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Firearms in Minnesota 2022

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INTRODUCTION

LWVMN and LWVUS firearms positions have given us wide latitude around which to lobby on firearms issues. Why, then, a new study?

In 1990, gun deaths stood at 35,000 a year. The Supreme Court still interpreted the Second Amendment as applying to the right of states to form and maintain a militia (National Guard). There were significantly fewer assault rifles in private owners’ hands. Few states had permit-to-carry laws allowing individuals to carry loaded firearms in public. Gun casualties were exceeded by traffic-related deaths.

Since 1990, there have been expansive and consequential changes in prevailing firearm laws at federal and state levels. New technologies in the manufacture of firearms have increased their lethality. The U.S. Supreme Court has reversed its prior interpretations of the Second Amendment, with profound implications for the legality of existing and future gun laws. The Department of Homeland Security considers the rise in domestic armed militia groups the greatest threat to our democracy.

We have seen an increase in mass shootings. There is a national divide between those claiming that guns are the issue and those claiming that gun violence is not a gun issue but, rather, a mental health crisis. And there is a wide and growing disparity between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)’s regulatory capabilities and the increased need for oversight.

In 2022, the Center for Disease Control (CDC) released gun mortality figures for 2020, when the U.S. population was 330 million. They reveal the highest number of annual gun deaths ever recorded, with 24,292 gun suicides and 19,384 gun homicides. The CDC considers firearm deaths a significant public health issue. According to the Pew Research Center, “[t]he 2020 total represented a 14% increase from the year before, a 25% increase over five years.”¹ The numbers are still climbing.

The purpose of this position paper is not to speculate about why people kill themselves or others. Gun violence is not only a crime and public safety issue. It intersects with a wide range of other national concerns ranging from immigration, racial justice, the safety of women and children, public health, as well as national security and threats to democracy. The many changes that have occurred in the firearms landscape since 1990 led LWVMN members to update its background study and formulate new consensus questions.

LEAGUE POSITIONS

LWV Minnesota Position

Support restrictions on the sale, possession, and use of firearms including ghost guns and ghost gun kits, and any unserialized or untraceable guns by private parties in the state of Minnesota. (1990, updated 2022)

Support:

- Licensing of firearms (including ghost guns and ghost gun kits, and any unserialized or untraceable guns) purchasers or transferees
- Registration of long guns, handguns, assault weapons, ghost guns and ghost gun kits, and any unserialized or untraceable guns
- Universal background checks for the purchase or transfer of firearms including ghost guns and ghost gun kits, and any unserialized or untraceable guns
- A ban on the manufacture, sale and importation of assault weapons and assault weapon parts
- Mandatory firearm safety training before the purchase of a firearm including ghost guns and ghost gun kits, and any unserialized or untraceable guns
- The concept of gun owner liability when others are harmed due to the owner’s negligence
- Stiffer and/or mandatory penalties for people who commit crimes with firearms including ghost guns and ghost gun kits, and any unserialized or untraceable guns

- The ability of local municipalities to regulate ownership and possession of firearms and ammunition including ghost guns and ghost gun kits, and any unserialized or untraceable guns more strictly than state law allows

Oppose:

- An amendment to the Constitution of the State of Minnesota granting an individual the right to bear arms

LWVUS Position

LWVUS believes that the proliferation of handguns and semi-automatic assault weapons in the United States is a major health and safety threat to its citizens. The League supports strong federal measures to limit the accessibility and regulate the ownership of these weapons by private citizens.

The League supports regulating firearms for consumer safety. The League supports licensing procedures for gun ownership by private citizens to include a waiting period for background checks, personal identity verification, gun safety education and annual license renewal. The license fee should be adequate to bear the cost of education and verification.

The League supports a ban on “Saturday night specials,” enforcement of strict penalties for the improper possession of and crimes committed with handguns and assault weapons, and allocation of resources to better regulate and monitor dealers.

OVERVIEW OF FIREARM VIOLENCE

Firearm violence encompasses all deaths by firearms: suicides and homicides, as well as deaths that are unintentional, those involving law enforcement intervention, self-defense and those whose cause was undetermined. As noted, before, these statistics reflect a suicide by gun death rate of 7 per 100,000 (suicide) and 6.2 per 100,000 (homicide).

According to the CDC, the age-adjusted firearm homicide rate in Minnesota rose from 2.8 per 100,000 in 2019 to 3.6 per 100,000 in 2020, below the national average of 6.2/100,000. Minnesota has the 9th lowest homicide rate in the country.²

In 2021, 48 cities in Minnesota experienced a homicide as compared to 44 cities in 2020. Homicides increased in the seven-county metro area, while decreasing in Greater Minnesota. Firearms were used in 75% of the homicides of which 17% were domestic violence incidents. Of the known race of victims, 65% of murder victims were Black.³ The racial disparity in MN gun homicides has widened each year since 2018.

Gun suicides account for most of the firearm deaths nationally and in Minnesota. Males have much higher gun related suicides than females; American Indian and White males have much higher suicide rates than other groups. Rural counties have higher suicide

rates than urban counties. Greater Minnesota counties notably lack mental health services, whether in person or virtually.

Mass Shootings

There is no one definition of a mass shooting but the most common definition is four persons shot excluding the shooter. The FBI only tracks mass shooters in public spaces (not private homes) and excludes drug, gang, or criminal activity. Their data shows 103 people killed and 140 wounded in U.S. mass shootings last year (0.5% of firearm homicides).⁴ FBI statistics show mass shootings increased 52.5% from 40 in 2020 to 61 in 2021. Males accounted for 60 incidents and female for one.

If the definition of mass shooting were to include shootings in the home and drug, gang or other criminal activity, there were 692 mass shootings: 703 killed and 2,842 wounded. This definition of mass shooting would encompass 3.4% of firearm homicides.⁵

In 2021, there were 11 mass shootings in Minnesota: six in Minneapolis, four in St. Paul and one in Buffalo resulting in a total of 10 deaths and 57 wounded. Most shooting scenes are not mass shootings. “In Minneapolis alone, there were 500 shooting scenes in 2021, which left over 600 people needing treatment for gunshot wounds and 96 killed.”⁶

Officer Involved Shootings

Police have the difficult job of having to quickly respond to various situations. In any given situation, police must quickly determine whether their lives or the lives of others are in danger. They operate with the knowledge that there are more privately owned guns than people in the U.S.

In 2021, there were 1,331 subjects killed and 891 injured by police in the U.S. There were 69 police officers killed and 371 wounded by offenders.

During 2021 in Minnesota, 12 people were killed by police and seven wounded. Assaults against police increased with 900 incidents and 1,112 officers assaulted.⁷ At that time, Minnesota had the 10th lowest rate of killings by police in the U.S. at 2.28 per million people.⁸

FIREARMS AND THE CONSTITUTION

The Second Amendment

For more than 200 years, the right to bear arms under the Second Amendment to the United States Constitution received little attention in either legislatures or the courts. It was seen as the right that states have to form their own militias – *a collective right* -- with no bearing on the right of private gun ownership.⁹

District of Columbia, et al. v. Heller (2008)

In 2008, prior precedent was reversed with the Supreme Court decision in *District of Columbia, et al. v. Heller*.¹⁰ Prior to *Heller*, the last Supreme Court decision involving the Second Amendment had been *U.S. v. Miller*¹¹ in 1939. At that time, the Court had ruled (in a case involving an appeal of a conviction relating to a sawed-off shotgun) that “Only weapons that have a reasonable relationship to the effectiveness of a well-regulated militia under the Second Amendment are free from government regulation.” Its ruling had provided precedent for subsequent federal rulings, which is why the *Heller* decision was considered by many scholars a violation of the judicial principle of *stare decisis* (“Let precedent stand”).

As the first significant consideration of the Second Amendment since *U.S. v. Miller*, *Heller* established considerable changes. Most significantly it established an individual right to bear arms which was determined to be unrestricted if the gun owner was not a felon, or involuntarily committed as mentally ill. They also allowed restrictions on carrying weapons in schools, government buildings and certain classes of firearm sales. These instances were determined to be constitutionally regulable. *Heller* also stated that the Second Amendment “extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of founding.”¹² It noted a historical tradition of prohibiting dangerous and unusual weapons while protecting those arms “in common use at the time.”¹³

McDonald v. City of Chicago (2010)¹⁴

This decision holds that the Second Amendment right as defined in *Heller* applies to state and local laws, not just federal laws, under Section 1 of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹⁵ Specifically identified was the right to keep and bear arms as a privilege of American citizenship.¹⁶

Interpretation Issues

There are three levels to the United States federal courts: District Courts, Circuit Courts of Appeal, and the Supreme Court. Each of the fifty states has its own set of rules and regulations for firearm ownership, possession, and use. Most challenges to these state statutes begin in the District Courts and appeals of these could move to the Circuit Court and ultimately to the Supreme Court if it chooses to hear an appeal.

Heller and *McDonald* did not outline a standard method for reviewing statutes for constitutionality, nor did they clearly define the scope of the Second Amendment right. Consequently, the states and the lower federal courts have sought to interpret what was meant by a “not unlimited” individual right. The courts frequently employed a two-part test, first assessing the burden placed on the Second Amendment right by the

state regulation and then balancing it against the governmental interest which the regulation furthers.¹⁷

New York State Rifle and Pistol Association, Inc., et al. v. Bruen, Superintendent of New York State Police, et al. (2022)

The Supreme Court once again rewrote our common understanding of the Second Amendment. In *NYSRPA v. Bruen*,¹⁸ the Court held that New York's statute requiring an applicant to show need for a permit to carry violated the Privileges and Immunities clause of the 14th Amendment by preventing the free exercise of a citizen's Second Amendment right to bear arms. *Heller* had focused on the individual right to self-defense in the home. This case extended the individual right to bear arms for self-defense in public spaces.

In the years since *Heller*, the Supreme Court has largely declined to rule on Second Amendment cases that might have clarified the new paradigm, leaving the issue of firearm regulation to the states and lower courts¹⁹. Lower court cases have upheld many gun regulations in question since they fell into the exceptions still allowed in the *Heller* ruling. Taking an historical interpretation in *Bruen*, the court also explicitly rejected the two-part test the courts had developed after *Heller*²⁰ and now requiring a determination of "whether the historical and modern regulations impose a comparable burden on the right of armed self-defense."²¹ *NYSRPA v. Bruen* has further narrowed the latitude for the passage of new gun laws and reframed the challenge of firearm regulation. States have already begun enacting statutes seeking to clarify the boundaries of the new, more expansive, individual right to bear arms for self-defense conferred by recent Court decisions.²²

So far, background checks and safety training requirements designed to ensure that those bearing arms are, indeed, law-abiding, responsible citizens are still acceptable, but things such as lengthy waiting periods or exorbitant fees for permits would be deemed too restrictive.²³

Minnesota and the Second Amendment

Under *NYSRPA v. Bruen*, "shall issue" licensing regimes, such as currently the law in Minnesota, are likely to be deemed acceptable, provided they have objective and narrowly defined standards.²⁴

The Minnesota Supreme Court has decided two Second Amendment cases since *Heller*.

State v. Craig (2013)²⁵ concluded that the Second Amendment does not protect a person convicted of a violent crime from having his right to possess a firearm restricted.²⁶ The Court made a presumption of constitutionality for such statutes that would only be overcome if the challenger could demonstrate the unconstitutionality of such a prohibition beyond a reasonable doubt.²⁷

State v. Hatch (2021)²⁸ ruled that Minnesota’s law requiring a permit to carry a handgun in public is constitutional. Minnesota became a “shall issue” rather than “may issue” state in 2003²⁹ which implies that the burden of proving unsuitability for a permit to carry falls on the granting law enforcement entity when under MN’s previous “may issue” status, the applicant needed to demonstrate eligibility.

FEDERAL LEGISLATION SINCE 1990

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is responsible for the administration and enforcement of federal firearms laws.

Federal, state and some local laws regulate the possession, sale, transfer and carrying of firearms. Where the laws conflict, federal laws preempt state laws, and no city can have regulations stronger than those governing the whole state due to the preemption law passed in 1985 (MN Statute 471.633). Local governments can, however, regulate the discharge of weapons within their jurisdiction.

Since 1990, there have been significant federal and state firearm laws enacted. Previous laws are described in the LWVMN 1990 Firearms study.

The Brady Handgun Violence Prevention Act of 1993

This law requires a background check to purchase a handgun from a federal firearm licensee (FFL), manufacturer or importer. To determine eligibility to purchase a firearm, the FFL contacts the National Instant Criminal Background Check System (NICS), which is maintained by the FBI. In 1998, after NICS was operational, this Act applied to all firearms purchases from licensed dealers. The background check only takes a few minutes.

This law did not consider unlicensed sellers, creating a loophole for the buyer to evade a background check.

Federal Violent Crime Control and Law Enforcement Act of 1994

This was a large omnibus bill with several parts to reduce crime. Title XI of this act banned the manufacture, transfer and possession of certain semiautomatic weapons and made it unlawful to transfer or possess large capacity ammunition magazines. Title XI, expired in 2004. Some states ban assault weapons and large capacity magazines, but these laws could still be challenged in the courts.

The **Tiahrt Amendment of 2003** bars the National Tracing Center of the ATF from publicly releasing information about where criminals bought their firearms, except to law enforcement agencies or prosecutors.

Protection of Lawful Commerce in Arms Act of 2005 prohibits gun manufacturers and dealers from being named in civil lawsuits in federal and state courts when crimes are

committed involving their firearms. This immunity from civil liability offers the gun industry a protective shield not afforded to any other American industry.

MINNESOTA LEGISLATION SINCE 1990

Minnesota laws do not regulate long guns that are primarily used for hunting; however, pistols and semiautomatic military-style weapons require permits to purchase.

Certain Persons Not to Possess Firearms (MN Statute 624.713)

Since 1990, the following categories of prohibited persons have been added: Person prohibited under federal law, Person convicted of domestic assault against family or household member in the 5th degree, Person convicted in Minnesota or elsewhere of a gross misdemeanor involving crimes benefiting a gang, any assaults motivated by bias, false imprisonment, neglect or endangerment of a child, burglary in the 4th degree, setting a spring gun, riot, or harassment and stalking within the proceeding three years; Person convicted in any court of a crime punishable by imprisonment for a term exceeding one year, a peace officer admitted to a treatment facility for chemical dependency, unless the officer has a certificate discharging the officer from such facility; a fugitive from justice, a Person convicted of a felony crime of violence is banned for a lifetime, with some exceptions, and a person who is subject to an Order for Protection.

Minnesota 1993 Negligent Storage of Firearms (MN Statute 609.666)

This Act makes it a gross misdemeanor for a person to store or leave a loaded firearm in a location where a child (person under 18 years) is likely to gain access unless reasonable action is taken to secure the firearm against access by the child. This doesn't apply to access by unlawful entry. This is considered a Child Access Prevention (CAP) law because gun owners are liable if death or injury results from negligence.

Permit to Purchase/Transfer (MN Statute 624.7131)

Minnesota law requires that, unless a person buying or receiving a pistol or semiautomatic military-style assault weapon (from a licensed dealer) already has a permit to carry, they must have a permit to purchase, obtained by making application to the local police department or sheriff's office and undergoing a background check.

The background check must be completed within seven days of receipt of application. If not denied within those seven days, the permit to purchase will be granted by default. There is no fee; the permit is valid for one year and can be used for an unlimited number of purchases or transfers during that year.

Minnesota Personal Protection Act of 2003 (Permit to Carry) (MN Statute 624.714)

Prior to 2003, Minnesotans needed to demonstrate a need to carry a loaded firearm in public. This Act changed Minnesota from a "may-issue" state, under which law enforcement had discretion in granting a permit and could consider the applicant's

need and eligibility, to a “shall issue” state, in which any person 21 years or older who passes the background check and completes a firearm training course can legally “open carry” and “conceal carry” their firearm. Under “shall issue” law, there is an assumption of eligibility and the burden of proving ineligibility falls on law enforcement, often requiring negative testimony in court.

The Sheriff’s Department must approve or deny the permit within 30 days of receipt of application. The background check is more rigorous for this permit. There is a \$100 fee, and the permit is valid for five years. The renewal fee is \$75. Sheriffs must do yearly background checks for these permits. Minnesota has reciprocity for permits to carry with states that also require the person to have undergone a background check, be at least 21 years old and show proof of firearms training.

NEW TECHNOLOGY

Safety

Technologies exist to make firearms safer, but efforts to require such technology be incorporated into firearms’ manufacture have met with stiff resistance. Recent trends in gun manufacture demonstrate a need to look ahead to avoid implementing safety measures that suit today’s environment but are less effective for new technologies.

Lead bullets, which leave a toxic residue, are being replaced by ammunition made of polymers and copper. One safety feature built into most firearms and touted by manufacturers is “drop safety,” meaning they won’t fire accidentally if dropped.

Smart guns or child-proof guns can be made that will fire only if used by authorized owners or users (through a fingerprint or electronic recognition device such as a ring worn by the owner). Trigger locks and cable locks may deter a young child but would also delay access to the firearm when needed for self-defense. Since many crimes involve stolen guns, smart gun technology could prevent their criminal use.

Manufacturing

Firearms are becoming more versatile, accurate, and deadly and at the same time less expensive. New technologies make possible firearms with interchangeable parts with the capacity to add lasers, flash suppressers and high-capacity magazines. Some can fire underwater. Some firearms are less detectable.

Many new firearms have an expanded range or use higher velocity ammunition designed for penetration of bone, body armor, cinder blocks and other materials. According to the EPA, depleted uranium, both a toxic chemical and radiation health hazard, is still used to make bullets and mortar shells. Depleted uranium contamination of spent shells and shell fragments are also a hazard at some military firing ranges and

its use is now curtailed.³⁰ Increasingly, a \$20 auto-sear device, though illegal, is being used to convert semi-automatic to automatic weapons.³¹

Ghost Guns

Ghost guns are self-manufactured, have no serial numbers, are often sold in kits, and are found, increasingly, to have been used in crime. LWVMN 2022 Council voted to expand the LWVMN definition of firearms to include “ghost guns”. Wherever “firearms” appeared, the phrase “including ghost guns and ghost gun kits and any unserialized or untraceable guns” was added.

Plastic guns, now classified as ghost guns, are made from techno-polymers are lighter and cheaper, though perhaps less durable than their well-maintained metal counterparts. Those made by 3D printers are undetectable and convenient for criminal use since they don’t have serial numbers. Blueprints for making 3D printer guns are cheap and easily available online. This is one type of ghost gun because it has no serial number.

Plastic firearms have been made since the 1970s but concern for their ability to pass undetected through screening devices led to the Undetectable Firearms Act of 1988, which made it illegal to manufacture, possess, or transfer a firearm that contained less than 3.7 ounces of metal, enabling them to be detected by a metal detector, at an airport for instance. In 2013, Congress extended the ban for ten years. At that time, the NRA continued to support the law but opposed any extension of its scope. The ready availability of 3D printers now makes it even harder to enforce.

FUTURE LEGISLATIVE AGENDAS

Legislative agendas will vary depending on politics and points of view. It is expected that those lobbying for gun rights will focus on reciprocity in concealed carry laws, repealing laws prohibiting firearms on certain premises, arming teachers, and the so-called “stand your ground” laws. It is anticipated that gun violence prevention advocates will press for universal background checks, adding those on the terror watch list to prohibited owner/purchaser categories, adopting extreme risk prevention protections, licensing gun dealers, gun buyers, and registering firearms. Public health minded groups will support resumption of research and interventions to prevent gun violence.

LWVMN has identified the following issues as significant for LWV members to understand. While our list is not comprehensive, the ones below were identified as the highest priority by the Firearms Study Group as well as by the Board of Directors. They reflect the non-partisan nature of our deliberations.

EXTREME RISK PROTECTION ORDERS

Extreme Risk Protection Orders (ERPOs), commonly called Red Flag laws, allow law enforcement, family members or others to petition judges to temporarily remove guns from a person where there is clear evidence that the person poses a significant danger to themselves or others. Extreme Risk Protection Orders not only place a time-limited prohibition on possession but also on the purchase of new firearms and ammunition. Danger is based on behavioral criteria, rather than a mental illness diagnosis, which is poorly correlated with dangerousness.

As of spring 2022 nineteen states and the District of Columbia, had enacted Red Flag laws.

Opponents of these laws say they violate Bill of Rights protections, including the 2nd Amendment right to bear arms, the 4th Amendment right against undue search and seizure and the 5th Amendment right of due process. They hold it is unconstitutional for government to seize an individual's private property without a criminal conviction or finding of a mental health issue.

Supporters of Red Flag laws cite studies showing that extreme risk protection orders have been effectively used to prevent suicides, the most prevalent form of gun fatalities.³² Evidence is growing that such laws can also work to prevent other shooting tragedies.³³ According to PEW, polls show a large majority of Americans support Red Flag laws and a recent Reuters/Ipsos poll^{34, 35} puts the percentage of public support at seventy percent.

"The potential impact of these policies on such outcomes as suicide, homicide, and mass shootings will hinge critically on how the policies are used in practice."³⁶

In Minnesota, attempts in 2020 and 2021 to pass an ERPO law failed due to a divided legislature. SF1431/HF1654 specified that law enforcement officers and family members are empowered to petition a civil (not criminal) court, that petitioners must provide a preponderance of evidence showing the person poses a significant risk of gun violence, that guns could be taken away for a minimum of six months but no more than 24 months, and that ERPO orders can be renewed. False petitions would be subject to prosecution. If there is an immediate risk of harm, a court would be able to issue emergency orders to seize guns for up to two weeks.

COMMUNITY-BASED VIOLENCE INTERVENTION PROGRAMS

A recent report by the Giffords Law Center shows that, in Minnesota alone, "the economic cost of gun violence is more than \$764 million per year—and that does not include indirect costs, such as pain and suffering,³⁷ or the economic impact of gun violence on a community's economy.

Community-Based Violence Intervention (CVI) programs have been effective in reducing gun violence, with a range of success, with outcomes depending on implementation, administration, and funding of the program. Their approach “uses evidence-informed strategies to reduce violence through tailored community-centered initiatives. Multidisciplinary strategies engage individuals and groups to prevent and disrupt cycles of violence and retaliation and establish relationships between individuals and community assets to deliver services that save lives, address trauma, provide opportunity, and improve the physical, social, and economic conditions that drive violence.”³⁸

A wide swath of CVI programs or strategies may be employed to focus on persons or areas with the highest gun violence, most often urban neighborhoods or social networks that have concentrated poverty compounded by systemic racism and multi-faceted trauma. Some models include:

Cure Violence Global (CVP) uses a public health strategy to prevent the spread of violence to other areas by 1) employing mediators (street outreach workers) to interrupt gun violence, 2) identifying and treating high risk individuals with supportive social services and training to keep them from future violence and 3) having outreach workers, who are credible in the community, create social pressure to stop the violence. Cure Violence Global claims 40-70% reductions in shootings and killings in some of the hardest hit communities in the U.S.³⁹

Group Violence Intervention (GVI), also referred to as focused deterrence, “involves law enforcement, community-based organizations, and individuals at risk of being involved in violence. At-risk individuals receive social services to turn their lives around.”⁴⁰ This model has a remarkably strong track record, featuring a documented association with homicide reductions of 30–60%.⁴¹

Hospital-based Violence Intervention Programs (HVIP) offer another strategy based on the knowledge that victims of gun violence are more likely to become perpetrators of gun violence in retaliation. Case managers keep in contact with victims and provide access to needed social services.⁴² Patients who receive hospital-based violence intervention services are four times less likely to be convicted of another violent crime and four times less likely to be violently injured again.⁴³

Investing in community violence intervention saves money in the long run. “Nationally, it is estimated that the economic cost of gun violence is \$153-\$173 billion dollars each year, yet its impact is not limited to direct costs. “Based on an analysis of 10 years (2006 to 2015) of past Cure Violence Global (CVG) efforts in Chicago, it was found their efforts saved \$33 for every \$1 spent, with \$4 in government savings for every \$1 spent.”⁴⁴

FIREARMS IN THE STATE CAPITOL

Those who wish to keep guns out of certain public spaces argue that doing that reduces the chance of violence. Opponents of gun-free zones believe those with permits to carry guns can deter crime, keep individuals and the public safer, and are protected by the Second Amendment.

One area of particular concern in recent years is the presence of guns in state capitol buildings that house governing bodies integral to our democracy. The U.S. Capitol riot on Jan. 6, 2021 and subsequent threats have inspired a debate over capitol security in statehouses around the country.

While stick handles for signs are deemed dangerous and are banned from the Minnesota statehouse, any individual with a valid permit to carry may bring a handgun inside with no prior notice, screening or sign-in required. (Courthouses are the exception.)⁴⁵

The number of permits to carry issued in Minnesota nearly doubled between 2019 and 2020, with more permits issued in 2020 than any year since Minnesota's Personal Protection Act was enacted in 2003. According to the Minnesota Department of Public Safety, there were 106,488 permits issued in 2021 based on 110,078 permit applications.⁴⁶

The number of handgun permits has skyrocketed during a time when violent rhetoric and demonstrations have noticeably increased. The Giffords Law Center tracked over 50 instances since 2020 of armed protesters using firearms to chill free speech and harass and intimidate legislators, including attacks on state capitols of Michigan, Oregon, and Iowa. For example:

- In April 2020 anti-quarantine demonstrators wielding assault rifles entered the Michigan state senate gallery in Lansing while lawmakers were in session, yelling at lawmakers.⁴⁷ A plot to kidnap Governor Gretchen Whitmer had been part of the plan, but it was foiled.
- A demonstration at the Washington state capitol campus following the 2020 election turned violent, resulting in 3 incidents of shots fired and one person wounded.
- At least 13 people have been arrested for gun possession charges stemming from the January 6th attack on Capitol Hill in Washington, D.C.⁴⁸

Although those who carry guns claim they make the public safer, the Harvard Injury Control Research Center states there is no good evidence that using a gun in self-defense reduces the likelihood of injury, and further, that firearms are actually used far more often to frighten and intimidate than they are used in self-defense.⁴⁹ At issue is

whether it is wise to have people bearing arms in places where contentious issues are debated hotly. Debate should not be constrained by fear of armed opponents.

SAFE STORAGE OF FIREARMS

Safe firearm storage laws require owners to store firearms in a specified way—either by storing them unloaded and separate from ammunition or by using trigger locks or gun safes. Studies show safe storage can prevent unintentional shootings⁵⁰, mass shootings in which the firearm used came from the home or in which the guns were stolen.⁵¹ Given that more than half of firearm-related deaths are suicides,⁵² and that suicide attempts using firearms have the highest fatality rate,⁵³ safe storage laws have been found especially effective in preventing suicide.⁵⁴

Although some consider safe storage laws ineffective since no one checks for compliance, others say lives could be saved. A 2019 JAMA Pediatrics study showed that safe storage “could result in meaningful reductions in firearm suicide and unintentional firearm fatalities among youth.”⁵⁵ The study estimated that up to 32% of youth firearm deaths could be prevented if adults who do not currently lock their firearms could be persuaded to do so.

Six states require unattended firearms to be stored in a certain way. Federal law requires dealers who sell or transfer handguns to provide a secure gun safety device.⁵⁶ Minnesota does not require a locking device to accompany the sale of a firearm.⁵⁷

Child Access Prevention (CAP) laws impose a penalty on those who leave an unsecured and unattended firearm in the presence of an unsupervised minor. Minnesota’s negligent storage of firearms statute (MN Statute 609.66) makes it a gross misdemeanor to negligently store or leave a loaded firearm in a location where a child is likely to gain access unless reasonable action is taken to secure the firearm.⁵⁸

According to an American Public Media Research Lab survey, more than three-quarters of Americans, including gun owners and those who are not gun owners, support mandating locked gun storage.⁵⁹

FIREARMS AND DOMESTIC TERRORISM

The growth of armed militia groups poses an increasing threat to democracy. Many of the violent demonstrators on January 6, 2021, came to Washington armed; many others stashed their arsenals in motel rooms, with plans to retrieve them after gaining control of the Capitol.

The Department of Homeland Security is currently considering a restructuring, in acknowledgement of the now widely accepted belief that it is domestic terrorism that poses the greatest threat to national security.⁶⁰

On September 21, 2021, FBI Director Christopher Wray testified in a Senate hearing that the agency's "domestic terrorism caseload has exploded" going from about 1,000 cases to about 2,700 in the previous year and a half.⁶¹

Whether would-be terrorists draw their inspiration from outside the country or from within, they are enabled by the easy availability of firearms and explosives and our laws' failure to include those on the terror watch list in the prohibited purchaser category. "Those on the terror watch list are free to buy and own unlimited firearms in the United States. And it is well documented that they do. The Government Accountability Office, the investigative arm of Congress, . . . reported that between February 2004 and December 2014, individuals on the watch list attempted to purchase firearms or explosives on 2,333 occasions – and more than 90 percent of the time, they cleared a background check and received approval to buy."⁶²

The FBI oversees the terror watch list, which is contributed to by many agencies, including the Terrorist Screening Center (TSC), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Drug Enforcement Administration (DEA), Transportation Screening Administration (TSA), Interpol and the Department of Homeland Security. People get put on the list through objective criteria, including active membership in a suspected terrorist organization, a record of transfers of money to such an organization and incitement to acts of terrorism. More than a million people are included in the list.

In the past, it was considered politically problematic to add those on the terror watch list to the prohibited purchaser category out of fear that it might lead to an unfair profiling of religious, racial, or ethnic groups. It is now believed that white extremist militia groups pose the greatest terror threat⁶³. (It is also worth noting that the terror watch list to which the FBI, Department of Homeland Security, and the TSA all contribute is not synonymous with the no-fly list.)⁶⁴

Until the storming of the Capitol, many Americans had not heard of extreme militias. Most groups share fundamental beliefs and motivations including opposing government and regulation as well as social programs, internationalism, and immigration. They seem "motivated by political, racial, ethnic, and economic grievances."⁶⁵ They see government regulation of firearms as an attempt to strip Americans of their 2nd Amendment right to own guns.

While firearms have been used by right-wing extremists and militia groups as their tools of intimidation, many are concerned that escalation of these groups could result in countering actions by other groups.

The Southern Poverty Law Center has identified more than 800 hate groups in the United States. Minnesota has eleven statewide hate groups, with members that include

neo-Nazis and gun-rights extremists.⁶⁶ Three terror incidents tied to militia movements have occurred in Minnesota.⁶⁷

Some states have passed laws requiring background checks for all gun purchases, including those from unlicensed sellers at gun shows, but no screening of gun purchases from unlicensed sellers is required in Minnesota. Terrorists, both domestic and foreign, are able to purchase their weapons at gun shows without the restraint of a background check. Even if someone on the terror watch list were to be flagged in a required background check, the sale would likely go through since being a suspected terrorist is not a prohibited purchaser category.

STATE LICENSING OF FIREARM DEALERS

Becoming a licensed federal firearms dealer (FFL) is a simple process managed by the Bureau of Alcohol, Firearms, and Tobacco (ATF). Online instructions are outlined and few applicants are denied.

Once the application process (involving the completion of forms, a background check, an interview, and approval by the Licensing Center) is complete, a federal firearms dealer can buy unlimited quantities of firearms of any type. Some become firearms dealers in order to bypass restrictions. They are not required to operate from a dedicated place of business; approximately half of them operate from home. There are more licensed firearms dealers in the U.S. than there are McDonald's.

Oversight of FFLs is important because there are rogue dealers who sell a disproportionate share of crime guns and guns that wind up being trafficked or purchased by straw purchasers (those who can pass a background check who buy for prohibited purchasers). Furthermore, inspections provide a means of determining whether dealers can account for their inventory, which is important since guns not accounted for have often been stolen or trafficked. When gun dealers are not compliant with their record-keeping, it is harder for law enforcement to trace crime guns.

ATF has been underfunded for decades, and presently is able to conduct its inspections of federal dealers only sporadically. The Giffords Law Center reports that, on average, "dealers are inspected only once a decade."⁶⁸

Nine states and the District of Columbia require state (or district) licensing of firearms dealers, and seven more states require state licenses for the sale of handguns and certain kinds of firearms. State licensing of gun dealers makes possible a stricter certification process; routine inspections and annual accountability for inventory; background checks for all employees, not just the dealer liability insurance; and security measures such as surveillance cameras, safe storage, and alarm systems. Minnesota

does not have a state licensing system for dealers, but it does mandate certain security measures for places of business selling firearms.

States mandating more frequent inspection of its firearms dealers are responsible for fewer illegal guns flowing into other states. According to Everytown, “Intrastate gun trafficking was 64% lower in places with strong gun dealer regulations and oversight.”⁶⁹ “Municipalities and states should pursue increased regulation of gun dealers because these policies are associated with decreased gun trafficking and lower homicide rates. This can include a requirement that dealers be licensed at the municipal or state level and be required to implement effective recordkeeping, security practices, and employee background checks.”⁷⁰ Other extensive public health research confirms these findings. “Regression models estimate that comprehensive regulation and oversight of gun dealers and state regulation of private sales of handguns were each associated with significantly lower levels of intrastate gun trafficking.”⁷¹

As long ago as 2007, the International Association of Chiefs of Police recommended “that state and local governments enact their own dealer licensing requirements because they can respond to specific community concerns, and because state and local oversight of licensees helps reduce the number of corrupt dealers.”⁷²

FUNDING FOR FIREARMS RESEARCH

Compared to diseases and other causes of death, gun violence receives comparatively little funding for research. In 1996 Congress passed the Dickey Amendment, lobbied for by the NRA, which prohibited the Centers for Disease Control from using their research in any way that might be seen as advocacy for gun control. Thereafter, an abundance of caution and the fear of jeopardizing other projects’ funding had the effect of ending CDC research on gun violence altogether.

An Omnibus bill passed by Congress in March of 2019 did award \$25 million in funding for gun violence research and clarified that the Dickey Amendment would not prohibit funding for research on the causes of gun violence but would still prohibit CDC funds from advocating gun restrictions.

Given the wide scope of gun violence in all its forms, from suicides and domestic violence to community gun violence and unintentional shootings to police-involved shootings, more research—and therefore more funding—would be needed for suitable evidence-based solutions to be developed. More research would support progress in our understanding of “the root causes and potential solutions to the gun violence epidemic.”⁷³

STAND-YOUR-GROUND LAW

There have been efforts to pass a Stand-Your-Ground law in Minnesota, similar to those already enacted in 29 other states. These laws extend the Castle Doctrine into the public arena, permitting use of deadly force without the duty to retreat (when safe) and allowing a subjective standard of threat. Minnesota already honors the old common-law principle of the Castle Doctrine, under which a homeowner has the right to use deadly force to prevent great bodily harm or the commission of a felony within the home.⁷⁴

Advocates of these laws argue that they allow more latitude for self-defense; opponents argue that they are a license to shoot to kill with impunity. George Zimmerman, killer of the unarmed teenager Trayvon Martin in 2012, was exonerated of criminal liability because of Florida's Stand-Your-Ground law.

Because Stand-Your-Ground laws "allow . . . lethal force as a first step rather than as a last resort," they are often referred to as "Shoot First" laws. They "become exponentially more dangerous when paired with weak concealed carry laws that grant large numbers of people licenses to carry concealed firearms in public places or allow concealed carry without a license."⁷⁵

Stand-Your-Ground laws are associated with higher firearm homicides and injuries, without deterring crime. As well, they disproportionately harm Black people. When White shooters kill Black victims, they are eleven times more likely to be exonerated than when Black shooters kill Whites.^{76,77}

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⁸ <https://mappingpoliceviolence.org>

⁹ *United States v. Cruikshank, et al.*, 92 U.S. 542 (1876), and *Parker v. D.C.*, 311 F. Supp. 2d 103, 104-5 (D. D.C. 2004) See also Richard A. Allen, What Arms? A Textualist View of the Second Amendment, 18 GEO. MASON. U. CIV. RTS. L.J. 191, 191-93 (2008) (explaining the views used by courts and scholars since Miller)

¹⁰ 554 U.S. 570 (2008)

¹¹ 307 U.S. 174

¹² 554 U.S. at 581

¹³ Id. at 628

¹⁴ 561 U.S. 742 (2010), 130 S. Ct. 3020

¹⁵ 14th amendment, Section 1 "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

¹⁶ 130 S. Ct. at 3059

¹⁷ See *e.g.*, *U. S. v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010)

¹⁸ 597 U.S. ___, (2022)

¹⁹ See Lawrence Hurley, REUTERS, Supreme Court Rejects Challenge to State Assault Weapon Bans, Reuters (Jun. 20, 2016 1:01 P.M.), <https://www.reuters.com/article/us-usa-court-guns-idUSKCN0Z61JE> (noting that the Supreme Court declined to review New York and Connecticut's assault weapon bans, which "underlined its reluctance to¹³ insert itself into the simmering national debate on gun control"); Matt Ford, THE ATLANTIC, Have the Justices Gone Gun-Shy? (Dec. 7, 2015), <http://www.theatlantic.com/politics/archive/2015/12/supreme-court-gun-rights/419160/> (observing that the Supreme Court has yet to opine further on the Second Amendment since *Heller* and *McDonald*).

²⁰ See p. 8 of the slip opinion for *NYSRPA v. Bruen*, p. 14 of the whole.

https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf#page=14

²¹ Id. at p. 3 of the Syllabus

²² See *e.g.*, <https://www.governor.ny.gov/news/governor-hochul-signs-landmark-legislation-strengthen-gun-laws-and-bolster-restrictions>

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- ²³ See p. 30 of the slip opinion for *NYSRPA v. Bruen*, p. 36 of the whole. https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf#page=14
- ²⁴ Ibid.
- ²⁵ 826 N.W. 2d 789 (S. Ct. Minn. 2013) <https://www.leagle.com/decision/inmnco20130227345>
- ²⁶ Appellant Craig had been convicted of possession of a controlled substance, which is defined by Minn. Statute §624.712 subd. 5 (2012) as a “crime of violence.” Thus, under Minn. Stat.624.713 subd.1 (2) (2012), barring those convicted of violent crimes from possessing firearms, he is categorically ineligible to possess a gun. Bars on felons possessing firearms are presumptively lawful under *Heller*. The Court found Craig to be categorically unprotected, and thus found it unnecessary to determine a level of scrutiny.
- ²⁷ State v. Yang, 774 N.W. 2d 539, 552 (Minn.2009)
- ²⁸ State v. Hatch, August 4, 2021 A20-0176 <https://mn.gov/law-library-stat/archive/supct/2021/OPA200176-080421>, <https://law.justia.com/cases/minnesota/supreme-court/2021/a20-0176.html>
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- ³¹ <https://www.nytimes.com/2022/07/01/business/auto-sear-handgun-automatic.html>
- ³² <https://pubmed.ncbi.nlm.nih.gov/31426088/>
- ³³ Garen J. Wintemute et al., “Extreme Risk Protection Orders Intended to Prevent Mass Shootings,” *Annals of Internal Medicine* 171, no. 9 (2019): 655–58, <https://doi.org/10.7326/M19-2162>.
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- ⁴¹ Intervention Strategies. <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/intervention-strategies/>
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- ⁴³ Intervention Strategies. https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/intervention-strategies/#footnote_48_5669
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