

I suggest you review this recent piece in the Wall Street Journal. We are all saddened by the events at Newtown, but enacting more laws because you feel you have to "to something" is bad policy. Have the courage to face the challenge of curtailing violence in CT in a way that does not punish law abiding citizens and, ultimately, is completely ineffective in protecting our children.

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Gun Control and the Constitution

The courts would no more allow government to undermine the Second Amendment than the First.

Article

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Could there be a better illustration of the cultural divide over firearms than the White House photograph of our skeet-shooting president? Clay pigeons are launched into the air, but the president's smoking shotgun is level with the ground. This is not a man who is comfortable around guns. And that goes a long way toward explaining his gun-control agenda.

Lack of informed presidential leadership aside, there is a gulf between those Americans who view guns as invaluable tools for self-defense, both against private wrongdoers and a potentially tyrannical government, and those who regard that concept as hopelessly archaic and even subversive. For them, hunting is the only possible legitimate use of firearms, and gun ownership should be restricted to weapons suited to that purpose.

Associated Press

But while the level of the policy discourse leaves much to be desired, its constitutional dimensions are even more dimly recognized, much less seriously engaged. Yet the debate over guns, as is the case with many other contentious issues in American history, cannot be intelligently pursued without recognizing its constitutional dimensions. The Supreme Court's 2008 decision in *Heller v. District of Columbia* confirmed that the Second Amendment means what it says: "the right of the people to keep and bear arms shall not be infringed."

After *Heller* and its follow-on case, *McDonald v. Chicago*, which applied the Second Amendment rights to the states, what government cannot do is deny the individual interest in self-defense. As a legal matter, that debate is settled.

The president and his allies seem to have missed the message, as demonstrated by his continued insistence that most of the American people, including many hunters, support his proposed gun-control measures. Even if that claim were true, constitutionally protected rights are guarded with particular vigor precisely when public opinion turns against them. Meanwhile, the president's continued appeals to emotion, capitalizing on a series of tragic mass shootings, also ill-fit what ought to be a serious and dispassionate discussion.

While the courts are still sorting out *Heller's* implications, politicians should not assume that they have a free hand to restrict private gun ownership. Decades of case law interpreting and applying the other provisions of the Bill of Rights show that there are hard-and-fast limits on gun control.

The general framework is straightforward and certainly well-known to those who have studied (let alone taught) constitutional law. The government cannot abridge constitutionally protected rights simply to make a symbolic point or because it feels that something must be done. Any measure must be justified by a legitimate government interest that is compelling or at least important. At the same time, any regulation must be "narrowly tailored" to achieve that interest.

On that basis, in a recent case the Supreme Court struck down a federal ban on depictions of animal cruelty, rejecting the government's argument that it had any legitimate interest in banning pictures and videos associated with crimes, and finding—even assuming the government's interest—that the statute swept up too much protected speech. In this way, judicial balancing requires a careful weighing of the government's interests against the individual's, with a thumb on the scale in favor of the individual.

But you wouldn't know that from the current gun-control debate. Several states, for example, are considering gun-insurance mandates modeled after those for automobile insurance. There is no conceivable public-safety benefit: Insurance policies cover accidents, not intentional crimes, and criminals with illegal guns will just evade the requirement. The real purpose is to make guns less affordable for law-abiding citizens and thereby reduce private gun ownership. Identical constitutionally suspect logic explains proposals to tax the sale of bullets at excessive rates.

The courts, however, are no more likely to allow government to undermine the Second Amendment than to undermine the First. A state cannot circumvent the right to a free press by requiring that an unfriendly newspaper carry millions in libel insurance or pay a thousand-dollar tax on barrels of ink—the real motive, in either case, would be transparent and the regulation struck down. How could the result be any different for the right to keep and bear arms?

The same constitutional infirmity plagues the president's plan. Consider his proposal for a new "assault weapons" ban, targeting a class of weapons distinguished by their cosmetic features, such as a pistol grip or threaded barrel. These guns may look sinister, but they don't differ from other common weapons in any relevant respect—firing mechanism, ammunition, magazine size—and so present no greater threat to public safety. Needless to say, the government has no legitimate interest in banning guns that gun-controllers simply do not like and would not, themselves, care to own.

Also constitutionally suspect are restrictions on magazine size. There is no question that a limit of 10 rounds (as the president has proposed) or seven (as enacted by New York state last month) would impair the right to self-defense. A magazine with 10 rounds may provide adequate protection against a single nighttime intruder. But it may not: What if there are two intruders?

Further compounding the constitutional problem is the fact that the benefit of such limits is questionable. For a practiced and calm shooter, swapping magazines takes no more than a couple

of seconds. And a swap may not even be necessary if the shooter has multiple guns, as in several mass shootings in recent years.

While some limit on magazines may be constitutionally permissible, one that falls below the capabilities of guns in common usage for self-defense is probably not. The most popular guns for self-defense take 15 or so rounds in their default configurations. Given the uncertain benefit of restricting magazine size, not to mention the tens of millions of "high capacity" magazines in circulation, something near that number may be a constitutional minimum.

And while there is no question that procedural requirements like background checks are permissible, that does not mean that the government may place an undue burden on the right of law-abiding citizens to protect themselves. Excessive waiting periods, registration fees and the like are all subject to scrutiny, lest they infringe on constitutionally guaranteed rights.

At bottom, the Constitution requires sensible and effective regulation of guns that respects and upholds this most fundamental right. Policies motivated by nothing more than discomfort with firearms, often born of a lack of experience, fall far short.

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