the Left.

Permitting Schemes as *De Facto* Gun Control

Another tactic often employed by liberal politicians to circumvent the Second Amendment’s clear intent and historical meaning is creating a chokepoint to ownership through use of firearms permits. Justified as necessary for public safety, gun permits allow lawmakers to make the path to legal ownership needlessly complicated, even prohibitive. In the absence of a clarifying post-*McDonald* ruling, this tactic has

proven exceptionally successful in liberal states and cities. Even in politically conservative areas, permitting schemes can have a chilling effect on gun ownership.

In North Carolina, residents without a concealed-carry permit are required to obtain a permit from their county's sheriff's office in order to purchase or otherwise take possession of a pistol.⁵⁸ Furthermore, each permit is good for only one purchase or transfer and cannot be reused. And, if a citizen in Mecklenburg County, which includes the city of Charlotte, wishes to obtain a concealed-carry permit, he or she is in for a very time-consuming procedure, requiring an initial online application and an in-person visit to the Sheriff's office, recent completion of a firearms training and safety course approved by the North Carolina Criminal Justice Standards Commission, a full background check, and a subsequent visit to pick up the permit after the background check (including release of court orders pertaining to an applicant's mental health) is complete.⁵⁹

As burdensome as Mecklenburg County's requirements are, they are less stringent than those of other localities. In 21st-century Boston, which is considered by many to be the birthplace of the American Revolution, the process of owning a firearm would put the onerous Stamp Act to shame. Before the application process even begins, resident Bostonians must take a firearms safety course.⁶⁰ Only after completing the government-designed course are residents allowed to apply for permission to be granted a firearms license by the local police department.⁶¹ In Boston, this process includes an initial application, an in-person police interview, photograph and fingerprinting, criminal and mental health background checks, and a shooting test at the police range.⁶² In all, this process can take more than six months to complete⁶³ and costs hundreds of dollars, not to mention the toll on the applicant's personal time. At the end of this cumbersome and costly process, the applicant is not assured of being rewarded with permission to obtain a firearm—and even if he does receive a license, it may be limited to carrying for recreational purposes only. Residents wishing for an unrestricted license must prove to police that they have “cause” for needing such a license, such as a cognizable “fear [of] injury to yourself or your property.”⁶⁴ For many citizens, a firearm for self-defense is out of reach due to the prohibitive cost, time requirements, or lack of an acceptable “cause” in the eyes of local law enforcement.

Boston is not alone in mandating onerous firearms licensing requirements. Liberal-leaning states and local governments have intentionally made legal firearm ownership incredibly difficult and expensive for citizens for the sole purpose of limiting the number of guns in the hands of citizens. Their scheme is working, but not always exactly in the way they intended. For example, in 2014, *The Washington Times* looked at racial disparities behind Illinois' concealed carry permits. Not surprisingly, 90 percent of license-holders, who, at the time, had to spend more than \$650 in fees and required time-intensive training, were white.⁶⁵ Another contributing factor to this disparity

noted by *The Times* is the requirement that the license applicant must pass a shooting test, but the city of Chicago had no shooting ranges and prohibits carrying unlicensed firearms on public transportation.⁶⁶ One can only imagine the outcry if similar restrictions were applied to, say, voter identification.

The District of Columbia, while perhaps not as averse to granting carry permits as certain other jurisdictions like New York City, Maryland, or most cities and counties in California, does not make it easy for its citizens to comply with the conditions for obtaining a permit, even after having its hand slapped rather hard by the Supreme Court in the 2008 *Heller* decision.

For example, the District requires gun-related businesses be located at least 300 feet away from certain structures such as schools, libraries, and specified DC landmarks.⁶⁷ In 2011, the District's *only* licensed dealer was unable to find new retail space after losing his lease, and the city was for a period of time effectively without a way for any citizen to legally transfer a pistol into his or her possession. This prompted yet another lawsuit by Alan Gura, the lead attorney representing Dick Heller in the 2008 case bearing his name, which prompted city officials into taking action to avoid another loss in court.⁶⁸ The District of Columbia government has been sued multiple times since *Heller* over its regulatory schemes designed to chill firearms ownership in the nation's capital. These officials, like others in similarly anti-firearm cities across the country, plainly are thumbing their noses at the Supreme Court and the Bill of Rights.

And the game continues.

The lessons from Washington, DC, and Illinois demonstrate the danger posed to Second Amendment rights by intentionally restrictive permitting and licensing schemes, especially when, as was seen during the 2020 coronavirus pandemic, it becomes significantly more difficult for citizens to travel to and access government offices.⁶⁹ When it comes to circumventing *Heller*, liberal politicians appear to have unlimited imagination for making legal possession of firearms difficult if not impossible. Yet, even so-called light-touch regulations of firearms, such as the permitting process in Mecklenburg County, can create cumbersome problems for a process that should, to accord with constitutional and natural rights, be frictionless. In addition to the cost-and-time-limiting nature of these regulations, each one creates a potential point of exploitation to stop gun rights dead in their tracks, at the whim of local elected and appointed officials.

In extreme cases, such as in the District of Columbia, prohibiting gun dealers from opening creates a *de facto* ban on firearms since they cannot otherwise be legally purchased or transferred.⁷⁰ Tools, such as "good cause" requirements for licenses or requiring that permits be approved by local sheriffs, can be used as mechanisms to arbitrarily deny citizens their Second Amendment rights, often with a disparate impact

on poor and minority communities, reinforcing the racist origins of many gun-control laws and policies.⁷¹

Only by limiting these points of vulnerability and regulatory chokepoints, including those that are seemingly benign or were passed in “good faith,” can citizens protect their Second Amendment rights from encroachment.

Mass Shootings and the “Good-Guy-with-a-Gun” Scenario

On April 20, 1999, two high school seniors at Columbine High School in Littleton, Colorado, methodically murdered 12 students and one teacher during a rampage that included guns and (failed) pipe bombs. Although the shooting was neither America’s first nor its deadliest mass shooting, the massacre immediately took on special significance, leading to sweeping political and cultural changes.

In the 15 years prior to the Columbine tragedy, there were 25 mass shootings,⁷² including five at schools.⁷³ Nevertheless, Columbine stood out among incidents of this nature, and is regarded as the start of America’s “mass shooting era.”⁷⁴ Factually, it was the deadliest school shooting up to that time. The shooting and its aftermath also unfolded live on television, producing harrowing images as scared school children ran from the school with their arms above their heads, or watching the “boy in the window”⁷⁵ desperately escape the building through the second story window.

The emotional toll the Columbine shooting exacted on a nation of helpless bystanders all but ensured immediate and swift action, especially with the Clinton Administration already openly hostile toward Second Amendment rights. The now-ubiquitous term “common sense gun control” was placed front-and-center in the year following the massacre, serving as a rallying cry for post-Columbine gun-control efforts. In addition to calls for child safety lock requirements for handguns and an import ban on high-capacity magazines, the Columbine killers’ use of firearms obtained through gun show vendors (albeit through third parties in illegal transfers⁷⁶) also put gun shows under the regulatory microscope.

Democrats advocated for a closure of what they inaccurately but cleverly called the “gun show loophole.”⁷⁷ These proposals, strongly supported by Democrats in both chambers, would have required mandatory background checks for all firearms transfers taking place at gun shows, coupled with a 72-hour waiting period. Other gun-show-related proposals included taxes on gun show promoters, of which the Cato Institute warned, “[I]n this case, the power to tax really will be the power to destroy.”⁷⁸

Ultimately, thanks primarily to House Republicans and pressure from the National Rifle Association and other Second Amendment organizations aggressively opposing the Clinton Administration's full-court press for sweeping gun control, the resulting legislation was much more limited in scope.

There was, however, an unintended consequence to the win by Republicans in successfully pushing back against the Clinton Administration's post-Columbine gun-control agenda. The inability to enact significant federal gun control pushed this battle to the states, leading to a new era of state-level gun control (which continues to this day), in which (as noted above) federal courts have been disappointingly reluctant to intervene. It is estimated that between 1991 and 2016, state gun laws increased by 57 percent, concentrated mostly in liberal or so-called blue states and municipalities.⁷⁹ The result from decades of state action has been a patchwork of wildly differing gun laws regarding possession and carry, making inter-state travel legally treacherous for hunters and other gun owners.

ERPOs. Most recently, one controversial tool pushed heavily at the state level—often in response to mass shootings—are “red-flag” laws, also known also as extreme risk protection orders (ERPOs) or “gun violence restraining orders.” While the specifics of such laws vary on a state-by-state basis, they generally allow law enforcement officers, and in many cases, family members or other acquaintances of a firearms owner, to petition courts to deem the gun owner a “risk” to himself or others. These laws then permit the police to forcibly disarm the “at-risk” gun owner for a period of time, usually ranging from six months to five years, depending on the state.

There are certain elements of ERPOs that make them a popular anti-gun violence tool, even among some pro-Second Amendment organizations. However, many of these same elements also serve as reasons why great care must be taken in their drafting, enactment, and execution. Far too often, such care is not taken, creating significant constitutional problems.

Among the beneficial aspects of ERPOs is the personal nature of the originating complaint, which theoretically comes from concerned individuals with close ties to the accused. This can often ensure earlier legal and mental health intervention than with current methods, which typically require that a person has already reached a mental health crisis or committed a serious criminal offense before he or she can be disarmed. Involuntary civil commitments to mental health inpatient treatment facilities, for example, require intensive evaluations by medical or legal professionals. Moreover, individuals may not be actively seeking treatment when risk factors for violence first appear.

Additionally, ERPOs can be executed more quickly than civil commitments since they are often written in ways that create exceptions to normal due process standards due to

the time-sensitive nature of potentially armed-and-dangerous individuals. The result can be an “act first, ask questions later” intervention process. It is in this respect that H. Ross Perot’s cautionary “the devil is in the details” must be kept foremost in mind. Additionally, in a well-crafted red-flag law, individuals should theoretically avoid the serious lifelong consequences of a civil commitment or felony criminal conviction.

The speed at which ERPOs can be executed, and their potential for preventing violent episodes by unstable individuals who might not yet have done something to place them “in the system” or on law enforcement’s radar, certainly has merit as a potential solution to many different types of gun violence. In theory, their targeted reach and temporary timelines make ERPOs preferable to sweeping statutory and regulatory bans written with little thought given to their intended (and often, unintended) consequences on gun owners who pose no public risk, such as New York’s egregiously ill-conceived Secure Ammunition and Firearms Enforcement Act (SAFE Act).

New York’s SAFE Act. Less than two years after New York’s SAFE Act was enacted, the database of individuals it had designated as too dangerous to possess firearms due to “mental health” issues had ballooned to an astounding 34,500 citizens.⁸⁰ This law, as with similarly crafted overly broad state and federal regulations, earned criticism from organizations ranging from the American Civil Liberties Union to the American Psychiatric Association for over-simplifying a highly complex process of clinically determining violent individuals and likely discouraging people from seeking professional mental health services by jeopardizing their Second Amendment rights.⁸¹ In this regard, temporary, targeted ERPOs made possible through red-flag laws would be preferable, as their limited reach minimizes the potential for both abuse and potentially tragic unintended consequences often accompanying broad regulatory action.

Red-flag laws rushed through as a knee-jerk response to mass shootings by careless or agenda-driven government officials or legislatures, on the other hand, are unlikely to be carefully crafted or narrowly tailored, and consequently fail to meet constitutional due process standards.⁸² Critics of these laws have rightfully pointed out the inherent potential for abuse and misuse lurking within them if they are not precisely worded with absolute caution as to their potential impact on otherwise peaceful and law-abiding citizens.

Unfortunately, in a number of instances, such emergency laws have been hurriedly enacted even in the face of *existing* legal procedures that allow for the same result but *with* constitutionally required equal protection and due process protections.⁸³ Poorly written and abusive ERPOs erode public trust in their efficacy, and in localities considering these measures, citizens may pressure officials to reject a potentially

effective tool at preventing gun violence because it is seen as another Trojan horse for more invasive gun-control measures.

Another problem in jurisdictions where ERPOs have been enacted is that they tend to be overused or rubber-stamped by issuing judges. In Florida, for example, which passed a red-flag law following the 2018 Marjory Stoneman Douglas High School mass shooting in Parkland, that law has already been used thousands of times, with judges granting 99 percent of the requested orders.⁸⁴

Mass shootings have had a “chilling” effect on even modest pro-gun reforms. While perhaps understandable, this is nonetheless concerning. One example is the very narrow Hearing Protection Act. Following the Republican takeover of the House, Senate, and White House in the 2016 election, there was hope by Second Amendment advocates that much-needed, practical reforms were on the horizon. The Hearing Protection Act, which simply would have removed firearm noise suppressors from the National Firearms Act, thereby making them easier to obtain and more affordable, was a major goal for conservatives. The bill, sponsored by Representative Jeff Duncan (R-SC), was introduced in the House on January 9, 2017, but any momentum to pass that bill was halted following the Las Vegas shooting in October of that year. Democrats regained a majority in the House the following year, and the window for any federal legislation protecting even the most modest exercise of Second Amendment rights all but closed.

The standard response to mass shootings by the mainstream media and liberal lawmakers is pushing gun control as the cure-all to such tragedies. This media agenda-setting on gun control distorts reality by falsely representing it as popular “public” opinion. As such, media bias in favor of gun control remains a significant factor behind the reluctance of state and federal legislators to recognize the importance of law-abiding armed citizens as a meaningful way to defend against these tragic events.

Good-Guy-with-a-Gun Reality. Stories of the “good guy with a gun” stopping a mass shooting—or preventing one from even beginning—are far more reality than myth. *National Review* notes that from 2014 to 2018, there were *at least* 19 cases in which mass shooters were confronted by citizens, either slowing or stopping the rampage.⁸⁵ The White Settlement, Texas, church shooting in December 2019, in which an armed congregant saved countless lives by quickly ending the threat of a would-be mass shooter, is one of the most poignant examples of this premise in action.⁸⁶ Even courageous unarmed citizens can save lives, though in doing so, they often put themselves at greater risk than had they been armed.⁸⁷

This points us to a lesson from Columbine, confirmed (though not always followed) through years of subsequent similar incidents. The length of time a mass shooting event is permitted to continue depends almost entirely on how quickly the shooter is

confronted with armed resistance either by law enforcement or by citizens. In the tragic February 2018 mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, the shooter was not stopped, even though an armed police officer was present on the campus at the building in which the shooter rampaged. Seventeen students and a teacher were massacred.⁸⁸ Shortly after the Parkland incident, at Santa Fe High School near Houston, Texas, law enforcement officers engaged the shooter quickly (within four minutes) and saved lives by following their training and acting in accord therewith.⁸⁹

Even taking action without being armed can have a beneficial effect on a shooter before or after he starts shooting. This could be as simple as charging⁹⁰ or yelling at⁹¹ the attacker. As shown by the Texas church incident noted above, outcomes are even better when the shooter is confronted by armed citizens, who are equipped—thanks to the Second Amendment—to take down attackers from a relatively safe distance rather than face-to-face.

FBI studies support this. In surveying 50 active-shooter incidents⁹² from 2016 to 2017, the FBI found shooters were engaged by citizens 20 percent of the time. “They safely and successfully ended the shootings in eight of those incidents,” notes the FBI. “Their selfless actions likely saved many lives.”⁹³

The FBI study also highlights one of the central challenges presented by mass shootings. “The enhanced threat posed by active shooters and the swiftness with which active shooter incidents unfold support the importance of preparation by law enforcement officers and citizens alike,” the report concludes.⁹⁴ Although police tactics in response to mass shootings have changed significantly since Columbine, the “swift” nature of how mass shootings unfold almost always makes them impossible for police to predict or respond to with sufficient speed to prevent casualties.

The reality, as unpleasant as it may be for liberals to accept, is that citizens are left to fend for themselves in such situations, unless either: (a) police are sufficiently nearby to respond immediately; or (b) a citizen is properly armed to quickly intervene. Given the limited resources available to virtually every police department in the country, option (a) is rarely the case. Option (b), though far more practical, is directly proportional to the applicable laws restricting the exercise of citizens’ rights guaranteed by the Second Amendment. In other words, armed citizens can intervene only if applicable laws in the jurisdiction allow civilians to carry firearms outside their homes.

Active-shooter events, though on the rise in recent years, are still incredibly rare—and represent a statistically negligible percentage of the violent crime that is committed in this country. Nevertheless, the most common venue for active shooter situations is not schools or workplaces, but commercial locations.⁹⁵ This means every citizen has a

potential need for self-defense outside the home, allowing him or her to confront attackers in a manner that most improves the outcome for himself and fellow citizens. Laws that restrict the exercise of Second Amendment rights outside the home—which are always proposed after any mass shooting event—run contrary to the scope of the right to “bear” arms, to a citizen’s natural right to self-defense, and to the objective public safety data bolstering claims to such rights.

The proper approach to lawmaking based on shooting tragedies should be to allow more good guys with guns in public, not making more defenseless targets for bad guys.

A Right to Self-Defense in Conflict with Law Enforcement

A complicating factor for conservatives seeking to reclaim the natural right to self-defense is a growing conflict with law enforcement. As conservatives press for greater Second Amendment freedom, municipal elected officials and many law enforcement agencies increasingly are pushing back. A common complaint from agency heads is that more guns in the hands of the public endangers police and makes it harder for them to do their job. They also assert what they believe to be their *exclusive* duty to protect citizens—even though, legally and practically, this has proven to be categorically untrue.

This shifting dynamic, wherein law enforcement agencies are no longer necessarily a reliable ally in defending the Second Amendment for the civilian population, has put law-and-order conservatives in what can be most benignly described as an awkward position.

Law Enforcement Hostility. Scott Israel, the former Sheriff of Broward County, Florida, is a good example of law enforcement’s changing tune on the Second Amendment. The Broward County Sheriff’s Office is one of the nation’s largest law enforcement bodies,⁹⁶ which, according to Israel, makes him an authority on gun control. “I understand public safety better than gun industry lobbyists and those elected officials who help advance their agenda,” Israel pompously wrote in 2017, following a mass shooting at the Ft. Lauderdale airport. “I can say with certainty that more guns are not the answer.”⁹⁷ Israel also reiterated the primary talking point used by law enforcement in pushing back against the Second Amendment rights of citizens, that more armed citizens would “make the job of law enforcement far more difficult and divert them from the real threat.”⁹⁸

Israel's message did not change a year later when his office failed to follow up on numerous warning signs about the Parkland high school shooter *or* when one of his own deputies cowered in fear outside the school while the murderous rampage continued inside. To Israel, even in the face of such clear evidence to the contrary, guns in the hands of citizens remain a problem rather than a solution.

Israel is not alone in his hostility to the Second Amendment. His views are shared by many in law enforcement. In December 2019, Houston Police Chief Art Acevedo challenged federal lawmakers after the death of one of his officers, arguing for expanded red-flag law powers. "Whose side are you on?" chirped Acevedo. "Gun manufacturers? The gun lobby? Or the children that are getting gunned down in this country every single day?"⁹⁹

Such cheap rhetoric may not be surprising coming from keyboard activists on Twitter, but it is distressing to hear from law enforcement leaders who traditionally have been supportive of the Constitution.

In 2016, the *New York Times* noted that moves to expand gun rights by state legislatures in more than a dozen states have been strongly opposed by local law enforcement officials.¹⁰⁰ Sadly, rather than merely reflecting the opinions of two liberal police chiefs, Israel's and Acevedo's commentary reveals a much broader—though certainly not unanimous—hostility to the Second Amendment within the law enforcement community, with implications that extend beyond simply lobbying for specific gun-control policies. It is manifest in how some police departments approach gun rights and how they perceive the citizens that possess or advocate for possessing firearms.

Public and Police Relations. One disturbing trend emerging from this changing attitude is how police confront armed citizens (which, in turn, colors how citizens perceive the police). Were the Second Amendment properly recognized and understood by law enforcement leaders, armed and law-abiding citizens should have nothing to fear from police, whether carrying openly, within a vehicle, or concealed on their person. This is especially true for citizens who maintain firearms inside their homes. Sadly, this no longer is the case. Whether inside or outside the home, law-abiding gun owners are at an increased risk of confrontations with police.

In some cases, such encounters result *only* in unnecessary harassment; in others, the consequences have been deadly.

There is, for example, evidence that law enforcement agencies in Maryland use concealed carry permit databases from other states (made possible by fusion centers¹⁰¹) to target out-of-state, lawful gun owners traveling through the state. In one such incident in 2013, Florida gun owner John Filippidis was driving through

Maryland when he was inexplicably pulled over by Maryland Transportation Authority (MDTA) police. According to public accounts by Filippidis, the MDTA officer tailed his vehicle before eventually signaling him to pull over. After taking his license and registration for a check, the officer returned 10 minutes later saying Filippidis owned a firearm and demanded to know where it was located. Even though Filippidis told the officer he left it at home in Florida, he was ordered out of the vehicle, while his family was separated in the back of police cruisers. Officers ransacked his vehicle but turned up nothing. Filippidis and his family were permitted to proceed only after hours of harassment.

As cover for their harassment, the transit police gave him a warning for speeding.¹⁰²

Considering the tension of the encounter with MDTA officers, who were clearly on edge, Filippidis was lucky to have emerged unharmed. Tragically, other gun owners have not been so lucky. There have been numerous incidents over the past few years in which gun owners who had every right to possess or carry a firearm were killed by police for that circumstance alone.

Fatal Encounters. In 2015, Corey Jones was shot and killed by a Palm Beach Gardens (Florida) police officer who arrived on-scene at 3:00 a.m. to Jones' stranded vehicle. The officer was dressed in plain clothes and in an unmarked van. An audio recording of the 9-1-1 call made by Jones just prior to the officer arriving confirmed the officer never announced who he was and gave Jones no chance to comply with an order to drop the pistol he was lawfully carrying, before being shot.¹⁰³

In 2016, police were called to a Mesa, Arizona, hotel in response to a guest's report of seeing a rifle being stuck out of a hotel window. Daniel Shaver, a Texas-based pest control technician, had been showing off his *pellet* rifle to a guest in his room. When the SWAT team arrived, they ordered the room's occupants onto the floor in the hallway. As Shaver was crying and pleading for his life, SWAT ordered him to crawl towards them. At one point, Shaver's gym shorts began to fall, and he reached back to pull them up. Upon making this gesture, Officer Philip Brailsford fired five rounds at Shaver, killing him.¹⁰⁴

Also in 2016, Philando Castile and a passenger were pulled over by police in a suburb of Saint Paul, Minnesota. The police claimed they stopped the car because Castile resembled a robbery suspect. Castile, who is black, informed the officer he had a firearm which he was licensed to carry,¹⁰⁵ prompting an intense exchange as the officer told Castile *not* to reach for it. However, when both Castile and his passenger responded he was *not* reaching for it, the officer fired seven rounds at close range, killing Castile. Less than 10 seconds elapsed from the moment Castile calmly informed the officer that he had a firearm to the moment when the fatal shots were fired.¹⁰⁶

In 2018, police responded to a shots-fired call near a Chicago bar. When they arrived on scene, the bar's security guard, Jemel Roberson, who was licensed to carry a pistol, had the alleged suspect pinned to the ground at gunpoint. According to witnesses, Roberson was wearing a hat identifying him as a security guard and bystanders were yelling to police that he was not the assailant (police dispute these claims). Witnesses also stated that the officers shot Roberson before even finishing the order for him to get on the ground, killing him.¹⁰⁷

Another incident in a suburb of Phoenix, Arizona, highlights the continued problems with encounters between police and lawfully armed citizens. Late in the evening of May 21, 2020, Ryan Whitaker was fatally shot twice in the back by local police, who were responding to a minor complaint involving excessive noise and possible domestic disturbance in the apartment building where Whitaker lived with his girlfriend.¹⁰⁸ Evidence later established that Whitaker had a handgun in his hand when he answered the door because of other incidents in the building, but that he did not point it at the police and was in the process of obeying an officer's command to kneel and put the gun down when he was fatally shot.¹⁰⁹ Although the police knocked and announced themselves, the loud music in his apartment apparently and tragically prevented Whitaker from hearing the announcement.¹¹⁰

It is understandable and completely reasonable that the presence of a firearm in an encounter between police and citizens increases tension and causes police to have a heightened sense of danger. After all, it is often difficult for police to discern whether the armed person they are confronting is a law-abiding citizen who is permitted to carry a firearm or a dangerous individual intent on harming someone. Yet in a society that legally allows citizens to carry firearms, it is reasonable to expect that a citizen may be armed in such encounters. The presence of a firearm must not be seen, by default, as a provocation. As we see clearly even in the few examples cited above, however, this is not the attitude many police departments and individual officers are taking with respect to lawful gun owners.

The cases illustrate scenarios that should concern, if not frighten, every lawful gun owner, as each one presents a situation in which gun owners could find themselves—stranded on the side of the road late at night, spotted carrying in a hotel, pulled over in a routine traffic stop, or open carrying in a vehicle—that results in a deadly encounter with a police officer when they were committing no unlawful act, or at least no act that would justify being shot by an officer.

No-Knock Warrants. Police tactics such as “no-knock” warrants also present special hazards for lawful gun owners. A no-knock warrant is a type of warranted search in which police, often armed SWAT teams, breach a residence without first announcing themselves as police. The justification for such searches is to protect evidence or when

a situation is potentially dangerous based on evidence acquired beforehand by the police. Execution of a no-knock warrant is inherently dangerous, especially when such warrants are obtained from a judge based on faulty information.

On the afternoon of January 28, 2019, 59-year-old Navy veteran Dennis Tuttle and his wife were suddenly shaken by the sound of their front door being smashed in. Houston police, who were executing a no-knock raid based on an “anonymous” tip (later determined to have been falsified by one of the officers) about drug dealing, shot Tuttle’s dog, which charged at officers as they entered.¹¹¹ According to police accounts, Tuttle fired on the officers, prompting a firefight that left both Tuttle and his wife dead, and five officers injured.¹¹² It is unclear if Tuttle fired first, but even if so, it is likely that Tuttle rightfully assumed his house was being unlawfully broken into, since police were at the wrong house¹¹³ and failed to identify themselves.

This is exactly what happened just over one year later in March 2020, when police executed a no-knock warrant at an apartment in Louisville, Kentucky, erroneously linked by police to drug dealing. As police breached the apartment, Kenneth Walker fired a single shot at the perceived intruders. In the return fire, police killed Walker’s girlfriend, Louisville EMT Breonna Taylor, striking her eight times after she had gotten out of bed due to the commotion.¹¹⁴ Walker was arrested for attempted murder, though the charges subsequently were dropped.¹¹⁵

In both these cases, the no-knock raids were conducted on residences that were not connected to the purported illegal drug activity. In Tuttle’s case, prosecutors later determined that Houston Police Department Narcotics Officer Gerald Goines intentionally lied about the evidence presented in the search warrant application.¹¹⁶ In the incident involving Walker and Taylor, the targeted suspect did not live at the address that was raided, and actually was *in* police custody by the time the warrant was served.¹¹⁷ These details are important insofar as the potential for tragedy is increased when “no-knock” warrants are executed.¹¹⁸ The reasonable reaction of a lawfully armed homeowner¹¹⁹ to such actions makes a tragic outcome highly likely not only for the homeowner, but often for the police officers as well—placing a premium on sound policing not only in executing such warrants, but in applying for them as well; judges, too, perhaps need to be more careful in approving such warrants.

Escalation of encounters with police will likely increase for gun owners as police are being used more often as the enforcers for gun-control policies. Whether red-flag laws or sweeping gun-control packages like that passed early in 2020 by Virginia’s Democrat-led General Assembly and governor,¹²⁰ police will be forced into increasingly contentious situations with gun owners. Support for gun-control policies by police leadership only worsens the situation, further eroding trust between law-abiding citizens and an ally they once could depend on for defending the Constitution.

No matter how careful law enforcement officials may be in crafting their disapproval of firearms in the hands of civilians as a matter of public safety or crime prevention (so as to avoid the flashpoint of directly criticizing the Second Amendment), these nuanced strictures amount to little more than a distinction without a difference in regard to the natural rights of citizens for self-defense. The Second Amendment is the embodiment of a citizen's ultimate right to defend himself or herself in the one way that is most effective when facing the danger of grievous bodily harm or death—with a firearm.

Attempts to limit the ability of law-abiding citizens to adequately arm themselves represent more than a mild annoyance to an individual gun owner's preference for firearms. Such efforts and policies by government officials and law enforcement leaders constitute an assault on the Second Amendment. The discomfort law enforcement officials and law-and-order conservatives may have with framing it so directly is merely a reflection of changing priorities for both groups. Chief Acevedo may claim Republicans "can't be the party of law and order and not listen to your police chiefs,"¹²¹ but that is only true if police chiefs themselves are supporting the ultimate order of law—the Constitution—in both letter and spirit.

Many citizens and law enforcement officials (mostly elected sheriffs, not appointed police chiefs¹²²) have pushed back against misguided gun-control schemes proposed by local and state leaders, most recently in Virginia, where many sheriff's departments said they would *not* enforce gun-control laws that had recently been proposed if those laws passed.¹²³ The larger trend among law enforcement officials, especially in major metropolitan areas, however, is in the opposite direction, with growing support for restrictions on citizens' right to possess and carry firearms.

To any reasonable observer, these situations—which will likely increase in the years ahead absent a fundamental shift in how political and social policies are developed, debated, and executed in America—illustrate as convincingly as any that it is the individual business owner, homeowner, or citizen out for a casual walk down the street who must be able to defend herself and her property, and not rely on the presence of police or the goodwill of elected leaders to do so. This truism comes, of course, just as "blue state" governors and "blue city" mayors increase their edicts designed to limit the ability of, or outright prohibit, citizens from defending themselves. It is a recipe for serious and uncomfortable confrontation, but one that must be engaged by conservatives if the Second Amendment is to retain any value beyond the parchment on which it was written.

Defending Second Amendment rights necessarily places citizens at least to some degree at odds with, and critical of, police leaders. The challenge for law-and-order conservatives will be picking sides in a cultural battle that increasingly pits those who support robust gun rights and the right to self-defense directly against police.

This is a confrontation many conservatives may prefer to avoid. But as widespread violence erupted and still continues in cities and communities across the country following the Memorial Day 2020 death of George Floyd at the hands of Minneapolis police officers, it has become clear even to the most diehard gun-control advocate that law enforcement departments as currently trained, configured, and equipped, simply are not able to—or, in many instances, are ordered by their civilian leaders not to—protect lives and property when confronted by protests that, in this day and age, often turn violent.

It is axiomatic that calls to “Defund the Police,” if carried through even partially, increase the need for individual citizens to be able to defend themselves, their businesses, and their families, as law enforcement resources and personnel become more limited. This reality, however, is *not* likely to persuade “blue” state governors, mayors, or judges to adopt a more favorable position regarding the Second Amendment and of the right to individual carry and possession it guarantees.

To Survive, Gun Rights Demand Better Defense from Conservatives

Civil unrest and calls for increased gun control (real or perceived) historically prompt increases in gun purchases, and 2020 was certainly no exception to that rule. Even prior to the riots that rocked cities across the country beginning in late spring and early summer, pre-purchase FBI background checks were already surging. By late 2020, nearly 18 million firearms had been purchased, far eclipsing the previous record of 15.7 million in 2016 (also a hotly contested election year).¹²⁴ The trend was set early in the year, with the onset of the coronavirus pandemic. In March 2020, for example, the FBI processed 3.7 million background checks: 210,000 on March 21, 2020, alone. This was a single-day record within a month in which more background checks were processed than at any other time in the 20-year history of the background check system.¹²⁵

Between the COVID-19 restrictions throughout 2020, the violent unrest in mid-year, and the Biden–Harris victory in November, the fact that the year saw a record number of gun sales comes as no surprise. What may surprise, however, is the noted increase in non-traditional purchasers, with black men and women buying guns in significantly higher numbers than in previous years and first-time buyers surging to nearly 40 percent of those sales (some 7 million).¹²⁶

March 2020 was the start of the COVID-19 virus outbreak, prompting both fears of social collapse, as well as a limited time to acquire new firearms before liberal governors and city officials started taking steps to limit or shut down sales.¹²⁷ While

the surge in the sale of firearms and ammunition slowed a bit after initial fears of COVID-19 waned, they picked up once more at the onset of rioting and looting following the death of George Floyd.¹²⁸

The intersection of these two trends underscores the manifest need of not only a strong defense of the Second Amendment, but a complete one as well. Today, gun rights are debated almost exclusively within the framework of *need*. Think of the common adage, “When seconds count, police are just minutes away.” This is a perfectly acceptable and accurate justification for individual gun ownership. The basic need for firearms in situations that require defense—home, work, self—is clearly reflected in the Second Amendment.

The “Need” Argument. However, a defense of the Second Amendment based on “need” alone is quick to be exploited by liberal lawmakers with decades of practice at undermining gun rights. This is done not by addressing the existential need itself (e.g., hunting, personal self-defense, defense of private property, etc.), but by focusing instead on the physical aspects of the firearm hardware, and even the firearm itself, in attacking the particularized circumstances of said “needs.” Common examples of this style of attack include questioning why someone might “need” an AR-15 rifle or high-capacity magazines for self-defense, when in the critic’s point of view, a revolver or shotgun would be adequate. Far more success has come from this approach to gun control, with even Republicans complicit at times, which slowly and subtly chip away at gun rights without the intense public backlash that follow proposals for more sweeping bans.

In pursuing this line of defense, some conservatives seem to have missed the forest for the trees. By pressing for poorly drafted red-flag laws, limitations on concealed carry or on high-capacity magazines, or the numerous other gun-control measures liberals have been pushing for decades, the Left has succeeded in forcing conservatives to rush from one brush fire to the next trying to put them out. This becomes a game of attrition, with liberals hoping conservatives will eventually tire and succumb, even if only partially, in face of the time and effort required to defend against such attacks. This is especially the situation with the mainstream media, the academy, the entertainment industry, and many major business and financial entities serving as dependable and effective allies for the gun-control lobby.

Unfortunately, time has shown that this strategy works, especially when supplemented, as it increasingly has been, by the financial resources of such well-known gun-control advocates as former New York City Mayor Michael Bloomberg and George Soros, among many others.

Republicans quickly caved on the Hearing Protection Act after public backlash following the Las Vegas mass shooting, and this in spite of the bill’s undeniable safety

benefits for gun owners. President Trump, who previously expressed strong statements on the Second Amendment,¹²⁹ also fell victim to the public sentiment scare. In response to the Las Vegas shooting, he took the dangerous step of using regulatory power (as opposed to congressional legislative action) to ban bump stocks, citing a lack of “need” for such hardware. He also expressed similar sentiments on citizen possession of sound suppressors. If Republicans are so easily susceptible to manipulations of “need-based” defenses of the Second Amendment, one can only imagine the effect on citizens who are less educated on firearms.

In fact, for years now, Republicans have remained largely on defense when it comes to gun rights at the federal level, often relying on what can best be characterized as a “need-based” defense of the Second Amendment, premised on the notion that gun rights come *from* the Second Amendment. *The more correct and important principle is that a gun is an instrument in the hands of an American that protects fundamental, pre-existing, and God-given rights as enumerated in our Constitution.* Looking at the Second Amendment through a needs-based lens provides little value for its lasting place in our society, given that critics may argue even rudimentary needs for the Second Amendment, such as hunting or target practice, can be done with a bow, spear, or other primitive device. Thus, an exclusively needs-based defense of the Second Amendment provides only frangible cover from being whittled away, at the expense of ignoring much stronger philosophical and historical grounds for the role the Founders intended it to play in American culture. The distinction between these defensive strategies is critical from both a policy and practical perspective.

The idea that gun rights emanate *from* the Second Amendment implies that the right to keep and bear arms is a product of man, or more specifically, government. If government bestows these rights upon citizens, it can, of course, also retract or limit them whenever it wishes to interpret, or reinterpret, the needs of citizens for self-defense. The far better, and correct, defense of the right to keep and bear arms is treating it as what it is: a fundamental right that enables individuals to meaningfully act in defense of life, liberty, and property. It does not “come from” the government, and our scheme of ordered liberty prohibits the government from infringing on those rights. Calendar year 2020 has illustrated vividly the importance of maintaining this perspective.

In the case of the COVID-19 outbreak, stores that sold firearms and ammunition were ordered closed after being deemed “non-essential” by liberal mayors and governors who enjoyed statutory powers to declare “emergencies” with little or no specificity. The decision severely impacted the full exercise of Second Amendment rights of citizens by preventing the purchase of ammo and firearms, all because Second Amendment rights were not seen as “essential” by these liberal officials. This is an absurdity: By enshrining the protection of this right into the Constitution itself, our Founders were,

quite literally, acknowledging it is an essential and fundamental right *not* subject to government infringement, other than to the limited extent necessary to ensure ordered liberty. To a public that perceives the Second Amendment only as a malleable and limited right subject to being interpreted and controlled by government based on its assessment of the “needs” of the public compared to the “needs” of the individual, this designation might seem reasonable, even if only during a pandemic or a riot. It is, of course, nothing of the sort.

A *natural-rights-based* understanding of, or approach to, the Second Amendment could never allow for such arbitrary and fluid restrictions, since one’s natural rights to self-defense are not dependent on a crisis or other “emergency” circumstances, or on how local leaders choose to interpret the Amendment’s text at any particular time or how they balance the “needs” of the public versus those of the individual.

Conservatives must start thinking of, and advocating for, the Second Amendment as an irrevocable natural right, which cannot be pared down as the perceived need (or threat) of firearms and firearm hardware change through the years or circumstances. The basic *right* for self-defense exists *in toto* before, during, and after a mass shooting, national pandemic, or violent riot. In the same manner, the fundamental constitutional right to keep and bear arms does not ebb and flow based on a balancing of *needs* at a particular time or within a particular circumstance, or when and what government decides are important based on particular temporal or policy interests.¹³⁰

If the Constitution protects an individual right to possess sound suppressors for safe self-defense in one’s home—and there is good reason to believe it does—then that right exists whether the President, Congress, or a majority of the general public decides that citizens *need* such equipment. The decision by a citizen to lawfully arm himself with a firearm, whether a shotgun, pistol, or AR-15, is a personal choice, dependent only on his or her personal desires. It is not a decision subject to the approval of the local sheriff or police department deciding what type of firearm the citizen does or does not *need*.

This is how the Second Amendment should and must be defended. It reflects an individual’s fundamental *right*, not another person’s or a government’s interpretation of that individual’s *need*.

This call to action may seem esoteric at first blush, but Americans will respond as the message becomes stronger and more ubiquitous among conservatives. Although certainly less so today, Americans are still by and large inherently drawn to the concept of self-sufficiency and self-preservation. It is, after all, a right of each American, given to him by God and nature, not *by* government. The only role for the government is to *protect* that right.

2020: A Reckoning for Self-Preservation

The intersection of the Second Amendment, gun control, policing, and the natural right to self-defense reached a climax in the first half of 2020. Perhaps in no other period in modern history were so many elements relating to the philosophical underpinnings of the Second Amendment sandwiched together. The turmoil began with the COVID-19 pandemic, which saw Democrat leaders at the local and state level effectively declaring gun rights to be “non-essential.” This upheaval was closely followed by the civil unrest in the months of May and June in response to the killing of George Floyd by police, in which sections of major cities were overrun by looting and rioting mobs to the point at which law enforcement authorities were unable—or, in some cases, unwilling—to safely control the crowds and protect private property. Finally, came the bizarre, but serious, calls to “defund the police.”

For America in 2020, the concept of self-defense was no longer an academic debate, but an issue unfolding for citizens across the country in real time.¹³¹

The confluence of these three events—a pandemic, major urban rioting, and broad calls to defund law enforcement—provides a rare juxtaposition of a government attempting to assert total control over citizens with one in which the government seems to have lost all control. Caught in the middle of these dynamics is the safety of citizens.

At the outset of the COVID-19 pandemic, liberal cities and states forced the closure of gun stores in the name of “public safety,” deeming gun rights as non-essential and declaring the safety of citizens would be in the hands of police. The riots, however, proved just how flimsy an argument this truly was, as police quickly lost the ability to control violent mobs, resulting in the destruction of many businesses, and ironically, the headquarters for the 3rd Minneapolis precinct as well. If police could not even protect their own building, how then can they ensure the safety of everybody, or even *anybody*, else? The answer is simple: They cannot, a reality confirmed only days later when gangs were permitted by municipal authorities to take control of several city blocks of Seattle, Washington, including its East Precinct police headquarters.

During the 2020 riots in New York, resident Scott Kaufman reported that he called police about a “dangerous standoff” between his neighbor and protestors. “Sir, the city is under attack,” he says the police told him. “Do what you have to do.”¹³² The response shocked Kaufman, who had tweeted his support for gun control a mere two years beforehand.¹³³ For Kaufman, like many Americans in 2020, the true reality of one’s sense of safety and self-defense exposed the fallacy of his previous faith that, when needed, the police would be there for them. “I was surprised by the police response,” said Kaufman.¹³⁴ Supporters of the Second Amendment would say such a response was entirely predictable.

These events demonstrated the absurdity of needs-based justifications—as well for limited Second Amendment rights. In some areas a shotgun or rifle, the standard firearms even some liberals agree are protected (to some extent, at least) by the Second Amendment, may have been satisfactory for personal protection. In others, only semi-automatic rifles, such as the AR-15, could provide sufficient firepower to repel a mob intent on violence and destruction. If citizens were fortunate to live or own a business in a locale with relatively few gun-control measures in place, the decision about whether to take and bear arms and which firearm would be most appropriate for the circumstances at hand would be simply a matter of personal choice, as it should be.

In states and cities governed according to oppressive gun-control measures, on the other hand, that decision would already have been made *for* individual citizens and business owners based on the *government's* interpretation of “need.” As expected, the government’s determination of need was woefully inadequate for the situations in which the citizens, the business owners, and in the case of officers belonging to the 3rd Precinct in Minneapolis, found themselves. They all were left to the mercy of the mobs, their right to self-defense and self-preservation cut off at the knees.

Herein lies the fatal conceit of gun-control proponents and the premise that the Second Amendment is constructed on a needs-based concept of self-defense. It is logically unsound to assume the government—any government—can reasonably or realistically determine the appropriate level of need for individualized public safety. It is also a fundamentally faulty premise that it is the government’s place *ab initio* to make such decisions through *its* interpretation of the Second Amendment and assessment of need. Instead, taking ownership for one’s safety in the best manner one can is the exclusive, natural right of citizens.

Conclusion

Virtually every piece of gun-control legislation designed to limit or restrict access to firearms and their necessary accessories rests on the government’s false assertion of control over this natural right. Conservatives who focus exclusively on the *needs* aspect of the Second Amendment feed into this misplaced ownership of self-defense. Conservatives do this when they ask permission from the government to exercise gun rights, rather than demanding them as natural rights that government should touch only in the most narrow and necessary of circumstances.

Conservatives must remember that the Constitution of the United States and the rights reflected therein are rights bestowed on citizens not by the grace of government, but by the hand of God and the essence of nature. Therefore, the maximum expression of these rights is the standard from which these rights start, and where conservatives

must aim to return. The responsibility is not on citizens to prove they need or deserve these rights and freedoms, which, by default, are theirs to enjoy. Rather, the onus is—and should remain—on government to prove, under the strictest of scrutiny, that any curtailment is for the overall public good *without* any undue impact on the ability of individual citizens to preserve their life, liberty, and property as they see fit.

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