

RESEARCH REPORT | Center for Law and Justice

RESTORING JUSTICE AND UPHOLDING THE SECOND AMENDMENT

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TOPLINE POINTS

- ★ The America First approach to the Second Amendment is grounded in an understanding of the Founding Fathers' commitment to freedom and individual liberty.
- ★ Restrictions on firearms that criminals ignore anyway have failed to prevent our Nation's surging crime rates, and the current environment of "defund the police" and soft-on-crime prosecutors makes the need for self-defense increasingly vital.
- ★ Both the states and federal government have a duty to fully recognize the inherent right to self-defense, and to promote safe and lawful firearm usage.

INTRODUCTION

The recent surge in violent crime is making the streets of America increasingly unsafe. In the last year alone, the rates of assault, murder, robbery, and rape have risen anywhere from five to forty percent, coming off unprecedented escalations in 2020 ([Colton, 2022](#)). When the state of public safety is in peril, citizens must be able to defend themselves and their families against criminals or those who seek to do them harm. This basic principle is consistent with America's historic commitment to freedom and equality, enshrined in the Nation's founding documents.

The United States is unique in recognizing the individual right to self-defense—elemental of the sacred principles articulated by the Founding Fathers. The Second Amendment puts this truth into practice, affirming “the right of the people to keep and bear Arms.” Without the ability to defend themselves against violence, the people cease to have any rights at all.

Human history is a testament to the way injustice festers when the ability to protect oneself is taken away: innocent people are robbed of their dignity without recourse. This is precisely what is occurring across America's major cities and counties at an alarming rate ([Baehr, 2022](#)).

Contemporary debate on the Second Amendment rarely includes the abiding right to self-defense as part of our God-given freedoms. It is instead framed as an outdated relic of the 18th century, only relevant to the colonists' need to defend themselves against the oppressive British monarch. Often absent from the conversation is how the right to bear arms is like the rest of our freedoms that have served as the backbone of our republic for nearly 250 years ([Silos-Rooney, 2020](#)).

Yet the right to bear arms is as sacrosanct as the right to free speech and the free exercise of religion, widely understood as uniquely fundamental to our American way of life. The Second Amendment protects an individual's right to own a firearm because it is an expression of self-defense and, in turn, a defense of the very liberty that is endowed upon each person by their Creator.

America has not always been perfect in the ways this right has been manifested, but current discussions should raise questions on how to uphold this fundamental freedom better, not take it away in the form of restrictive bans or gun control.

The America First approach to the Second Amendment is grounded in an understanding of the Founding Father's commitment to freedom and individual liberty—principles that history has repeatedly proven to be crucial to our continued strength and prosperity. Self-defense is inherent to our nature as free people, and the current crime epidemic will only result in greater victimization of innocent people if policymakers do not protect the right of law-abiding citizens to keep and bear arms.

Policies that seek to ban guns broadly or ignore the connection between mental health and gun violence are failures by elected leaders to both uphold public safety and safeguard the rights of the people. Acknowledging that the citizenry owns their right to self-defense not only puts Americans first but provides the best way forward for securing their right to defend themselves and their loved ones against injustice.

HISTORICAL CONTEXT

On December 15, 1791, the Second Amendment was ratified within the Bill of Rights, stating, "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 ([Archives, n.d.](#))"

In the 18th century, firearms were as plentiful among colonists as the modern handgun, and semi-automatic rifles are in contemporary America ([Vaughan, 2016](#)).

The importance of educating children on the safe and proficient use of firearms was emphasized by many of the Founding Fathers and early American presidents, including John Quincy Adams ([Adams, 1810](#)). Firearms were not just deemed essential for acquiring food provisions for both home and income but were also recognized as a critical tool for self-defense as well as the pursuit and maintenance of American independence during and following the Revolutionary War. Founding Father and statesman Richard Henry Lee fittingly believed that "[T]o preserve liberty, it is essential that the whole body of the people always possess arms, and be taught



alike, especially when young, how to use them” ([Lee, 1788](#)).

In fact, it was armed colonial resistance, with militias comprised of men as young as 16, that ultimately repelled the British military’s attempts to confiscate arms and ammunition in the opening salvo of the American Revolution at the battles of Lexington and Concord ([NPS, 2022](#)) ([Editors, 1998](#)).

Although the Revolution vividly demonstrated the importance of an armed citizenry, the philosophical and political foundations to support such a right matured in the century leading up to the historic conflict.

The indelible influence of Enlightenment philosophers can be observed in the Founders’ articulation of human rights, outlined in the Constitution and Bill of Rights.

17th-century English philosopher John Locke argued that “it is reasonable and just that I have a right to destroy anything that threatens me with destruction, because the fundamental law of nature says that men are to be preserved as much as possible, and that when not everyone can be preserved the safety of the innocent is to be preferred.” He articulated the importance of self-defense equally in cases of imminent danger as much as he did for the instances when someone “tries to get another man in his absolute power,” a euphemism for the subjugation of one person over another ([Locke, 1689](#)).

Thomas Jefferson included Italian jurist Cesare Beccaria’s justifications favoring self-defense in his *Legal Commonplace* book, arguing that it is not the right of self-

defense itself that endangers people, but rather the restrictions on an individual’s right to self-defense that can harm a Nation ([Jefferson, 1926](#)).

Restrictions on owning firearms may give law-abiding citizens a false sense of security—believing they are sacrificing their freedom for the sake of the greater good—but they are belied by the dangerous reality of being confronted by a criminal that neither respects the laws nor cares to follow them.

A jurist of another European nation, Sir William Blackstone, considered the English right to arms contained in the 1688 Declaration of Rights as an “auxiliary” right and “natural right of resistance and self-preservation when the sanctions of society and laws are found insufficient to restrain the violence and oppression” ([Blackstone, 1765](#)).

John Adams and Alexander Hamilton prioritized the Second Amendment as a private and original right, “paramount to all positive forms of government,” arguing that our natural and inherent rights, such as the right to keep and bear arms, were to be held above our entitlements ([Hamilton, 1767](#)).

In addition to the Constitution and Bill of Rights, many of the original state constitutions separately emphasized an individual’s right to keep and bear arms—among them, Virginia, Pennsylvania, North Carolina, and Vermont ([Archives, 1776](#))([Yale, 1776](#))([Yale, 1776](#)).

States that did not include a similarly explicit written amendment, such as New York, still acknowledged the natural right of all Americans to keep and bear arms ([Yale, 1777](#)).



Further, the Founding Fathers did not distinguish between who should enjoy the rights recognized in the Second Amendment and who should not. During debates and constitutional conventions, George Mason made it clear that the “militia” was “the whole people, except for a few public officials” ([Madison Library, n.d.](#)).

Despite substantial evidence outlining the Founders’ original intent concerning individuals and the right to keep and bear arms, the meaning and scope of the Second Amendment today face heavy scrutiny, particularly in areas of the country where gun control legislation has resulted in litigation making its way to the Supreme Court.

These challenges to the interpretation of the Second Amendment, and many of the attendant policies aimed at restricting its application, have had substantial consequences.

CURRENT STATE OF GUN CONTROL AND CRIME IN OUR NATION

Gun Control: A Failed Legacy

Gun control laws vary widely throughout the Nation, affecting everything from the type of gun a person can own to the places in which they can carry it. The current landscape, which often imposes severe restrictions on the gun rights of law-abiding citizens, has been shaped by several Supreme Court decisions and incidents involving the misuse of firearms. In assessing varying gun control legislation from the past several years, its influence on the reduction of crime and violence appears

dubious. A 2016 city-level cross-sectional analysis testing this very phenomenon found that gun control laws generally have no evidence of effect on crime rates ([Kleck, Kovanzik, 2016](#)). A glance at the headlines of major cities suggests the same conclusion: high crime rates in the face of stringent gun restrictions.

Three landmark Supreme Court cases in recent years have played a critical role in upholding the Second Amendment and its nexus to the innate rights of American citizens: *D.C. v Heller* (2008), *McDonald v. Chicago* (2010), and *NYSPPA v. Bruen* (2022). Each of the cities involved—Washington, D.C., Chicago, and New York City—have been the setting for litigation involving the interpretation and scope of the Second Amendment. Despite the rulings of the Supreme Court, these cities continue to pursue some of the strictest gun control laws in the Nation. Remarkably, they have also seen some of the Nation’s highest crime rates in recent years, which point to the failure of gun control policies in materially reducing crime and violence.

Washington, D.C.

The Heller decision upheld the right of private citizens to “keep and bear arms” for self-defense, ruling D.C.’s existing ban on handguns unconstitutional in 2008 (554 US 57 2008). The case clearly determined that citizens unconnected to militia could own guns, disabusing the notion that the Second Amendment only applied to members of law enforcement and the military. Today, D.C. has some of the most restrictive gun laws in the Nation, prohibiting open carry, among others. All firearms must be registered with the police department and cannot be carried



in or on government property, schools or universities, polling places, libraries, hospitals, public transportation, stadiums, arenas, any business that serves alcohol, the National Mall, U.S. Capitol and around the White House, or within 1,000 feet of a protest or dignitary who receives police protection ([MPDC, n.d.](#)).

Despite all these restrictions in place, the surging crime rates in the Nation’s capital have continued to set alarming milestones in the past few years, particularly noticeable in the number of violent gun crimes. In just the first six months of 2022, D.C. Metropolitan police reported 221 more violent gun-involved crimes than the same time last year, coming off a five-year increase from 2017–2021 ([Hopkins, 2022](#)) ([D.C. Metropolitan Police, n.d.](#)) Fraught with an epidemic of violence, the District had already surpassed the 2021 record of violent crime with over three months of reporting left in the year ([MPDC, 2022](#)). Even with measures meant to take guns off the streets, D.C. has witnessed a steady uptick in the number of firearms recovered by metropolitan police ([MPDC, 2022](#)).

Chicago

Chicago has had several notable battles with the court over gun control, beginning with the first major case in 1981 that challenged a handgun ban in Morton Grove, a suburb of Chicago. After the District Court ruled that the ordinance was valid, several other regions nearby passed similar bans, and in 1982, Chicago became the first city to ban the sale and possession of handguns entirely ([Clark, 2014](#)). The landmark Supreme Court case, *McDonald v. Chicago* (2010), overturned the ban and further clarified Heller’s affirmation of the individual right to “keep and bear arms” to the states via the

due process clause of the Fourteenth Amendment.

Despite the Supreme Court ruling, Chicago lawmakers continued to pursue significant restrictions designed to inhibit the acquisition of firearms, even by law-abiding citizens. These measures included restrictions on obtaining gun permits, open carry, and others.

Nonetheless, Chicago remains one of the most dangerous cities in the U.S., with a murder rate quadruple the national average ([Rosenfeld, 2021](#)). In 2021, the Chicago Police Department reported that more than 90% of homicides in the city were a result of gun violence ([Chicago Tribune, 2022](#)). This was one of the deadliest years on record, where gunshot victims topped 4,300 compared to 2,800 in 2018 ([Sweeney, 2022](#)). The state of Illinois reportedly has thousands of instances where individuals whom the state determines can no longer own a firearm do not comply—an issue that poses an alarming public safety threat. Instances of revoked Firearm Owner Identification cards are heavily concentrated in Chicago, where crime is repeatedly committed by individuals using firearms they are not allowed to possess ([Sweeney, 2019](#)).

New York City

In the most recent significant ruling affecting the Second Amendment, *New York State Rifle & Pistol Association v. Bruen* (2022) questioned the constitutionality of the 1911 Sullivan Act, which required ‘proper cause,’ or special needs be proven for applicants to be issued an unrestricted license to carry a concealed carry firearm on their person. Ultimately, the Supreme Court’s 6-3 ruling dispelled New York’s “proper cause” or “special needs” provision.



Despite this significant victory for the Constitution, New York City still has some of the strictest gun control laws in the Nation, prohibiting open carry and requiring the registration of all guns. Concealed carry is allowed—but only with certain restrictions—and a weapons license is required. Additional gun control legislation was recently passed in New York state, including a broad set of measures that raise the minimum age for citizens to obtain long guns and amend permits for semi-auto long guns ([NRA-ILA, 2022](#)).

Again, the city’s crime rates demonstrate that these restrictive gun control measures, despite their intentions, are not effective in preventing innocent victimization of crime. Like alarming trends seen in Chicago and Washington, D.C., gun homicides are on the rise in New York City, making headlines about the violent way innocent shopkeepers and pedestrians are threatened in their daily lives ([Sheehan, 2022](#)). In areas that are already plagued by crime, the city recently further restricted Second Amendment rights by declaring them gun-free zones ([Byfield, 2022](#)). Coming off the month of July 2022, where citywide shooting incidents increased by 13.4%, it’s clear that the aggressive pursuit of ever more restrictive gun control measures has clearly not reduced crime or improved public safety ([NPYD, 2022](#)). The fundamental flaw inherent to these measures is the misbelief that society’s criminally inclined population will obey the law. Common sense, backed up by evidence, overwhelmingly reveals that lawbreakers, by definition, do not obey the law. Strict gun control measures only prevent law-abiding citizens from obtaining firearms through legal channels, an avenue rarely pursued by the criminal element. In practice, these measures leave innocent civilians

defenseless in the face of potential victimization while leaving society’s criminal class unperturbed.

POLICY RECOMMENDATIONS

The America First Policy Institute’s (AFPI) Center for Law and Justice recommends policies on the state and federal levels that preserve the Second Amendment for law-abiding citizens while also helping our communities and members of law enforcement reduce the suffering caused by gun violence. In upholding the inherent right of gun ownership, additional care should be reserved for thorough transparency and accountability among the agencies that enforce policies impacting the exercise of Second Amendment rights. Americans deserve the assurance that law enforcement, especially those with federal authority, follow their oaths to preserve, protect, and defend the Constitution.

Since self-protection through being able to keep and bear arms is a natural right inherent to our human condition, defending the Second Amendment in policy should be simple and straightforward. Yet the debate around guns often becomes convoluted amid attempts to restrict this basic right, putting many Second Amendment advocates on the defense.

Constitutional carry—the right of lawful citizens to carry a firearm freely—is one of the most basic measures to uphold the intrinsic right to self-defense and should be applied to all states. Where constitutional carry has not been passed, states should refrain from imposing unjustifiable restrictions on their “shall-issue” permitting laws.



AFPI supports well-intentioned measures designed to ensure public safety while also safeguarding individuals' constitutional rights. In many cases, good laws already exist to prevent gun violence, but the lack of prosecutorial enforcement in some communities has resulted in tragic and foreseeable consequences ([NRA ILA, n.d.](#)). Pursuing a zero-tolerance arrest and prosecutorial policy toward gun usage during the commission of a crime will go much further toward preventing future gun violence than any measure designed to infringe on a lawful citizens' right to obtain, possess, or bear arms.

States should also allocate more funds for effective background checks and firearm training schools when possible. The following proposed measures directly relate to upholding the Second Amendment in legislation.

STATE LEVEL

Uphold the Right to Constitutional Carry

The 2008 Heller decision affirmed that individuals have a right to possess and carry weapons “in case of confrontation.” Forty-two states, marking 74% of the entire population, currently have Right-to-Carry laws, meaning that citizens may carry concealed handguns outside their homes with or without a permit ([NRA-ILA, n.d.](#)). In most of these states, citizens are also allowed to carry openly. Yet a fewer number of states—only 25—uphold the right to constitutional carry: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Mississippi, Missouri, Montana, New Hampshire, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming.

Also known as permitless carry, constitutional carry permits citizens who can legally possess a firearm to carry a handgun without a permit, openly or in a concealed manner. Constitutional carry is the primary way states can practically recognize the right to bear arms, as it recognizes self-defense as a right rather than a privilege.

Without bureaucratic restrictions or government mandates, law-abiding Americans can carry their firearms freely. Low-income citizens may especially benefit from constitutional carry laws in states that currently impose onerous fees throughout the permitting process.

The state of New York, for instance, requires that citizens seeking a permit to carry must complete classes that can cost up to \$350—estimated to rise to \$500 with new laws—not including the necessary ammunition needed to complete the training successfully ([Lewke, 2022](#)).

With constitutional carry, individuals prohibited from possessing a firearm under federal or state law would still not be allowed to carry a firearm. While there is understandable concern that permitless carry could lead to an increase in gun violence and crime, data from states with constitutional carry laws in place have no such documented increases.

Vermont, which historically has had minimal gun regulations, is one of the safest states ([World Population Review, 2022](#)). Since Alaska became the second state to allow constitutional carry in 2003, no links have emerged tying the policy to higher crime or gun violence. One study found no statistically significant relationship between



constitutional carry laws and homicide ([Adams, 2022](#)).

Enact Concealed Carry Reciprocity Between All States and Territories

The right to self-defense should not stop when crossing state lines, yet in our Nation’s current legal landscape, it often does. Many states have their own reciprocity laws, allowing as applicable only handgun licenses from a specific selection of other states. Practically speaking, this means responsible gun owners from states with legal permits in their home state may not be able to carry when they leave their borders legally.

Honoring concealed carry permits across state lines is a commonsense way to carry out the promise of the Second Amendment, as well as the “Full Faith and Credit” clause of Article IV of the U.S. Constitution, requiring states to recognize “public acts, records, and judicial proceedings of every other state.” Individuals who have lawful state-issued carry permits in their home state should not suddenly be unable to exercise their rights when they leave. Full reciprocity also ensures that otherwise law-abiding citizens will not be imprisoned or fined for accidentally bringing their firearms across state lines.

States can take concrete action within their respective state legislatures or governor’s offices to recognize the lawfully issued permits of other states. Not having to issue additional permits would reduce bureaucracy in the long term and provide gun owners with clarity in the law.

FEDERAL LEVEL

Enact Concealed Carry Reciprocity at the Federal Level

Codifying concealed carry reciprocity at the federal level would eliminate the need for individual states to enact reciprocity laws and would ensure that all states are compliant in allowing citizens to exercise their Second Amendment rights across state borders.

Bipartisan legislation for national concealed carry reciprocity has been introduced in both the House and Senate in previous years. Though it has passed in the House, it has thus far met obstacles in the Senate. In both the Senate and the House, legislators have spoken about the need for a commonsense way to uphold the right to self-defense across borders, starting with the recognition of permits across state lines. In the same way that states accept driver’s licenses issued from other states as a valid permit to operate a vehicle in their state, citizens can lawfully use their permits to carry outside their home state while still having to abide by the rules in the visiting area.

For states with constitutional carry where no permit is needed, reciprocity promises the ability to carry in other states. That said, federal reciprocity should respect state law allowing concealed carry only in the permitted areas of that state and ensuring that no citizen prohibited from obtaining a gun by federal law can possess a firearm across state lines. Criminal activity does not stop at state borders, so it makes little sense to prevent law-abiding gun owners from exercising their constitutional right to carry while away from home.

Offer Tax Breaks and Grants for Individuals to Exercise the Right to Carry



In states where the issuance of a permit is required to carry a firearm lawfully, the costs to obtain that permit—through mandatory training classes—should not be prohibitively expensive. To deter states from imposing onerous costs on law-abiding citizens pursuing the right to carry, the federal government can provide targeted tax breaks or other forms of financial assistance to reduce the costs of safety, education, and training classes. This would prevent states from using high fees to discourage people from exercising their Second Amendment rights.

In some states, necessary classes to obtain a permit can cost \$350–\$500 or more, which is a burden most heavily placed on middle-class and lower-income citizens ([Lewke, 2022](#)). All levels of government should be proactive in incentivizing law-abiding gun owners to enroll in firearm safety classes and participate in measures to decrease the likelihood of accidental firearm injuries and deaths.

Legislation offering tax deductions for gun training and individuals taking certified concealed carry courses has been introduced at the state level but should ultimately be undergirded by the federal government to encourage responsible firearm usage. Further tax breaks could be offered for the purchase of gun safety and storage equipment, all of which encourage safe ownership and storage of firearms.

CONCLUSION

Contemporary arguments antagonistic to the Second Amendment are at best indifferent and, at worst, hostile to the Founders' understanding of the relationship between gun ownership and liberty. AFPI offers an alternative perspective: that the reason to

respect the intentions of our forefathers is because of the extraordinary promise of America, which is uniquely built on the recognition of inherent rights that cannot be taken away by the government.

Few nations recognize the intrinsic rights of their citizens and acknowledge those rights as transcending those of the state. The Founding Fathers accomplished the extraordinary task of enshrining sacred moral absolutes into the Nation's governing documents. The Constitution and Bill of Rights are not subject to change outside of the manner prescribed in the Constitution itself, based on the whims of any given generation. They are not privileges that can be merely brushed away.

Recognizing the individual freedoms that have been so rarely recognized among people throughout human history should be the highest priority of policymakers today. Yet the debate around firearms is illustrative of the way the original purpose of government has been lost. In recent years, laws restricting gun usage have been passed and repeatedly ruled unconstitutional in favor of the individual right to bear arms.

Understandably, gun violence has spearheaded the movement for gun control, but it is still predicated upon the false notion that more restrictions will result in less crime. This paper's policy recommendations are a starting point for the Nation to more fully recognize the inherent right to self-defense and to promote safe and lawful firearm usage. Doing so will bring us one step forward toward restoring America's historic commitment to freedom, equality, and self-governance.





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