

Analyzing Pittsburgh Gun Regulation: Policy Recommendations to Prevent Urban Gun Violence



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Executive Summary

On October 27, 2018, Robert D. Bowers, armed with an AR-15-style assault rifle and multiple handguns, killed 11 worshippers in the Tree of Life Congregation in the Pittsburgh neighborhood of Squirrel Hill. He also wounded four police officers and two other individuals.¹ Following this atrocious act of hatred, the community of Pittsburgh gathered to mourn the victims and support their neighbors. The citizens of Pittsburgh also demanded political action, prompting the City Council to propose three gun control ordinances in December 2018.

These three ordinances, passed on April 2, 2019, most significantly prohibit the use within city limits of specified assault weapons, broadly defined as fully automatic, semi-automatic, or able to accept large capacity magazines holding more than 10 rounds of ammunition. The ordinances also ban the use of such large capacity magazines and institute a “Red Flag Law” to prohibit the possession or purchase of firearms by those at risk of danger to themselves or others. A pre-existing Pennsylvania preemption statute, however, explicitly forbids municipal regulation of the ownership, possession, transfer, or transportation of firearms, ammunition, or ammunition components. While the City Council understood that this statute prevented them from passing virtually any form of gun control regulations, it attempted to craft the language of these laws to avoid violating the preemption clause.

Nonetheless, District Attorney Stephen Zappala, the NRA, and others have voiced that Pittsburgh’s gun policies clearly violate the preemption clause and are thus unconstitutional. Accordingly, on October 29, 2019, Judge Joseph M. James of Allegheny County struck down all three ordinances for violating state preemption.

The largest factor inhibiting the success of Pittsburgh’s ordinances is Pennsylvania’s preemption statute. Pennsylvania has a particularly strict preemption clause, where Pittsburgh’s Home Rule Charter only allows for the regulation of discharge of firearms. Despite the City Council’s creative attempt to choose the word “use” to circumvent preemption violations, these ordinances still overstep the City Council’s authority. There is no legal precedent for overturning a preemption statute, as a municipality’s authority is inherently determined by the state. Since the City Council’s definition of “use” limits not just the discharge but also the carrying of assault weapons in public places, it is unlikely that Pittsburgh would succeed on an appeal of this case.

¹ Campbell Robertson, Christopher Mele, and Sabrina Tavernise, “11 Killed in Synagogue Massacre; Suspect Charged With 29 Counts,” *The New York Times* (The New York Times, October 27, 2018), <https://www.nytimes.com/2018/10/27/us/active-shooter-pittsburgh-synagogue-shooting.html>

The senior Ethics, History, and Public Policy Capstone required us to incorporate our knowledge from the past three years of coursework to analyze how federal and local authorities work to regulate guns from a historical, ethical, and cultural perspective. We narrowed our topic to focus on whether the three Pittsburgh ordinances are effective, legal, and morally defensible.

Then, we investigated the historical context of gun control in the United States, analyzing the factors that led to various federal gun control laws. We found that gun control and gun rights have been entwined since the founding of the nation, that gun control policies have often maintained or created inequalities, and that gun control is typically enacted as a direct response to an event of gun violence. We also drew inspiration from the firearms taxation created by the 1934 National Firearms Act and the waiting periods implemented by the Brady Handgun Violence Prevention Act when proposing our recommendations.

Next, we studied the legal and ethical dimensions of the Second Amendment, why people choose to own guns, and the motivations behind Pittsburgh's policies. To conduct our ethical analysis, we suggested using a harm reduction framework to address the gun violence crisis like an epidemic. Using strategies from public health, we believe it is crucial to learn from the root causes of gun violence and address them, instead of legislating in ways that might be more reactionary and less effective. In terms of legal considerations, an analysis of the language of the Second Amendment shows that it guarantees the rights of individuals to keep and bear arms so and we sought to balance this with the collective right it confers to freedom from state tyranny. Similar to other rights outlined in the Bill of Rights, we believe that the government can restrict some Second Amendment privileges to safeguard the fundamental right to life. Therefore, limited gun legislation ensuring the safety of the people is constitutional, as long as it does not conflict with preemption and state law. With this in mind, we delved into the arguments on either side of the "gun debate" between gun rights activists and gun control activists. We attempted to determine both their philosophical validity and alignment with the principles outlined in the Constitution.

We also studied other state policies and policies in other countries, drawing insight from the different types of regulation implemented around the world. While these other governments had different goals than Pittsburgh, the programs discussed are instructive in providing examples of the types of gun regulation that work in other areas.

With this background, we evaluated the effectiveness of the Pittsburgh laws as well as their impact on the most significant areas of violence. It is difficult to predict the effectiveness of the law, but based on previous gun control policy we can debate its potential effectiveness. We emphasized the importance of understanding the demographic aspects of gun violence and examined if the Pittsburgh ordinances would decrease the number of suicides, domestic violence, and homicides involving firearms. We concluded that the Red Flag Law is an effective measure,

based on examples of laws implemented across the nation, but the ban of the use of assault weapons and large capacity magazines in public places is ineffective in combating domestic violence, suicide, or violence in high risk populations.

We recommend that Pittsburgh focuses on three main areas to improve safety and decrease gun violence in this city and the country that do not violate the state preemption clause. Since mass shootings are incredibly rare, we need to focus on comprehensive, rather than reactionary, gun policy. First and foremost, Pittsburgh should advocate for increased *effective* gun regulation informed by a harm reduction and public health framework on the state and national level. This includes advocating for Extreme Risk Protection Orders, public health funding to study the effects of gun violence, and universal background checks. Secondly, City Council and local leadership must focus on methods to disincentivize people from acquiring guns for the purpose of harming others. This can be accomplished on the state and federal level by using taxes and longer waiting periods. Lastly, City Council must tackle the societal factors that influence people to commit gun violence. By reducing economic inequalities and increasing access to educational opportunities, we can provide more stability and prevent people from resorting to violence. This also includes support resources such as funding at-risk youth programs, counseling and mental health services, and domestic violence shelters and legal aid.

Introduction

Just over a year ago and less than a mile from Carnegie Mellon, Pittsburgh experienced the deadliest attack on Jewish people in the history of the United States. On that devastating day, eleven people were murdered in their place of worship by an anti-semitic shooter. The shooter was carrying guns acquired *legally*, including a semi-automatic rifle and three semi-automatic pistols. In response to this horrific event, the people of Pittsburgh called upon City Council and local leaders to pass gun control legislation. Though City Council was limited in what they could implement, they successfully passed a ban on so-called “assault weapons” and high capacity magazines in the city as well as a “Red Flag” law to temporarily remove firearms from the possession of those at risk of harming themselves or others.

The United States is one of three countries that includes gun ownership as a fundamental right in its written constitution.² Though the original purpose was to provide a means for states to form militias to defend against a tyrannical federal government, the modern day interpretation includes an individual right to own a gun for self-defense. Though this concept is enshrined in the Constitution, there have been several successful and unsuccessful attempts to curb gun violence. Surprisingly, the American public is in agreement about some basic gun regulation. 60% of Americans support stricter gun laws and 85% of Americans are concerned by the increasing amount of gun violence, with these statistics crossing party lines. Policies such as increasing the legal age to buy a gun from 18 to 21 years old and tracking gun sales through a federal database have overwhelming support from both parties. The largest disagreement is about the ban of military-style and semi-automatic weapons, with greater than 80% of Democrats supporting this idea and about 49% from Republicans.³ In particular, the new Pittsburgh laws focus on banning the use of these weapons.

Rates of gun violence in America are significantly higher than in most other developed nations. Each day 100 Americans are killed with guns.⁴ Though overall violent crime has decreased in America, gun violence is rising (39,773 deaths in 2017) and has surpassed the previous peak in 1993. This may be due to a significant increase in population, but the trends demonstrate a recent rise in gun crimes similar to levels in the 1970s. The number of gun-related homicides have decreased slightly and the number of gun-related suicides has increased substantially to 51% of all suicides. “Active shooter” situations, such as the cases of Sandy Hook and Pulse nightclub,

² Esmé E. Deprez, “Guns in America,” Bloomberg.com (Bloomberg, August 5, 2019), <https://www.bloomberg.com/quicktake/americans-and-their-guns>.

³ “Public Opinion Round Up: Guns Violence in America,” Giffords (Giffords: Courage to Fight Gun Violence, March 11, 2019), <https://giffords.org/press-release/2019/03/march-11-polling-round-up/>.

⁴ Everytown, “Gun Violence in America,” EverytownResearch.org, November 19, 2019, <https://everytownresearch.org/gun-violence-america/>

are also trending upwards, with 27 active shooter incidents in 2018.⁵ There is no single agreed upon definition of a mass shooting, but for the purposes of this report we will refer to it as an instance in which an armed person shoots four or more people. According to this definition, 373 people lost their lives in mass shootings in 2018. Though these instances are horrific events and highly publicized, they are only a small part of the gun violence problem. Mass shootings, as previously defined, account for 0.93% of all gun violence in America. About 60% of gun-related deaths are due to suicide, 37% due to homicide, and the rest were unintentional or undetermined causes.⁶

Pennsylvania has the 26th highest gun death rate of all 50 states. It places an enormous financial toll on states, costing Pennsylvania around 8.5 billion dollars annually.⁷ In Pittsburgh, the violent crime rate is 67% higher than the national average.⁸ The violent crime in the city subdivides into 55 homicides and 114 non-fatal shootings in 2018.⁹ Based on this data it is clear to see that America and more specifically, Pittsburgh, has a significant gun violence problem.

Pittsburgh is situated at the intersection of three rivers, the Monongahela, Ohio, and Allegheny, and is bordered by the Allegheny Mountains in the east. Pittsburgh was a haven for manufacturing, with several shipping routes and an abundance of natural resources, and became renowned as the steel capital of the world, producing 60% of the nation's steel. From 1870 to 1910 Pittsburgh grew at an astonishing rate, with the population increasing sixfold to almost half a million people within the city limits and over a million within Allegheny County.¹⁰ Deindustrialization coupled with depleting natural resources resulted in the shut down of almost all of Pittsburgh's steel mills. In less than a hundred years the population nearly halved to 301,048 people today.¹¹ The population is majority White (66.64 percent), with minority Black

⁵ John Gramlich, "What the Data Says about Gun Deaths in the U.S.," Pew Research Center (Pew Research Center, August 16, 2019),

<https://www.pewresearch.org/fact-tank/2019/08/16/what-the-data-says-about-gun-deaths-in-the-u-s/>

⁶ Ibid.

⁷ "The Economic Cost of Gun Violence in Pennsylvania," LawCenter.Giffords (Giffords Law Center to Prevent Gun Violence, August 3, 2018),

https://lawcenter.giffords.org/wp-content/uploads/2018/08/Giffords-Law-Center-Cost-of-Gun-Violence-in-Pennsylvania_8.3.18.pdf

⁸ "Table 6," FBI (FBI, August 29, 2019),

<https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-6>

⁹ Pittsburgh Post Gazette "As Gun Violence Wanes in Pittsburgh, Police Solve More Homicides"

¹⁰ William S. Dietrich II, "A Very Short History of Pittsburgh - Pittsburgh Quarterly Magazine," Pittsburgh Quarterly (Pittsburgh Quarterly Magazine, 2008),

<https://pittsburghquarterly.com/pq-people-opinion/pq-history/item/56-a-very-brief-history-of-pittsburgh.html>

¹¹ "U.S. Census Bureau QuickFacts: Pittsburgh City, Pennsylvania," Census Bureau QuickFacts (US Census Bureau), accessed December 12, 2019, <https://www.census.gov/quickfacts/pittsburghcitypennsylvania>

(23.63 percent) and Asian (5.62 percent) populations.¹² Pittsburgh also faces issues of widespread racial inequality due to past discriminatory policies. The median household income for black residents decreased by about 5,000 dollars while the median household income for white residents increased by about 5,000 dollars between 2015 and 2019. The poverty rate for black residents is over double that of white residents.¹³ These statistics are important because financial instability and poverty is strongly correlated with gun violence. We will study this phenomena more in depth about the influence of race and poverty on gun violence in the Societal Impacts of Gun Violence section.

Pittsburgh has attempted to mitigate its gun violence crisis several times in the past, most notably in 1993, 2008, and 2017. In response to the aforementioned Tree of Life shooting in October 2018, the City Council passed three new ordinances around gun control. These policies, though well-intentioned, were reactive and did not provide a comprehensive solution for the majority of gun violence plaguing Pittsburgh.

In this paper, we will examine the language of these laws, analyze their ethical, historical, and legal dimensions, and explore their potential effectiveness. Additionally, we will scrutinize the matter of state preemption laws and compare the legislation to that of other American cities and foreign countries. We assert that the new laws are not only unconstitutional, but ineffective, because they do not take a harm reduction and public health approach. Based on this research, we will provide a series of recommendations for combatting this problem.

Methodology

Our team of seven students began our process by conducting extensive historical research of America's culture of guns and gun control measures. With this background, we read several scholars' opinions of the morality of gun ownership and gun control, what a harm prevention approach to gun violence would look like, and why there are such varying definitions of the Second Amendment. We also examined four court cases that dealt with gun rights to understand the precedent and the court's interpretation of the Second Amendment. We interviewed over fifteen sources including journalists, scholars, members of the National Rifle Association, members of local government, and subject matter experts. We reached out to several other gun rights proponents, but did not receive any response. These interviewees are listed in Appendix B.

In the next section, we provide a preview of the recommendations resulting from our analysis.

¹² Data Access and Dissemination Systems (DADS), "American FactFinder - Results," American FactFinder - Results (United States Census Bureau, October 5, 2010),

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

¹³ US Census Bureau, "U.S. Census Bureau Quickfacts: Pittsburgh City, Pennsylvania."

List of Recommendations

1. Advocacy on State and National Levels
 - a. Extreme Risk Protection Orders/Red Flag Laws
 - b. Public Health Funding (Dickey Amendment)
 - c. Universal Background Checks
2. Disincentives for Purchasing Firearms on the State and National Levels
 - a. Waiting Periods
 - b. Taxes
3. Support Resources on the Local Level
 - a. Legislation that Reduces Economic Inequalities
 - b. Funding for Mental Health Resources
 - c. Funding for Domestic Violence Victims
 - d. Funding for At-Risk Youth Programs

In this next section, we analyze in detail the goals and language of the Pittsburgh gun policies, keeping in mind these areas with the most need for gun control.

Pittsburgh's Gun Policies

Goals

In April 2019, the Council of the City of Pittsburgh enacted three ordinances, which banned the use of identified assault weapons, prohibited large capacity magazines, and authorized confiscating weapons from those at risk of harming themselves or others (otherwise known as a “Red Flag Law”). The City Council reported passing these three laws directly in response to the Tree of Life shooting. In an interview with Pittsburgh City Councilwoman Erika Strassburger, she reported that the Pittsburgh community demanded action after the shooting. She stated, “You have the power as a legislator to think beyond your own individual needs and desires, to think of the whole, and the public health or the needs of the whole population, and there aren’t many people in a position to do that.”¹⁴ Thus, these ordinances were a way for the City Council to use their power to try to enact change in gun control regulations to prevent such atrocities from happening again.

However, these three regulations directly violate Pennsylvania’s preemption clause, which prohibits municipal regulation of “lawful ownership, possession, transfer or transportation of

¹⁴ Strassburger, Erika. Interview by Hazel Grinberg, Harrison Manning, and Gabby Vennitti. Phone. Pittsburgh, November 7, 2019.

firearms, ammunition or ammunition components.”¹⁵ Aware of this, the City Council cited its status as a Second Class City under 53 Pa. C.S. § 23131 and the City of Pittsburgh’s Home Rule Charter to justify enacting these laws. It declared that “The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is protect their people...” and “both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce gun violence.”¹⁶ Specifically, it claims that it has the authority to legislate regarding the use or discharge of firearms. The City Council further petitions the Pennsylvania General Assembly to enact these measures for the state as a whole or to allow Pittsburgh and other municipalities to regulate firearms, effectively overturning the preemption clause. Members of the City Council affirmed that they hoped to take this case to the Supreme Court to expand Pittsburgh’s and other municipalities’ ability to pass gun regulation specific to their needs.

Language and Reasoning

To evaluate these laws, we will consider each of them separately. In this section, we will focus on what these laws state to determine their constitutionality and effectiveness. Each of them add to Article XI: Weapons section of Title Six of the Pittsburgh Code of Ordinances. There was previously no section in the municipal code regulating firearms and ammunition, as all historical attempts to pass new legislation in Pittsburgh had failed.

Article XI: Weapons, Chapter 1101 and Chapter 1102: Regulation of Assault Weapons

The law known as the assault weapons ban, made up of two parts, is the most widely debated. The first section provides Chapter 1101: General Weapons Provisions, amending the Pittsburgh Code of Ordinances by prohibiting the possession of “weapons designed or intended to cause injury or death to persons or damage to property for which no common lawful purpose exists,” as listed in Appendix A.¹⁷ It also prohibits the carrying, concealed or unconcealed, of facsimile firearms, which are any toys, antiques, starter pistols, or other objects that reasonably resemble any operable firearm or impel a projectile by spinning action, compression, or CO2 cartridge. Finally, the first part limits the use of weapons by discharge in any public places except for firearms in duly-established target ranges or places explicitly permitted by the Crime Codes Act of 1972 and air guns and bows in duly-established target ranges or where firing or discharge and missile flight is wholly confined to the user’s property or another property with express consent. Public places are delineated as streets, parks, open spaces, public buildings, public accommodations, businesses, and other locations to which the general public has a right to resort,

¹⁵ “Preemption of Local Laws in Pennsylvania,” Giffords Law Center to Prevent Gun Violence (Giffords Law Center, November 18, 2019),

https://lawcenter.giffords.org/preemption-of-local-laws-in-pennsylvania/#footnote_0_9109.

¹⁶ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1101 (2018).

¹⁷ Ibid.

but does not include a private home or residence or any duly established site for the sale or transfer of firearms or for firearm training, practice, or competition.¹⁸

In the second part, section IV, the law provides Chapter 1102: Use of Assault Weapons in Public Places. An assault weapon is defined as “a selective-fire firearm capable of fully automatic, semi-automatic or burst fire at the option of the user that has the ability to accept a large capacity magazine” or any of the listed semi-automatic firearms in Appendix A.¹⁹ Selective fire means the capability of a weapon to be adjusted to fire in semi-automatic, multi-short burst, and/or automatic firing mode. These definitions, taken from the Weapons Law Encyclopedia, define those terms:

Semi-automatic fire means that one shot is fired upon each depression of the trigger. Multi-short burst means a pre-set number of shots are fired upon each depression of the trigger. Automatic fire means continuous fire while the trigger is depressed. Burst fire means that a pre-set number of shots are fired automatically from a weapon each time the trigger is pulled.²⁰

Automatic fire is synonymous with a fully automatic firearm. Furthermore, a large capacity magazine is defined as “[a] firearm magazine, belt, drum, feed strip, or similar device that has the capacity of, or can be readily restored or converted to accept, more than 10 rounds of ammunition.”²¹ This definition is expanded on in Appendix A.

This section plainly prohibits the use of any assault weapon in any public place in Pittsburgh. To ensure that this does not overlap with the preemption clause prohibitions of regulation of “possession, ownership, transportation, or transfer,” the City Council defines “use” as

1. Discharging or attempting to discharge an assault weapon;
2. Loading an assault weapon with ammunition;
3. Brandishing an assault weapon;
4. Displaying a loaded assault weapon;
5. Pointing an assault weapon at any person; and

¹⁸ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1101 (2018).

¹⁹ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1102 (2018).

²⁰ Weapons Law Encyclopedia, <http://www.weaponslaw.org/glossary/selective-fire>, (February 1, 2014).

²¹ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1102 (2018).

6. Employing an assault weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.²²

In both of these sections, there are exemptions for government agencies, law enforcement, and federal, state, or local historical societies, museums, etc. that house secured and unloaded firearms or devices. Additionally, the law specifies that people should still be able to use a lawfully possessed firearm for immediate protection of their or others' property or for lawful hunting purposes.²³

The Pittsburgh City Council argues that they chose to regulate both of these categories of weapons because there is no clearly justifiable reason for an ordinary person to use them. One large criticism of this ordinance is the unclearly defined term "assault weapon." A practical problem with this is that there is no easy way to communicate this regulation to individuals, as both categories here are simply a list of weapons. Nonetheless, as rationale for this law, the City Council provides that "assault weapons and large capacity magazines should be prohibited, because they present an unacceptable and needless public safety risk."²⁴ Furthermore, this law would have a large effect on the gun-owning population because most weapons sold today are semi-automatic. The Council has not countered this point.

The Council has acknowledged that this law is not currently constitutional as it violates the preemption clause by explicitly banning possession of specified weapons. However, it tries to justify the law by framing the law around the "use" of certain weapons. This is an interesting workaround, considering that Pittsburgh's Home Rule Charter does allow it to regulate the discharge of weapons in public places. The City Council hopes to take the lawsuit filed against them to the Supreme Court to establish this exception to Pennsylvania's preemption law. Nonetheless, this workaround is not effective. Even if the use of assault weapons in public places becomes illegal, it is not clear that this is a common occurrence when it is not in the context of a shooting, act of hatred or terrorism, or an instance of self-defense. The former two reasons are the most common uses of these weapons in a public place, and these are already illegal through federal and state laws. The reason why the preemption clause includes the actions of "ownership, possession, transportation, or transfer" is because these actions are more frequently regulated to actually prevent gun violence by preventing the number of weapons in a city or place. Simply regulating its use in public places is unnecessary, as this essentially only occurs when someone decides to illegally use the weapon violently.

²² Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1102 (2018).

²³ Ibid.

²⁴ Ibid.

Article XI: Weapons, Chapter 1104 and Chapter 1105: Regulation of Large Capacity Magazines

The second ordinance focuses on the regulation of ammunition. Throughout this ordinance, the City Council reiterates that they are not regulating the possession, ownership, transportation, or transfer of ammunition; they only regulate its use. The first part of this law, Section I, provides Chapter 1104: Prohibition on the Use of Certain Accessories, Ammunition, and Modifications. It prohibits the use of Armor or Metal Penetrating Ammunition, “any ammunition, except a shotgun shell, that is designed primarily to penetrate a body vest or body shield”²⁵ in any public place in Pittsburgh. The extended definition of Armor or Metal Penetrating Ammunition can be found in Appendix A. Here, “use” is defined as

1. Discharging or attempting to discharge by means of a firearm; and
2. Loading it into a firearm or magazine.²⁶

It also prohibits the use of any large capacity magazine, defined in the previous ordinance and in Appendix A, in any public place in Pittsburgh. Here, “use” is defined as

1. Employing it to discharge or in attempt to discharge ammunition by means of a firearm;
2. Loading it with ammunition;
3. Fitting or installing it into a firearm
4. Brandishing it with a firearm;
5. Displaying it with a firearm while loaded; and
6. Employing it for any purpose prohibited by the laws of Pennsylvania or of the United States.²⁷

Finally, this part prohibits the use of any rapid fire device, which is “[a]ny device, part accessory, attachment, or modification designed to accelerate substantially the rate of fire of a firearm,” in any public place in Pittsburgh.²⁸ It clarifies that this does not include the use of a replacement trigger or trigger components.

²⁵ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1104 (2018).

²⁶ Ibid.

²⁷ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1104 (2018).

²⁸ Ibid.

The second part, section II, provides Chapter 1105: Authorized Prohibition of Large Capacity Magazines. This part prohibits the ownership, possession, transfer, or transportation of large capacity magazines within Pittsburgh. Again, this section clearly violates the preemption clause, as it employs the specific language that the preemption clause prohibits.

The City Council makes a similar argument about the purpose of this ordinance to the previous ordinance. Specifically, the ordinance states that

[s]hooters using assault weapons and large capacity magazines can fire more rounds more quickly than shooters using other guns more suitable for self-defense, and fire rounds with greater destructive capacity...Especially in a crowded urban jurisdiction like this one, there is no legitimate need for assault weapons and large capacity magazines that justify the consequences of tolerating the proliferation of such military-style weaponry in the community...²⁹

Our interpretation of the constitutionality and effectiveness of the previous law largely also applies here. While the exception to preemption may apply to the first part of this ordinance, the second part clearly violates the preemption clause. The regulation of large capacity magazines has the potential to receive less backlash than regulating firearms themselves. However, as with our argument that regulating “use” of assault weapons is ineffective in the previous section, regulating the use of large capacity magazines would be less effective in preventing gun violence than regulating the possession or ownership of large capacity magazines, which the City Council cannot constitutionally do.

Article XI: Weapons, Chapter 1106 and Chapter 1107: Child Access Prevention Law and Red Flag Law

The third ordinance seeks to address every-day gun violence for particularly vulnerable groups: children and those who are a danger to themselves or others. The first part of this law, section I, provides Chapter 1106: Prevention of Extreme Risk to Children. It places a fine on the custodian of a firearm if

1. A minor gains access to and uses the firearm; and
2. The firearm’s custodian knew or reasonably should have known that a minor was likely to gain access to the firearm.³⁰

²⁹ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1105 (2018).

³⁰ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1106 (2018).

Here, the City Council defines use with the same definition as in Chapter 1102, with “firearm” replacing “assault weapon.” There are exceptions to this rule:

1. The minor gains access to the firearm as the result of an illegal entry to any premises by any person;
2. The firearm is stored in a locked box, locked gun safe, or other secure, locked space, or is secured with a trigger lock or other similar device that is properly engaged so as to render the firearm inoperable by any person other than the firearm’s custodian or other lawfully authorized user;
3. The firearm is carried on the person of the firearm’s custodian or within close enough proximity thereto that the firearm’s custodian can readily retrieve and use the firearm as if carried on the person; or
4. The minor uses the firearm in a lawful act of self-defense or defense of another person.
5. The minor was lawfully given authorization to use the firearm by the minor’s parent or legal guardian.³¹

The second part of this law provides Chapter 1107: Extreme Risk Protection Orders, the implementation of which are commonly known as a “Red Flag Law.” Extreme Risk Protection Orders, or ERPOs, are court orders prohibiting possession, purchasing, receiving or attempting to purchase or receive a firearm by a person on the basis that this person presents a risk of suicide or harm to others.³² Law enforcement officers or family or household members have standing to file a petition for an ERPO or to renew an ERPO, which must present facts that demonstrate risk, describe the details of firearms owned or possessed by the person, and identify any known restraining orders, orders of protection, or lawsuits against the person. These are the following factors that the court will assess:

1. Suicide threats or attempts.
2. Threats or acts of violence or attempted acts of violence.
3. Domestic abuse, including any violation of a protection from abuse order, under 23 Pa. C.S. Ch. 61 (relating to protection from abuse) or a similar law in another state.

³¹ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1106 (2018).

³² Ibid.

4. Cruelty to animals under 18 Pa. C.S. Ch. 55 Subch. B (relating to cruelty to animals) or a similar law in another state.
5. Abuse of controlled substances or alcohol, or any criminal offense that involves controlled substances or alcohol.
6. Unlawful or reckless use, display or brandishing of a firearm.
7. Recent acquisition or attempted acquisition of a firearm.
8. The possession, use or control of a firearm as a part of the respondent's employment.
9. Any additional information the court finds to be reliable, including a statement by the respondent.³³

If found by a preponderance of the evidence that the respondent presents a risk of suicide or causing harm to another person and the risk is imminent, an interim ERPO may be issued. Even if an interim ERPO is issued, the court must hold a hearing no more than 10 days from the date of the petition. At the hearing, the court will consider the factors above and must determine by clear and convincing evidence that the respondent presents a risk of suicide or causing harm to others. If this is done, the ERPO requires relinquishment of firearms to a law enforcement officer or sheriff within 24 hours of the issuing of the order. The firearms would then be transferred to the sheriff or a firearms dealer for safekeeping.³⁴

When an interim ERPO is vacated or an ERPO is terminated or expired, the respondent may request the return of all firearms no later than the next business day. The law also outlines penalties for abuse of this process, including fines and payment of restitution to the respondent for those who file a petition knowing information in the petition to be materially false or with intent to harass another.³⁵

This law is different than the other two in that the City Council was specifically targeting at-risk populations of dangerous use of weapons. The findings and purpose of this law cite that “From 2013 to 2017, 7,517 Pennsylvania residents died from a firearm injury, including 301 children under the age of 18” and “From 2013 to 2017, a child or teen under the age of 18 was killed by gunfire in Pennsylvania every 6 days, on average.”³⁶ Furthermore, “Over 22,000 Americans every year, including over 1,000 children and teens, die by firearm suicide” and

³³ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1107 (2018).

³⁴ Ibid.

³⁵ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1107 (2018).

³⁶ Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1107 (2018).

Among commonly used methods of self-harm, firearms are by far the most lethal, with a fatality rate of approximately 85 percent, compared to less than five percent with other methods, such that while firearms are used in less than six percent of suicide attempts, over half of suicide deaths result from suicide attempts performed with firearms.³⁷

These statistics serve to show that these sections were designed to target “every-day” gun violence rather than a mass shooting, like the Tree of Life shooting. Since gun violence with children in Pennsylvania and national firearm suicides are serious public health issues, Pittsburgh seeks to address these issues through this ordinance.

With regards to the first section about access of firearms to minors, the law seems to be regulating ownership by placing a particular condition on the nature of storage, but it is certainly less prohibitive and therefore not a clear violation of the preemption clause. Moreover, “Law enforcement agencies in Pittsburgh and Allegheny County have partnered with the National Shooting Sports Foundation to distribute free gun locks to Pittsburgh residents through Project ChildSafe.”³⁸ Here, the clearly apparent purpose of the law is safety, and this initiative decreases the financial burden for individuals to safely store their firearms. However, the argument may be made that in the event that an individual needs their weapon for self-defense, the time needed to remove this lock could be potentially life-threatening. In the city of Pittsburgh at least, it would likely be more common for a minor to gain access to this firearm than for a threat to be made. This could warrant improvements in technology or better training to ensure the fast but secure removal of a lock. One possible method to do this would be a lock activated by the fingerprint of the registered owner.

With regards to the second section on ERPOs, the City Council cites the Connecticut and Indiana Red Flag laws and resulting reduced suicide rates to justify this law. For example, in Connecticut, an average of 50 guns a year were taken since the law was enacted in 1999.³⁹ If these ERPOs are actually obtained for people who exhibit risks, this could drastically improve law enforcement’s detection of those at risk to participate in gun violence, as “an analysis of mass shootings from 2009 to 2017 revealed that in 51 percent of incidents the shooter exhibited warning signs that he posed a danger to himself or others before the shooting.”⁴⁰ However, this law does clearly violate the preemption clause as it regulates ownership and possession of firearms by certain people. Still, on a national level, there are people who are prohibited from possessing firearms because they have an arrest record. Similarly, states and cities could justify

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ana Radelat and Kelan Lyons, “CT’s ‘red flag’ law,” <https://ctmirror.org/2019/08/13/cts-red-flag-law-an-early-but-narrow-effort-to-take-guns/>, (August 13, 2019).

⁴⁰ “Ten Years of Mass Shootings in the United States,” EverytownResearch.org (Everytown for Gun Safety Support Fund, November 21, 2019), <https://everytownresearch.org/reports/mass-shootings-analysis>.

that people found to present a risk to themselves or others by a hearing specifically exemplify the same risk these national prohibitions seek to prevent. Therefore, while this law is unconstitutional in the current context, it could be very effective if implemented appropriately.

Nonetheless, as previously mentioned, the City Council seeks to tackle a statewide and nationwide issue with this ordinance. Because these are not issues specific to Pittsburgh, they would be better addressed with Pennsylvania state laws on Child Access Prevention or Extreme Risk Protection Orders, or even a national law addressing firearms most commonly used for suicide. While these issues may certainly affect Pittsburgh, and the City Council may feel that it has a responsibility to address these issues, state preemption exists to ensure that such laws are implemented on a statewide level to ensure consistent implementation across all municipalities in Pennsylvania.

Public Opinion

In the aftermath of the shooting, the outpouring of support for the victims was remarkable. Within the Jewish community in Pittsburgh, volunteers followed traditional Jewish customs of guarding a corpse until burial. An interfaith vigil was held in Squirrel Hill, organized by the students of Allderdice High School, and many more occurred around the city. Even President Trump offered his condolences, although he also opined that “If there was an armed guard inside the temple, they would have been able to stop him.”⁴¹

Almost immediately after the shooting, city officials called for action. In December of 2018, Mayor Bill Peduto and other council members proposed legislation that would ban assault style weapons and certain kinds of ammunitions, as well as implementing a Red Flag Law. In the past, Pittsburgh tried to enact legislation in 1993, but it was struck down by the Pennsylvania Supreme Court, and by 1994, Pennsylvania enacted preemption laws that would prevent any further attempts by municipalities to regulate firearms. In 2008, Pittsburgh introduced a “lost and stolen” gun ordinance, requiring gun owners to report a lost or stolen firearm to the police within 72 hours of the realization that it is gone.⁴² This ordinance was designed to prevent guns from falling into the hands of felons and to limit illegal gun sales, but the law faced legal trouble after the NRA sued the city of Pittsburgh.⁴³ In 2017, after demonstrators carrying large guns marched in Mellon Park, the Pittsburgh City Council attempted to introduce a bill banning guns in public parks and playgrounds, and while they used language similar to the law that stops people from

⁴¹ Caroline Kelly, Ray Sanchez, and Liz Stark, “Trump Says Pittsburgh Synagogue Should Have Had Armed Guards,” CNN (Cable News Network, October 28, 2018), <https://www.cnn.com/2018/10/27/politics/trump-jba-death-penalty-pittsburgh/index.html>).

⁴² Jeffrey Benzing, “How Pittsburgh’s effort to limit illegal firearms turned into a years-long, escalating gunfight.” Last modified April 21, 2017. Accessed December 8, 2019. <https://www.publicsource.org/how-pittsburghs-effort-to-limit-illegal-firearms-turned-into-a-years-long-escalating-gunfight/>.

⁴³ Ibid.

carrying uncased guns in state parks, this bill also faced challenges from the state's preemption laws.⁴⁴ Additionally, Philadelphia, Erie, Harrisburg, and Lower Merion Township have all tried to pass bills concerning the use of guns within city limits, but each was struck down or is currently pending in courts, further cementing the idea that it is nearly impossible to pass gun legislation at a municipal level in Pennsylvania.

The preemption law and past cases are the key points that opponents of the Pittsburgh gun laws use to form their arguments. District Attorney Stephen Zappala commented that it would not stand up to state preemption. When it comes to gun legislation, "There is no local authority".⁴⁵ State Representative Aaron Bernstine (R-Ellwood City) similarly believes that the Pennsylvania Crime Code prevents cities and municipalities from passing restrictions on gun owners.⁴⁶ In January, the Firearm Owners Against Crime wrote a letter to City Council echoing these thoughts, and, along with the Allegheny County Sportsmen's League, retained a lawyer as chief counsel throughout the proceedings. Kim Stolfer, the president of FOAC and an active gun rights advocate from Southwestern Pennsylvania, compared city council to the shooter. "[T]here's very little difference between [City Council] and the killer at the synagogue except for a matter of degree. They're both criminals."⁴⁷ While Mayor Peduto and Chief of Staff Dan Gilman condemned the comments, the concerns were enough to dissuade council members Darlene Harris and Teresa Kail-Smith from sponsoring the proposed bill. Preemption makes it difficult to pass any gun-related legislation at the municipal level. As council member Harris stated, "I need to know that if I'm voting on something, that it's going to be upheld by the police and by the court system."⁴⁸

Supporters of the ban saw it differently. Calling it "common-sense," Peduto lamented that the legislative process at the state level acts slowly. "[D]oing nothing is not the answer," he said. "[I]n communities across this state ... in cities around this country, we will take action." He compared the situation to the women's vote—many women were enfranchised by cities and towns before states, and state legislation preceded the 19th Amendment in 1920. "If we didn't

⁴⁴ Smeltz, Adam. "Pittsburgh council proposal would ban guns in city parks." Accessed November 15, 2019. <https://www.post-gazette.com/local/city/2017/09/26/Pittsburgh-parks-gun-ban-Dan-Gilman-Mellon-Park-Marc-h-Google/stories/201709260129>

⁴⁵ Ty Tagami et al., "Common-Sense' Gun Measures to Be Introduced in Pittsburgh," WPXI, December 14, 2018, <https://www.wpxi.com/news/top-stories/common-sense-gun-measures-to-be-introduced-in-pittsburgh-/888438765>

⁴⁶ Ibid.

⁴⁷ Bob Mayo, "Common Sense' Gun Safety Legislation Unveiled in Pittsburgh Includes Assault Weapons Ban," WTAE (WTAE, December 14, 2018), <https://www.wtae.com/article/new-common-sense-gun-safety-measures-announced-in-pittsburgh/25585940>

⁴⁸ "City's Gun-Control Bills Draw Sharp Criticism from Gun Rights Advocates," Gazette, December 18, 2018, <https://www.post-gazette.com/local/city/2018/12/18/City-Council-Kim-Stolfer-Second-Amendment-Peduto-Gilman-Strassburger/stories/201812180135>

challenge laws, women wouldn't be able to vote,” Peduto said.⁴⁹ Council member Corey O'Connor echoed this sentiment when he asked the state to “Give the local municipalities some leeway to do what they feel is right to protect their citizens.”⁵⁰ State Rep. Dan Frankel, who represents Squirrel Hill, has been looking to introduce new legislation to remove the preemption clause from state law.⁵¹ The issue of preemption was significant enough, however, to get the council to change the language in the laws, banning the “use” of assault weapons in public places rather than possession. This version of the law passed 6-3 on April 9, 2019. Anthony Coghill, Darlene Harris and Theresa Kail-Smith were the dissenting votes.

Immediately after the law passed, the NRA announced that it was helping residents file a lawsuit against the city. However, the focus of the NRA’s argument was different from preemption, instead resting on the definition of a large capacity magazine. The law prevents those that have ten or more rounds, but the NRA contends that most rifles and handguns hold at least ten rounds, making the definition unrealistic. Additionally, opponents feared that when Mayor Peduto said he was willing to fight the laws in courts, it meant that the taxpayer would pay for the city’s legal team, but the law firm, Everytown Law, stated on public record that they were working pro bono. Everytown Law focuses on gun regulations, boasting the “largest team of litigators in the country dedicated to advancing gun safety in the courts and through the civil and criminal justice systems.”⁵²

The Tree of Life shooting captured national attention, so when the City Council passed the legislation, news publications of all kinds reported on it. While some members of the public may believe it is a Second Amendment issue, news sources from the *New York Times*⁵³ to the *Wall Street Journal*⁵⁴, and even the NRA⁵⁵ have established that the reason the law is being taken to

⁴⁹ Ariel Worthly, “Pittsburgh Restricts Use Of Assault-Style Weapons, Setting Up Court Fight,” NPR (NPR, April 9, 2019),

<https://www.npr.org/2019/04/09/711401894/pittsburgh-restricts-use-of-assault-style-weapons-setting-up-court-fight>

⁵⁰ Ibid.

⁵¹ The Inquirer Editorial Board, “Allow Cities like Philly and Pittsburgh to Make Their Own Gun Laws: Editorial,”

<https://www.inquirer.com> (The Philadelphia Inquirer, December 17, 2018),

<https://www.inquirer.com/opinion/editorials/pennsylvania-gun-laws-harrisburg-dan-frankel-pre-emption-20181217.html>)

⁵² “Law Posts Archive,” EverytownResearch.org, accessed December 12, 2019, <https://everytownresearch.org/law/>)

⁵³ Mihir Zaveri, “Judge Strikes Down Gun Laws Enacted in Wake of Pittsburgh Synagogue Massacre,” The New York Times (The New York Times, October 30, 2019),

<https://www.nytimes.com/2019/10/30/us/pittsburgh-judge-gun-control.html>)

⁵⁴ Kris Maher, “After Synagogue Attack, Pittsburgh's Push for Stricter Gun Laws Sparks Backlash,” The Wall Street Journal (Dow Jones & Company, February 11, 2019),

<https://www.wsj.com/articles/after-synagogue-attack-pittsburghs-push-for-stricter-gun-laws-sparks-backlash-11549881000>)

⁵⁵ Nra-Ila, “ILA: Pennsylvania Court Knocks Out Pittsburgh Gun Control in NRA-Backed Case,” NRA, accessed December 12, 2019,

<https://www.nraila.org/articles/20191029/pennsylvania-court-knocks-out-pittsburgh-gun-control-in-nra-backed-case>)

court is concerning preemption. There may be some rhetoric surrounding the Second Amendment and possible Constitutional violations, but most commentaries focus on the issue at the state level. If the Second Amendment is mentioned, it is only in passing.

Gun-owning residents, on the other hand, felt that their rights were infringed upon. Gun owners interpret the Second Amendment to mean that any citizen has a right to own a gun. Outside city hall in January, hundreds of protesters chanted, “We will not comply!” Many of them brought their guns that would be deemed illegal under the new law. The sentiment among these lawful gun owners is that they were not doing anything wrong with their guns. Addressing the council, nurse Mary Konieczny called it an “overreach of authority.”⁵⁶ Another Pittsburgh resident Dennis Jordan said:

My guns are not hurting anybody. I have no intent of hurting anybody. I am not going to be allowed to own my guns because of this ordinance. I am ready to move out of this place. You just want to control people. You want to take away my right to protect people.

⁵⁷

Amongst many legitimate concerns about the laws were also some frivolous ones. Matthew Boardley, a plaintiff challenging the gun laws, claimed to carry an AR-15 while working security for Heinz Field, and said he needed the gun to carry out his duty in protecting the field. It turned out that Boardley is actually a part time, intermittent worker from Landmark Event Staffing Services, Inc. who doesn’t allow their employees to possess weapons when working.⁵⁸

The black community within Pittsburgh is also concerned, but for different reasons. Prefacing the Pittsburgh synagogue shooting was another high-profile case where an unarmed 17-year old named Antwon Rose II was shot and killed while fleeing from an officer from the East Pittsburgh Police Department.⁵⁹ He is one of many black Pittsburgh residents killed each year: since 2014, 80% of homicide victims in Pittsburgh are black, and 86% of them were killed by firearms.⁶⁰ While it’s nice that Pittsburgh has decided to act, many within the African-American

⁵⁶ Ramesh Santanam, “Pittsburgh Approves Gun Restrictions; Lawsuits Expected,” AP NEWS (Associated Press, April 2, 2019), <https://apnews.com/3f4ffc8f307d46499b824dbf47467fe3>

⁵⁷ Ramesh Santanam, “Pittsburgh Approves Gun Restrictions; Lawsuits Expected,” mcall.com (The Morning Call, April 2, 2019), <https://www.mcall.com/news/pennsylvania/mc-nws-pa-gun-control-pittsburgh-synagogue-20190402-a6jfiwz7evh2b khl4yxuilreni-story.html>

⁵⁸ Bob Mayo, “Pittsburgh’s New Gun Laws on Hold: City Agrees Not to Enforce Restrictions Yet; Heinz Field Claims by Plaintiff in Dispute,” WTAE (WTAE, May 21, 2019), <https://www.wtae.com/article/pittsburgh-agrees-not-to-enforce-gun-restrictions-lawsuits/27531556>

⁵⁹ Elham Khatami and Kay Wicker Twitter, “Pittsburgh’s Black Community Is Wary of the City’s New Gun Control Policies,” ThinkProgress, April 23, 2019, <https://thinkprogress.org/pittsburgh-gun-control-police-black-community-342c26375851/>

⁶⁰ Ibid.

community feel as if it didn't come soon enough. There has consistently been a disproportionate amount of violence against black Americans, and it frustrates people that it takes such a high-profile case to effect change.⁶¹

The biggest worry, however, seems to be that the laws would give police officers more pretext to shoot black residents. Rev. De Nice Welch, president of the Pennsylvania Interfaith Impact Network, said that these ordinances “always lands on the backs of young African Americans... The phrase, ‘I’m in fear for my life,’ has literally given [officers] permission to fire at will.”⁶² Black gun owners, both legal and illegal ones, are especially worried. Take, for example, a case in 2016 when a black gun owner was fatally shot when he was stopped at a routine traffic stop. Despite informing the police officer that he was in possession of a gun, the officer overreacted and killed him. This kind of situation will not stop if the ordinances were to take effect; people fear it would probably increase. While the ordinances seem like a good idea, CityLab’s Brentin Mock says that the lesson that Pittsburgh has to learn is “how to create laws that will take more illegal guns off the streets and save more lives, while ensuring that black people don’t become criminalized collateral damage in the process.”⁶³ Pennsylvania State Rep. Summer Lee has co-sponsored a bill addressing the concerns of Pittsburgh’s black community that would require police departments to keep records regarding a police officer’s firing or resignation and appoint a special investigator to look into the use of deadly force by a police officer.⁶⁴

For their part, the city agreed not to enforce the laws until they made their way through the courts. Most of the city council and other supporters of the bill felt that it’s a worthy endeavor despite the preemption laws. It’s “sensible,” Jenna Paulat, a volunteer leader for Moms Demand Action, said of the laws.⁶⁵ The council members in support of the law use language like “common-sense” in reference to it. Chief of Staff Dan Gilman stated in an interview that the city knew the lower courts would reject the ordinances and plan to take their fight to the Pennsylvania Supreme Court.

In the next section, we explore the misconceptions and realities of gun violence. We analyze how vulnerable populations are disproportionately affected by this issue and discuss two of the main contributors of gun violence, suicide and domestic violence.

⁶¹ Brentin Mock and CityLab, “Seeking the Racial Equity Factor for Pittsburgh’s New Gun Control Proposals,” CityLab, March 12, 2019,

<https://www.citylab.com/equity/2019/03/gun-control-laws-pittsburgh-racial-equity-ending-violence/584458/>

⁶² Khatami and Twitter, “Pittsburgh’s Black Community Is Wary of the City’s New Gun Control Policies.”

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Santanam, “Pittsburgh Approves Gun Restrictions; Lawsuits Expected.”

Societal Impacts of Gun Control

The media coverage of gun violence is vastly different than the reality. Because mass shootings are sensational events, the media coverage is distorted to reflect the most shocking incidents. The paper “Mass Shootings and the Media: Why All Events Are Not Created Equal”, examined 90 mass shootings covered by the New York Times. The authors uncovered that 60% of the articles were about the same five incidents. Meanwhile, 78% of the mass shootings, most of which were situations of domestic violence and urban violence, received less than five articles per incident⁶⁶. The Trace, a nonprofit news organization dedicated to covering gun violence in America, conducted an analysis that demonstrated that the mass shooting at the Gilroy Garlic Festival in July 2019 was featured on the front page of four out of the six major newspaper websites in the country. In contrast, the shooting in Brownsville, that occurred 17 hours earlier drew far less attention, only reaching the front page of two major newspaper websites. The two incidents involved the same number of victims (11). The key difference is that Brownsville is predominantly Black and low income community, whereas Gilroy was predominantly White. Moreover, major news outlets such as Fox, MSNBC, and CNN devoted almost 20 times more time to covering the Gilroy Garlic Festival shooting. This is not to say that the incident at Gilroy should not have been covered, but rather to highlight the lack of coverage minority communities receive when traumatized by similar violence. Rebecca Gilroy, a public defender in New York, articulated this point to the Trace, “The way it’s covered in Gilroy is like it’s a tragedy. Then it’s covered in Brownsville like it’s endemic, like it’s a pathology”⁶⁷.

Gilroy’s statement and the several studies cited above illustrate the overarching idea that news is highly influential to our current discourse on gun violence. The way the media frames events through what they choose to cover or not cover, word choice, and the amount of coverage strongly impacts people’s understanding of this issue. This is incredibly dangerous because mass shootings only constitute about 0.1% of gun related deaths and yet are the most covered gun incidents. The media should provide people an accurate picture of gun violence in order to relay pressing concerns to policymakers and make our communities safer. As the coverage of the shooting in Brownsville exhibited, the framing around race plays a critical role in how important events are perceived to be. In media coverage, black men are viewed as criminals, even though black men are more likely to be victims of gun violence⁶⁸. Instances in which black men are the victim and the perpetrator (so-called “black on black violence”) is portrayed as a moral personal

⁶⁶ Jaclyn Schildkraut, H. Jaymi Elsass & Kimberly Meredith (2018) Mass shootings and the media: why all events are not created equal, *Journal of Crime and Justice*, 41:3, 223-243, DOI: [10.1080/0735648X.2017.1284689](https://doi.org/10.1080/0735648X.2017.1284689)

⁶⁷ Champe Barton, “When 12 People Are Shot in Your Neighborhood, and America Shrugs,” *The Trace* (The Trace, August 4, 2019), <https://www.thetrace.org/2019/08/brownsville-brooklyn-shooting/>.

⁶⁸ Eileen E S Bjornstrom et al., “Race and Ethnicity Representations of Lawbreakers and Victims in Crime News: A National Study of Television Coverage,” *Social problems* (U.S. National Library of Medicine, May 1, 2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2904566/>.

failing of the perpetrator. In other words, the perpetrator's backstory and personal choices are highlighted as the reason behind the violence rather than a societal failing in the education, public health, and economic systems that lead to people committing violent acts⁶⁹. It is vital that we shift this narrative to focus on the fact that black men are more likely to be the victims and that gun violence is a problem that can be mitigated through societal reforms in the spheres of education, public health, and economics.

High Risk Populations

As described in the previous section, black people are especially at risk of being affected by gun violence. In Pittsburgh, the homicide rate for black residents is 28.4 per 100,000 people. The homicide rate for white residents is significantly lower at 3 per 100,000 people. African Americans make up around 27% of Pittsburgh's population, but make up 80% of the homicide victims. Gun violence is especially high in Homewood, the Hill District, and the North Side, which are also majority Black. For black children and teens in America, gun violence is the leading cause of death⁷⁰.

Children and youth constitute another vulnerable population. It is important to note that gun violence for children and teens often comes in the form of domestic violence. As a result, we must also prioritize the safety of children in domestic violence situations by providing better support programs. The third Pittsburgh ordinance addresses this issue by instituting Extreme Risk Protection Orders which can remove guns from people who are likely to harm their children. America has a tremendous issue with teen suicides. About 36% of these suicides are committed by guns. Recently, the impacts of school shootings have come to light with the Sandy Hook and Parkland shootings. Not only are these youth affected physically by gun violence, but they are also face the physiological effects of witnessing violence. About 2,900 children and teens are killed from guns and about 12,700 are shot and injured. This is a purely American issue; no other developed country has as high rates of gun violence with children and teens⁷¹.

Exposure to violence manifests in a variety of ways: youth affected by gun violence are more likely to abuse alcohol and drugs to cope and suffer from depression and anxiety. The violence also affects their academic performance and attendance, which, when aggregated, can set these children years behind their peers. Minority students are even more affected as they are twice as likely to miss school due to safety concerns than their white counterparts. This is a pervasive problem in our society that we must solve if we want to give our children and future generations

⁶⁹ Shanto Iyengar, "How Citizens Think About National Issues: A Matter of Responsibility," *American Journal of Political Science* 33, no. 4 (1989): pp. 878-900.

⁷⁰ "The Impact of Gun Violence on Children and Teens," EverytownResearch.org (Everytown For Gun Safety Support Fund, May 29, 2019), <https://everytownresearch.org/impact-gun-violence-american-children-teens/>.

⁷¹ Everytown, "The Impact of Gun Violence on Children and Teens."

the best chance at success. Simply regulating the use is not enough to solve this problem entirely. We must consider putting Extreme Risk Protection Orders into place to protect at risk children in their homes, encourage responsible gun storage and establish stronger child access laws, and provide youth intervention programs to help mitigate the damaging effects of gun violence. The third Pittsburgh ordinance acknowledges these facts and includes an Extreme Risk Protection Order. This ordinance provides a condition that through a court process, guns can be seized from people with an intent to harm themselves or others. The ordinance also recognizes that child access to guns is an issue and has strengthened child access prevention laws. By utilizing Extreme Risk Protection Orders and child access prevention laws, we can take steps to protect our most vulnerable population.

With reference to the Pittsburgh laws, there has not been enough work to examine gun violence occurring in predominantly African American communities and low income such as Homewood. The current legislation prevents the use of assault weapons, but does not consider putting funds towards psychological support for families affected by gun violence. We recommend that the City Council makes a more active effort to engage with the predominantly minority communities (Homewood, Hazelwood, the Hill District, and Northside) before forming policy and lobbying state government.

Suicide

In Allegheny County (which includes Pittsburgh and several other urban and suburban communities), homicides only slightly outnumber suicides.⁷² This topic is rarely covered in the media for reasons relating to privacy and stigma. As a result, our society has an inaccurate picture of what gun violence looks like and ignores the growing problem of gun related suicides. Alarming, there is no chance for intervention as self-inflicted gunshots result in almost immediate death. The first Pittsburgh ordinance may dissuade someone from buying and using a semiautomatic or automatic rifle. However, most suicides are caused by a handgun.

An Israeli experiment with Israel Defense Force (IDF) soldiers is one of the best case studies that demonstrate how to significantly reduce suicide rates with simple policy. IDF officials reclaimed soldiers' guns for the weekend in hopes of decreasing suicides. The results were impressive; the *total* number of suicides decreased by 40%.⁷³ This means that soldiers did not resort to other means to commit suicide and that the ease of access to a gun directly affects the

⁷² "We Hear More about Homicides, but Gun Suicides Outnumber Murders in Pennsylvania," PublicSource, January 16, 2018, <https://www.publicsource.org/we-hear-more-about-homicides-but-gun-suicides-outnumber-murders-in-pennsylvania/>

⁷³ Gad Lubin et al., "Decrease in Suicide Rates After a Change of Policy Reducing Access to Firearms in Adolescents: A Naturalistic Epidemiological Study," *Suicide and Life-Threatening Behavior* 40, no. 5 (2010): pp. 421-424, <https://doi.org/10.1521/suli.2010.40.5.421>

chances of someone committing suicide. The case study reveals that preventing access to a gun directly decreases the amount of suicides. In our paper, we mention two suggestions that particularly target access to guns. The first is implementing a strategy that the ordinances support: Extreme Risk Protection Orders. ERPOs limit the access to a gun when an individual has demonstrated a desire to harm themselves. Secondly, by creating better mental health background checks we can begin to decrease the number of suicidal people who have the ability to buy a gun and commit an irreversible act. As the current ordinances stand, it is highly unlikely that simply discouraging the use of semiautomatic and automatic weapons will cause the number of suicides will markedly decrease, as people can still buy handguns unimpeded. Through the city offers a mental health crisis hotline and a coalition for recovery, we believe that more can be done to provide free resources to citizens. For example, the city can invest in better mental health education and counseling at the elementary, middle, and high school levels to ensure that our youth know how to get help and be proactive about their mental health.

Domestic Violence

In America, an average of 42 women each month are victims of gun violence from an intimate partner. 54% of mass shootings are situations of domestic violence⁷⁴. In Pittsburgh, 39% of all female victims of homicide in Pennsylvania were victims of domestic violence⁷⁵. As the statistics demonstrate, domestic violence is one of the main contributors of gun violence. Homewood therapist Geraldine Massey describes the impact of a gun in a domestic violence situation, “often, guns are used for intimidation to keep the women and children from reporting the incident or leaving the household. The most dangerous time is when someone leaves the domestic violence situation. When the perpetrator has a gun, it takes a dangerous situation to a deadly situation”⁷⁶

ERPOs are a starting point to mitigating the domestic violence issue plaguing Pittsburgh. The orders can prevent someone from using their guns as a weapon or intimidation tactic if the court proceedings reveal an intent to harm their family or partner. However, domestic violence tends to be one of the most underreported crimes. Reducing the amount of death from domestic violence needs to include support resources and protection for victims in order to ensure their safety when leaving a violent household. Moreover, Pittsburgh needs to invest in the education of its citizens on how to deal with conflict and emotion in a healthy way so that we can reduce the number of domestic violence perpetrators.

⁷⁴ “Guns and Violence Against Women,” EverytownResearch.org, accessed December 12, 2019, <https://everytownresearch.org/reports/guns-intimate-partner-violence/>

⁷⁵ “Domestic Violence,” Allegheny County District Attorney's Office, accessed December 12, 2019, <http://alleghenycountyda.us/domestic-violence/>

⁷⁶ Massey, Geraldine. Interview by Roshni Mehta. In Person. Pittsburgh November 22, 2019.

In the next section, we will study the issue of state preemption, which is the main factor threatening the constitutionality of the ordinances, including its origination, definition, and impacts on Pittsburgh's ordinances.

State Preemption

Preemption is a fairly recent phenomenon, largely resulting from the NRA's backlash to gun regulation. In the colonial era, cities like Philadelphia and New York had extensive regulation on gunpowder and gun use. Since 1813, state legislatures freely granted newly incorporated cities the power to enact gun control laws.⁷⁷

In 1981, when Morton Grove, Illinois adopted the nation's first municipal prohibition on the possession of handguns outside of Washington, DC, the NRA mobilized an effort to persuade state legislatures to bar municipalities from enacting gun laws.⁷⁸ The Illinois Supreme Court upheld this law in *Quilici v. Village of Morton Grove*, 695 F.2d 261 (1982) after Plaintiffs alleged that this violated the Illinois Constitution and the Second, Ninth, and Fourteenth Amendments of the U.S. Constitution.⁷⁹ During this time there was no explicit preemption law in place in Illinois, and the Illinois Supreme Court merely balanced the interests of Morton Grove with the Second Amendment. The NRA sued Morton Grove immediately, sparking a backlash to local regulation of firearms that led to preemption laws being passed around the nation.⁸⁰ Thus, while the response by organizations such as the National Coalition to Ban Handguns viewed Morton Grove's ordinance as a positive force for strengthening gun control,⁸¹ its effects seemed to directly lead to severe restrictions on municipal gun control. The handgun prohibition was repealed in 2008 after *District of Columbia v. Heller*.⁸² Although that Supreme Court case did not concern the issue of state preemption (because the District of Columbia is not a state), it ruled that banning the possession of handguns was unconstitutional under the Second Amendment, meaning that no government (local, state, or national) could pass such a law. However, the NRA's effort to push states to pass preemption laws around the national led to

⁷⁷ "State Firearm Preemption Laws," EverytownResearch.org (Everytown for Gun Safety, February 20, 2018), https://everytownresearch.org/fact-sheet-preemption-laws/#foot_note_4

⁷⁸ Everytown, "State Firearm Preemption Laws."

⁷⁹ *Quilici v. Village of Morton Grove*, 695 F.2d 261

⁸⁰ Channick, Robert. "Morton Grove's landmark gun prohibition is repealed." Chicago Tribune. 29 July 2008. <https://www.chicagotribune.com/news/ct-xpm-2008-07-29-0807280686-story.html>.

⁸¹ "Federal Judge Rules Illinois Town's Ban on Pistols Unconstitutional," The New York Times (The New York Times, December 30, 1981), <https://www.nytimes.com/1981/12/30/us/federal-judge-rules-illinois-town-s-ban-on-pistols-is-constitutional.html>

⁸² Karen Hawkins, "Illinois Towns Repealing Handgun Bans," The State Journal-Register (The State Journal-Register, July 31, 2008), <https://www.sj-r.com/x223020433/Illinois-towns-repealing-handgun-bans>

municipalities being unable to pass gun control regulations that would be constitutional under the Second Amendment.

The current reasoning behind preemption is that different gun policies in different cities could violate generality, the rule that laws and regulations should apply equally to all citizens under one government, namely the state government.⁸³ The Supreme Court held in *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907) that “[m]unicipal corporations are political subdivisions of the [s]tate” and “[t]he [s]tate, therefore, at its pleasure may modify or withdraw all such powers . . . without the consent of the citizens, or even against their protest.”⁸⁴ The state ultimately controls its municipalities and thus has the power to control their authority. Because municipalities can be extremely partisan, this could result in starkly opposing laws in cities within miles of each other. Citizens should not have the responsibility to know all of the laws in not just their town, but surrounding towns as well. Preemption thus seeks to prevent an “incomprehensible patchwork of local ordinances.”⁸⁵ The issue of different laws across city borders exists for other laws like driving laws and are usually resolved with notices like speed limit signs. Cities could also post signs for gun policies, but doing this may still allow certain cities to infringe on state constitutions and the Second Amendment. The state is regarded as better equipped to protect these rights, so the argument is that state preemption of firearms is better for protecting the liberty of citizens.⁸⁶

Local regulation of firearms specifically became an issue for Pennsylvania when Philadelphia and Pittsburgh attempted to regulate assault weapons. In June 1993, the Philadelphia City Council passed a bill banning certain types of assault weapons within Philadelphia’s boundaries. A year later, Pittsburgh City Council passed an ordinance banning specified assault weapons within Pittsburgh as well.⁸⁷ Directly following this, the General Assembly amended Pennsylvania law to include Pennsylvania’s Uniform Firearms Act, 18 Pa.C.S. §§ 6101-6124.⁸⁸ This amendment included 18 Pa.C.S. § 6120, which outlined the express state preemption of virtually all forms of municipal regulation of firearms. Currently, section 6120(a) provides

⁸³ Adam Millsap, “When States Should Preempt Local Governments,” *Forbes* (Forbes Magazine, March 6, 2018), <https://www.forbes.com/sites/adammillsap/2018/03/06/when-states-should-preempt-local-governments/#57f202211ece>

⁸⁴ Phillips E Lauren, “Impeding Innovation: State Preemption of Progressive Local Regulations” (Columbia Law Review), accessed December 8, 2019, <https://columbialawreview.org/content/impeding-innovation-state-preemption-of-progressive-local-regulations/>

⁸⁵ “Strong Firearms Preemption Laws Are More Important Than Ever” (NRA-ILA, November 11, 2019), <https://www.nraila.org/articles/20191111/strong-firearms-preemption-laws-are-more-important-than-ever>

⁸⁶ Millsap, “When States Should Preempt Local Governments.”

⁸⁷ *Ortiz v. Commonwealth*, 545 Pa. 279 (1996).

⁸⁸ “Section 6120 - Title 18 - CRIMES AND OFFENSES,” accessed December 8, 2019, <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.061.020.000..HTM>.

[n]o county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.⁸⁹

Given this explicit preemption clause, attempts by Philadelphia and Pittsburgh to pass gun regulations have been swiftly shut down. In *Ortiz v. Commonwealth* (1996), the Supreme Court of Pennsylvania held that

Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. The constitution does not provide that the right to bear arms shall not be questioned in any part of the commonwealth except Philadelphia and Pittsburgh, where it may be abridged at will, but that it shall not be questioned in any part of the commonwealth.⁹⁰

With this 20-year old precedent, it was unlikely that Pittsburgh would succeed in passing its gun ordinances. As explained in the “Pittsburgh’s Gun Policies” section, the City Council made a respectable effort to avoid a violation of the preemption clause. Still, because express preemption laws are designed to completely prevent municipalities from passing regulations in this area, the preemption clause leaves virtually no room for cities in Pennsylvania to pass significant gun control laws. This point is confirmed in the Court of Common Pleas of Allegheny County Opinion on the case of *Firearm Owners Against Crime v. City of Pittsburgh*, the lawsuit against Pittsburgh, where Judge Joseph M. James cites *Huntley & Huntley Inc. v. Borough Council of Borough of Oakmont*, 964 A.2d 855 (Pa. 2009) stating that “[p]reemption of local laws may be implicit, as where the state regulatory scheme so completely occupies the field that it appears the General Assembly did not intend for supplementation by local regulations.”⁹¹

The NRA defends preemption statutes as “essential protection for gun owners.”⁹² This points to the political nature of preemption, with conservative state governments controlling liberal localities. While gun rights activists argue that varying levels of gun control across a state makes it more difficult to understand different laws, this could also be said for citizens who live near state borders and may frequently travel across state lines. The sole reason of inconvenience should not justify state preemption. Furthermore, municipalities would still be subject to the same restrictions on gun control that federal and state governments must comply with to protect the Second Amendment.

⁸⁹ “Preemption of Local Laws in Pennsylvania,” Giffords Law Center to Prevent Gun Violence (Giffords Law Center, November 18, 2019), https://lawcenter.giffords.org/preemption-of-local-laws-in-pennsylvania/#footnote_0_9109.

⁹⁰ NRA-ILA, “Strong Firearms Preemption Laws Are More Important Than Ever”

⁹¹ *Firearm Owners Against Crime v. City of Pittsburgh*, GD 19-005330.

⁹² NRA-ILA, “Strong Firearms Preemption Laws Are More Important Than Ever.”

Comparing Pennsylvania with states without preemption of firearm regulations is instructive to measuring how preemption can impact gun violence. Currently, 43 states have preemption statutes for regulating firearms, ranging from broad to specific areas of preemption. The seven states that do not are Connecticut, Hawaii, Massachusetts, New Jersey, New York, California, and Nebraska.⁹³ These seven states are among the 10 top ranked states for low death rates due to gun violence.⁹⁴ Furthermore, these newer preemption laws in states are associated with increased rates of gun trafficking. According to Everytown, a gun control advocacy group, “states with broad preemption laws export guns used in crime to other states at a rate more than four times greater than states that allow local control.”⁹⁵ This suggests that states may benefit from not implementing preemption if their objective is to reduce gun violence.

Preemption has also, directly or indirectly, led to negative outcomes. For example, while the Pennsylvania state legislature has prohibited guns in the state capitol and on the state agency property, local governments are not able to restrict firearms in municipal buildings, town halls, and city halls, making these government places potentially dangerous for local citizens and lawmakers. This danger manifested in the 2013 shooting in a municipal building in Ross Township which killed three people and injured at least two.⁹⁶ Furthermore, as mentioned previously, the recent Pittsburgh ordinances were passed in direct response to the Tree of Life shooting. Although it is difficult to discern whether certain tragedies could have been prevented if not for state preemption, the lower rates of gun violence in states without preemption suggest that preemption is ineffective to combat gun violence.

In 2014, Pennsylvania tried to institute repercussions for violating preemption to deter city council members from even attempting to pass laws like the current Pittsburgh regulations. Specifically, a locality that was sued over gun laws that violated the preemption clause would have to pay the legal fees and costs of the law’s challenger.⁹⁷ This provision was held unconstitutional by the Commonwealth Court in 2014 and by the Supreme Court of Pennsylvania in 2016 in *Leach v. Commonwealth*.⁹⁸ This attempt was also largely due to the influence of the NRA in further strengthening preemption to prevent stricter gun control. If such a provision was passed, it would further inhibit the ability of municipalities to try to fight against state preemption.

⁹³ “Preemption of Local Laws in Pennsylvania,” Giffords Law Center to Prevent Gun Violence (Giffords Law Center, November 18, 2019).

⁹⁴ “Stats of the States - Firearm Mortality,” CDC (Centers for Disease Control and Prevention), accessed December 11, 2019, https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm.

⁹⁵ “State Firearm Preemption Laws,” EverytownResearch.org (Everytown for Gun Safety, February 20, 2018), https://everytownresearch.org/fact-sheet-preemption-laws/#foot_note_4.

⁹⁶ *Ibid.*

⁹⁷ Everytown, “State Firearms Preemption Laws.”

⁹⁸ Giffords, “Preemption of Local Laws in Pennsylvania.”

However, it is unlikely that Pennsylvania's preemption law will be changed or removed entirely in the near future. Thus, preemption is a reality that municipalities like Pittsburgh must grapple with. To imagine realistic gun control policies, Pittsburgh must either be creative in crafting careful policies and programs to reduce gun violence or focus on pushing the state government to implement its proposed legislations. It has chosen to be creative in crafting careful policies by regulating the use of firearms based on its power under home rule, which is explored in the next section.

Home Rule

Home rule is the legal authority, delegated by the state, that local governments have over their municipalities to enact ordinances based on the needs of its citizens. It first emerged in 1875 after Dillon's Rule, "a canon of construction and a rule of limited power that focuses on the subservient nature of the city relative to the state."⁹⁹ The benefits of home rule include the government's proximity to local residents to hear their grievances as well as lawmakers who are often more familiar with the municipality's needs and likely more representative of the municipality's population compared to state and federal lawmakers. Furthermore, having fewer restrictions on home rule can allow for more experimentation with different policies to test effectiveness that could be translated to statewide policies. While these may lead to deeply partisan areas, voters can ultimately choose to live in cities or towns better suited to their needs and political identification.¹⁰⁰

With the issue of Pittsburgh's Home Rule Charter and the Pennsylvania Preemption law, it is clear that the Pennsylvania ban on certain types of municipal firearm regulation overrides the standard rule that Pittsburgh can implement its own laws. The Home Rule Charter, implemented in 1972 under Act 62, states this: that Pennsylvania counties and municipalities can do anything that's not specifically denied by the state constitution, the General Assembly, or the charter itself.¹⁰¹ According to the justifications in the Pittsburgh firearm regulations,

A Second Class City has the power under 53 Pa. C.S. § 23131, and City Council has the authority under the City of Pittsburgh's Home Rule Charter, "to regulate, prevent and punish the discharge of firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons."¹⁰²

⁹⁹ Phillips E Lauren, "Impeding Innovation: State Preemption of Progressive Local Regulations" (Columbia Law Review), accessed December 8, 2019,

¹⁰⁰ Millsap, "When States Should Preempt Local Governments."

¹⁰¹ Millsap, "When States Should Preempt Local Governments."

¹⁰² Pittsburgh, PA, Code of Ordinances, Title VI, Article XI, Chapter 1102 (2018).

Furthermore,

The City Council has authority under 53 Pa. C.S. § 3703 to “regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation.”¹⁰³

Because the preemption law only specifies that municipalities cannot regulate the ownership, possession, transfer, and transportation of firearms, and because Pittsburgh’s Home Rule Charter allows it to regulate the discharge of firearms, the City Council hoped that regulating the “use” of assault weapons and large capacity magazines would not violate state preemption. However, the other portions of the policies regulating the possession and ownership of certain weapons and large capacity magazines, as well as the Red Flag Law, do not fall under the scope of Home Rule Charter as they directly violate the preemption law.

However, the way that City Council defined use makes it unlikely that even the portions of the ordinances regulating use will be upheld by the Pennsylvania Supreme Court. Because the City Council includes “loading a weapon with ammunition,” “brandishing a weapon,” and “displaying a weapon,” they are also regulating open carry in public places. This is not the narrow definition of discharge of weapons and thus not necessarily in the scope of Pittsburgh’s Home Rule Charter. Thus, it is likely that the Pennsylvania Supreme Court will find that this definition still violates the Pennsylvania preemption law.

Studying the case of *Florida Carry v. City of Tallahassee* helps us further explore this issue. While the actual appellate case regarded a situation beyond the constitutionality of the ordinances, the context it provides is instructive. Florida enacted local ordinances in 1957 and 1984 that prohibited the discharge of firearms in city parks and other public places based on the 1987 Florida preemption law. Florida provided clearly in its statutes that it was “occupying the whole field of regulation of firearms and ammunition...to the exclusion of all existing and future county, city, town, or municipal ordinance...”.¹⁰⁴ However, the court found that the ordinances did violate the preemption law and Tallahassee subsequently did not try to enforce them. Florida’s preemption law is explicitly broader than Pennsylvania’s preemption law, but Pennsylvania courts may find that it had the same intention. Florida courts have also read the

¹⁰³ Ibid.

¹⁰⁴ *FL Carry v. COT Appellate Ruling*, 1D15-5520 (2017).

state right to bear arms as a further justification for preemption.¹⁰⁵ The same reasoning could apply to Pennsylvania, making it even more unlikely that these ordinances will be upheld.

In the next section, we will begin our interdisciplinary analysis of gun control to instruct our recommendations to the City Council. The first analysis we will conduct concerns the history of gun control, which can help us understand the context of firearms in America and suggest the most effective measures that have been implemented in the past.

Historical Considerations

Gun control and the right to bear arms have a deep, intertwined history in the United States, stretching back to when the colonies were still under British control. Guns were integral to the protection of the colonies—the frontier border was always nearby and skirmishes with Native Americans or other colonial powers were possible.¹⁰⁶ Men were obligated to arm themselves at their own expense to defend their town or region. Owning a firearm was considered not a right but a part of their duty to the collective security of the colony, and so gun control was built into the system. Every man was required to own a functional firearm and to report to muster—a formal meeting where the militiamen would train for battle and have their firearms inspected.¹⁰⁷ In the mid-1700s, the British government began to encroach on the rights of the colonists, leading them to articulate a right to self-defense from tyranny. The colonial charters granted by the king permitted a militia to ward off threats to the charter and so the colonists drew on the charters and on English law; they “invoked the authority of the English Declaration of Rights of 1689,” which “declared that ‘the subjects being Protestants may have arms for their defense’” and which the colonists reinterpreted as “‘the necessary Defense of the Community.’”¹⁰⁸ The concept of bearing arms was part of the civic duty towards community defense, and so it became intertwined with the idea of defense against tyranny. Since men did not purchase and maintain guns exclusively for themselves but for the greater good of the colony, gun regulation and inspection was an accepted part of the system.

The First American Century

The colonists asserted this right to bear arms in defense against tyranny and used their militias to win the American Revolution. The militias’ success meant that the right to a militia became a core tenet of the new American government, which emphasized liberty and freedom from

¹⁰⁵ “Preemption of Local Laws in Florida” (Giffords Law Center to Prevent Gun Violence, October 28, 2019), <https://lawcenter.giffords.org/preemption-of-local-laws-in-florida/>

¹⁰⁶ Adam Winkler, *Gunfight*, (New York, W.W. Norton, 2011), 113.

¹⁰⁷ Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America*, (New York, Oxford University Press, 2006), 2.

¹⁰⁸ Cornell, *A Well-Regulated Militia*, 12.

tyranny.¹⁰⁹ Therefore, some early state constitutions protected a right to bear arms in connection with a duty of communal defense.¹¹⁰ However, no early state constitutions codified an individual right to keep and bear arms for personal self-defense—this was instead a matter of common law, and even state constitutions that mentioned keeping a gun at home still linked that gun to the common defense.¹¹¹

When the right to bear arms as a militia was added to the Constitution, a fierce debate over the purpose of the amendment and the militias erupted between two political groups: the Federalists, who believed in a strong national government, and the Anti-Federalists, who advocated for maximal states sovereignty. Federalists doubted the effectiveness of undisciplined militiamen and wanted to nationalize the militia by giving the federal government control over regulation and training, while Anti-Federalists viewed the militia as a valuable tool of the state to prevent tyranny in the federal government if need be and were concerned that the federal government might try to disarm the citizens.¹¹² After much debate between the two sides, the Second Amendment was crafted to protect the citizens' ability to form a militia and to arm themselves, but additional laws still granted the federal government the authority to call upon the militia under certain circumstances.

The Second Amendment reads: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The amendment's first clause—that bearing arms was a civic obligation to serve in a militia to defend against tyranny or foreign aggression—was critical.¹¹³ The amendment drew on the British legal system, where English jurist Sir William Blackstone had established a collective political right that “aimed to prevent violence of oppression” and was considered “legally distinct from the individual right of personal self-defense.”¹¹⁴ Thus, at the time, the Second Amendment protected a collective right against political tyranny and did not codify an individual right to bear arms for self-defense.

The right to bear arms was in some ways more of a command than a right: the Uniform Militia Act of 1792 *required* that every 18 to 45 year old able-bodied white male serve in the militia and own a “a good musket, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch, with a box containing 24 cartridges with a proper quantity of powder and ball.”¹¹⁵ Since bearing

¹⁰⁹ Ibid., 3.

¹¹⁰ Ibid. 16-17.

¹¹¹ Ibid. 16-17.

¹¹² Ibid. 70.

¹¹³ Cornell, *A Well-Regulated Militia*, 3.

¹¹⁴ Cornell, *A Well-Regulated Militia*, 15

¹¹⁵ United States Congress. “United States Statutes at Large/Volume 1/2nd Congress/1st Session/Chapter 33.”

Accessed September 3, 2019.

https://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/2nd_Congress/1st_Session/Chapter_33

arms was a duty, the government could decide which guns men had to own and could inspect these firearms at muster. This reveals how the role of guns in early America meant that gun control and the right to bear arms were inextricably linked.

The nation expanded and urbanized in the 1800s, changing the way American citizens viewed guns. In the 1700s, most people rarely traveled out of the small towns they lived in, so interactions with strangers were uncommon. But as cities grew and more Americans traveled to seek employment opportunities, they had increased contact with strangers, and an influx of European immigrants in the 1840s meant that Americans were living amongst people that they knew far less frequently than in the past. People were wary of outgroups and this produced a lack of trust and the rise of an individualist mentality, so people armed themselves with concealed knives and pistols for self-protection.¹¹⁶ This led to deadlier interpersonal violence and prompted states to introduce gun control legislation.¹¹⁷ Between 1813 and 1829 several gun control laws were passed, limiting the ability of citizens to carry guns in public.¹¹⁸ These laws were often adapted from the 1328 Statute of Northampton, an English law which banned the open carry of certain weapons to prevent public terror at the sight of a weapon.¹¹⁹ More states added similar laws between 1830 and 1850, and some, like Kentucky and Georgia, also banned the carrying of concealed arms.¹²⁰ Courts usually upheld these laws, determining that the right to bear arms “had nothing to do with personal self-defense”¹²¹ and that “weapons that had little connection to military preparedness were not given any constitutional protection.”¹²² The courts also “acknowledged that militia weapons were constitutionally protected” but that “the state could still regulate the manner in which these weapons might be kept or borne,” suggesting that courts still saw the right to bear arms as a civic duty linked to the idea of a well-regulated militia.¹²³

This view was upheld in *U.S. vs Cruikshank*, the first Supreme Court ruling regarding the Second Amendment. The case originated when a contested election in Louisiana led to both the Democratic and Republican candidates claiming victory. The Democratic sheriff formed an armed posse of white men to take control of the courthouse, and in response the Republican incumbent drafted his own black armed force to protect the building from a Democratic takeover.¹²⁴ After an attempt at a truce failed, the Democrats besieged the courthouse, culminating with what became known as the Colfax Massacre: the white Democrats set fire to

¹¹⁶ Cornell, *A Well-Regulated Militia*, 137-139.

¹¹⁷ Ibid. 140-141.

¹¹⁸ Ibid. 4.

¹¹⁹ Mark Frassetto, *Firearms and Weapons Legislation up to the Early 20th Century*, (January 15, 2013), Accessed at SSRN: <https://ssrn.com/abstract=2200991>, 14.

¹²⁰ Cornell, *A Well-Regulated Militia*, 142.

¹²¹ Ibid. 144.

¹²² Ibid. 146.

¹²³ Cornell, *A Well-Regulated Militia*, 146.

¹²⁴ Ibid. 191.

the building and then slaughtered the black Republican defenders as they fled the burning courthouse.¹²⁵ Three of the Democrats involved were initially found guilty under the Enforcement Acts, which protected the newly freed blacks' ability to access the rights guaranteed in the Bill of Rights, including the right to bear arms. However, the Supreme Court overturned this decision, arguing that the Second Amendment only prevented the federal government from making laws that infringed upon the right, and that while the federal government could intervene to stop state and local governments from violating these rights, it had no control over private citizens or vigilante groups as had been the case in the Colfax Massacre.¹²⁶ This allowed the states freedom in regulating the militia and firearms, casting aside the individual view of the Second Amendment and emphasizing a states' rights reading of the civic duty enshrined in the Second Amendment.¹²⁷

While the American West in the 1800s is remembered as a wild, lawless frontier full of cowboys and bandits engaging in stand-offs, this perception largely emerged from popular culture and a mythologization of the Wild West for the purpose of entertainment and profit after the Civil War.¹²⁸ In reality, frontier towns like Dodge City, Kansas or Deadwood, South Dakota had relatively few murders, and this was a result of strict gun control ordinances.¹²⁹ While guns were prevalent, nearly every frontier town had laws prohibiting the carrying of guns by anyone other than law enforcement within the town borders.¹³⁰ People arriving in town were often expected to turn their guns in to the authorities in exchange for some sort of receipt, similar to a coat check at a theater.¹³¹ Concealed carry was also prohibited in many Western territories, and the illegal carrying of concealed weapons was actually the second most common cause for arrest in frontier towns, showing that sheriffs enforced these gun control laws.¹³²

The First Federal Gun Control

Following the Civil War, the federal government expanded its powers. While it had originally focused on national security, foreign policy, and monetary policy, the federal government now inserted itself into more aspects of the socio-economic lives of Americans, including crime. In 1919, Congress ratified the Eighteenth Amendment which banned the manufacturing, distribution, and sale of alcohol. The goal of Prohibition was to lower crime and prevent danger resulting from alcohol overconsumption, but it actually instigated more crime, stimulating a

¹²⁵ Ibid., 191.

¹²⁶ Ibid. 195.

¹²⁷ Ibid. 195.

¹²⁸ Cook, Philip J. and Kristin A. Goss, *The Gun Debate: What Everyone Needs To Know*, (New York, Oxford University Press, 2014), 161.

¹²⁹ Ibid. 161.

¹³⁰ Winkler, *Gunfight*, 165.

¹³¹ Ibid. 165.

¹³² Winkler, *Gunfight*, 171.

massive black market which quickly came under the control of organized crime rings.¹³³ Disputes between gangs over production facilities, markets, and political alliances (through bribery of local police or politicians) led to bloody skirmishes.¹³⁴ These were made even bloodier by the Thompson submachine gun, an automatic weapon which was easy to carry and produced devastating results, easily becoming the go-to for the gangster.¹³⁵ While instances of gun violence involving gangsters were not actually common, the media triggered fear in the public by sensationalizing stories about shootouts, such as the St. Valentine's Day massacre, where Al Capone's gang set up and murdered another group of bootleggers.¹³⁶ Additionally, bank robbers and highway bandits like Bonnie and Clyde, George "Machine Gun" Kelly, and John Dillinger utilized guns in their schemes, including automatic weapons like the Thompson submachine gun, drawing a lot of media attention as well.¹³⁷

The public's fear of gun violence, stoked by the media, led to the first federal gun legislation: the 1934 National Firearms Act. This law instituted a high tax on the manufacture, sale, and transportation of certain weapons—including sawed-off shotguns and rifles, automatic machine guns, and silencers—which effectively doubled their cost.¹³⁸ It also required that these firearms be registered with the Secretary of the Treasury and that the purchaser provide fingerprints.¹³⁹ This legislation was upheld in the Supreme Court case *U.S. vs. Miller* (1939).¹⁴⁰ The Federal Firearms Act of 1938 followed, making gun manufacturers, importers, and dealers obtain a federal firearms license and maintain customer records.¹⁴¹ Additionally, the act defined a group of "prohibited persons" who weren't allowed to buy guns, including convicted felons.¹⁴² The National Firearms Act and Federal Firearms Act were some of the first instances of gun control legislation emerging as a response to media hype and mass panic surrounding gun violence, rather than just being crafted to deal with the most pressing policy needs at the time.

Gun Control in the 1960s

The next wave of regulation came in the 1960s, again prompted by acts of gun use and gun violence that frightened the American public. First, there were several major assassinations: President John F. Kennedy in 1963, Martin Luther King Jr. in 1968, and Senator Robert F. Kennedy just two months later. Additionally, after a period of relative stability, crime rates were rising—from 1964 to 1967, murders with guns went up 51%, aggravated assaults with guns by

¹³³ David Harsanyi, *First Freedom*, (New York, Threshold Editions, 2018), 193.

¹³⁴ Ibid. 193.

¹³⁵ Winkler, *Gunfight*, 190.

¹³⁶ Cornell, *A Well-Regulated Militia*, 200.

¹³⁷ Harsanyi, *First Freedom*, 196.

¹³⁸ Cornell, *A Well-Regulated Militia*, 200.

¹³⁹ Winkler, *Gunfight*, 203.

¹⁴⁰ Cornell, *A Well-Regulated Militia*, 200.

¹⁴¹ Winkler, *Gunfight*, 204.

¹⁴² Winkler, *Gunfight*, 204.

84%, and armed robberies by 57%.¹⁴³ This increase in crime was partially a result of the devastation of African American communities by racist housing policies, unfair police treatment, discriminatory employment procedures, and destructive urban renewal projects. This left many African Americans impoverished and disadvantaged, with little access to well-paying jobs, neighborhoods that were falling apart, and essentially no government assistance. This led some black men to turn to crime, often armed robberies, to provide for themselves and their families. They typically used small, cheap pistols which became known as “Saturday night specials,” since they were used to rob people going out on the weekends.¹⁴⁴ These easily concealable, cheap handguns were not purchased exclusively by black men, but the media called extra attention to these firearms when they were used by black men, breeding an association between gun violence and black men and stoking fear among white Americans.¹⁴⁵ The 1960s also saw increasing racial tensions in the form of race riots in major cities like New York City and Detroit, which increased panic about the idea of armed, violent African Americans.¹⁴⁶

The factors surrounding race ultimately played a role in the passage of the Gun Control Act of 1968. This law replaced the Federal Firearms Act of 1938, expanding the definition of machine gun and adding “destructive devices” like bombs, mines, and grenades to the definition of firearm. The law also banned the shipping of guns across state lines by anyone except a federally licensed dealer or collector, expanded the federal licensing system to anyone selling weapons for the purpose of making money, and prohibited the importation of small, easily concealable firearms without a clear “sporting purpose.”¹⁴⁷ Finally, it mandated that all guns bear a serial number and expanded the “prohibited persons” list to include felons, the mentally ill, users and addicts of controlled substances, illegal aliens, and others, as well as introducing an age restriction of 21 on the purchase of handguns.¹⁴⁸

However, the assassinations and escalating crime rates did not alone inspire Congress to pass the Gun Control Act of 1968—instead, conflict between the Black Panthers and the California state government further persuaded Congress to pass the measure. Guns played a significant role in the Civil Rights Movement during the 1950s and 1960s, with the Black Panthers and others preaching that African Americans should arm themselves for self-defense, but this ultimately led to gun control measures on the state and federal levels. African Americans had first discovered the value of owning firearms for self-defense following the Civil War, when black Union soldiers returned home to the South with their guns, purchased from the Union Army for a reasonably cheap price, and used them to defend themselves against angry white mobs and white

¹⁴³ Ibid. 250.

¹⁴⁴ Ibid. 252.

¹⁴⁵ Ibid. 252.

¹⁴⁶ Ibid. 249.

¹⁴⁷ Cornell, *A Well-Regulated Militia*, 205.

¹⁴⁸ Winkler, *Gunfight*, 251.

supremacist groups.¹⁴⁹ During the 1960s, some blacks felt that the peaceful protests were not effective enough and simply led to blacks being beaten without any ability to protect themselves. Thus, many blacks began to purchase firearms, keeping them in their home and on their person for protection, believing that the muzzle of a gun would be the only thing that violent, racist whites would understand.¹⁵⁰ However, the Black Panthers' attempts to use firearms for protection in fact caused the government to create gun control measures preventing them from using guns.

The Black Panthers had been monitoring interactions between police and black residents by patrolling black neighborhoods in armed groups in an attempt to prevent police brutality.¹⁵¹ Racial tensions were heightened after an armed group of the Black Panthers occupied the steps of the California Legislature in Sacramento on May 2, 1967, advocating for black Americans to "arm themselves against this terror before it is too late."¹⁵² This demonstration led Governor Ronald Reagan to sign the Mulford Act, banning the open carry of loaded weapons, declaring that firearms were "a ridiculous way to solve problems that have to be solved among people of good will."¹⁵³ While Reagan and the National Rifle Association later supported gun rights in the 1980s, they were willing to support gun control in the 1960s when it fit their agenda and when arms were being used as a tool of justice and protection for African Americans.¹⁵⁴

The Rise of the Gun Rights Movement

Increasing efforts to ensure racial equality led many white Americans to become concerned that they were losing their place in American society, and ultimately drove the NRA and many others who had previously argued for gun control to begin a gun rights movement. Legislation like the Civil Rights Act gave blacks and other minorities more ability to stand up for their rights, and "many working- and middle-class white men...felt threatened by these massive social changes."¹⁵⁵ They perceived "a loss of status and power, a decline in the rights and privileges they enjoy as individuals but are able to obtain partly because they belong to a dominant social group" and felt that the government was giving minorities advantages at the expense of their way of life.¹⁵⁶ This popularized the notion of individualism among white Americans, who believed they need to defend their individual rights, most importantly the right to bear arms. They feared "big" government was extending its control too far with legislation that extended the rights of minority

¹⁴⁹ Ibid. 135.

¹⁵⁰ Winkler, *Gunfight*. 231-234.

¹⁵¹ Ibid. 237.

¹⁵² Jane Coaston, "The (Really, Really) Racist History Of Gun Control In America," MTV News, June 30, 2016, <http://www.mtv.com/news/2900230/the-really-really-racist-history-of-gun-control-in-america/>

¹⁵³ "The (Really, Really) Racist History Of Gun Control In America."

¹⁵⁴ Ibid.

¹⁵⁵ Scott Melzer, *Gun Crusaders: The NRA's Culture War* (NYU Press, 2009), 25-69.

¹⁵⁶ Ibid. 47.

groups, and they believed that the “loss of gun rights will lead to the loss of all other individual rights and freedoms.”¹⁵⁷ Additionally, the NRA underwent a dramatic transformation in the 1970s. While the organization had originally focused on firearms safety and marksmanship training, a group of hard-liners who were strong believers in the Second Amendment organized a leadership coup, forcing out the older members who focused on guns as recreation and shifting the NRA’s focus to gun rights and preventing gun regulation.¹⁵⁸ This was the beginning of the gun rights movement, and the racial factors outlined above led to many white Americans joining the NRA and becoming Second Amendment hard-liners themselves.

The start of the gun rights movement led to the first federal act that mostly relaxed gun control, the Firearms Owners Protection Act in 1986.¹⁵⁹ This legislation created protections for gun owners by prohibiting a national registry of dealer records, limiting ATF inspections to once per year, allowing licensed dealers to sell firearms at gun shows, and decreasing the amount of regulation on the sale and transfer of ammunition.¹⁶⁰ However, it limited guns in one major way: banning the ownership or transfer by civilians of automatic weapons made after the passage of the act on May 19, 1986.¹⁶¹

Gun Control Developments in Recent History

The next federal action on gun control came in the 1990s after an assassination attempt on President Ronald Reagan left White House Press Secretary James Brady permanently disabled.¹⁶² While the culprit had purchased the gun legally, some details which later emerged led to questions over who should be allowed to buy firearms; the culprit did not live at the address on the driver’s license he provided, and while he suffered from mental illness there were no documents that the seller could access that said this.¹⁶³ By signing the Brady Handgun Violence Prevention Act of 1993 into law, President Bill Clinton hoped to prevent similar people from buying a gun in the future, so the law made background checks mandatory before a firearm could be transferred from a licensed dealer, manufacturer, or importer to an unlicensed individual.¹⁶⁴ It also created the National Instant Criminal Background Check System (NICS), run by the FBI,

¹⁵⁷ Ibid. 59.

¹⁵⁸ Ibid.. 36-38.

¹⁵⁹ Winkler, *Gunfight*, 257-258.

¹⁶⁰ “Firearms Owners’ Protection Act.” Accessed December 4, 2019.
<https://www.congress.gov/bill/99th-congress/senate-bill/49>

¹⁶¹ Ibid.

¹⁶² Winkler, *Gunfight*, 69.

¹⁶³ United States Congress. “Waiting Period Before the Sale, Delivery, Or Transfer of a Handgun.” (U.S. Government Printing Office, 1989.) Accessed December 5, 2019.

<https://books.google.com/books?id=jicYSHkwLGoC&pg=PA361&lpg=PA361&dq=where+did+john+hinckley+purchase+his+guns&source=bl&ots=heAtbxqhjw&sig=ACfU3U2Mt3NVmPDbWOTKDtb2s5xzs4XNLg&hl=en&sa=X&ved=2ahUKEwiti9Kd5Z7mAhUiqlkKHQISDv84FBD0ATACegQICChAC#v=onepage&q=where%20did%20john%20hinckley%20purchase%20his%20guns&f=false>

¹⁶⁴ Winkler, *Gunfight*, 69-70.

and imposed 5-day waiting periods on the transfer of firearms until the NICS went into effect in 1998.¹⁶⁵ While the 5-day waiting periods were eventually ruled illegal, the NICS was already up and running by this point.

The late 1980s and early 1990s saw several mass shootings, most notably in Stockton, CA, where 29 children and one teacher were injured and five children were killed by a gunman wielding a semi-automatic rifle.¹⁶⁶ This spurred an anti-assault weapons sentiment, and led Clinton to sign the Public Safety and Recreational Firearms Use Prevention Act in 1994 which has become known as the “assault weapons ban.” This law banned the manufacture, transfer, or possession of 19 military-style semiautomatic assault weapons unless it was legally acquired before the law was passed.¹⁶⁷ It also prohibited the manufacture for civilian use of high-capacity magazines with more than ten rounds, but the act was only a temporary measure that lasted until 2004.¹⁶⁸

In the 21st century, the only major federal gun law came under President George W. Bush, and was beneficial to the gun industry. The 2005 Protection of Lawful Commerce in Arms Act prevented firearms manufacturers and licensed dealers from being blamed and held liable for negligence if a crime was committed with one of their guns. This law does nothing to lessen the number of guns in the hands of civilians nor to promote the safe ownership and operation of guns.

In the next section, we will analyze the legal history of gun control and the Second Amendment, particularly the Supreme Court cases that instruct gun policy, through the lens of different interpretations of the Constitution.

Legal Considerations

Although we are examining a preemption issue, we must also consider the greater context of the Constitution and the Second Amendment to examine whether the laws infringe on basic American rights. Understanding the different ways that the Constitution can be read is crucial to creating legally compliant gun policy. For a law to be deemed unconstitutional a majority of justices must agree, which makes understanding how the justices read the Constitution so important. There are two major schools of thought when it comes to the Constitution: textualists

¹⁶⁵ Ibid. 71.

¹⁶⁶ Adams, Jane Meredith. “Sparked by School Massacre, Gun Debate Still Rages.” Last modified May 29, 1995. Accessed December 8, 2019. <https://www.chicagotribune.com/news/ct-xpm-1995-05-29-9505290097-story.html>.

¹⁶⁷ Keneally, Meghan. “Understanding the 1994 assault weapons ban and why it ended.” Accessed December 4, 2019. <https://abcnews.go.com/US/understanding-1994-assault-weapons-ban-ended/story?id=65546858>

¹⁶⁸ Ibid.

and living constitutionalists.¹⁶⁹ The two schools of thought inform justices in all manners of Constitutional matters and have come into play in several Second Amendment cases.

Textualists believe that the Constitution is an unchanging document and that it is necessary to read the document in the context of the time it was written in. Textualists are considered to be the conservatives of the court, and they have a strict understanding of the Constitution.¹⁷⁰ A firm textualist would say that all cases dealing with constitutional issues should be decided based on what the Founding Fathers would have wanted. A lot of their analysis is based on historical background. They consider their interpretation to be a strict understanding of the amendments as written. A textualist would not believe in changing with the times or with the culture of the day.¹⁷¹ If a textualist wants to see an evolution of the Constitution they would advocate for adding another amendment. In the Supreme Court the most notable textualist was former Chief Justice Antonin Scalia, who was known for looking only at the words on the page or, as he put it, “The text is the law.”¹⁷² Joshua Prince, who is currently the council representing the groups suing the City of Pittsburgh over the legislation, also considers himself to be a strict textualist. He believes that that if any gun legislation is going to be passed, the Constitution must first be amended. Justice Scalia wrote the majority opinion in *District of Columbia v. Heller*, 554 U.S. 570, which is the current precedent for the Second Amendment.

“Living Constitution” proponents have a somewhat looser interpretation of the Constitution and are generally the court’s liberal justices. A living constitutionalist considers the Constitution to be a living document that was designed with some level of flexibility to account for societal changes.¹⁷³ They believe that the founding fathers took much care to craft the words in the Constitution and that the minutiae of the language is incredibly important, but that constitutional interpretation must take some account of how society changes over time.¹⁷⁴ Thurgood Marshall is considered one of the Supreme Court’s best examples of a living constitutionalist, stating that he “do[es] not believe that the meaning of the Constitution was forever ‘fixed’ at the Philadelphia Convention.”¹⁷⁵ He claims that by including the three-fifths compromise the Constitution was “defective” to start with and needed several amendments after the Civil War to get where it is

¹⁶⁹ Strauss, David. *The Living Constitution*. Oxford University Press. 2010. Last modified Sept. 27, 2010. Accessed December 2nd, 2019. <https://www.law.uchicago.edu/news/living-constitution>

¹⁷⁰ Siegel, Jonathan R. The Legacy of Justice Scalia and His Textualist Ideal. 85 Geo. Wash. L. Rev. 857 (2017); GWU Law School Public Law Research Paper No. 2017-78; GWU Legal Studies Research Paper No. 2017-78. May 2017. Last Accessed December 1st, 2019. <https://ssrn.com/abstract=3068880>

¹⁷¹ Ibid.

¹⁷² Ibid. 858

¹⁷³ Strauss. *The Living Constitution*.

¹⁷⁴ Ibid.

¹⁷⁵ Marshall, Thurgood. “Bicentennial Speech”. The Annual Seminar of the San Francisco Patent and Trademark Law Association. Maui, Hawaii. 6 May, 1987.

today.¹⁷⁶ Including the three-fifths compromise shows that the Constitution is a product of the time it was written in and thus cannot govern all aspects of modern life. If constitutional interpretation is not adapted to the current situation in the country, it would be rendered obsolete.¹⁷⁷ In *District of Columbia v. Heller* Justice Stephen Breyer wrote the dissent from the perspective of a living constitutionalist.

When it comes to the Second Amendment, most judges and legal commentators believe it confers either a collective right to defend the freedom of the community or an individual right to own a gun for purposes of both collective defense and self-defense. One other interpretation is Saul Cornell's argument in *A Well-Regulated Militia* that the right to bear arms in the Constitution was actually a civic obligation.¹⁷⁸ Cornell claims that the Second Amendment was added as a "civic right that guaranteed that citizens would be able to keep and bear those arms needed to meet their legal obligation to participate in a well-regulated militia."¹⁷⁹ His theory claims that the civic right was the dominant understanding of the Second Amendment for the first century of American history. According to Cornell, the collective understanding came from Anti-federalist sentiments of maintaining state control, while the individual interpretation came from people fearing for their safety. Cornell concludes the individual and collective understandings can be read in the Second Amendment, neither are what the Founding Fathers originally intended it to mean. However, most cases dealing with the Second Amendment center around a debate over whether the right to keep and bear arms is an individual right or a collective right. A collective right would imply that a person's right to have a gun is only in the context of what would be used in a militia.¹⁸⁰ In this argument a person would only need a gun to fight against the tyranny and the militia would be under the control of the respective state. Since *District of Columbia v. Heller*, the collective right interpretation has become associated with liberal justices.

The individual right is exactly what it sounds like: an individual person has the right to own a gun that is not related to any other social obligation.¹⁸¹ Proponents of the individual right interpretation believe that people should have that right for sport and recreation or for protecting themselves or their family. In this view, the government has no right to take away guns from law-abiding citizens for any reason. At the extreme, individual rights advocates believe that the government has no right to prevent any person from owning any gun that could have military

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Cornell, *A Well-Regulated Militia*.

¹⁷⁹ Ibid. 2.

¹⁸⁰ *District of Columbia v. Heller*, 554 U.S. 570.

¹⁸¹ *District of Columbia v. Heller*, 554 U.S. 570.

uses.¹⁸² The individual right to own a gun is now associated with conservative justices, who advocate a textualist approach to constitutional interpretation. *DC. v. Heller* established the individual right to own a gun as protected by the Second Amendment. Prior to that, in cases like *United States v. Miller*, 307 U.S. 174 (1939) the collective versus an individual right was never clear, but the prominent understanding was that it was a collective right.¹⁸³

Supreme Court Cases

District of Columbia v. Heller (2007) was the first time the Supreme Court ruled on gun ownership since the case of *Miller*. The court's decision was seen as moving away from its earlier interpretations, with the Supreme Court ruling that the right to own a gun was an individual right.¹⁸⁴ The court held that

The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.¹⁸⁵

That means that the government cannot restrict people's access to guns without substantial government interest. Substantial government interest in the context of guns would include preventing felons from owning guns and removing guns from the possession of people proven to be mentally unsound. The ruling came from the conservative majority in a five to four decision.¹⁸⁶ The *Heller* ruling shifted away from the traditional understanding of the *Miller* decision, but according to Justice Scalia did not reverse the precedent.

United States v. Miller was brought to the Supreme Court by the government on behalf of Jack Miller and Frank Layton. They were arrested carrying a sawed-off shotgun in violation of the National Firearms Act of 1934.¹⁸⁷ The court ruled that the Second Amendment does not protect a person's right to own all types of guns under all types of circumstances. Previous to *Heller*, *Miller* was interpreted to mean that the right to own a gun is a collective right necessary to the upkeep of a militia. Justice James McReynolds wrote the majority opinion and stated

In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has

¹⁸² Levy, Robert. "Anatomy of a Lawsuit: District of Columbia v. Heller. The Federalist Society." Last modified October, 2008. Accessed November 12, 2019. <https://fedsoc-cms-public.s3.amazonaws.com/update/pdf/XaixaVaK662iuLmR0z2WiQYxNEwuA6II3CAZT5BD.pdf>

¹⁸³ McReynolds. James. *United States v. Miller*, 307 U.S. 174 (1939)

¹⁸⁴ *District of Columbia v. Heller*, 554 U.S. 570.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ McReynolds. James *United States v. Miller*, 307 U.S. 174 (1939).

some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.¹⁸⁸

District of Columbia v. Heller centered around the passage of gun legislation in Washington D.C. which banned the possession of handguns unless owned by a current or retired law enforcement officer. People falling into that category had to have a special license issued by the Chief of Police. Any other type of lawfully owned firearm in the home “must also be unloaded and disassembled or bound by a trigger lock or similar device” unless they are in a business or are being used for sport.¹⁸⁹ Dick Heller was a resident of D.C. and was allowed to carry a firearm during his job as a special police officer in the Federal Judicial Center.¹⁹⁰ He applied for a license to keep a firearm in his home and was denied. He then reached out to the NRA about filing a lawsuit.¹⁹¹

Dick Heller reached out to the NRA to see if they would represent him in challenging the D.C. gun laws. The NRA was not interested in representing Heller in the case because they feared an undesirable decision would set back the goals of gun rights activists.¹⁹² Libertarian lawyer Robert A. Levy came across Heller’s name through his pro-gun connection and chose him to be one of six plaintiffs in his suit against the city of D.C.¹⁹³ He was not only a member of the legal team, but also bankrolled the entire case. By Levy’s own estimates a case lasting five years accumulating as many hours as *Heller* did would have “cost up to half a million bucks,” although he claimed to have not spent “anything near that. Not even in the ballpark.”¹⁹⁴ Levy made his fortune from wealth management, giving him the freedom to go to law school in his forties and serve on the board of libertarian organizations like the Institute for Justice and the Cato Institute.¹⁹⁵ It was through his associates from these organization that he met the two other lawyers that would make up the legal team for the suit, Alan Gura and Clark Neily.¹⁹⁶ They began connecting to different groups in order to find the best plaintiffs for the case. Originally, the suit consisted of six plaintiffs who were purposely chosen for their diversity in order to not

¹⁸⁸ *United States v. Miller*, 307 U.S. 174 (1939).

¹⁸⁹ D. C. Code §§7–2501.01(12), 7–2502.01(a), 7–2502.02(a)(4) (2001).

¹⁹⁰ *District of Columbia v. Heller*, 554 U.S. 570.

¹⁹¹ Levy, “Anatomy of a Lawsuit.”

¹⁹² Liptak, Adam. *Carefully Plotted Course Propels Gun Case to the Top*. The New York Times. 3 December, 2007. Last Accessed November 27, 2019. <https://www.nytimes.com/2007/12/03/us/03bar.html>

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Levy, “Anatomy of a Lawsuit.”

¹⁹⁶ Ibid.

only swing the justices, but also swing “the court of public opinion.”¹⁹⁷ Levy claimed that plaintiffs were chosen based on

who would project favorably and be able to communicate with the media and the public. Ideally, they should be diverse—by gender, race, profession, income, and age. They should believe fervently but not fanatically in Second Amendment rights, fear for their safety within their homes, and have need of a loaded weapon for self-defense. Naturally, we wanted law-abiding, responsible citizens¹⁹⁸

They eventually narrowed the number down to six plaintiffs, four of whom were white and two of whom were black. Additionally, three were men and three were women. The team then chose the lead plaintiff from the six, an African American woman named Shelly Parker.¹⁹⁹ She had several conflicts with drug dealers on her block after reporting them to the police and encouraging her neighbors to do the same. Eventually, someone broke into her home and threatened her life, which she also reported to the police.²⁰⁰ Due to the high crime in her neighborhood and the clearly documented threat to her life she was seen as the ideal candidate to be the face of the case. The suit against the City of D.C. was originally filed under her name, hence its original title, *Parker v. District of Columbia*, 311 F. Supp. 2d 103 (D.D.C. 2004).²⁰¹

The choice to bring this case at the time they brought it was no accident. Libertarians and gun rights activists had been waiting for their chance to challenge the dominant understanding of the Second Amendment for decades. The law in D.C. had been in place since 1975 and had never been disputed.²⁰² Levy and his team however, saw the shifting court and understood that it could be their chance to get a favorable ruling. Levy says that the team modeled their legal strategy after Thurgood Marshall’s strategy during the Civil Rights Movement²⁰³ They waited for a court that could help them, chose plaintiffs that would do well in the public eye, and made sure to not ask too much. The team understood exactly what they were doing. They wanted to bring this suit to the highest court in hopes of expanding the Second Amendment and turning it from a collective to an individual right.²⁰⁴

¹⁹⁷ Ibid. 1.

¹⁹⁸ Ibid. 1.

¹⁹⁹ Ibid. 2.

²⁰⁰ Ibid. 2.

²⁰¹ *Parker v. District of Columbia*, 311 F. Supp. 2d 103 (D.D.C. 2004).

²⁰² Levy, “Anatomy of a Lawsuit.” 2.

²⁰³ Ibid. 2.

²⁰⁴ Levy, “Anatomy of a Lawsuit,”. 2.

Parker v. District of Columbia was filed in the District of Columbia. The District Court ruled in favor of the District of Columbia and found the legislation to be constitutional because they interpreted the Second Amendment to be a collective right based on the Supreme Court's decision in *United States v. Miller*.²⁰⁵ The court found that their personal ownership of a handgun had nothing to do with the maintenance of a well-regulated militia under the precedent set by *Miller*. The libertarian law team then appealed to the District of Columbia Court of Appeals.

In the Court of Appeals, D.C. lost their case and the law was struck down. The Court of Appeals interpreted *Miller* and the Second Amendment to be an individual right.²⁰⁶ They became the second federal court ever to find an individual right in the Second Amendment. The only other at the time came from the fifth circuit in *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001).²⁰⁷ That case was denied certiorari, a review by the Supreme Court, and never brought to the highest court. That meant the D.C. appeals court was making the choice to find an individual right in the Second Amendment with no real precedent. Until the Supreme Court decided on *Heller*, lower courts had a lot of discretion in Second Amendment cases, which was a weakness Levy and his team knew they could exploit.²⁰⁸

It was in the D.C. Federal Court of Appeals that the plaintiffs besides Heller were found to have no standing. Standing means that a plaintiff in the case must show some sort of harm or injury by specific law before suing. None of the other five had ever actually requested a license to own a handgun.²⁰⁹ The court deemed that because they never applied for a gun, they were never denied and because they were never denied they could not prove any harm from the law.²¹⁰ The plaintiffs didn't apply because the process was long and because of the strict wording of the law. They knew they would have been denied. Levy called the process a "perfect Catch-22."²¹¹ You couldn't apply for a handgun in D.C. without first owning one, but you couldn't buy one without the license.²¹² Only Heller, who had bought a handgun in another state, could legally prove that it belonged to him and he had been denied. By applying for the license Heller could not be prevented from bringing the case to court based on standing.²¹³ Heller became the new face of the case when it moved to the Supreme Court because of the extreme planning of those around him seeking to expand the Second Amendment. He wasn't the perfect plaintiff. Heller was not as

²⁰⁵ *Parker v. District of Columbia*, 311 F. Supp. 2d 103 (D.D.C. 2004)

²⁰⁶ *District of Columbia v. Heller*, 554 U.S. 570.

²⁰⁷ *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001)

²⁰⁸ Levy, "Anatomy of a Lawsuit." 3.

²⁰⁹ *Ibid.* 2.

²¹⁰ *Parker v. D.C.*, 311 F. Supp. 2d 103 (D.D.C. 2004)

²¹¹ Levy. Anatomy of a Lawsuit. 1.

²¹² *Ibid.* 1.

²¹³ Obbie, Mark. "He Won the Supreme Court Case That Transformed Gun Rights. But Dick Heller Is a Hard Man to Please." The Trace. 3 March, 2016. Last Accessed November 21st, 2019.

<https://www.thetrace.org/2016/03/dick-heller-second-amendment-hero-abolish-gun-regulation/>

sympathetic of a figure as Parker or some of the other plaintiffs because he was a much more fervent believer in the Second Amendment and didn't have any documented threats against his life like Shelly Parker and some of the others.²¹⁴

When the case reached the Supreme Court, former Chief Justice Antonin Scalia wrote the majority opinion. The opinion relied heavily on the grammar used in the Second Amendment. He even went so far as to analyze the use of the words “keep” and “bear.” The largest focus of his analysis was on the distinction between the prefatory clause, which tells the purpose, and the operative clause, which is the protected legal right of the Second Amendment.²¹⁵ The two clauses are separated by the comma in the middle of the amendment.²¹⁶ The rights denoted in the two clauses give the right to bear arms a collective and an individual interpretation. Scalia states that the court found textual evidence in the Second Amendment

guarantee[s] the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the historical background of the Second Amendment.²¹⁷

He claimed that *Miller* and other Second Amendment cases never expressly said the individual right didn't exist because they were dealing with issues that wouldn't fall under the operative clause. By essentially ignoring the prefatory clause, Scalia reasoned that the D.C. law was unconstitutional because it limited individuals' right to bear arms.²¹⁸

The prefatory clause of the Second Amendment, according to Scalia, is the section that deals with the well-regulated militia. It states “A well regulated militia, being necessary to the security of a free state,” which the amendment follows with the operative clause, which states “the right to bear arms shall not be infringed.”²¹⁹ Scalia claimed the prefatory clause was included to put the Second Amendment into context. He explained when it comes to operative and prefatory clause that, “The former does not limit the latter grammatically, but rather announces a purpose,” because “apart from that clarifying function, a prefatory clause does not limit or expand the scope of the operative clause.”²²⁰ The reason that the Founding Fathers included an individual right to bear arms is because they needed to be able to call on an a militia. Scalia then went on to give a small history lesson, explaining that the colonists had been disarmed by King George III and so the Founding Fathers thought state militias were necessary to prevent the kind of tyranny

²¹⁴ Ibid.

²¹⁵ *District of Columbia v. Heller*, 554 U.S. 570

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ *District of Columbia v. Heller*, 554 U.S. 570.

they had been subjected to under British rule. The prefatory clause is, at its basis, the context for the rights in the rest of the amendment.²²¹

In Scalia's view, the operative clause means that people have the individual right to keep and bear arms stating, "We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans."²²² He put the amendment into a historical context by explaining the history of the United States and guns. Scalia explained that the term "the right to bear arms" was used in the 18th century to mean the right to keep and use weapons.²²³ Scalia finds fault in the idea that the right to bear arms only works in the context of a militia by writing

In any event, the meaning of "bear arms" that petitioners and Justice Stevens propose is *not even* the (sometimes) idiomatic meaning. Rather, they manufacture a hybrid definition, whereby "bear arms" connotes the actual carrying of arms (and therefore is not really an idiom) but only in the service of an organized militia. No dictionary has ever adopted that definition, and we have been apprised of no source that indicates that it carried that meaning at the time of the founding.²²⁴

He put the operative clause into context by explaining that the early colonists needed these guns to protect themselves in self-defense. He also linked the amendment to its ties to English common law because "the Second Amendment was not intended to lay down a "novel principle[e]" but rather codified a right 'inherited from our English ancestors'." ²²⁵ There was a long tradition of the right to bear arms in common law. At different points in the history of law in England and the early colonies the individual right to own a gun under certain circumstances was expressed.²²⁶ Scalia explained that owning a useful and common gun like a hand gun and being able to keep that gun in an operational way in your own home for protection has always been part of American life. The long history combined with the operative clause caused Scalia to rule that the right to bear arms was both an individual and collective right.²²⁷

At the end of his opinion Scalia also explained that while this right is unenumerated in our Constitution it does have limitations.²²⁸ He stated that he understood that cities in the United

²²¹ Ibid.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ *District of Columbia v. Heller*, 554 U.S. 570.

²²⁸ Ibid.

States have to deal with the issue of gun violence. Municipalities can still make laws that deal with guns.²²⁹ However, they can't outright ban people from owning common guns, like handguns, for protection purposes. This part of the decision leaves a lot of room for interpretation by states because it does not expressly say what can and cannot be regulated.

The case was groundbreaking for pro-gun activists. For the first time the Supreme Court recognized their individual right to own a gun. However, it was not the total win that some pro-gun activists wanted. The decision still left regulatory power to states when it comes to guns and made it clear that cities and states could require things like a license from people. It was the strategy of the legal team for *Heller* to argue that some regulatory power be given over guns. Levy and his team understood that it was important to not seem to radical.²³⁰ They understood that by not asking that all guns be legal under all circumstances their case would be more palatable for the swing justices. In the end that strategy worked and the highest court ruled in their favor.²³¹ The law only applied to D.C. because the District is totally under control of the federal government. For a constitutional right to apply to the states it must be incorporated by the Supreme Court on an amendment by amendment basis. It was not applied to the rest of the country until *McDonald v. Chicago*, 561 U.S. 742 (2010).²³²

Four justices found that the decision was wrong. In his dissent, Justice Stevens explained that the right is based on military readiness.²³³ He explained that the framers never intended the right to encompass the common law practice of the right to own a gun for protection. He made the point that the framers were familiar with laws that explicitly give individuals the right to own a gun and specifically didn't include that right in the Second Amendment.²³⁴ Justice Breyer also wrote a dissent in which he explained that the right to own a gun was not absolute.²³⁵ He also explained that at the time the Constitution was written laws restricting the use and ownership of guns existed in several states.²³⁶ These dissents show that even though the individual right to own a gun is now precedent, there is still abundant legal scholarship that strongly argues the opposite.

In the next section, we will explore gun control policies in other cities in America and in the U.K., Canada, and Australia. Analyzing the goals and results of these policies help guide our recommendations to the City Council through unique perspectives.

²²⁹ Ibid.

²³⁰ Obbie. "He Won the Supreme Court Case That Transformed Gun Rights"

²³¹ Ibid.

²³² *McDonald v. Chicago*, 561 U.S. 742 (2010)

²³³ John, Stevens. *District of Columbia v. Heller*, 554 U.S. 570. Dissent.

²³⁴ Ibid.

²³⁵ Breyer, Stephen. *District of Columbia v. Heller*, 554 U.S. 570. Dissent.

²³⁶ Breyer, Stephen. *District of Columbia v. Heller*, 554 U.S. 570. Dissent.

Comparative Policies

Analyzing Policies in Other Cities

Since other cities face preemption and issues of gun violence, we considered what they have done in response to their issues to build our recommendations. We focused on the examples of Boston, Austin, and Philadelphia. These three exemplify that municipal law is almost entirely determined by the extent to which the relevant state law allows cities to legislate, and then by what each city sees as its priority with respect to preventing gun violence. While Pittsburgh is in a period of reaction to a hate-motivated mass shooting, Philadelphia's laws target gang violence and at-risk youth, Austin seeks to preserve its citizens' rights to carry guns as freely as possible, and Boston largely seeks to prevent accidents and thefts. Therefore, while the legislation enacted in these three cities might not be helpful for Pittsburgh, these examples are useful in justifying increased home rule. If these three cities are justified in pursuing different strategies to enact firearm regulation for their vastly different goals, municipalities require more freedom to enact laws that solve their unique problems.

I. Philadelphia

Philadelphia is, of course, in a similar position to Pittsburgh when it comes to dealing with Pennsylvania's state preemption law. Also like Pittsburgh, and perhaps even moreso, Philadelphia has attempted to enact comprehensive gun legislation over the past several years only to have it struck down repeatedly at the state Supreme Court level. To combat this, in 2019, the mayor's office put forward the "Philadelphia Roadmap to Safer Communities," a set of community initiatives designed to prevent gun violence by regulating and improving the social conditions that cause it, since they are largely prohibited from legislating guns themselves.²³⁷ These include "Operation Pinpoint," the Youth Violence Reduction Partnership (YVRP), a community crisis intervention program (CCIP), and grassroots organization to stop gun violence.²³⁸ Operation Pinpoint will be conducted through the police department, and includes increased surveillance in neighborhoods with high crime rates.²³⁹ The YVRP includes home visits, job training, drug treatment, and referrals for counseling youth at risk of becoming involved in violent activity or those who have already been victims of it, and their families.²⁴⁰ The CCIP and the grassroots organizing both have a "boots on the ground" approach to curtailing the gang and youth violence that Philadelphia is seeking to address here and involve donations to nearly 50 existing community organizations and employing crisis workers who are respected in their communities to work in their neighborhoods on ending the "cycle of violence" present there.²⁴¹

²³⁷ Chainani, Anjali. "Gun Control Policies: Office of the Mayor." *City of Philadelphia*, 20 Mar. 2018, www.phila.gov/2018-03-20-gun-control-policies/

²³⁸ Ibid..

²³⁹ Chainani, "Gun Control Policies."

²⁴⁰ Ibid.

²⁴¹ Ibid.

Our analysis suggests that these types of programs have the potential to lower firearm mortality rates, although there are no public statistics of the success of these programs. Importantly, these programs can be feasibly passed in the face of Pennsylvania's state preemption law. Also, these initiatives are commendable for their efforts to address some of the other underlying causes of gun violence, like neglected communities whose members turn to gang violence in desperation. Although Pittsburgh legislators are likely justified in arguing that eliminating guns from our city limits could help decrease the number of shootings, mass and otherwise, Philadelphia lawmakers are also correct that in the absence of the opportunity to legislate about guns directly, community activism can be an effective tool for attacking gun violence at its earliest stages, sometimes even before the weapon has been purchased. These Philadelphia laws highlight a focus on crimes other than hate-motivated mass shootings, which is wise, since such events, while deeply traumatic for not only the victims directly involved but also for a whole generation of schoolchildren, are far less common than gang or domestic violence. Even though Pittsburgh had a different goal in responding to the mass shooting, and it thus structured its ordinances differently, it also sought to respond to other forms of gun violence through its Child Access Prevention Law and Red Flag Law. Incorporating these programs into that response would strengthen its ability to take municipal action to solve more commonplace issues of gun violence.

II. Austin

Austin has different priorities than Philadelphia and Pittsburgh when it comes to gun rights and restrictions, and it exemplifies what gun laws look like when they are being constructed with gun owners in mind instead of the potential and actual victims of gun violence. Nevertheless, gun owners in Austin do not have free reign to do whatever they want; that guns are still regulated more heavily within Austin city limits than in rural parts of the state is further proof that some restrictions on gun rights are acceptable even to those most stringent defenders of the Second Amendment. In Austin, open carry has been permitted since 2016 and requires a license to do so, however if you had a concealed carry license previously it carries over and permits you to open carry as well.²⁴² Additionally, no one is allowed to carry a gun while at work except for police officers, and guns are not permitted in certain public buildings like schools, courthouses, and private businesses with visible signage disallowing guns.²⁴³ Certain deadly weapons like machine guns and short barrel firearms are also banned by Texas state law, and Austin appears to have made no attempt to expand this list within its municipality.²⁴⁴

III. Boston

²⁴² Austin Police Department. "Open Carry." *AustinTexas.gov*, City of Austin, 2015, www.austintexas.gov/opencarry.

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

Boston and Massachusetts represent the opposite end of the gun legislation spectrum to Austin and Texas. In Boston, potential gun owners are required to report their purchase before or during the transaction and register their gun within a week, take a firearms or hunting safety course, pass a live fire test before a representative from the Boston Police Department, undergo a background check, and safely store their gun in their home.²⁴⁵ Additionally, various assault weapons are banned in the city consistent with Massachusetts state law.²⁴⁶ Boston's municipal laws indicate that the city is interested in preventing accidents and thefts more than assaults, consistent with them requiring such extensive safety training and licensing, and safe storage. However, we are interested in measures similar to these as a deterrent for those who attempt to purchase a gun with the intention of committing a violent crime, whether mass or domestic, since these people are less likely than well-meaning civilians to want to sit for a training course and register their guns, even if they can pass a cursory background check. The current Pittsburgh legislation focuses on regulating the "use" of assault weapons, since that word is conspicuously left out of the preemption clause, so we are interested in how some of these regulatory measures might be tweaked to fit within the confines of what Pittsburgh lawmakers are allowed to do, as well as what we would ideally pass if preemption were no object.²⁴⁷

Analyzing Policies in the U.K., Canada, and Australia

In the pursuit of solutions for gun violence, American politicians may take legislative advice from other English-speaking nations such as the U.K., Australia, and Canada. These countries have much lower rates of gun deaths and injuries. This will be an analysis of what firearm legislation they have implemented, how successful it was, and if it is possible to implement those same policies in the United States. Possible implementation will be based upon historical and current positions regarding the Second Amendment as held up by the Supreme Court.

The United Kingdom has the lowest rates of both gun ownership per capita and the lowest rate of gun deaths per capita. This is at least in part due to the extensive gun legislation that limits the ability of average citizens to attain firearms, which was implemented throughout the 20th century.

U.K. legislators have different constraints on their capacity for legislation due to the lack of a written constitution and the lack of a corresponding Second Amendment. Instead U.K. legislators had to contend with the Bill of Rights, whose wording for the right of citizenry to hold and maintain firearms was considerably more limited.

²⁴⁵ "Owning a Firearm in Boston." *Boston.gov*, City of Boston, Office of Mayor Martin J. Walsh, 19 June 2018, www.boston.gov/departments/police/owning-firearm-boston.

²⁴⁶ *Ibid.*

²⁴⁷ Pittsburgh Code of Ordinances.

The exact wording from 1689 was “That the subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law.” This was specifically in the aftermath of the English Civil War and the Glorious Revolution. The Bill of Rights protected the Protestant citizenry and country from potentially dangerous Catholic-influenced kings. This document was considerably weaker than the Second Amendment for multiple reasons. Firstly, the original text only specified that Protestants may have arms, meaning that this right wasn’t universal to the entire population. Secondly, defense suitable to their conditions further places a limit on what firearms are acceptable. Lastly, “allowed by law” means that any further legislation supersedes this portion of the Bill of Rights should that legislation be implemented. Without something as durable as the Second Amendment granting the right to bear arms, that right dwindled in the U.K.

The right for private citizens to own firearms was largely taken away during the early 20th century. Beginning with the repeal of the initial portion of the Bill of Rights detailed above, with the caveat that the right could just as easily be reimplemented through “use of the ballot box.” This once again highlights the difference in severity and weight the English Bill of Rights had compared to the U.S. Constitution. To implement a similar policy in the United States would likely require the repeal of the Second Amendment. This is an arduous process that requires mass mobilization and agreement from a vast majority of states in the Union. The U.S. Congress could never pass as a simple majority backed bill to dramatically limit access to firearms like what was done in the United Kingdom.

Lastly, something that many American legislators need to understand about the United Kingdom’s actions and success on reducing gun violence is the sheer length of time required to implement all the policies that created the system as it is known in the U.K. today, which has almost a century of different laws being enforced. Any reform passed will likely take time, and patience needs to be present in excess if the benefits of legislation can take place.

The United States cannot borrow much policy from the United Kingdom. Many reforms passed there would surely run afoul of the Second Amendment and be struck down in court in this country. It would be best to look elsewhere for suggestions for gun legislation.

Australia is a much younger country than either the U.S. or the U.K., and as such has less history to draw upon. However, the most important aspect of its legal system relating to firearms is that, like in the U.K., there is no constitutional right to bear arms. This allowed Australian legislators to respond quickly and decisively to a horrific act of violence in 1996 that left dozens dead or wounded with broad legislation of mandatory buybacks, bans of semi-automatic weapons, bans on imported firearms, and a statute that self-defense was no longer a viable reason to own a

firearm. Combined, these laws massively reduced the number of firearms available in the country.

This legislation likely would not have passed if there had been a Second Amendment equivalent. A mandatory buyback is akin to confiscation with a monetary reward, which very much violates that right of an individual to bear arms. Bans of semi-automatic weapons would be contentious. Imported firearms are not much of an issue as many American firearms are made inside the country.

The only potential ideas American lawmakers could draw from Australia would be a voluntary buyback system, mandatory training for those who own a firearm, and potentially a ban of semi-automatic weapons if the Supreme Court was of a sympathetic nature, which cannot currently be counted on.

Canada is considerably different from both the U.K. and Australia in terms of its legislation for firearms but is still much more extensive than the United States. Instead of focusing on confiscation, which would be legal given that Canadian citizens do not have the legal right to bear arms, Canada has implemented an extensive licensing, registration, and training system to reduce gun violence and deaths.

Every citizen who owns a firearm requires a license which necessitates both training and an extensive background check. On top of that, every firearm is registered in a national police database. Citizens also require special licenses to carry firearms outside the home.

Canada has the most transferable policy that could be utilized by the United States. Free mandatory training, extensive background checks, and a national registry of firearms do not conflict with the current accepted legal interpretation of the Second Amendment. All that is required is the political will to implement these policies.

The U.K., Australia, and Canada lack the clear constitutional right to bear arms that the United States has, allowing them to pass much more extensive and invasive firearm legislation. While their rates of gun death and gun ownership are far lower per capita than the US, it is difficult to emulate much of their successful legislation without clashing directly with the Second Amendment of the Constitution. As such, looking elsewhere for legislative inspiration has not yielded many practical solutions for U.S. policymakers, and will likely not in the future with the possible exception of Canada.

In the next section, we will interpret the Second Amendment, describe our ethical framework for our analysis, and use it to analyze the Pittsburgh ordinances.

Ethical Framework

While history can offer us a descriptive account of the shifting interpretation of the Second Amendment and what constitutes good and just gun law, given the existing legal framework and constraints surrounding it, it is then necessary to devise a normative account of the principles underlying both the Second Amendment as well as later policies concerning guns. To do this, we need to first identify the moral principles that underlie the Second Amendment, and then relate them to and analyze them in the context of the principles upon which the new Pittsburgh legislation is founded.

Our approach is based on a harm reduction framework, since it is clear to us and to Pittsburgh's local lawmakers that currently there is a gun violence crisis both in our city and nationally. Although we may differ from the Pittsburgh City Council in what we believe the most effective legislation would look like, we agree with them that if there is any action that could be taken to reduce gun violence and gun deaths, we have an obligation to take it. As gun violence in America is committed mostly by individuals or small groups of individuals, it should be mostly preventable, in so far as people can change their behaviors if properly incentivized. However, while addressing individual behaviors can make a difference, we argue that studying the underlying reasons for why people commit gun violence and the social conditions that permit it will be more effective than a purely incentives based approach. Knowing this, it is our responsibility to try and attack the problem of gun violence in a comprehensive way that gets at the heart of its many interrelated causes and meaningfully ameliorates the suffering it causes.

Second Amendment

We first analyze the language of the Second Amendment to determine the principles it is based on and how we wish to align them with our and situate them in our harm reduction framework. A plain reading of the Second Amendment suggests that “the security of a free state” is the most basic reason why the framers codify the right to keep and bear arms in the Bill of Rights.²⁴⁸ However, they thought that freedom could only be ensured if citizens are organized in a “well-regulated militia.”²⁴⁹ Digging deeper, the even more basic right that is being conferred by this amendment is to a “free state,” which from historical context meant freedom from monarchy, tyranny, and in general to a government that has authority through having the consent of the governed.²⁵⁰

The currently upheld legal interpretation of the Second Amendment was drafted in *D.C. v Heller* by the late Justice Antonin Scalia, a self-avowed textualist. There is contention even among legal

²⁴⁸ Pittsburgh Code of Ordinances.

²⁴⁹ Pittsburgh Code of Ordinances.

²⁵⁰ U.S. Const. amend II.

scholars over whether the position taken on guns and gun rights in *Heller* actually represents a textualist interpretation of the Constitution, or is simply aligned with Scalia's personal views as stated elsewhere.²⁵¹

Although textualism on its own as a philosophy does not inherently contain political attitudes, applying it in the case of the Second Amendment necessitates employing personal biases since there is no clear cut way to interpret it or know how stringently the right(s) guaranteed within it must be protected. Since the Second Amendment is written with an ambiguous grammatical structure, it is hard to make the argument that a single valid textualist interpretation of it exists. Scalia may be technically correct that the two clauses can and must be separated and treated as conferring two separate rights; however, a different textualist hoping to read a collective right into the Constitution might argue that the two clauses compose a single sentence and must be taken together and as informing each other. That is, the right to bear arms is directly related to the people's right and responsibility to form a well-regulated militia to defend the country from tyranny and thus not for any other purposes. Since it can generate conflicting interpretations of the Second Amendment, we have decided to turn away from using textualism alone, to also using the historical context surrounding the writing of the Constitution to try and determine what the amendment truly means.

The framers were writing the Constitution on the heels of the American Revolution. American independence from British Empire would undeniably have been impossible without the prevalence of guns and their presence in the hands of militiamen. Given these recent events and their perception of a police state in France, the framers likely thought that the only way to guarantee that Americans could exercise their right not to be governed by a tyrannical monarchy would be if the citizens themselves had the right to own guns and then could muster a militia if the need arose.²⁵² The fear was that if there was a standing army or police force at the behest of the government, even if the government itself was some kind of democratic republic, then the government would be able to secure the armed forces' services for their own purposes and use them against the people, as the framers saw happening in France.²⁵³ To prevent this, individual citizens and not agents of the government must have a right to keep and bear arms, and would perhaps ideally be required to do so, so that the only armed forces would be citizens' militias whose only interests could possibly be defending those of the citizens. Through this, we can see that the gun itself is not the thing; freedom is the thing. However, guns were seen as absolutely instrumental to guaranteeing access to freedom.

²⁵¹ Jeffrey A. Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (New York, NY: Cambridge University Press, 2002). 7-8.

²⁵² Don Kates, "Handgun Prohibition and the Original Meaning of the Second Amendment," *Michigan Law Review* 82, no. 2 (November 1983): pp. 204-273). 233.

²⁵³ Kates, "Handgun Prohibition." 233.

The Constitution was written in a context where there was no standing army, no police force, and essentially no legitimate functional government, as the charge of the various Constitutional Congresses was to build one. Additionally, the framers specifically feared the development of a standing army and the corruption it could lend easily to the government. In this context, it is perfectly understandable to think that guaranteeing everyone the right to own a gun would be instrumental in guaranteeing their right to freedom from tyranny. Acting collectively, as a well-regulated militia, the ragtag Americans had beaten the British regulars and it is reasonable to expect they could have taken on any elements of the government that turned against them. A problem with this line of thinking arises when elements of the government become heavily armed and well-regulated themselves, and when there are state police forces at the behest of local and national governments. Although Americans are still guaranteed their Second Amendment rights, the right to keep and bear arms is not enough to guarantee a right to freedom from tyranny when the government is armed because the government and its military can always be more armed than the people.

While the Second Amendment is still a fundamental right as outlined in the Bill of Rights, it cannot actually fulfill its own mission of conferring a right to freedom from tyranny through defending gun rights alone, and yet, its purview is limited based on the specificity in the operational clause. It is unclear how exactly this would translate to a modern setting. It is difficult to know what would guarantee the American citizenry the ability to defend itself against the government, given their current state of armament. While it might be effective, for example, to disarm the police, that is not exactly the kind of municipal legislation within the scope of this project, as we did not explicitly focus on police violence specifically as a phenomenon. It is likely futile to try and find an exact analogy explaining what would mean the same to me today as a gun did to an eighteenth century civilian. Therefore, we have focused our recommendations on what might guarantee us freedom from tyranny in a modern context, which we will explore more in discussions of specific recommendations.

Additionally, the conception of who was actually covered by the right guaranteed in the Constitution would likely have been relatively limited compared to who we would like to see it apply to today. The Second Amendment simply refers to those it confers rights upon as the “American people,” which would have been interpreted differently by its contemporaries than it hopefully would today. As evinced by the notorious “three-fifths compromise,” as well as the existence of the institution of slavery at all, the framers of the Constitution did not view African Americans as full American citizens and would likely not expect the Bill of Rights to apply to them.²⁵⁴ Similarly, for women, who were at the time denied the right to vote, it is unlikely they

²⁵⁴ U.S. Const. Art I, Sec II.

would be considered full citizens and protected by the Second Amendment. They certainly would not have been expected to report to muster and join a militia.

We, however, would of course like to see the Bill of Rights apply equally to all Americans, and make suggestions which seek to address or at least acknowledge the long history of imbalanced distribution of privilege and protection under the Constitution that this country has known since its inception. This, to us, means acknowledging that certain minority groups have higher risk factors for gun violence and may need special consideration given to the most effective way to protect their right to keep and bear arms.²⁵⁵ For example, in an era where leading government executives publicly use hateful, racist rhetoric, tyranny as propped up by the government's tacit consent may present itself as a hate crime, and thus a weapon intended for self-defense against an individual as opposed to an army may be guaranteed as a right.²⁵⁶

The right to bear arms also appears in many state constitutions, including the Pennsylvania State Constitution. This right reads as "The right of the citizens to bear arms in defense of themselves and the State shall not be questioned."²⁵⁷ We see the right to bear arms used increasingly with the justification of a right to self-defense, and it is important to acknowledge that while this right is not explicit in the U.S. Constitution, it is outlined clearly for the citizens of Pennsylvania. It is just as important to balance this right among individuals, acknowledging that not all citizens will have the ability to or feel comfortable defending themselves with guns. We find that this right fits with our harm reduction framework, but it clarifies that harm to oneself (the victim) may be weighted more heavily than harm to the assailant.

Our Framework

We believe from our direct reading of the text of the Second Amendment, and our consideration of the historical context surrounding its writing, as well as what it means in the modern day, that the most fundamental right we should seek to protect with regards to the Second Amendment is to freedom from tyranny. We will also consider the right of self-defense, but as we want our analysis to apply broadly to citizens of the United States, and because the U.S. Constitution does not specify the right to self-defense, we believe this right is more limited. We are not under any illusions that it is clear what this means or tells us exactly what we have to do. However, as we have decided to use a harm reduction framework to point the path forward, it becomes clear that

²⁵⁵ "Gun Violence in America," EverytownResearch.org (Everytown for Gun Safety Support Fund, April 4, 2019), <https://everytownresearch.org/gun-violence-america/>.

²⁵⁶ Lydia O'Connor and Daniel Marans, "Here Are 13 Examples Of Donald Trump Being Racist," HuffPost (HuffPost, August 5, 2019), https://www.huffpost.com/entry/donald-trump-racist-examples_n_56d47177e4b03260bf777e83.

²⁵⁷ "State Right to Bear Arms in Pennsylvania," Giffords Law Center to Prevent Gun Violence (Giffords Law Center to Prevent Gun Violence, November 18, 2019), <https://lawcenter.giffords.org/state-right-to-bear-arms-in-pennsylvania/>.

we may have to recommend sacrificing some individual liberty in the potential form of gun licenses, registrations, and waiting periods, as well as heavy taxes, for the sake of maximizing freedom as a whole, in the form of freedom from the threat of violence, state and otherwise.

By harm reduction, we mean that we see the problem of gun violence in its many forms (mass shootings, domestic violence, suicide, gang violence), and see an obligation to stem it. Considering the collective good of society, we seek to decrease the number of deaths and injuries caused by gun violence. Thus, we consider gun violence as a public health crisis, not a crisis of people committing illegal behaviors in excess. Using a public health lens means analyzing the root causes of gun violence that go deeper than the shortcomings of the current system at the point of sale or acquisition. In another, perhaps more familiar public health context, harm reduction has been used to advocate for social services like needle exchanges instead of heavy penalties for drug use. Advocates for needle exchanges explain how this will help stop the spread of infectious diseases like HIV and Hepatitis C at the earliest stage possible.²⁵⁸ Instead of jailing people for their drug use, which would lead to their continued unsafe drug use, as well as open the possibility of people with these infections spreading them to others, needle exchanges overlook for the moment the potential illegality or immorality of the activities they make safer with the goal of reducing the harm from the spread of disease.

Since gun violence is a deadly or seriously injurious harm to many as well, we are employing this framework to make recommendations which can reduce harm by considering societal conditions and root causes instead of regulations which single out individuals or objects as the source of the harm. Additionally, we have to clarify the difference between harm and crime. While some gun violence is legal, in the case of self-defense, that does not mean it does not constitute a harm. We account for this in our framework by weighting the harm caused by self-defense less than the harm caused by a violent act, but we overall seek to reduce harm, meaning that we would ideally like to eliminate the need for harm caused by self-defense. That is, if someone shoots a criminal who may or may not have had a gun, in self-defense, that is still a type of gunshot we are seeking to find ways to prevent. What we do not think is that “gun grabbing” is the way to do this, and instead want comprehensive reforms that would also prevent whatever the original crime was that prompted a gun owner to need to use one in self-defense.²⁵⁹ Reducing the need for self-defense means reducing the amount of ways a criminal can commit a violent act that requires self-defense. Thus, we want to implement comprehensive reforms to ensure that guns are removed from the hands of those likely to commit violence.

²⁵⁸ Chris Elkins, “Benefits and Risks of Needle Exchange Programs,” Drug Rehab (DrugRehab.com, May 3, 2018), <https://www.drugrehab.com/2017/11/06/pros-and-cons-of-needle-exchange-programs/>.

²⁵⁹ “Do Guns Save Lives,” Gun Sources (Gun Sources, May 1, 2017), <https://gunsources.com/guns-save-lives/>.

The fact that guns can save lives in some situations is a common argument made for why gun control will actually increase crime rates and gun deaths. This follows if gun control only consists in banning, heavily restricting, or confiscating the kinds of weapons people use for self-defense. It is also based on the assumption that since the only thing that can stop a bad guy with a gun is a good guy with a gun, more good guys need guns. However, we think that another course of action which could “stop a bad guy with a gun” is to institute comprehensive social reforms which put us on the path to eliminating assaults like that. Additionally, licenses, registrations, and waiting periods are not intended to disincentivize all gun owners from purchasing them, but instead to emphasize safety to reduce accidents, and offer a cooling off period for people who are liable to commit a crime if they do purchase a gun. Our recommendations help protect people's right to self-defense while reducing harm by placing measures to prevent those likely to commit an act of violence from gaining access to firearms and implementing overall licenses, registrations, and waiting periods to take caution when allowing anyone to purchase a deadly weapon. While these measures may cause burdens to law-abiding gun owners who use guns for self-defense, we believe that the harm reduced from implementing these measures is greater than any harm caused.

This reasoning also comes from our harm reduction framework, which causes us to consider gun violence as a societal problem, and not the fault of certain individuals or objects, even though they will be instrumentally involved. We also focus on considering the most vulnerable in society, who are often underrepresented in government and disenfranchised at all levels of the democratic decision making process. Historically gun regulation has served to maintain the status quo of the various social hierarchies that have defined American life since its inception. We instead recommend that if possible gun regulations be used to make society more equitable as opposed to maintaining inequality. Additionally, we see that those who commit some common forms of gun violence like gang violence and suicide are often driven to that by virtue of living in neglected communities. This points to a strategy for curbing gun violence that has more facets than simply banning the sale and purchase of assault weapons.

However, under the constraints of the Second Amendment, Pennsylvania state preemption, and the fact that making something illegal just pushes it to the black market and does not necessarily actually eliminate its presence, we have to figure out how exactly we can limit the prevalence of guns on the streets and how to maximize both freedom and safety for society as a whole. When it comes down to it, guns are objects and people are people. Even though people's right to own a gun is codified in the Constitution, so is our right to a free state, and in our view a state is more free the safer the streets are. Comparing the raw data of other countries does suggest that having fewer guns in people's possession and on the streets would correlate to having fewer deaths from guns. If, fundamentally, the right to own a gun comes into conflict with the right to live in a free, safe state, then we think it is ethical to restrict the ultimate freedom to own a gun. If reducing

harm means reducing the number of guns, then we would see a moral obligation to do that. Additionally, we believe that we can reduce further harm by preventing those who are likely to commit a violent act from gaining access to a gun. This requires careful consideration when allowing someone to buy or use a gun because preventing them from a crime by intervening at an earlier stage than when they are actually committing it would in turn eliminate the need for self-defense and the possible harm associated with it.

Since there is some limited legal precedent on restricting rights outlined in the Bill of Rights like libel laws do, we believe any limitations should be implemented with the intention of reducing harm. Therefore, we think that certain limitations on things like the speed at which people can acquire guns may be permissible, as well as requiring people to obtain a gun license, which is required by some states, and that these would have our desired effect of reducing the raw number of guns in people's possession, specifically in the hands of people with the intention of committing a violent crime.²⁶⁰ In order to prevent dangerous people from acquiring guns, however, it may fall on the rest of us to give up some of the liberty to completely freely acquire a gun. Since eliminating the need for guns for personal self-defense by stopping people likely to commit a violent crime from acquiring a gun at an early stage would reduce harm overall, and since this is what our recommendations on limitations of Second Amendment rights are designed to do, we find them both morally permissible and legal under federal law.

It has long been acknowledged by political theorists and proponents of social contract theory in particular that in order to exit the state of nature and enjoy the myriad privileges that come with living in a society, each individual gives up some of their personal liberties so that society as a whole can flourish through our cooperative behavior.²⁶¹ They have reached the conclusion that maximizing individual liberty does not actually equate to constructing a free society; the freedom of a society is different if not greater than the sum of its parts. What we endeavor to build, based on our Second Amendment right to be free from governmental tyranny, is a society like that, where the conditions for gun violence no longer exist, and therefore neither must gun violence itself or the fear of it. Some argue that an increased number of guns in the hands of civilians would actually be necessary to do this, since people who are committing a violent crime clearly are not committed to following laws.²⁶² However, many of the guns used to commit mass shootings as well as homicides and suicides are acquired legally, like the ones used in the Tree of

²⁶⁰ "Gun Ownership in Massachusetts," Mass.gov (Commonwealth of Massachusetts), accessed December 10, 2019, <https://www.mass.gov/info-details/gun-ownership-in-massachusetts>.

²⁶¹ Thomas Hobbes, *Leviathan*, version January 25, 2013 (London: Andrew Cooke, at the Green Dragon in St. Paul's Churchyard, 1651), <https://gutenberg.org/files/3207/3207-h/3207-h.htm>. Chapter XIII.

²⁶² Evan DeFilippis, "Rebutting the 'Criminals Don't Follow Laws' and 'Gun Control Only Hurts Law-Abiding Citizens' Argument against Gun Control," Armed With Reason (Armed With Reason, August 29, 2016), <https://www.armedwithreason.com/rebutting-the-criminals-dont-follow-laws-and-gun-control-only-hurts-law-abiding-citizens-argument-against-gun-control/>

Life shooting.²⁶³ Perhaps with better disincentives and social support services at the outset, crimes that like could be prevented without sanctioning increased widespread possession of guns among civilians, a position which we are not currently prepared to take based on the associated risk.

Individual and Collective Rights

In our reading of the Second Amendment, we interpret both an individual right to keep and bear arms, and a collective right to a well-regulated militia constituted of an individual and a collective right to a free state. We have also decided from considering the principles of harm reduction to make that collective right to freedom the priority of our recommendations, since the principles of social contract theory upon some of which America's founding documents rely say that it is ethical to require citizens in a society to give up some of their liberties for the sake of maximizing the liberty of the whole. However, those sacrifices to liberty should be felt equally throughout society. It could be argued that increased gun regulations single out the portion of the population that wants to own guns and targets them unduly. While social contract theory, and especially Rawls' variant on it in which he develops the concept of the veil of ignorance from behind which rational actors would gather to devise their ideal society, can be used to explain why certain demographic groups would not be treated unequally in that society, it can not necessarily be used to extend the same logic to those seeking to purchase something.²⁶⁴

Speaking abstractly, from behind the veil of ignorance there would be no codified right to keep and bear arms; it exists in America as a construction under the Constitution. Thus, if data suggested, and all other things being equal, that not having guns in a society would be safer, in so far as it is impossible to commit gun violence if no guns exist, those building a society from behind the veil of ignorance might not guarantee themselves a right to keep and bear arms once they enter society. Under these conditions, people would not have to worry about criminals acquiring guns and using them unlawfully, since the thrust behind social contract theory is that whatever the rational actors involved agreed upon would be constructed with incentives to follow it baked in. This does not guide us in devising legislation for the real world, but it generates an ethical basis for the fact that restricting gun rights may be more ethical than restricting rights which have a more demographic basis, like marriage equality or universal suffrage, which are the kinds of things people would also agree to from behind the veil of ignorance, in case they wished to enjoy them in society.

²⁶³ Richard A. Oppel, "Synagogue Suspect's Guns Were All Purchased Legally, Inquiry Finds," The New York Times (The New York Times Company, October 30, 2018), <https://www.nytimes.com/2018/10/30/us/ar15-gun-pittsburgh-shooting.html>

²⁶⁴ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap, 1971). Ch 3, Sec 24.

We have next to decide what it means to protect an individual right to bear arms in the context of protecting a collective right to a free state. To address the possibility that all parts of the Second Amendment may be intended to be construed individually, we considered “Handgun Prohibition and the Original Meaning of the Second Amendment,” where Don Kates Jr. makes a historical argument for an individual right to bear arms.²⁶⁵ He is correct that a plain reading may very well imply a conferred individual right.²⁶⁶ Additionally, among both scholars and lay people, most will usually assume that the rest of the Bill of Rights guarantees various individual rights like free speech or a swift trial by jury; the Second is the only amendment to face such significant backlash from the left and have its conferral of an individual right so hotly debated.²⁶⁷ We do not find that the parts of the Second Amendment which can be construed individually or collectively actually come into conflict, and wish to see them inform each other, as we believe may have been originally intended. That is, individuals exercising their right to keep and bear arms should be able to do so for the purpose of maintaining the security of a free state, if they wish to exercise that right.

In Kates’ discussion of the “militia” section of the amendment, his analysis is consistent with ours that the framers saw guaranteeing a right to bear arms as key to guaranteeing the right to a well-regulated militia, and then in turn the right to the free state that the militia would protect.²⁶⁸ While the right to own a gun in this case applies to the individual, one individual does not a militia make. Although it might be said that each individual has a right to a militia and to be protected by it, it is also clear how this right will inevitably be enjoyed collectively, as it is even a classic problem for social contract theory that the society it supports will serve free riders as well as contributors.²⁶⁹

The Second Amendment seems to confer neither an exclusively individual nor an exclusively collective right. The right to a “free state” can hardly be enjoyed by only one individual, while it is hard to explain how the right to “keep and bear arms” specifically can be applied collectively. To marry the two, we think it is our goal to figure out how to balance the three rights outlined in the Second Amendment (a well-regulated militia, a free state, and keeping and bearing arms) when at times they appear to come in direct contradiction to each other. For example, guns in the hands of certain individuals threaten the freedom and security of the state in general, while on the other hand, restricting gun ownership for some would eliminate their ability to help constitute a militia.

²⁶⁵ Kates, “Handgun Prohibition,” 213.

²⁶⁶ Ibid. 213.

²⁶⁷ Ibid. 237.

²⁶⁸ Ibid. 217-218.

²⁶⁹ Garrett Hardin, “The Tragedy of the Commons,” *Science* 162, no. 3859 (December 13, 1968): pp. 1243-1248.

In deciding the correct balance between individual and collective Second Amendment rights, we have to think very carefully about whose access to guns we feel the need to restrict in the interest of maximizing liberty overall. Since we have decided to operate as if the Second Amendment seeks to guarantee a right to freedom from tyranny, we evaluate the legitimacy of restrictions with this principle in mind. Traditionally, lawmakers have sought to block those with felony convictions and/or mental illness(es) from gun ownership. We find this line of thinking somewhat misguided if the end goal is to minimize gun violence and related crime. While we do agree that those convicted (or accused, under an ERPO) of violent offenses, specifically domestic abuse and violence, should be barred from owning guns, because the statistics show how many gun violence perpetrators have these charges on their record, we think more nuance must be given to the situation than a blanket ban on people with felony convictions. Instead of some kind of writ large ban on people with a criminal history or a history of mental illness on owning guns, we instead propose developing social programs to prevent crime in ways besides excessive armed surveillance, and provide support for the mentally ill, so that we do not have to deny groups of people their constitutional rights based on something about them that is never specified in the Constitution as grounds to do so.

The rights outlined in the Second Amendment are supposed to apply to “the people,” so we do not find it Constitutional or ethical to pick certain groups to deny these rights to without sound reasoning.²⁷⁰ Firstly, having a mental illness or having prior felony convictions does not, morally speaking, immediately disqualify someone from being a member of a well-regulated militia or protecting the freedom of the state. Of course, the nature of someone’s illness or past convictions may be an indicator that they are likely to be violent, in which case more notice should be taken if they are seeking to purchase a gun. Legislation like Red Flag laws seek to address this at an earlier stage as well, so that people close to someone potentially dangerous could notify the courts and legal action could be taken to prevent tragedy. Additionally, community-based support and mental health resources would seek to decrease the likelihood of people with mental illnesses and/or felony convictions from being driven to cause harm to themselves or others. Thus, we do not advocate barring certain demographic groups entirely from being able to purchase guns, as this could constitute discrimination, and in fact would likely largely be borne out by already marginalized groups who have disproportionately high rates of incarceration.

Applying this theoretical framework to the real world, we can see specific instances where it becomes clear that restricting the Second Amendment in precisely this way, as Kates suggests we intuitively should want to do, would actually limit freedom and reduce safety in the kind of substantive way we are seeking to avoid.²⁷¹ While of course we do not want to see guns in the hands of convicted domestic abusers, there are a whole host of “victimless crimes” for which it is

²⁷⁰ US Const. Amend. II.

²⁷¹ Kates, “Handgun Prohibition,” 264-265

unreasonable to deny people their constitutional rights based on a conviction. For instance, those arrested on drug charges, an issue rife with racial tension and discrimination, should not be barred from gun ownership on that count alone. The massive racial disparity in minor drug arrests is astounding, and young black and brown men should not be denied their Second Amendment rights just because they represent a flaw in a criminal justice system in desperate need of reform.²⁷² Since many of the charges these people are arrested under were devised with various levels of discriminatory intent and are implemented disparately across racial lines, they represent a form of state tyranny since they further entrench inequality and were made without the consent of those they affect.²⁷³ By further disenfranchising people arrested on trumped up non-violent drug charges, for example, and limiting their Constitutional rights if they are incarcerated, it only perpetuates an unjust racial hierarchy that America has not yet overcome.

Another “victimless crime” that actually represents deeper flaws in the system and not the character defects or propensity to commit a violent crime of its perpetrators is sex work; this is another, in some cases, felony offense which forces us to consider a nuanced position on whose rights exactly should be restricted under a view where we are prioritizing the freedom of the collective over the individual. Sex workers, in fact, like people suffering from mental illnesses, are more likely to be the victim of a violent crime than the perpetrator.²⁷⁴ Since identifying particular classes of people whose access to guns should be restricted is actually a murky process which lends itself to potentially limiting rights and freedom instead of guaranteeing them, we believe Pittsburgh should opt for more holistic, comprehensive gun regulations that get at the root causes of gun violence instead of individual potential perpetrators and their weapons, since this approach has as yet proved ineffective in eliminating urban gun violence in its many forms. We believe that more harm could be reduced in the long term by focusing on the root causes of gun violence rather than keeping the focus on confiscating and banning certain types of guns.

To further consider the idea of guns for personal self-defense, sometimes the argument is made that guns are the great equalizer; as it stands, without the aid of weaponry, some human beings are naturally stronger than others and may even have the ability to kill or hurt them, but if everyone had a gun, then everyone would have the ability to kill anyone else, if the need arose in a scenario which called for lethal self-defense.²⁷⁵ While the first part of those premises is definitely true, that some humans are stronger than others in the state of nature, by entering into society we agree not to exercise that natural ability for the sake of living in a society free from

²⁷² Michelle Alexander, *The New Jim Crow*, 2nd ed. (New York, NY: The New Press, 2012). 5.

²⁷³ Ibid. 5.

²⁷⁴ “Prostitution Statistics - Sex Crimes: Laws.com,” Sex Crimes (Laws.com), accessed December 4, 2019, <https://sex-crimes.laws.com/prostitution/prostitution-statistics>.

²⁷⁵ Erich Pratt, “Firearms: The Great Equalizer,” Gun Owners of America, August 28, 2018, <https://gunowners.org/firearms-the-great-equalizer/>.

violence and the fear of violence.²⁷⁶ The point of the argument is that physically weaker people need a contingency plan for if someone stronger than them decides to violate the social contract and attack them. Having this worry stems from the assumption that human nature is inherently violent and that no amount of good government and social support can eliminate the threat of attack.

While it is not a completely unfounded assumption that humans will always resort to violence, the true essence of human nature can never be proven, and we are proposing our recommendations under the assumption that humans are fundamentally cooperative and capable of constructing a society that can support all of its participants without driving anyone to attempt violence, especially given the vast resources at our disposal. Most human endeavor requires vast amounts of cooperation, and if wealth and resources were distributed more equitably throughout society, some of the conditions which lead to urban violence specifically could be curbed. Additionally, some psychologists argue that “aggression is not our primary ‘go to’ behavior” and that “it is largely our abilities to get along and to negotiate complex social problems, with and without aggression, that make humans” so successful.²⁷⁷ With this in mind we put forward suggestions in the hope that with the right conditions, humans would not always turn to violence even in times of need.

We genuinely are not sure whether the way to solve the problem that some people have the natural ability to kill others while others do not is to ensure that everyone has the ability to kill each other. It is the flipside to the solution to inequality offered by Kurt Vonnegut in his satirical *Harrison Bergeron*, where everyone must handicap themselves until perfect social equality is reached.²⁷⁸ The argument we draw out of this is that inequality among people will always exist, and that it is futile to try and get them to change something about themselves or make a specific purchase in order to combat it. Inequality is a social problem, and as we see it, it is a government’s responsibility to try and solve it at a social rather than individual level if it is truly going to do it effectively. That is why we recommend grassroots community programs to support at-risk youth and those suffering from mental illness, instead of approaches that focus on the individual as responsible for their own self-defense or even as the perpetrator of a crime or purchaser of a deadly weapon.

We do not necessarily have faith in the federal government to guarantee the adequate protections for its citizens at the outset. However, there are substantive changes at the local level that we

²⁷⁶ Hobbes, *Leviathan*, Ch. XIII.

²⁷⁷ Augustín Fuentes, “Bad to the Bone: Are Humans Naturally Aggressive?,” *Psychology Today* (Sussex Publishers, April 18, 2012), <https://www.psychologytoday.com/us/blog/busting-myths-about-human-nature/201204/bad-the-bone-are-humans-naturally-aggressive>.

²⁷⁸ Kurt Vonnegut, “Harrison Bergeron,” *The Magazine of Fantasy and Science Fiction*, 1961.

think could have a real impact, as outlined in our recommendations. Additionally, it would take comprehensive reforms of the police force and criminal justice system involving the implementation of more democratic structure before we could actually trust the police to protect the most vulnerable in society. However, at this stage we are more comfortable arguing for such long-term comprehensive reforms, and short-term social programs with grassroots bases than advocating for the proliferation of more guns, given the comparative data which shows that countries with fewer guns on their streets have fewer citizens die from guns.

Those examples considers the case of guns for individual self-defense, which is one of the main purposes often cited for why modern American citizens' Second Amendment rights must be upheld, along with hobbies like shooting and hunting. The right to bear arms, is, of course, as the right to free speech, for example, specified in the Constitution, but the government has never treated these rights as if they must go totally unregulated.²⁷⁹ Thus, since these common modern uses for guns are not referred to, we argue that they should be regulated as anything else in that category, so long as their regulation does not amount to government tyranny; as long as laws about them are passed through typical democratic channels involving demand from constituents or voting at all requisite levels, it is unlikely that laws surrounding them would inherently constitute tyranny or overreach, and therefore we argue regulations arrived at in this way are a valid tool for potentially preventing gun violence.

Of course, any effort to enact local gun regulation must take into account the challenge of state preemption. Nevertheless, as we argue that guns not being used for the purpose of arming a well-regulated militia might theoretically be regulated as other items used for hobbies, we are putting forward suggestions with that in mind. One of our goals with our recommendations is to keep guns only in the hands of law-abiding citizens. The requirement of a license or registration to own the types of guns common for use for sport is not intended to be prohibitive generally, only for those who would be unable to demonstrate their ability to use a gun safely or have a dangerous criminal record indicating they are liable to commit a violent crime. Guns are a hobby for some, but they are also potentially lethal if misused and we do not wish to treat the issue of gun deaths lightly even if guns can also be used harmlessly.

A comparison between guns and another hobby, and one often cited by proponents of heavier gun regulation, is that of cars. Lots of people drive cars, many feel they need to have one to live their life safely and conveniently; some will pay vast amounts of money to acquire a large collection of them, lots of people die from their misuse, and many cite their perceived

²⁷⁹ Alien and Sedition Acts, 1798.

similarities between the two in terms of mortality rates and casual usage.²⁸⁰ Taking the analogy further, perhaps it would not be unreasonable to require gun owners who expect to operate their guns to have a license and registration, and have to pass a proficiency exam in order for it to be issued. It is also plausible that the framers would have considered something like this appropriate, as the people would have to be held in some way accountable for their presence in their militia.²⁸¹

Even though a small minority of people who purchase guns actually intend to use them for a violent crime, since guns are so dangerous relative to most other things that people use for their hobbies, we think it is valid for potential gun owners to have to demonstrate that they can use their guns safely and have to have a license for them, and also to have to wait for at least some period to actually acquire the gun. Relative to the lives that might be saved by preventing someone potentially dangerous from acquiring a gun, and considering that even rights outlined in the Bill of Rights have not historically gone completely unregulated, we think it is both ethical and legally possible to have some limitations on utter freedom to purchase a gun, for the sake of keeping society as a whole safer. In fact, arguably, only responsible gun owners would actually be able to constitute a militia capable of defending the citizenry from tyranny, and the people are guaranteed their right to keep and bear arms for the sake of the maintenance of a well-regulated militia.

Pittsburgh Legislation

The new Pittsburgh law appears to be based, like our analysis, on a principle of harm reduction.²⁸² Although the Red Flag law that it tried to put in place would address the issue of suicide, for the most part the other sections of the law do not necessarily seek to address the main underlying causes of widespread gun violence except for the high prevalence of guns in America; it does operate under the assumption that we need guns off the streets if we want to stop violence.²⁸³ Perhaps the text of the law itself does not reveal this, but the fact that it was passed so soon after a mass shooting at the Tree of Life synagogue in Squirrel Hill in October of 2018 indicates that one of its main goals is to prevent further violence of that nature. This law does not concern itself with the fact that it may limit the liberty and individual rights of current and would-be gun owners, in the understanding that that is a secondary concern compared to the safety and security of real and perceived potential victims of gun violence.

²⁸⁰ Jen Gunter, “Gun Advocates Are Right, We Should Compare Guns to Cars,” Dr. Jen Gunter (Dr. Jen Gunter & Wordpress, January 26, 2013), <https://drjengunter.com/2013/01/21/gun-advocates-are-right-we-should-compare-guns-to-cars/>.

²⁸¹ Kates, “Handgun Prohibition.” 265.

²⁸² Pittsburgh, Pennsylvania, Code of Ordinances Title VI art. 1, Chapter 607 (2019).

²⁸³ Gilman, Dan and Grant Gittlen. Interview by Hazel Grinberg, Jeff Kang, Roshni Mehta, and Gabby Vennitti. In Person. Pittsburgh, November 13, 2019.

Objective levels of safety will in all likelihood always differ from perceived levels of safety due to the fallibility of human perception. However, increased perception of danger, whether or not the threat is present, does actually constitute a harm. In a situation where the tasks of preventing objective danger and perceived danger generate courses of action which are directly at odds with one another, you have to choose your priorities, and carefully. From a principled standpoint, and from examining the concrete example of Pittsburgh, we have reached the conclusion that preventing the objective danger should be the most important priority, while mollifying people's perceptions of danger can be a secondary task.

Even without the context of a mass shooting, the "gun debate" pervades our culture. The prominent faces of gun rights activism perceive, accurately or not, a sea change wherein they are losing their hegemony over the rest of American and global society.²⁸⁴ But a leveling of society, while it may reduce certain groups' relative power over others, does not actually constitute a harm against them if society overall is improving by becoming more equitable. However, in the context of a recent mass shooting, the disproportionate levels of fear are felt by the "other side." People fear more hate-fueled mass violence when in fact these acts are rare compared to common types of urban gun violence that people face every day, specifically domestic violence and suicide. What we wish to see in response to these prevalent forms of gun violence is comprehensive, not reactionary, reforms.

Among the various elements who disagree about the role of guns in society, some argue that they should play no role while others do not perceive them as special and think they could be integrated as anything else. Some gun owners feel unsafe whenever they cannot have their gun with them, and view their guns as an extension of themselves and their identity.²⁸⁵ If the government and the police cannot be trusted to enforce safety and defend their citizens from harm, then some feel a responsibility to defend others and themselves. With that in mind, it is understandable why some would feel unsafe if they cannot have their gun with them, if it is the one thing that guarantees their safety in the face of deadly harm.

Additionally, in the current polarized political climate, where some perceive their Second Amendment rights to be under attack, some gun rights advocates may feel targeted as any other minority might. As some democratic politicians make statements about their ideal levels of gun control, and local city councils like Pittsburgh's attempt to pass extremely restrictive gun legislation, it makes sense that some would worry they might be deprived of their Second

²⁸⁴ William A. Jacobson, "2nd Amendment Rights Are under Attack, but Don't Count on the Supreme Court," Legal Insurrection (Legal Insurrection, January 12, 2019),

<https://legalinsurrection.com/2018/02/2nd-amendment-rights-are-under-attack-but-dont-count-on-the-supreme-court>

²⁸⁵ John Burnett, "Does Carrying A Pistol Make You Safer?," NPR (NPR, April 12, 2016),

<https://www.npr.org/2016/04/12/473391286/does-carrying-a-pistol-make-you-safer>

Amendment rights.²⁸⁶ However, the actual relationship between guns, safety, and freedom is more complicated than that, and just because gun owners may perceive their gun ownership this way does not necessarily make that correct. Comparing being a gun owner to having some other kind of marginalized identity is also a false equivalence since there are objective social factors to consider when evaluating the validity of various competing interpretations of the current American situation.

Interestingly, the demographic split along the lines of “gun debate” used to plant people on the so-called opposite side. Gun rights activism began as a task of the Black Panthers and other civil rights activists who saw arming the relevant marginalized groups as an important tactic to combat government tyranny and state sanctioned racism.²⁸⁷ On the other hand, the NRA began as an organization aimed at improving the gun safety of Civil War soldiers and was “more open-minded about gun control than someone familiar with the modern NRA might imagine.”²⁸⁸ However, it has since shifted toward a more conservative ideology to typically being against further gun control in pursuit of the goal of defending their members’ Second Amendment rights. Nowadays, the prominent faces of gun rights activism are the same types of people who originally wanted gun control regulations in order to target African Americans and prevent them from owning guns as opposed to in the 1960’s when gun rights advocates more closely represented minority interests. Alternately, some gun control advocates today emphasize the importance of civil rights and racial equality, arguing that since members of marginalized communities are more likely to be the victim of a gun crime, gun control is in their interest.²⁸⁹

We believe that the Constitution should apply universally, to all citizens to whom it does apply, do not pose an excess danger to others. This cannot then inherently exclude any racial or other social groups. Additionally, when we see power asymmetries in this country that means members of certain groups like African Americans or people with mental illnesses are less likely to have their rights defended by the government, it means we have a responsibility to defend them to an even greater extent than those who already have a position of privilege in society. We aim to do this not through providing them something like special access to guns but instead based on our recommendations arrived at through our harm reduction framework, which focuses on the harms incurred at disproportionate levels by disadvantaged groups.

²⁸⁶ Brandon Carter, “O’Rourke Promises To ‘Take Your AR-15,’ But Americans Are Split On Buybacks,” NPR (NPR, September 13, 2019), <https://www.npr.org/2019/09/12/760386808/orourke-promises-to-take-your-ar-15-but-americans-are-split-on-buybacks>

²⁸⁷ Winkler, *Gunfight*, 13.

²⁸⁸ The Week Staff, “The Surprising History of the NRA,” The Week (The Week Publications, March 18, 2018), <https://www.theweek.com/articles/761135/surprising-history-nra>

²⁸⁹ Everytown, “Gun Violence in America.”

To illustrate this, we are not suggesting rollbacks of ERPOs or Red Flag legislation that is designed to protect these vulnerable groups until the disproportionate threats of danger they face is otherwise addressed. Since we do not live in an ideal world, where people are free from the threat of violence and the fear it causes, when we reason about what the right actions are to take with regards to legislation, we should be more pragmatic and less idealistic. Thus, it is important to acknowledge that while the arguments that both historically marginalized people and contemporary popular gun rights activists make for wanting to own a gun may contain the same words, they are not in essence the same.

Both groups may feel that their Second Amendment rights would be infringed by different laws, but there is a substantive difference between “Black Codes” barring African Americans from gun ownership, and the kinds of disincentives we would like to put in place on the speed at which someone can acquire a gun.²⁹⁰ Additionally, since marginalized people are more likely to be the victim of a gun crime, it is more logical for them to feel they need a gun for self-defense. Specific groups of marginalized Americans, specifically black people, women, and gay people, for example, also have centuries of history to call upon to provide empirical examples of danger they may need to defend themselves against while white men, the faces of gun rights activism, have precious little. Simply put, “gun owner” is not a marginalized identity in the same way “African American” or “Woman” is, and thus infringements on the liberties of gun owners may be held to a lesser degree of scrutiny than genuinely marginalized groups, especially considering the empirical data which shows that guns cause death and injury while blackness and womanhood do not.

It is also necessary to examine what motivated the legislators who crafted the Pittsburgh law to do it exactly the way they did to discern what principles they were motivated by, if we think they were good, and if they are, how to more effectively enact them through legislation, since the effectiveness of this bill is clearly in question, not in the least because it is currently undergoing an appeals process.

According to our interview with our local city councilperson in Oakland and Squirrel Hill, Erika Strassburger, the city lawmakers were perfectly aware of the state preemption issue when they passed the law, and indeed with how specifically and strongly it targeted gun legislation as an issue which local municipalities were really not supposed to legislate about.²⁹¹ Strassburger explained that they knew how quickly the law would likely be challenged in the courts, and while they attempted to anticipate some of the challenges and word the law carefully so that it might be upheld, she also saw value in the law generating power from below to put pressure on

²⁹⁰ “The Southern ‘Black Codes’ of 1865-66,” CRF-USA (Constitutional Rights Foundation), accessed December 11, 2019, <https://www.crf-usa.org/brown-v-board-50th-anniversary/southern-black-codes.html>.

²⁹¹ Strassburger.

lawmakers at higher levels.²⁹² For the city council, passing heavily prohibitive gun legislation including an assault weapons ban may have been less about actually immediately getting those weapons off the streets and out of people's possession, but instead about building consciousness around the issue so that in the future a really effective movement could be built for whatever type of gun control the majority of their constituency sees as important.

Clearly, these legislators were thinking long term. They went so far as to pass a bill they knew would likely be struck down just to raise consciousness, in the hopes that broad reforms could be won more effectively in the future. This is in philosophical alignment with the guiding reasoning behind a principle of harm reduction, which requires restraint in the present to maximize benefits in the future. However, evidence suggests that sometimes extremely restrictive bills like this actually have an adverse effect to their intentions, where people, fearing that their guns are about to be confiscated or illegal to be sold, will begin stockpiling or at least purchasing more guns, driving manufacturing and sale up in any meantime before the law goes into effect.²⁹³ These possible unintended consequences are why we do not actually recommend broad assault weapons bans like these and instead more community oriented programs and laws aimed at the time further before a crime is committed than the purchase of the relevant weapon.

In explaining the motivations behind the assault weapons ban and why the city council felt such extensive action needed to be taken, Strassburger spoke of her time as an organizer, specifically of her involvement with environmentalism.²⁹⁴ She and the council view gun violence analogously to the climate crisis and think that the causes of harm associated with each should be heavily regulated, like purchase, sale, and use of guns, and carbon emissions respectively.²⁹⁵ Even though big businesses may feel stifled by lawmakers regulating their behavior, they, like gun owners, have to stomach a little stifling in order to help preserve the safety of society at large, according to the lawmakers in charge of Pittsburgh's assault weapons ban.²⁹⁶ Dan Gilman, chief of staff to Pittsburgh Mayor Peduto also cited seat belt laws as an example of another area where perfect liberty cannot be maintained in the interest of maximizing safety.²⁹⁷ Although people may wish to have maximal freedom within their own vehicle, states decide to legislate around seat belts for the safety of drivers, passengers, and any passers-by who might potentially get hurt in an accident.

²⁹² Ibid.

²⁹³ Zachary Crockett, "What Happens after a Mass Shooting? Americans Buy More Guns.," Vox (Vox Media, LLC, June 15, 2016), <https://www.vox.com/2016/6/15/11936494/after-mass-shooting-americans-buy-more-guns>

²⁹⁴ Strassburger.

²⁹⁵ Ibid.

²⁹⁶ Strassburger.

²⁹⁷ Gilman.

These metaphors, however, as is our earlier comparison to cars, are imperfect. Guns are the only technology explicitly mentioned in the Bill of Rights, even if the framers' conception of a gun's technical capabilities may have been different to what ours is today. This weakens the analogy between guns and cars and guns and seat belts. However, although the metaphor may not hold up when trying to determine the legal standing of these various technologies, they can guide us in determining the strongest ways to legislate, like with a system of licensing and registration, or preventative if not somewhat paternalistic safety requirements. The comparison to the climate crisis is also a challenging one, because of the differences in the degree of impact an individual can have. While one person can commit an act of mass violence or an individual murder or violent crime and cause a huge amount of suffering, one person refraining from emitting carbon does very little to solve the climate crisis. So while it may be useful to consider the comparison insofar as it tells us it may be ethical and necessary for people to make individual sacrifices in order to preserve the health and safety of the whole, it does not necessarily give us clear instructions on how to do so.

Strassburger, in our interview, also stressed the importance of responding to the demands of her constituents; after the Tree of Life shooting in October 2018, people were outraged and afraid, and demanding something be done to prevent future violence of the sort.²⁹⁸ While a ban on assault weapons may not address the deepest root issue that causes people to commit hate crimes, it would theoretically decrease the prevalence of a major tool in their commitment, a weapon with the capability to very quickly and effectively kill multiple people. A problem with this line of thinking can sometimes arise when people, fearing that their guns are going to be confiscated or their ability to buy one curtailed in the near future, are motivated to purchase more guns after a restrictive law is passed. This can drive manufacturing up and generally cause the law to have the opposite of its intended effect of reducing the sale of guns.²⁹⁹ The Pittsburgh law was not really in effect long enough to tell conclusively if this will happen, but this potential outcome is one of the reasons that our recommendations include more interventions at the community level which seek to prevent violence at its root social causes instead of only at the stage of purchasing or using a gun.

In the next section, we conduct a final analysis of the effects of previous gun policies in America. We highlight successful past policies to consider implementing some of these aspects into our recommendations.

²⁹⁸ Strassburger.

²⁹⁹ Peter Hess, "Why Americans Buy So Many Guns, According to Psychology Experts," Inverse (Inverse, February 22, 2018), <https://www.inverse.com/article/37012-why-americans-buy-guns-after-shootings>

Evaluating Effectiveness of Past Gun Policy

The Public Safety and Recreational Firearms Use Protection Act (also known as the Federal Assault Weapons Ban), enacted from 1994 to 2004, prohibited the manufacture of semi-automatic civilian use firearms and large capacity magazines. According to a Stanford Law School study, mass shootings of 6 or more people declined by 25% during the period of the ban and significantly increased after. Furthermore, there was a 40% drop in fatalities during the period that the ban was in place. In contrast, there has been a 347% increase in fatalities in the years following the ban's expiration.³⁰⁰ From this study we can glean that a ban on weapons that are designed for combat purposes and can fire multiple rounds without reloading reduced the amount of mass shootings. Thus, the Pittsburgh law may be effective to a lesser extent as it only bans the use, not manufacture, of these semi-automatic weapons.

The Brady Bill of 1994 required background checks and a five-day waiting period before one can buy a handgun from a federally licensed dealer. Once the NCIS system was released in 1998, the database replaced the waiting period. A study by Philip J. Cook concluded that this bill did not make a difference in the number of homicides. Because there was a preexisting trend of decreasing homicides before the bill went into effect, we cannot attribute this decrease to the Brady Bill. Cook states that the problem is not the ban itself, but the gap that allows individuals to buy guns from private and gun show sales. Though there is not sufficient data on the number of people that obtain a gun illegally (straw purchases, failed background check) at private and gun show sales, Cook suggests measures such as an Illinois law that requires gun owners to show identification to dissuade ill-intentioned individuals from purchasing guns through this loophole.³⁰¹ Because the Pittsburgh law does not deal with the sale of firearms, we cannot make any predictive statement about the effectiveness. However, it is important to keep this example in mind when lobbying for state and federal legislation. We recommend that City Council and local Representatives petition state government for waiting periods and enhanced background checks and close the gun show loophole.

In January 2019, Tacoma City Council passed a law that banned the sale of semi-automatic assault rifles to anyone under 21, created a 10-day waiting period between the time that the buyer purchases the gun and receives the gun, and instituted more thorough background checks. Though it is too early to tell the effects of this law, this case may be useful to follow to see if

³⁰⁰ John Donohue and Theodora Boulouta, "That Assault Weapon Ban? It Really Did Work," The New York Times (The New York Times, September 4, 2019), <https://www.nytimes.com/2019/09/04/opinion/assault-weapon-ban.html>

³⁰¹ Michael Marshall, "Study Shows Brady Bill Had No Impact on Gun Homicides," University of Virginia School of Law (Rector and Visitors of the University of Virginia, June 6, 2018), https://www.law.virginia.edu/news/2003_spr/cook.htm.

these acts cause any tangible reduction in gun violence. In our further steps section we suggest researching more municipal gun control legislation and its effects.

A recent study about effective law states that they are “those that regulate who has legal access to guns as opposed to what kinds of guns they have access to.” This implies that simply regulating use of a specific type of gun will not lead to a meaningful decrease in gun violence. The study found that universal background checks and “may issue” laws that give police more discretion in issuing concealed carry permits are associated with a lower gun homicide rate.³⁰² “May issue” laws are quite rare and do not have the same mass support as universal background checks. Thus, we recommend pursuing more lobbying efforts towards universal background check implementation on the state and federal level.

These case studies demonstrate that there are a constellation of factors to contemplate as we craft gun control policy. It is unclear whether banning only the use of semiautomatic weapons will reduce gun violence, but previous attempts to regulate assault weapons demonstrate that a combination of comprehensive legislation can decrease gun related deaths. Pittsburgh should work with state legislators to build take a more holistic approach to gun violence and consider implementing measures such as increased background checks to supplement the new legislation.

In the next section, we outline our recommendations to the Pittsburgh City Council with our historical, legal, ethical, and policy analysis in mind.

Recommendations

Advocacy on State and National Level

A Red Flag law like the one passed by the City Council is something we recommend on a state and federal level. Currently, only 17 states and DC have Red Flag laws in place, and six others (including Pennsylvania) have bills pending in the legislature. While it is facing scrutiny, the current federal laws do not allow every legal citizen to own a gun. Even the Second Amendment has limits, and the Red Flag law merely enforces these limits. For example, felons, the mentally ill, and fugitives are but some of the categories of people who background checks will prevent from owning guns. Should these kinds of people fail to be identified, the Red Flag law is there to avert a serious situation from occurring.

This kind of law should avoid scrutiny from the gun lobby. Of the three laws that were passed, the Red Flag law has been glossed over in comparison to the ammunition and gun limits in

³⁰² Nicole Javorsky and Richard Florida, “The 3 Gun-Control Laws That Work Best in the U.S.,” CityLab (CityLab.com, April 5, 2019), <https://www.citylab.com/life/2019/04/gun-control-firearms-law-deaths-shooting-state-data-research/586363/>

conversations across the United States. Despite this, the NRA has come out in 2018 in support of such laws, although with conditions, and in the wake of the El Paso and Dayton shootings, President Donald Trump has come out in support of similar laws, stating that guns should be removed from “those judged to pose a grave risk to public safety.”³⁰³ State Supreme Courts have also ruled in favor of Red Flag laws that states have implemented. In a case at the Connecticut Appellate Court, the state’s law was considered constitutional as an example of “the longstanding ‘presumptively lawful regulatory measures’” that came from *Heller v. District of Columbia*. Florida and Indiana Courts of Appeals have also upheld similar laws. It’s the one kind of gun legislation that many lawmakers agree that is the most passable.³⁰⁴

The Pennsylvania legislature also has an Extreme Risk Protection Order law in the works. As of October 2019, it’s stalled as the House Judiciary Committee Chairman says it’s done looking at gun control legislation during this session.³⁰⁵ It has bipartisan support. Rep. Todd Stephens, R-Montgomery County, offered the bill in September 2019 as the state’s seen nearly 3 suicides per day.³⁰⁶ Stephens has stated that it isn’t a Second Amendment rights issue, but a “public health issue.” While it has not moved far, many groups in Pennsylvania support such a law, including trauma surgeons and veterans.

The main criticism of Red Flag laws are that gun owners who have their weapons taken away from do not always receive due process. President Trump acknowledged this when after the Parkland Shooting in Florida, he said “[t]ake the guns first, go through due process second.”³⁰⁷ In Florida, a case is currently in its court of appeals regarding a 16-year-old boy with autism who threatened to shoot his classmates after becoming agitated after they kept bumping into his desk. The vague language in Florida’s law allowed law enforcement to assess an ERPO against the student, which his lawyer cites is unconstitutional. While it can be a problem, states have amended their legislations to put the burden of proof on the accuser. The law in New York state,

³⁰³ Nicole Gaudiano, “Under Pressure, NRA Voices Support for Gun Violence Restraining Orders,” USA Today (Gannett Satellite Information Network, March 23, 2018), <https://www.usatoday.com/story/news/politics/2018/03/19/under-pressure-nra-voices-support-gun-violence-restraining-orders/433716002/>)

³⁰⁴ Ford Turner, “Backers of Proposed ‘Red Flag’ Gun Law in Pennsylvania Support End-around to Get Things Moving,” mcall.com (The Morning Call, October 14, 2019), <https://www.mcall.com/news/pennsylvania/mc-nws-pa-red-flag-20191014-5wf4f6xq55bybgzfhns5wpltlq-story.html>)

³⁰⁵ Ford Turner, “Backers of Proposed ‘Red Flag’ Gun Law in Pennsylvania Support End-around to Get Things Moving,”

³⁰⁶ Jan Murphy, “Calls for a Red Flag Gun Law in Pa.: ‘This Isn’t a Gun Issue. This Is a Public Health Issue.’,” pennlive, September 17, 2019, <https://www.pennlive.com/news/2019/09/calls-for-a-red-flag-gun-law-in-pa-this-isnt-a-gun-issue-this-is-a-public-health-issue.html>)

³⁰⁷ Brett Samuels, “Trump: ‘Take the Guns First, Go through Due Process Second’,” TheHill, March 2, 2018, <https://thehill.com/homenews/administration/376097-trump-take-the-guns-first-go-through-due-process-second>)

for example, “includ[es] an appeals process, a prompt evidentiary hearing and a burden on the petitioner to meet a certain standard of evidence.”³⁰⁸ ERPOs are temporary, and the accused in most states has a chance to defend themselves after their guns are taken. Pittsburgh’s Red Flag law is a great example of this as it outlines the process to issue an ERPO, which requires that the court find by clear and convincing evidence that the person presents a risk of harm to themselves or to others based on several outlined factors. To issue an interim ERPO before the hearing takes place, the court must determine by a preponderance of evidence that the risk of harm is imminent. Outlining a clear judicial process helps protect the rights of gun owners while balancing the threat of harm to others.

Support for Red Flag laws are expansive and bipartisan. 60% of gun owners approve of family member- or law enforcement officer-driven ERPOs being assessed, and more than 65% of either Democrats, Republicans, or Independents support them.³⁰⁹ Red flag laws are a policy that despite the outcomes on the current Pittsburgh gun laws, due to state preemption, should be revisited.

Disincentives for Purchasing Firearms

We can also look to our historical analysis to find inspiration for potential modern gun control measures. Although the National Firearms Act was passed nearly 90 years ago, it provides insight into how guns can be regulated in ways other than outright bans, such as creating disincentives for purchasing firearms. The law’s main component was a massive tax on certain weapons that were deemed to be a problem at the time: sawed-off shotguns and machine guns, like the Thompson submachine gun employed by some bootleggers and gangsters. The tax, which approximately doubled the price of these weapons, not only acted as a preventive measure against the purchase of guns, but also allowed law enforcement to arrest criminals for evading the tax. A similar tactic could be useful in the modern era, as federal, state, and local attempts to ban weapons, specifically assault weapons, are often struck down. While banning any types of firearms seems out of the question, implementing higher taxes on firearms could reduce the number of gun sales, and the tax could be higher for weapons deemed more potentially dangerous, such as assault weapons.

Unfortunately, Pennsylvania’s state preemption rule prevents municipalities from passing laws that regulate the ownership, possession, transfer, or transportation of firearms, meaning a high tax on assault weapons would likely be found unlawful if introduced on a local level in Pittsburgh. However, the city could advocate for such a tax on the state level, where it would not run into preemption issues. It is important to note that the only recent attempt at prohibitive

³⁰⁸ “Red Flag Laws Spur Debate Over Due Process,” The Pew Charitable Trusts, accessed December 12, 2019, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/09/04/red-flag-laws-spur-debate-over-due-process>)

³⁰⁹ “APM Gun Survey, Part One: Opinions on ‘Red Flag’ Laws,” APM Research Lab, accessed December 12, 2019, <https://www.apmresearchlab.org/gun-survey-red-flag>)

taxation for firearms, a \$1000 tax on handguns in the Commonwealth of the Northern Mariana Islands, was ultimately struck down in court, so taxation is not a guaranteed success, and would have to leap over several legal hurdles.³¹⁰

In a more modern context, we can draw from the Brady Handgun Violence Prevention Act. While this act created waiting periods only as a stop-gap until the NICS system was operational, waiting periods could still be used today in addition to background checks. This extra time before the acquisition of the firearm would force buyers to be more certain about their purchase, and could act as a deterrent to people tempted to use a gun for suicide, the most common method of suicide, or criminals who would use the gun in their unlawful act. Both Canada and Australia have mandatory waiting periods, and each nation experiences a fraction of the gun violence that occurs in the United States. While Pittsburgh would likely not be able to create waiting periods on a local level, the city should advocate for such measures on a state level, as Pennsylvania currently has no waiting periods for the purchase of firearms.³¹¹

Support Resources

On the local level, we recommend that the city places more funding and resources behind support resources. This includes education and programming about mental health issues and the roots of domestic violence and misogyny. More mental health resources for free or reduced costs, particularly to youth, would help to alleviate some of the conditions that cause people to resort to violent crime. We can also focus on providing better education and economic resources such as job training and assistance in filling out applications and creating resumes. Addressing these points aids in developing financial stability and reducing poverty, which leads to lower rates of violence. Lastly, we recommend placing more funding in domestic violence shelters and providing means for protection for partners or family who leave abusive situations.

Further Research

This report has been largely comprehensive of the various facets surrounding gun legislation proposed in the city of Pittsburgh and the nation at large. However, for the sake of continued research, discussion, and action, there are several topics that should be analyzed further.

The first topic would be a historical and statistical analysis of bills proposed in the United States' past and how successful they were in their proposed purposes. This would supplement a

³¹⁰ Eger, Chris. "Court Strikes Down Sweeping Gun Control Measures In U.S. Territory." Last modified September 30, 2016. Accessed November 15, 2019.

<https://www.guns.com/news/2016/09/30/court-finds-1k-excise-tax-on-handguns-to-be-unconstitutional>.

³¹¹ "Waiting Periods: State by State," Giffords Law Center to Prevent Gun Violence, November 8, 2019, <https://lawcenter.giffords.org/gun-laws/state-law/50-state-summaries/waiting-periods-state-by-state/>

historical and legal understanding and provide practical assistance in the proposal of any future legislation.

The second topic is less a thread of research and more a requirement for these topics to get the research they require to be relevant. At this point in time the Centers for Disease Control and Prevention is prohibited from researching gun violence. This is a barrier to seeking workable data for policies and proposals. While there is some research on these topics, until a more comprehensive set of facts and analysis is provided, many discussions cannot extend beyond the theoretical. The removal of this prohibitive measure is imperative to responding to gun violence with rational methods.

The third topic is a further analysis of preemption from moral and legal perspectives. This conversation was somewhat detailed in our analysis, but it would benefit from an expansive examination of preemption and whether or not it is a benefit or hindrance to taking a public health approach to gun violence.

The fourth topic is more comprehensive polling and research on public opinion of various proposals that exist now. Common sense gun legislation is a nice phrase, but it doesn't have any intrinsic meaning. A better way for discussion to happen would be around the specific and named policies that are seeking to respond to gun violence.

The fifth topic is a larger analysis specifically on how various gun legislation affects suicide on the United States. Considering that suicides are the largest portion of gun deaths, responding to them first and foremost can have the greatest amount of impact from a sheer numerical perspective. Creating legislation with an understanding of the proportional impact of multiple aspects of gun violence is integral to creating rational and non-reactionary gun legislation.

The sixth topic is to produce more data on the support for various policies from different demographics based upon race, class, ethnicity, and political affiliation. This will allow for a more in depth discussion on exactly who supports which specific legislation.

Conclusion

Throughout this paper, we analyzed the Pittsburgh ordinances regulating the use of assault weapons and large capacity magazines in public places as well as implementing a Red Flag law within the city. These ordinances were passed largely as a reaction to the shooting at the Tree of Life Synagogue. While there was a general outpouring of support immediately following the shooting, the reactions to the gun laws introduced by the City Council have been mixed. Supporters applaud the “common-sense” nature of them, while opponents focus on the Second

Amendment and preemption issues. We established that these ordinances still violate state preemption because the definition of use of weapons is not limited to discharge of firearms in public places, which is the only form of regulation allowed by Pittsburgh's Home Rule Charter. We analyzed the epidemic of gun violence through historical, legal, and ethical lenses to develop our recommendations.

By examining gun violence through a variety of different factors we hoped to gain a greater understanding of gun violence. The historical context revealed how the right to bear arms in the United States has always been closely linked with gun control, and the analysis of federal gun control measures showed how gun control policies have been connected to inequality and discrimination and are often a response to a major event or events of gun violence that lead to public outcry. The legal context provided by the Constitution, Supreme Court decisions, and past laws provides a road map of what legislation is deemed permissible under the Second Amendment. The ethical context provides various frameworks for structured discussion. Present context provided by American citizens from all political philosophies and various public positions demonstrates the current shape of the debate as it exists today. In our ultimate goal to curb gun violence as much as possible, we chose to employ a harm reduction framework to help develop comprehensive suggestions for reforms that address gun violence at its root causes among vulnerable communities, not just at the point of gun sale or acquisition. Also, guided by the principles underlying the Second Amendment, we considered the modern context of tyranny and how the Second Amendment might be applied today to try and increase equity in society instead of solidifying existing social hierarchies. We also examined how other common law countries have effectively limited gun violence and what policies we can recommend for the United States. All of these factors together have informed our report and hopefully given a better idea of how to handle gun violence.

This work has been a multifaceted, hopefully nuanced road map through and around the current landscape of the issue of gun violence, with suggestions for further analysis and research. This report serves as a comprehensive source of information for discussion and debate, and the policy suggestions therein provide potential alternatives or additions to the local, state, and national conversation on gun violence.

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Appendix

Appendix A: Definitions in Pittsburgh Ordinances

Ordinance 2018-1218: Article XI, Chapter 1101

Prohibition on Specified Weapons:

1. An anti-tank gun;
2. A bazooka;
3. A bomb;
4. A booby trap;
5. A flamethrower;
6. A grenade;
7. A mine; and
8. A mortar shell.

Ordinance 2018-1218: Article XI, Chapter 1102

Prohibition of any of the following semi-automatic firearms:

- a. Algimec Agmi;
- b. Armalite AR-180;
- c. Australian Automatic Arms SAP Pistol;
- d. Auto-Ordnance Thompson type;
- e. Avtomat Kalashnikov AK-47 type;
- f. Barrett Light-Fifty model 82A1;
- g. Beretta AR-70;
- h. Bushmaster Auto Rifle and Auto Pistol;

- i. Calico models M-900, M-950 and 100-P;
- j. Chartered Industries of Singapore SR-88;
- k. Colt AR-15 and Sporter;
- l. Daewoo K-1, K-2, Max-1 and Max-2;
- m. Ecom MK-IV, MP-9 and MP-45;
- n. Fabrique Nationale FN/FAL, FN/LAR or FN/FNC;
- o. FAMAS MAS 223;
- p. Feather AT-9 and Mini-AT;
- q. Federal XC-900 and XC-450;
- r. Franchi SPAS-12 and Law-12;
- s. Galil AR and ARM;
- t. Goncz High-Tech Carbine and High-Tech Long Pistol;
- u. Heckler & Koch HK-91, HK-93, HK-94 and SP-89;
- v. Holmes MP-83;
- w. Intratec TEC-9 and Scorpion;
- x. Iver Johnson Enforcer model 3000;
- y. MAC-10, MAC-11 and MAC-11 Carbine type;
- z. Ruger Mini-14/5F folding stock model only;
- aa. Scarab Skorpion;
- bb. SIG 57 AMT and 500 series;
- cc. Spectre Auto Carbine and Auto Pistol;
- dd. Springfield Armory BM59, SAR-48 and G-3;

- ee. Sterline MK-6 and MK-7;
- ff. Steyr AUG;
- gg. Street Sweeper and Striker 12 revolving cylinder shotguns;
- hh. USAS-12;
- ii. UZI Carbine, Mini-Carbine and Pistol;
- jj. Weaver Arms Nighthawk; and
- kk. Wilkinson "Linda" Pistol;

3. A semi-automatic firearm not specifically listed in § 1102.01(B)(2) that meets any of the following criteria:

- a. The firearm is a semi-automatic, centerfire rifle that has an ability to accept a detachable magazine and has at least one of the following:
 - i. A folding or telescoping stock;
 - ii. A pistol grip that protrudes conspicuously beneath the action of the weapon;
 - iii. A thumbhole stock;
 - iv. A second handgrip or a protruding grip that can be held by the non-trigger hand;
 - v. A flash suppressor, muzzle brake, muzzle compensator, or threaded barrel designed to accommodate a flash suppressor, muzzle brake, or muzzle compensator; or
 - vi. A grenade launcher or flare launcher.
- b. The firearm is a semi-automatic, centerfire rifle with a fixed magazine with the ability to accept more than 10 rounds.
- c. The firearm is a semi-automatic, centerfire rifle that has an overall length of less than 30 inches.

d. The firearm is a semi-automatic, centerfire pistol that has an ability to accept a detachable magazine and has at least one of the following:

- i. Capacity to accept an ammunition magazine that attaches to the pistol outside of the pistol grip;
- ii. A second handgrip;
- iii. A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer; or
- iv. A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the non-trigger hand without being burned, except a slide that encloses the barrel.

e. The firearm is a semi-automatic, centerfire pistol with a fixed magazine that has the ability to accept more than 10 rounds.

f. The firearm is a semi-automatic, centerfire shotgun that has at least one of the following:

- i. A folding or telescoping stock;
- ii. A pistol grip that protrudes conspicuously beneath the action of the weapon;
- iii. A thumbhole stock;
- iv. A vertical handgrip; or
- v. An ability to accept a detachable magazine.

g. Any shotgun with a revolving cylinder.

Ordinance 2018-1219: Title XI, Chapter 1104

Definition of Armor or Metal Penetrating Ammunition:

Any ammunition, except a shotgun shell, that is designed primarily to penetrate a body vest or a body shield, and has either of the following characteristics:

- 1. Has projectile or projectile core constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten

alloys, steel, iron, brass, beryllium copper, or depleted uranium, or any equivalent material of similar density or hardness; or

2. Is primarily manufactured or designed, by virtue of its shape, cross-sectional density, or any coating applied thereto, including, but not limited to, teflon coating and / or ammunition commonly known as “KTW ammunition,” to breach or penetrate a body vest or body shield when fired from a firearm.

Definition of Large Capacity Magazine:

A firearm magazine, belt, drum, feed strip, or similar device that has the capacity of, or can be readily restored or converted to accept, more than 10 rounds of ammunition. This definition shall not be construed to include the following:

1. A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds of ammunition;
2. A .22 caliber tube ammunition feeding device;
3. A tubular magazine that is contained in a lever-action firearm; and
4. A magazine that is permanently inoperable.

Appendix B: Interviews

Name	Date Interviewed
Jane Coaston	October 14, 2019
Roger A. Mitchell, Jr. MD FASCP	November 11, 2019
Erika Strassberger	November 11, 2019
Dan Gilman	November 13, 2019
Stephen Gutowski	November 20, 2019
Geraldine Massey	November 22, 2019

Appendix C: Acquiring guns

The process for purchasing guns is simple and can take as little as 15 minutes. First, one must be over the age of 18 to purchase rifles and shotguns and over 21 to purchase handguns. One must be a U.S. citizen, and cannot be:

- Under indictment for or convicted of a crime punishable by prison for over a year,
- Dishonorably discharged from the military,
- Convicted of domestic abuse or have a restraining order filed against them,
- Currently committed to a mental institution or adjudicated as a mental defective,
- An unlawful user of or addicted to federally controlled substances, or
- A fugitive³¹²

If these requirements are met, then one merely has to walk into a gun store and subject themselves to a background check before acquiring a gun. Another legal way to get a gun is as a gift. As long as both the purchaser and the recipient is legally allowed to own a firearm, two people are allowed to make such a transfer. In some states, these must happen in the vicinity of a licensed firearms dealer who will run a background check on the recipient. In Pennsylvania, this only applies to handguns; any other kind of gun can be handed over provided they are not a prohibited person.³¹³

One must also be sure to declare that a gun being purchased is a gift. In *Abramski v. United States*, Bruce James Abramski wanted to take advantage of a sale going on at a gun store in his state of Virginia and gift a gun to his uncle. When a form he filled out asked him if he was purchasing the gun for someone else, Abramski responded no. When police raided his home for an unrelated reason, they found the receipt and his declaration that the gun was not a gift. However, it had already made its way to his uncle through the proper channels. Outside of the initial purchase, the gun made its way to Abramski's uncle legally. When the subsequent lawsuit by Abramski made its way to the Supreme Court, they ruled that one cannot make a "straw-purchase" where one buys a gun for someone else without declaring it a gift. For this reason, the National Shooting Sports Foundation recommends that instead of directly buying a gun for someone else, one should buy a gift card instead.³¹⁴

³¹² "Minimum Age to Purchase & Possess," Giffords Law Center to Prevent Gun Violence (Giffords Law Center to Prevent Gun Violence), accessed December 12, 2019, <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/>

³¹³ "Information for Pennsylvania Firearm Purchasers and Basic Firearm Safety," psp.pa (pa.gov), accessed December 12, 2019, https://www.psp.pa.gov/Documents/Public/Documents/SP4-135_Information_Firearm_Purchasers_and_Safety-PG-2-10-2008.pdf

³¹⁴ "Giving a Firearm as a Gift? Some Reminders from NSSF," NSSF (National Shooting Sports Foundation, December 10, 2018), <https://www.nssf.org/giving-a-firearm-as-a-gift-some-reminders-from-nssf/>