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Gun Violence in America: A Preventable Epidemic

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Firearm related deaths and injuries are a serious and growing public health problem in the United States. The problem receives most attention after high profile mass shootings, and there have been many such tragic events over the past five decades in our country. Some of the most horrific ones include the Cleveland Elementary School mass shooting in Stockton, California in January of 1989 in which 5 students were killed and 32 were wounded; the Columbine High School mass shooting in Colorado in April of 1999, in which 12 students and one teacher were killed and 21 wounded; the Virginia Tech mass shooting in April of 2007 in which 27 students and 5 professors were killed and 27 were wounded; the Aurora, Colorado theater mass shooting in June of 2012, 12 people killed and 58 wounded; the Sandy Hook Elementary School mass shooting in Newtown, Connecticut, in December of 2012, in which 20 six and seven year old children, 6 female staff, and the shooter's mother were killed; the Pulse Nightclub mass shooting in Orlando Florida in June of 2016, in which 49 people were killed and 53 wounded; the Las Vegas Harvest Festival concert mass shooting in October of 2017, in which 58 people were killed and 422 wounded; the Marjory Stoneman Douglas High School mass shooting in Parkland, Florida on Valentine's Day, 2018, in which 14 students and 3 staff were killed and 17 students and staff were wounded. And the list goes on.

Within a period of just one week this summer, there were high profile mass shootings in Gilroy, California; El Paso, Texas; and Dayton, Ohio. And as I'm sure you know, the state of Michigan has not been immune to this terrible epidemic. Seven people were killed and two were wounded in a mass shooting in Grand Rapids in July of 2011; and 6 people were killed and 2 were wounded by an Uber driver in Kalamazoo in February of 2016.

There's no universally accepted definition of what constitutes a mass shooting. That's why you hear widely varying reports of how many mass shootings there have been in our country over given period of time. The most stringent definition of a mass shooting that I'm aware of is an incident in which at least 5 people, not including the shooter, are killed. One of the least stringent definitions is an incident in which at least four people, not including the shooter, are shot but not necessarily fatally wounded.

In 2017, the most recent year for which complete data are available, there were 10 shooting incidents in the United States that met the more stringent definition of a mass shooting. There were 346 shooting incidents – an average of almost one a day – that met the less stringent definition.[1]

The total number of people killed by guns in the United States in 2017 was 39,773.[2] Using the definition of a mass shooting as one in which a least 5 people are killed, mass shootings accounted for just 0.3% of all gun related deaths in 2017.[3] And this figure includes the shooting in Las Vegas in October of 2017, which was the worst mass shooting to date in modern U.S. history. Using the definition of a mass shooting as one in which at least four people are shot but not necessarily fatally wounded, mass shootings accounted for 1.1% of all gun related deaths in 2017.[4] In other words, by any definition of a mass shooting, as horrific as these events are, they account for a small fraction of all gun related deaths in our country.

On an average day in the United States of America, more than 100 people are killed with guns,[5] and two to three times this many people suffer non-fatal but often devastating gunshot wounds.[6] In 1994, the U.S. Centers for Disease Control and Prevention reported that gun related deaths were the fourth leading cause of preventable years of life lost below age 65, behind non-firearm accidents (mainly motor vehicle crashes), cancer, and heart disease.[7] Congress responded to this report not by passing more stringent gun control laws, but by cutting the CDC's funding. The CDC hasn't issued a similar report since 1994, but since 1999, the U.S. rate of deaths due to motor vehicle accidents has declined by 19%,[8] the rate of deaths due to cancer has declined by 19%,[9] and the rate of deaths due to heart disease has declined by 18%.[10] Over this same time period, the rate of deaths due to gunshot wounds has increased by 15%.[11]

Our youth are disproportionately affected by gun violence. The Michigan Health Lab just reported in August of this year that gunshot wounds are the second leading cause of death in U.S. children and adolescents, behind automobile crashes. For middle school and high school age youth, gunshot wounds are the leading cause of death, exceeding deaths from motor vehicle crashes by 23%.[12]

If you consider fatal and non-fatal shootings together and for all age groups combined, about two thirds of all shootings occur in the setting of criminal assaults, about 20% occur as a result of intentional self harm, 10-15%% occur as a result of accidents, and just 1-2% occur in the setting of legal

intervention.

	Assault	Self-harm	Accident	Legal intervention
Fatal	32.6%	63.5%	1.7%	1.4%
Non-fatal	74.6%	4.1%	19.7%	1.6%
Combined	62.3%	21.5%	14.4%	1.6%

Circumstances of fatal and non-fatal shootings in 2014[13]

If you separate fatal and non-fatal shootings, though, the relationship between suicides and homicides changes dramatically. Suicides account for almost two thirds of fatal gunshot wounds, but less than 5% of non-fatal ones. The reason is that people who try to kill themselves with a gun almost always succeed.

There is a common misconception that most gun suicides occur in older white men. In fact, a well known U.S. gun violence researcher at the University of California, Davis was quoted in our main Sacramento newspaper as stating, “When it comes to suicide, firearm violence is an old white guy problem.”[14] While it’s true that older Caucasian men have the highest rate of gun suicide, they comprise a small segment of the entire population, and accordingly, they account for a small percentage of all gun suicides. In 2017, 61% of all gun suicides occurred in individuals under the age of 55, and 30% occurred in individuals under the age of 35.[15] Suicide is the third leading cause of death for American youth age 15-19, and most suicides in this age group are committed with guns.[16]

A great deal of attention has been focused recently on the part that so-called “assault weapons” play in the worsening epidemic of gun violence in our country. I believe that there’s no legitimate civilian use for firearms that are specifically designed to be used to kill and maim large numbers of people in a short period of time. I’ll also acknowledge that some of the worst mass shootings in recent history have been committed with so-called “assault rifles.” Like mass shootings, though, there’s no universally accepted definition of what constitutes an “assault rifle.” If you see a picture of an AR-15, which looks like the military’s M-16, most everyone would agree that based on it’s appearance alone, an AR-15 is an “assault rifle.” The main difference between the AR-15, which is available for civilian purchase in the United States, and the military M-16, which is not, is that the M-16 can be changed from semi-automatic to automatic firing mode by the flip of a switch. In fully automatic mode, an M-16 keeps firing as long as you keep the trigger depressed. In semi-automatic mode, the gun only fires once each time you pull the trigger. Civilian ownership of fully automatic firearms has been stringently restricted in the United States since the Gun

Control Act of 1934, and as a result, AR-15's don't have a built in semi-automatic mode. For practical purposes, though, there's little difference in the amount of destructive power between an AR-15 and an M-16. The main rate limiting factor in how many bullets can be fired in a given period of time is not whether the gun is in automatic or semi-automatic mode, but rather the capacity of the magazine or other device that feeds bullets into the firing chamber. And although AR-15's aren't sold with a built-in automatic mode, they can be easily modified, as in the case of the Las Vegas mass shooting, to fire almost as rapidly as a fully automatic M-16.

The main problem with using a gun's appearance to define whether it's an "assault rifle" is that gun manufacturer's can easily subvert so-called "assault weapons bans" by changing the cosmetic features of guns without reducing their destructive potential. This was a problem with the federal assault weapons ban that went into effect in 1994 and sunsetted in 2004, when Congress failed to renew it. The ban defined an assault rifle as a semi-automatic rifle that could accept a detachable magazine and that had at least two other features typically included on military weapons, such as a pistol grip, a thumb-hole in the stock, or a bayonet mount. By this definition, the semi-automatic version of the M-14 that I trained with in Marine Corps boot camp, and that has a wooden stock that makes it look a lot more like your grandfather's old thirty ought six hunting rifle than an AR-15, would not be classified or readily identified as an "assault rifle," even though it's more deadly than an AR-15. At the time that the federal assault weapons ban went into effect, over 600 different types of semi-automatic rifles were specifically exempted from the ban, and U.S. gun manufacturers subsequently produced new ones, mocking the ban by giving them names with acronyms like "AB" for "after ban" or "PCR" for "politically correct rifle."

There's another problem, though, in focusing mainly on "assault rifles" and their equivalents. The vast majority of all gun deaths in the United States are committed with handguns. Handguns are not generally as lethal rifles because they usually fire smaller bullets at lower speeds, and semi-automatic handguns usually don't accommodate large capacity magazines, but handguns are far more concealable than rifles and easier to stash in a nightstand, a glove compartment, or even a purse. Handguns are used in about 80% of all gun related homicides and suicides in the United States. You may be surprised to learn that they're also used more often than long guns in mass shootings. An analysis of 88 mass shootings from 1982 through 2019 in which at least five people were killed showed that handguns were used in 78% of the shootings, long guns were used in 53%, and a combination of handguns and long guns were used in 34%.[17]

To summarize what I've covered so far, firearm related deaths and injuries are a serious public health problem in our country. The problem disproportionately affects our youth. As horrific as mass shootings are, they account for only a tiny fraction of all firearm related deaths and injuries.

And although there's no legitimate civilian use for assault rifles, there's also no universally accepted definition of an assault rifle, and handguns, not assault rifles, are used in the vast majority of all gun related deaths.

The next topic I'd like to cover is how rates of gun violence in the United States compare with rates in other countries. I think most of you probably already know that they're higher, but you may be shocked to learn how much higher.

The United States has by far the highest rate of gun violence of any high income democratic country in the world. For all age groups combined, the rate of gun deaths in our country is 10 times higher than the average rate in other high income democratic countries. Our gun homicide rate is 25 times higher and our gun suicide rate is 8 times higher.[18] For children under the age of 15 years old, our gun death rate is 11.9 times higher,[19] and for high school age youth, our gun homicide rate is 82 times higher.[20]

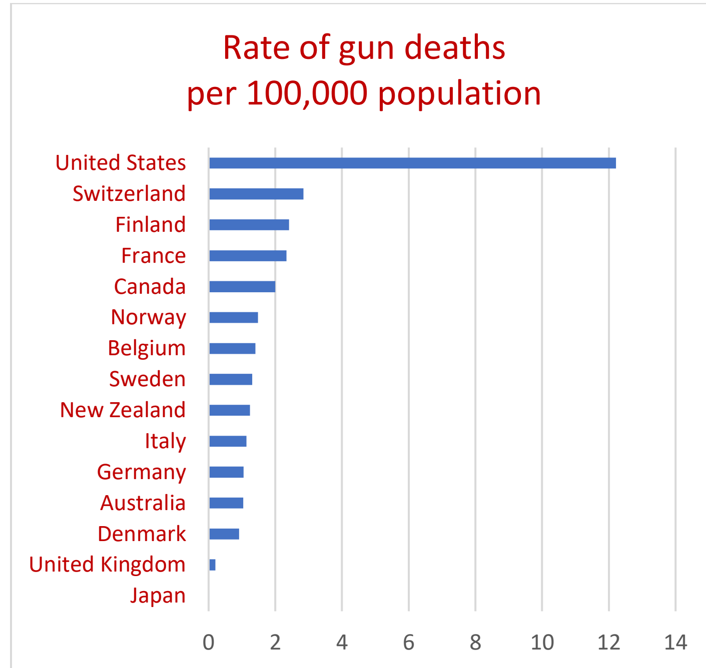
The factors that are most often mentioned as accounting for our high rate of gun violence are mental illness, substance abuse and a culture of violence that includes racism and other forms of discrimination, bullying, and a lack of value for human life. The factor that is mentioned least often is that our country is awash in privately owned guns.

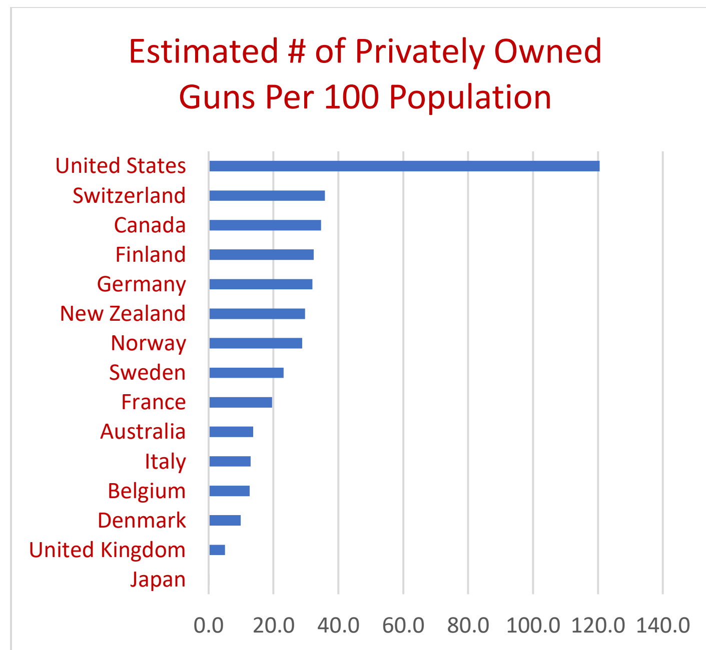
The roots of violence, including gun violence, are complex, and they need to be addressed. But the final common pathway by which all gun violence is committed is simple – its with guns. But after high profile shootings in our country, this simple fact seems to be the one that gets the least attention.

Mental illness and substance abuse are definitely a problem in our country, but the United states is not an outlier as compared with other high income democratic countries in terms of our rates of mental illness and substance abuse.[21] Racism and other forms of discrimination are a problem, but other countries with much lower rates of gun violence face similar problems. Socio-economic inequality is a problem, but the degree of socio-economic equality in the United States, as measured by something called the Gini coefficient, is comparable to levels in other economically advanced democratic countries.[22] The glorification of violence, and particularly gun violence, in our popular media is, in my opinion, irresponsible and despicable, but people in other countries watch many of the same movies and TV shows and play many of the same video games that Americans do. And surprisingly, despite what seems to be a culture of violence in our country, the rate of criminal assault by means other than firearms in the United States is actually below the average for the other high income democratic countries of the world.[23]

The factors that most clearly explain our extraordinarily high rate of gun violence are our extraordinarily lax gun control laws and the related extraordinarily high number of privately owned guns in circulation in our country as compared with all the other high income democratic countries of the world.[24] If you look at a bar

graph comparing the rate of gun deaths in the different high income democratic countries of the world, and you look at another bar graph of the number of privately owned guns per capita in these same countries, you'll note that the shapes of these two graphs are nearly identical. The United States is at the top of both graphs, with by far the highest rate of gun deaths and the highest number of privately owned guns per capita. Switzerland is a distant second in both categories. At the bottom of the graphs are Japan and the United Kingdom, with the lowest rates of gun deaths and the lowest rates of private gun ownership.[25]





This same relationship holds not just for rates of gun homicides, but for overall homicide rates as well. And there's no inverse correlation between rates of gun homicides and rates of non-gun homicides.[26] In other words, if guns are not readily available, people don't generally substitute other means for committing murders. Instead, they just don't commit as many murders. The same relationship holds for suicide,[27] but with one notable exception. The rate of suicide in Japan is higher than in most other high income democratic counties, including the United States, despite the fact that private gun ownership is almost completely banned in Japan.[28] Japan's high suicide rate is probably due to longstanding cultural norms.[29]

I'd like to turn now to the topic of just how U.S. gun laws differ from the laws in other high income democratic countries. The most fundamental difference is that the guiding policy for gun ownership in the United States is permissive, whereas the guiding policy is restrictive in every other economically advanced democratic country.[30]

Under our country's permissive guiding policy, the default position under federal law is that anyone of a certain age who wants a gun can legally purchase one unless the government can prove that he or she falls into one or more of 9 fairly narrow categories of persons prohibited from owning guns.[31] These nine categories include any person:

- convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- who is a fugitive from justice;
- who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, codified at 21 U.S.C. § 802);
- who has been adjudicated as a mental defective or has been committed to any mental institution;
- who is an illegal alien;
- who has been discharged from the Armed Forces under dishonorable conditions;
- who has renounced his or her United States citizenship;
- who is subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or
- who has been convicted of a misdemeanor crime of domestic violence.

These federal background check criteria apply only to gun purchases from federally licensed firearm dealers, not to purchases from private parties. (Individual states may have more stringent criteria and may require more universal background checks.) But even as limited as the federal background check criteria are, persons who should be prohibited under these criteria from purchasing firearms from federally licensed firearm dealers have still been able to do so in many cases. Thanks to legislation promoted by the NRA, many individuals with

past felony convictions, including convictions for aggravated assault and rape, were able to obtain “relief” from the “disability” of not being able to legally purchase a gun appealing to the ATF.[32] In many other cases, including that of the perpetrator of the mass shooting at the First Baptist Church in Sutherland Springs, Texas, in November of 2017, in which 26 people were killed and 20 others were wounded, individuals convicted of crimes that should have prohibited them from purchasing firearms from federally licensed firearm dealers were still able to do so because their convictions were not reported to the FBI’s background check database.[33] And in many more cases, as in that of the perpetrator of the Virginia Tech mass shooting in April of 2007 in which 32 people were killed and 17 were wounded, individuals with overt mental illness were able to legally purchase firearms from federally licensed firearm dealers because the reporting requirements for persons with mental illness were interpreted as applying only to individuals who had been involuntarily committed for inpatient treatment.[34]

In every other high income democratic country of the world, the guiding policy for gun ownership is restrictive.[35] Instead of the burden of proof being on the government to prove that a potential gun purchaser should be prohibited from owning a gun, the burden of proof is on the gun buyer to show that he or she can handle a firearm safely and has a legitimate reason for needing a gun. And in most other high income democratic countries, “self defense” is not considered to be a legitimate reason for having a gun. This isn’t because people in those other countries don’t value their own safety. On the contrary, it’s because they have the common sense to know that there’s no net protective value in honest, law-abiding residents owning or carrying guns in a democratic country, and that the more highly armed a society is, the more dangerous it is for everyone.

In all other high income democratic countries of the world, background checks are the secondary safeguard, not the primary one, for determining who can or cannot be allowed to acquire a gun, and the background checks are far more extensive than in the United States. For example, in order to purchase a gun in Great Britain, a person must provide the names of two references who know the potential buyer well. The references are then required to submit detailed, confidential statements concerning the applicant’s mental state, home life, and attitude toward guns.[36]

In the United States, there is no federal requirement for registration of privately owned firearms, with the exception of fully automatic machine guns, nor is there any requirement for licensing of gun owners. In all the other high income democratic countries of the world, all guns must be registered, and all gun owners must be licensed.

But perhaps the most dramatic difference between the United States and the other high income democratic countries of the world is the way in which we respond – or fail to respond - to mass shootings. Following the Sandy Hook Elementary School mass shooting in December of 2012, in which 20 six and seven year old children, six female staff members, and the shooter’s mother were killed, when it became clear that Congress was not going to enact any new gun control legislation to

prevent this kind of tragedy from recurring, former Congresswoman Gabrielle Giffords,, who was herself critically wounded in a mass shooting in January of 2011 in which six people, including a federal judge and a 9 year old girl were killed and 12 other people were wounded, stated:

> In response to a horrific series of shootings that has sown terror in our communities, victimized tens of thousands of Americans, and left one of its own bleeding and near death in a Tucson parking lot, Congress has done something quite extraordinary — nothing at all.[37]

The response to mass shootings has been very different in other high income democratic countries. For example, in March of 1996, a man armed with several handguns killed a teacher and 16 five and six year old students and wounded another three teachers and 10 children in an elementary school in Dunblane, Scotland.[38] Britain already had much stronger gun control regulations than the United States, including a ban on semi-automatic rifles and stringent regulations regarding who could own a handgun. The Dunblane shooter was a 43 year old man who owned handguns legally as a result of his membership in a local target shooting club. Within two years of the Dunblane mass shooting, Great Britain enacted a complete ban on civilian handgun ownership. All British handgun owners were required to surrender their firearms to the government in return for monetary compensation, and the weapons were destroyed.[39] There have been no further mass shootings with handguns in Britain since the ban was enacted, although there was one mass shooting committed with a rifle and a shotgun in 2010 in which 12 people were killed. As a result of that shooting, Britain is considering further restrictions on long gun ownership.[40]

In April of 1996, there was a mass shooting in the Australian resort town of Port Arthur in which 35 people were killed and 23 others were wounded by an intellectually impaired 28 year old man using a variety of firearms, including a semi-automatic shotgun and a semi-automatic AR-15 rifle. Australia already had stringent regulations governing civilian ownership of handguns at the time, but not of long guns.[41] Within just 12 days of the Port Arthur massacre, the Australian government agreed to enact a complete ban on civilian ownership of all semi-automatic rifles and semi-automatic and pump action shotguns.[42] As in the case of the British handgun ban, owners of the newly banned weapons were required to surrender them to the Australian government in return for monetary compensation, and the weapons were destroyed. There had been 13 mass shootings in Australia in the 17 years prior to the enactment of the ban. There have been none since. [43]

There is no reason to believe that we could not reduce our own country's rate of firearm related deaths and injuries to levels comparable to those in Australia and Great Britain if we were to adopt similarly stringent gun control laws. In the last year in which data are available for all three countries, the rate of gun related deaths in the United States was 12 times higher than in Australia and 56 times higher than in Great Britain. If the US rate of gun deaths were the same as in either of these two countries, more than 35,000 Americans lives would be saved

annually, and two to three times this many non-fatal gunshot wounds would be prevented.[44]

So why don't we adopt stringent gun control laws like those in Australia and Great Britain? Having worked in the field of gun violence prevention for more than two decades – obviously with very little success – I've come to believe that there are seven main obstacles to the adoption of definitive gun control laws in our country. I call these obstacles "the seven deadly myths."

Myth #1

The first myth is that the Second Amendment was intended to confer an individual right to own guns for personal use. The Second Amendment is just 27 words long. It states:

> 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.

There are extensive records available from the debates during the Constitutional Convention in Philadelphia in 1787,[45] debates in key state ratification conventions following the writing of the Constitution,[46] debates concerning the Second Amendment in the first session of Congress when the Bill of Rights was first introduced and later revised,[47] and the letters and notes of James Madison who wrote the initial draft of what would become the Second Amendment.[48] None of these records support the contention that the Founders who wrote, debated, and eventually adopted the Second Amendment intended or understood it to confer an individual right to own guns unrelated to service in a well regulated militia.

Prior to 2008, the Supreme Court had ruled on four separate occasions that the Second Amendment did not confer an individual right to own guns.[49] In particular, in the 1939 case of *United States v. Miller*, the Court ruled unanimously:

> With obvious purpose to assure the continuation and render possible the effectiveness of [a well regulated militia] the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view….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 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.[50]

Supreme Court Justice Harry Blackmun reiterated in his majority opinion in the 1980 case of *Lewis v. United States:*

> The Second Amendment guarantees no right to keep and bear a firearm that does not have "some reasonable relationship to the preservation or efficiency of a well regulated militia."[51]

Scores of lower court opinions during the 20th Century endorsed the interpretation of the Second Amendment as conferring a collective right of the people to maintain an armed militia, such as the current day National Guard, not an individual right to own guns. Up to and including the time of the *Lewis* decision, no serious legal scholars disputed this interpretation. During the latter portion of the 20th Century, though, lawyers with direct financial ties to the gun lobby began to seed law journals with articles claiming that the courts had been wrong all along and that the Second Amendment really was intended to confer an individual right to own guns.[52] The late Supreme Court Chief Justice Warren Burger responded to this misrepresentation of the Second Amendment by the gun lobby by stating in an interview on the PBS News Hour in 1991:

> This has been one of the greatest pieces of fraud - I repeat the word, 'fraud,' - on the American public by special interest groups that I have ever seen in my lifetime."[53]

Sadly, in 2008, a narrow 5-4 majority of the Supreme Court, including new George W. Bush appointees James Roberts and Samuel Alito, became a party to this fraud in ruling in the case of *District of Columbia v. Heller* that Washington DC's partial handgun ban violated the Second Amendment.[54]

The *Heller* decision, strictly speaking, only applied only applied to handguns in the home. In *Heller,* though, the five member majority sent a message to the gun lobby that it was open season for shooting down all sorts of gun laws. Prior to *Heller,* it had been rare for anyone to challenge a gun law on a Second Amendment basis. Within a couple of years after the *Heller* decision, though, the gun lobby filed more than a thousand such suits.[55] Most of these lawsuits failed initially, although the gun lobby was successful in striking down Chicago's partial handgun ban when the Supreme Court ruled in the 2010 case of *McDonald v. Chicago* that the *Heller* decision applied to the states and not just to the District of Columbia.[56]

More recently, the gun lobby has achieved success in striking down other gun control laws. In the case of *Young v. Hawaii,* a three judge panel of the 9th Circuit Court of Appeals ruled in a split decision that Hawaii's ban on openly carrying firearms in public violated the Second Amendment.[57] In the case of *Peruta v. County of San Diego,* another three judge panel of the 9th Circuit ruled in a split decision that restricting concealed carry of handguns also violated the Second Amendment.[58] And in the case of *Duncan v. Becerra,* a 9th Circuit judge ruled in an 86 page decision that reads like a gun lobby manifesto that California's high capacity magazine ban – a ban that was approved overwhelmingly by both the State Legislature and the California electorate – violated the Second Amendment.[59]

The Supreme Court had declined hearing any new Second Amendment cases after the 2008 *Heller* decision and the 2010 *McDonald* decision until January of this year when it agreed to hear the case of the *New York State Rifle and Pistol Association (NYRPA) v. New York City*.[60] In this case, the NYRPA is claiming that New York City's ban on carrying handguns anywhere other than to or from city-approved firing ranges violates the Second Amendment. Although New York City has agreed to change its handgun laws to make the case moot, the NYRPA has refused to drop the case, and the Supreme Court has refused to declare the case moot.

It's unusual for the Supreme Court to hear a case with such limited scope, particularly given that a district court judge summarily dismissed the case, the Second Circuit Court of Appeals unanimously upheld the dismissal, and the city of New York has agreed to change its laws in order to make the case moot. The concern is that with the two new Trump nominees, Neil Gorsuch and Brett Kavanaugh, on the Supreme Court, the Court will take this opportunity to extend the constitutional right created in *Heller* even further.

Americans Against Gun Violence has filed an *amicus curiae* (friend of the court) brief in this case in support of New York City's handgun laws. In our brief, we also call on the Court to take the opportunity of this case to overturn the *Heller* decision, not expand it. We are one of just three gun violence prevention organizations to file an *amicus* brief in support of New York City in this case, the other two being Everytown and the March for Our Lives, and we're the only organization in the entire country asking the Court to overturn *Heller.*

The majority opinion in the *Heller* decision, which was written by the late Supreme Court Justice Antonin Scalia, has been publicly condemned by respected constitutional authorities as a "radical departure" from prior legal precedent,[61] an example of "snow jobs" produced by well-staffed justices,[62] and "gun rights propaganda passing as scholarship."[63] Privately, more than one expert in constitutional law has described the Heller opinion to me as "an abomination." In his book, *The Making of a Justice,* the late Supreme Court Justice John Paul Stevens wrote, "*Heller* is unquestionably the most clearly incorrect decision that the Court announced during my tenure on the bench."[64] But the *Heller* decision is worse than all this. In creating a constitutional obstacle, where none previously existed, to the enactment of stringent gun control laws in the United States comparable to the laws that have long been in effect in every other high income democratic country of the world – countries in which mass shootings are rare or non-existent and in which the rate of gun deaths is, on average, one tenth the rate in the United States – *Heller* is a death sentence for tens of thousand of Americans every year.

In helping prepare our *amicus* brief in the NYRPA v. NYC case, I went through Scalia's lengthy majority opinion in the *Heller* decision line by line. This opinion is truly an abomination. It is replete with egregious errors, omissions, and distortions of historical facts. It's particularly ironic that Scalia, who claimed to be an

"originalist,"[65] ignores almost all of the original records to which I've previously referred, including records of debates during the Constitutional Convention in Philadelphia in 1787,[66] debates in key state ratification conventions following the writing of the Constitution,[67] debates concerning the Second Amendment in the first session of Congress,[68] and the letters and notes of James Madison who wrote the initial draft of what would become the Second Amendment.[69] As I've previously noted, these records clearly demonstrate that the Founders who wrote, debated, and eventually voted to ratify the Second Amendment never intended for it to confer an individual right to possess firearms outside of service in a well regulated militia.

At best, the Second Amendment was intended by the Founders to establish a mechanism for the state and federal governments to avoid maintaining a standing army, relying instead on citizens militias that could be called forth when needed to put down internal insurrections or defend against foreign armies. But the Founders knew, or should have known, that citizens militias had been almost entirely ineffective during the Revolutionary War. George Washington, who commanded the professional Continental Army, repeatedly disparaged the militia. For example, in an open letter that he sent to fellow Founders in October of 1780, midway through the Revolutionary War, Washington wrote that the idea of substituting a volunteer militia for a professional army was "chimerical." He explained:

> Tis time we should get rid of an error which the experience of all mankind has exploded, and which our own experience had dearly taught us to reject….We have frequently heard the behavior of the Militia extolled…by visionary Men whose credulity easily swallowed every vague story in support of a favorite Hypothesis….I solemnly declare I never was witness to a single instance that can countenance an opinion of Militia or raw troops being fit for the real business of fighting.[70]

In another letter, Washington wrote that members of the volunteer militia were "incapacitated to defend themselves, much less to annoy the enemy."[71]

If the Founders knew by the time that the Bill of Rights was ratified in 1791 that a volunteer militia was entirely ineffective in fighting against a foreign army, then why did they include an amendment that said that a well regulated militia was necessary to the security of a free state?

One theory is that the Founders feared that the federal government created by the U.S. Constitution would be too powerful and that they wanted to provide a mechanism for the states to overthrow an oppressive central government. While it's clear that the Anti-federalists who opposed ratification of the Constitution did fear that the federal government might become too powerful, they were in the minority, and there's no evidence that either the Federalists or the Anti-federalists intended to include a mechanism in the Constitution or the Bill of Rights for states or non-state actors to violently overthrow a democratically elected federal government.[72] Indeed, it would have been suicidal for them to do so, for many of

them knew that they themselves would be holding important offices in the federal government.

At worst - and more likely - the main reasons for including the Second Amendment in the Bill of Rights were much darker ones. Although militias were ineffective in fighting British troops, they were effective in killing Native Americans and driving them from their lands, often in the name of "self defense."

As I've mentioned, George Washington was highly critical of the militia's ability to fight the British. Washington wrote in a letter to Patrick Henry in 1776, while Henry was Governor of Virginia:

> I own my fears [that victory against the British is not possible] when our dependence is placed on men, enlisted for a few months, commanded by such officers as party or accident may have furnished; and on militia, who as soon as they are fairly fixed in the camp, are impatient to return to their own homes; and who, from an utter disregard of all discipline and restraint among themselves, are but too apt to infuse the like spirit into others.[73]

Washington added, however:

> I would not wish to influence your judgement with respect to militia, in the management in Indian affairs, as I am fully persuaded that the inhabitants of the frontier counties in your colony are, from inclination as well as ability, peculiarly adapted to that kind of warfare.[74]

The other purpose for which the militia was effective was keeping slaves in subjugation. In the southern colonies with large slave populations, the militia and slave patrols were one and the same.[75] There was extensive debate during the Constitutional Convention in Philadelphia in 1787 concerning whether southern states would be allowed to continue the practice of slavery if they were admitted to the Union. As James Madison stated, while he was a delegate to the convention:

> It seemed now to be pretty well understood that the real difference of interests lay, not between the large & small but between the N. & Southn. States. The institution of slavery & its consequences formed the line of discrimination.[76]

Ultimately, it was agreed that four separate clauses would be included in the Constitution to assure the southern states that the practice of slavery could continue unimpeded until at least 1808. In each of these four clauses, a euphemism was deliberately employed in place of the words, "slave" or "slavery." The four clauses (with euphemisms for the words "slave" or "slavery" highlighted in bold print and italics) were:

> Article I, Section 2: …Representatives and direct Taxes shall be apportioned among the several States which may be included within the

> Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, ***three fifths of all other Persons***….
>
> Article I, Section 9 (first clause): The Migration or Importation of ***Such Persons as any of the States now existing shall think proper to admit***, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for ***each Person***….
>
> Article IV, Section 2: …***No Person held to Service or Labour in one State, under the Laws thereof***, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such ***Service or Labour***, but shall be delivered up on Claim of the Party to whom ***such Service or Labour may be due***.
>
> Article V: [The Constitution can be amended by a process outlined in this article] Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the *first* and fourth Clauses in the ***Ninth Section of the first Article***….

Despite the assurances in the Constitution that the practice of slavery would be allowed to continue, the southern states remained wary that northern states would find some other way to abolish slavery, including by disarming the militia or removing it from state control. There was particularly acrimonious debate on this topic at the state ratification convention in Richmond, Virginia, in June of 1788. James Madison and Patrick Henry, both slaveowners, were delegates to the convention, and both participated in the debate. Henry warned fellow delegates:

> In this state, there are two hundred and thirty-six thousand blacks, and there are many in several other states. But there are few or none in the Northern States….Slavery is detested….they [the northern states] will search that paper [the Constitution] , and see if they have the power of manumission. And have they not, sir? Have they not the power to provide for the general defence and welfare? May they not think that these call for the abolition of slavery? May they not pronounce all slaves free, and will they not be warranted by that power?...This paper speaks to the point; they have the power in clear, unequivocal terms, and will clearly and certainly exercise it….The majority of Congress is to the north, and the slaves are to the south.[77]

At another point during the Richmond ratification convention, Henry spoke specifically about the fear that Congress would nullify the power of the militia which in Virginia and the other slave states was essential to keeping slaves in check.

> Let me here call your attention to that part [of the Constitution] which gives

> the Congress power 'to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States – reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.' By this, sir, you see that their control over our last and best defence is unlimited. If they neglect or refuse to discipline or arm our militia, they will be useless: the states can do neither – this power being exclusively given to Congress.[78]

According to the 19th Century Virginia historical scholar Hugh Blair Grigsby:

> I was told by a person on the floor of the Convention at the time, that when Henry had painted in the most vivid colors the dangers likely to result to the black population from the unlimited power of the general government wielded by men who had little or no interest in that species of property, and had filled his audience with fear, he suddenly broke out with the homely exclamation: *'They'll free your [racial slur for Negroes]!'* The audience passed instantly from fear to wayward laughter; and my informant said that it was most ludicrous to see men who a moment before were half frightened to death, with a broad grin on their faces."[79]

James Madison spoke in favor of ratification of the Constitution in its current form, minimizing the likelihood that Congress would abolish slavery by nullifying the power of the state militias.

> I cannot conceive that this Constitution, by giving the general government the power of arming the militia, takes it away from the state governments. The power is concurrent, and not exclusive.[80]

The delegates to the Richmond convention ultimately voted to ratify the Constitution without amendments by a vote of 89-79. James Madison subsequently won a tightly contested election to become a U.S. Representative from Virginia in the first U.S. Congress, and in order to win, he was forced to commit to introducing a bill of rights as amendments to the Constitution. He made good on the promise in June of 1789, when he introduced a bill of rights in the first session of the U.S. House of Representatives. It's highly likely that the debate at the Richmond ratification convention in June of 1788 was still on his mind when he drafted the original version of what would become the Second Amendment to the U.S. Constitution.[81]

The final version of the Second Amendment that was ultimately included in the Bill of Rights states:

> 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 thesis that the Second Amendment was included in the Bill of Rights in part, at least, to reassure the southern states that they could keep their slaves, might on first consideration seem blasphemous, if not downright treasonous. If one considers the following facts, however, the likelihood that this thesis is true becomes not only possible, but highly probable.

- Four separate clauses in the main body of the Constitution were indisputably included specifically to reassure the southern states that they could keep their slaves, but euphemisms were deliberately used in all four clauses in place of the words, "slave" or "slavery."
- The original draft of the Second Amendment was written and introduced by James Madison, a slave owner from Virginia, who was aware that his fellow slave owners were concerned that Congress would abolish slavery indirectly by nullifying the power of state militias, and who committed to introduce a Bill of Rights in order to win election to the first U.S. House of Representatives.
- In the southern states, slave patrols and militias were one and the same.
- The "right of the people to keep and bear Arms," whether it was meant to confer an individual right or a collective right, refers only to white people. Slaves were not accorded any constitutional rights.
- Virginia, Georgia, South Carolina, and North Carolina were not "free states," in the usual sense of the term. They were slave states.
- Replacing the euphemism, "the people," with the more accurate term, "white people," and replacing the euphemism, "free State," (in the cases of Virginia, Georgia, South Carolina, and North Carolina) with the more accurate term, "slave State," the Second Amendment would read:

    > A well regulated Militia, being necessary to the security of a slave State, the right of white people to keep and bear Arms, shall not be infringed.

In his majority opinion in *Heller,* Scalia makes no mention of the protections of slavery incorporated into the body of the Constitution, the concerns of the southern states that Congress might indirectly abolish slavery by nullifying the power of their militias, or the fact that the author of the original draft of the Second Amendment was a slave owner. Instead, Scalia attempts to put an anti-slavery spin on the Second Amendment, claiming:

> Antislavery advocates routinely invoked the right to bear arms for self-defense.[82]

This claim is patently false. During the Founding Era, Quakers were the leading advocates for the abolition of slavery, and they were also religiously opposed to carrying or using lethal weapons. In fact, Madison's original draft of the Second Amendment included a clause to exempt Quakers from militia service: "…but no person religiously scrupulous of bearing arms shall be compelled to render military service in person."[83] It was not until the pre-Civil War era that a small faction of

radical abolitionists advocated armed conflict as a means of preventing the spread of slavery westward into new territories.[84]

There are several places in Scalia's majority opinion in which he quotes slave owners or apologists for slavery as advocating an individual right interpretation of the Second Amendment, but without acknowledging that the sources he's quoting were slave owners or apologists for slavery. I'll give you one of the more egregious examples.

Scalia cites the following excerpt from the 1833 Pennsylvania case of *Johnson v. Tompkins* in support of the individual right interpretation of the Second Amendment:

> [Supreme Court Justice] Baldwin, sitting as a Circuit Judge, cited both the Second Amendment and the Pennsylvania analogue for his conclusion that a citizen has "a right to carry arms in defence of his property or person, and to use them, if either were assailed with such force, numbers or violence as made it necessary for the protection or safety of either."[85]

Scalia doesn't mention, though, that in this case, the plaintiff, Johnson, was a slave owner, and that he was arrested by the defendant, Tompkins, who was a justice of the peace, when Johnson and some armed accomplices crossed from New Jersey into Pennsylvania to forcibly abduct a Black man, named Jack, who Johnson claimed was a runaway slave. Upon trying to take Jack back to New Jersey, Johnson was "assailed with such force, numbers or violence" by residents of the town where Jack had been living who were outraged by the actions of Johnson and his accomplices. The residents forced Johnson to go to the home of a local judge on Sunday evening to prove that he "owned" Jack. The judge ordered Tompkins, the justice of the peace, to arrest Johnson and put him in jail. Johnson subsequently sued Tompkins for false arrest.

Here's the full paragraph in the *Johnson v. Tompkins* decision from which Scalia takes the excerpt above:

> Jack was the property of the plaintiff, who had a right to possess and protect his slave or servant, whom he had a right to seize and take away to his residence in New Jersey by force, if force was necessary, he had a right to secure him from escape, or rescue by any means not cruel or wantonly severe—he had ***a right to carry arms in defence of his property or person, and to use them, if either were assailed with such force, numbers or violence as made it necessary for the protection or safety of either***; he had a right to come into the state and take Jack on Sunday, the act of taking him up and conveying him to [a nearby town] was no breach of the peace, if not done by noise and disorder, occasioned by himself or his party—and their peaceable entry [on false pretenses] into the house [where Jack lived with his employer] was lawful and justifiable, for

> this purpose in doing these acts they were supported by laws which no human authority could shake or question.[86]

Judge Baldwin ruled in favor of Johnson in the case and awarded him both compensatory and punitive damages. Baldwin also served as a Supreme Court justice. In *Groves v. Slaughter,* another case involving slavery, Johnson dissented from the other justices, writing:

> Other judges consider the Constitution as referring to slaves only as persons, and as property, in no other sense than as persons escaping from service; they do not consider them to be recognized as subjects of commerce, either "with foreign nations," or "among the several states;" but I cannot acquiesce in this position…. That I may stand alone among the members of this Court, does not deter me from declaring that I feel bound to consider slaves as property, by the law of the states before the adoption of the Constitution, and from the first settlement of the colonies; that this right of property exists independently of the Constitution, which does not create, but recognizes and protects it from violation, by any law or regulation of any state, in the cases to which the Constitution applies.[87]

The quotation from the *Johnson v. Tompkins* decision is just one example of the many instances in the *Heller* majority opinion in which Scalia appears to deliberately misrepresent historical documents by quoting snippets from them out of their full context.

Time does not permit a full discussion of the many other serious problems with the *Heller* discussion, but I'll mention just a few others.

In his majority opinion, Scalia repeatedly claims that the Second Amendment to the U.S. Constitution is an analogue of the 1689 English Declaration of Rights, and that for this reason, the Second Amendment should be viewed as conferring a broad individual right to own firearms for personal use.[88] There are multiple serious fallacies in this claim.

The Second Amendment is not an analogue of the English Declaration of Rights. The 1689 English Declaration of Rights was a contract between an autocratic monarch and his subjects. The Second Amendment is a contract between the citizens of the United States and their democratically elected leaders.

The 1689 English Declaration of Rights does not begin with the phrase, "A well regulated militia, being necessary to the security of a free state." The Second Amendment clearly states that the reason the people have a right to keep a bear arms is to maintain state militias for the common defense. There is no such statement in the 1689 English Declaration of Rights.

Even if the Second Amendment were an analogue of the 1689 English Declaration

of Rights, according to Scalia's own "important founding-era legal scholars,"[89] the English Declaration of Rights did not confer a broad right of individual firearm ownership. For example, Scalia claims that the prolific 19th century American writer, "St. George" Tucker supported the individual right interpretation of the Second Amendment. Scalia fails to note, however, that according to Tucker, under the 1689 English Declaration of Rights, "…not one man in five hundred can keep a gun in his house without being subject to a penalty."[90] (Scalia also fails to note that "St. George" Tucker, like many of the other "important founding-era legal scholars" he quotes, was a slave owner and an apologist for slavery.)[91]

Finally, the 1689 English Declaration of Rights was never repealed, but the English have long had some of the strictest gun control laws of any high income democratic country of the world. As I've previously noted, following the 1996 Dunblane Primary School mass shooting, Great Britain completely banned civilian ownership of handguns. It's both ironic and absurd that Scalia should cite the 1689 English Declaration of Rights as evidence in support of overturning Washington DC's partial ban on handgun ownership.

I'll conclude my discussion of the problems with the *Heller* decision with a couple of more examples. Scalia claims that the term, "Militia," as used in the Second Amendment at the time that it was ratified in 1791, refers to "all males physically capable of acting in concert for the common defense.'"[92] He extrapolates from this 18th Century definition of the militia to argue that today's militia encompasses all adults. This extrapolation, of course, is nonsense. Today's equivalent of the 18th Century militia is the National Guard. But let's assume that it is reasonable to use an 18th Century definition of a militia in determining who should have a Second Amendment right to "keep and bear arms." Then just adult white males would have such a right, because Blacks and Native Americans were excluded from serving in the 18th Century militia, and so were women. And if we use an 18th Century definition of "militia," we should also use an 18th Century definition of "arms." Applying the 18th Century definition of "militia" and "arms," therefore, to the interpretation of the Second Amendment, we would conclude that all white males "physically capable of acting in concert for the common defense" would have a constitutional right today to own and carry single shot flintlock muskets.

There's a serious problem with Scalia's interpretation of the term, "the people," in his majority opinion Scalia interprets the term, "the people," as meaning individual persons, but he fails to reconcile this interpretation that the term is used to refer to the collective body of the people throughout the U.S. Constitution, including in the preface: "We the People of the United States, in Order to form a more perfect Union…." Also, had Scalia, the originalist, gone back to the records of the first Congress, he would have found that one of the original drafts of what would become the Second Amendment made it perfectly clear that the intent of the Amendment was to confer a collective right to keep and bear arms for military service:

> A well regulated militia, composed of the body of the People, being the best

> security of a free State, the right of the People to keep and bear arms, shall not be infringed, but no one religiously scrupulous of bearing arms shall be compelled to render military service in person.[93]

Finally, Scalia claims that with regard to the word, “arms,” “The term was applied, then [in 1791] as now, to weapons that were not specifically designed for military use and were not employed in a military capacity.”[94] This statement is false.

The Brief for Professors of English and Linguistics in the *Heller* case points out that the term, “bear arms,” as used during the Founding era, nearly always implied a military purpose. Their brief states:

> The term “bear arms” is an idiom that means to serve as a soldier, do military service, fight. To “bear arms against” means “to be engaged in hostilities with.” The word “arms” itself has an overwhelmingly military meaning, referring to weapons of offense or armor of defense. In every instance we have found where the term “bear arms” (or “bearing arms” or “bear arms against”) is employed, without any additional modifying language attached, the term unquestionably is used in its idiomatic military sense.[95]

Scalia ridicules this assertion:

> Giving "bear Arms" its idiomatic meaning would cause the protected right [in the Second Amendment] to consist of the right to be a soldier or to wage war—an absurdity that no commentator has ever endorsed.[96]

This statement is also patently false. As I have previously discussed, the “right to keep and bear arms” in the Second Amendment has been interpreted as a collective right to bear arms for military purposes in the 1939 *Miller* decision, in the 1980 *Lewis* decision, in scores of lower court decisions, and in virtually every article published in law journals on the subject of the Second Amendment from 1888 up until 1970 when articles written by authors with financial ties to the gun lobby began to flood the legal literature. Moreover, additional research done since the *Heller* decision through Brigham Young University’s database of Founding Era American English has shown that of about 1,500 separate occurrences of the term, “bear arms,” in 17th and 18th written records, all but a handful referred to war, soldiering, or other organized, armed action.[97]

Scalia continues to dispute the meaning of the term, “bear arms,” in an even more nonsensical – and frankly unprofessional – fashion:

> “Worse still, the phrase ‘keep and bear Arms’ would be incoherent. The word ‘Arms’ would have two different meanings at once: ‘weapons’ (as the object of ‘keep’) and (as the object of ‘bear’) one-half of an idiom. It would be rather like saying ‘He filled and kicked the bucket’ to mean ‘He filled the bucket and died.’ Grotesque.”[98]

Such is the level of reasoning in one of the most important decisions in modern Supreme Court history.

In summary, the Second Amendment was never intended to confer an individual right to own guns. At best, the Second Amendment was included in the Bill of Rights in the chimerical belief that a volunteer militia could be substituted for a professional army. At worst, and more likely, it was included mainly to induce the southern slave states to join the Union. The first time in U.S. history that the Supreme Court ever interpreted the Second Amendment as conferring an individual right to own guns was in the 2008 *Heller* decision. But *Heller* is worse than a rogue decision. It's a death sentence for tens of thousands of Americans every year, and it must be overturned.

Myth #2

The second deadly myth, which is related to the first one, is that Americans owe what democratic freedoms we have to a highly armed citizenry. The prevalence of gun ownership during the Founding Era is a matter of some controversy, but it was probably lower than most people think. Guns were in short enough supply and so cumbersome and unreliable that Benjamin Franklin suggested that the Continental Army should be armed with bows and arrows and pikes instead.[99] As I've discussed with regard to the Second Amendment, the volunteer militia was almost entirely ineffective during the Revolutionary War, which was won instead by the professional Continental Army, armed largely with guns imported from France and The Netherlands after the war began.[100]

A corollary of the myth that a highly armed citizenry was responsible for the American victory in the Revolutionary War is that we are freer today as a result of the fact that there are more privately owned guns than people in our country. A small segment of our population is free to pursue its unhealthy obsession with acquiring large numbers of highly lethal firearms, but the American people, as a whole, are less free than the people in the other high income democratic countries of the world. We're less free to go to a shopping mall, an outdoor festival, a place of worship, or a workplace; and less free to send our children to school or college without the fear of ourselves our family members becoming the victims of wanton gun violence.

Myth #3

The third deadly myth is that honest, law-abiding people should own "guns for protection." In fact, however, there is overwhelming evidence that guns in our homes and in our communities are far more likely to be used to kill, injure, or intimidate honest, law-abiding people than to protect them. I'll discuss a small but representative sample of this evidence.

A study published in the prestigious New England Journal of Medicine as long ago as 1986 showed that for every one time a gun in the home was used to kill a home invader, there were 43 gun related deaths of household members.[101] More recent data from the FBI's supplemental Homicide Reports confirm that guns continue to

be used far more often to murder people than to kill an attacker in self defense. FBI data from 2011-2015 show that for every one time a civilian killed someone with a gun in self defense, guns were used in 35 criminal homicides.[102]

Multiple studies have shown that the presence of a gun in the home is an independent risk factor for the occurrence of a suicide or homicide in the home. A meta-analysis of all the medical literature up to 2014 showed that access to a gun was associated with a three-fold increased risk of becoming a suicide victim and a two-fold increased risk of becoming a homicide victim.

Similarly, carrying a gun on one's person has been shown to carry far greater risk than benefit. One study showed that someone who was carrying a gun at the time of an assault was 4.5 times more likely to be shot and 4.2 times more likely to be killed than someone who was not carrying a gun.[103]

You may have heard the claim by the gun lobby that there are 2.5 million defensive gun uses a year in the United States. This claim is based on a telephone survey in which white males in southern states were over-represented.[104] The estimate of 2.5 million defensive gun uses annually is an extrapolation from the fact that 66 out of 4,977 respondents (1.3%) reported over the telephone that they had used a gun defensively in the past year. Not a single one of these reported defensive gun uses was confirmed through follow-up with law enforcement agencies or by any other means. Obviously, it is not valid to extrapolate from 66 unconfirmed assertions of defensive gun uses in a telephone survey of fewer than 5,000 people to the conclusion that there are 2.5 million defensive gun uses a year in the United States. Moreover, it's been pointed out that using the same type of telephone survey methodology, more Americans report having had contact with space aliens than having used a gun defensively within the past year.[105]

The bottom line is, own or carrying a gun confers far greater risk than benefit to honest, law abiding people.

Myth #4

The fourth deadly myth, and one that is promoted both by the gun lobby and by many gun violence prevention organizations, is that we can substantially lower U.S. rates of gun related deaths and injuries without substantially reducing the pool of privately owned guns in our country. The gun lobby's version of this myth, of course, is that we need more guns, not fewer ones. After all, they claim, "The only way to stop a bad guy with a gun is a good guy with a gun."

There is no credible evidence to support the naiive notion that someone with a concealed handgun is likely to be able to stop a mass shooting in progress. In a study of 160 active shooter incidents between 2000 and 2013, the FBI found only one case in which an armed bystander other than an off duty police officer or a paid security guard stopped the shooter. In 21 cases, unarmed bystanders successfully disabled the shooter.[106] In the immediate aftermath of the 2011 mass shooting in which Congresswoman Gabrielle Giffords and 12 others were

wounded and six people, including a nine year old girl and a district court judge were killed, a bystander with a concealed handgun nearly shot Ken Veeder, the unarmed man who took down the shooter, Jared Loughner.[107] The Violence Policy Center has documented multiple other incidents in which individuals carrying concealed weapons at the time of a mass shooting narrowly avoided killing innocent people, narrowly avoided being killed by responding law enforcement officers, or were killed or wounded by the shooter.[108] One of the authors of the FBI report on active shooter incidents, J. Pete Blair, has warned, “The last thing you want to do in an active shooter event is to pull your gun and go looking for the shooter.”[109]

In response to school shootings, many states have made it easier for teachers to bring guns to school.[110] There is no credible evidence that arming teachers is likely to deter mass shootings or stop one in progress. As you probably know, there was an armed police officer on campus at the time of the Marjory Stoneman Douglas High School mass shooting in February of 2018, and he took cover until reinforcements arrived.[111] We’ve offered an essay contest through Americans Against Gun Violence for high school students over the past two years, and several of them have addressed the issue of arming teachers. All of them who addressed this issue have been opposed to arming teachers, and some have commented that the teachers who they believe would be most likely to bring guns to school are the ones that they would trust the least with a gun.

On the other side of the gun control debate, I don’t know of any gun violence prevention (GVP) organization other than Americans Against Gun Violence and the Sacramento Chapter of Physicians for Social Responsibility that publicly advocates banning handguns and semi-automatic rifles and requiring current owners of the banned weapons to surrender them so that they can be destroyed. In fact, I don’t know of any other GVP organization that even uses the term, “gun control,” anymore. The other GVP organizations all advocate “common sense firearm regulations,” like banning the new sales of “assault weapons,” while grandfathering in the “assault weapons” already in circulation; expanding background checks to include private sales; and more recently, introducing “red flag” or “extreme risk” laws to identify individuals at highest risk for shooting themselves or others and temporarily taking away their guns.

It shouldn’t take us more than 2 seconds to decide to ban the new sales of so-called “assault weapons,” but we need to ban sales of all semi-automatic rifles and destroy the ones also in circulation, like Australia did after the 1996 Port Arthur mass shooting. And as I’ve discussed, handguns account for the vast majority of all gun deaths in our country. If we’re going to significantly reduce rates of gun violence in our country, we need to ban and destroy them too, like Great Britain did after the 1996 Dunblane Primary School mass shooting. And as far as expanding background checks and passing so-called “red flag laws go, we need to change the whole paradigm for gun ownership in our country. We need to place the burden of proof on people who want to own guns to show why they need one and that they can handle them safely, like they do in every other high income

democratic country of the world. Background checks should be the secondary safeguard, not the primary one. And the people who are now being identified through “red flag” or “extreme risk” laws should never have been allowed to acquire a gun in the first place.

I agree that we should adopt “common sense firearm regulations.” But when the rate of gun deaths in the United States is 10 times higher than in the other high income democratic countries of the world, when or rate of gun homicide is 25 times higher, and when high school kids in our country are being murdered by guns at a rate that is 82 times higher, I believe that common sense dictates that we must adopt stringent gun control laws like the laws that have long been in place in every other high income democratic country of the world.

Myth #5

The fifth deadly myth is that we need more research in order to know how to reduce gun violence in the United States. After the CDC supported research in the 1980’s and early 1990’s that showed that guns in the home were much more likely to be used to kill a household member than to kill a home invader;[112] that children in the United States were being killed by guns at a rate that was 11.9 times higher than in the other high income democratic countries of the world;[113] and that gunshot wounds were the fourth leading cause of years of potential life lost before age 65 in our country;[114] it was utterly shameful for Congress to retaliate by cutting the CDC’s funding. On the other hand, plenty of evidence had been accumulated by that time is support of adopting stringent gun control laws comparable to the laws in other high income countries of the world. In fact, there was plenty of evidence in 1968 to support the following statement by the late Senator Thomas Dodd of Connecticut:

> Pious condolence will no longer suffice….Quarter measures and half measures will no longer suffice….The time has now come that we must adopt stringent gun control legislation comparable to the legislation in force in virtually every civilized country in the world.[115]

Unfortunately, our country hasn’t acted in accordance with Senator Dodd’s statement, and as a result, more U.S. civilians have been killed by guns since 1968 than all the U.S. soldiers killed in all the wars in which our country has ever been involved.[116]

Calling for more research is a common ploy used by many politicians to make it seem like they’re doing something in the area of gun violence prevention when in fact, they don’t have the political courage to make what they see as difficult and potentially politically unpopular choices. There are an infinite number of peripheral that can be studied in the area of gun violence, but we don’t need more research to know that we should adopt gun control laws like those in the other high income democratic countries of the world. More research, in the absence of the adoption of stringent gun control laws, will merely document more senseless and preventable gun related deaths and injuries.

Myth #6

The sixth deadly myth is that advocating stringent gun control is political suicide. This myth is heavily promoted by the gun lobby. Ironically, it was also endorsed by past President Bill Clinton in his 2004 autobiography, even though Clinton had signed the federal assault weapons ban and the Brady background check into law in 1994. There's no credible evidence to support this myth.[117] Since 2008, most of the money that the NRA has spent on elections has gone to losing candidates, including Donald J. Trump, who lost the democratic portion of the 2016 election by almost 3 million popular votes.[118] NRA spending on the 2018 mid-term election was a record low for the organization, probably due in large part to the stigma that student activists were able to attach to candidates who took donations from the NRA after the Marjory Stoneman Douglas mass shooting in February of 2018.[119]

I'm not aware of any current candidate for state or federal office who publicly advocates overturning the *Heller* decision and adopting stringent gun control laws in the United States comparable to the laws in other high income democratic countries. I know from personal experience, though, that it's not political suicide to take such a position.

I was asked to run for Congress on short notice in 2006 when no one would step forward to run against a well-funded incumbent in a district in which the incumbent's party held a sizable voter registration advantage. I was advised by political pundits not to speak about gun control, but I advocated stringent gun control everywhere I went, including in the rural parts of our congressional district. My supporters and I ran a truly grass roots campaign. We came up quite a bit short in 2006, but we ran again in 2008. When the *Heller* decision came out in June of 2008, I condemned it, and I spoke of the need to overturn it throughout the rest of the campaign. We ended up exceeding all expectations by taking 45% of the vote, with the incumbent taking 49% and third party candidates taking the remaining 6%. I actually got more votes than the incumbent in the most rural part of our district. Although I wasn't elected, my supporters and I proved that ours was a winnable district for a candidate of our party affiliation, and that advocating overturning the *Heller* decision and adopting stringent gun control laws was certainly not political suicide. After our strong showing in 2008, other candidates in my party stepped forward, and I was happy to retire from politics and return to being an ER doc.

Myth #7

The seventh deadly myth, and perhaps the most pernicious one, is the reply, "It will never happen," that I often hear when I tell people that I'm working with an organization that's working to overturn the *Heller* decision and adopt stringent gun control laws in the United States comparable to the laws in other high income Democratic countries like Australia and Great Britain. I respond to these people that I'm sure that one day it will happen. The only question is, how many more innocent Americans will be killed and injured in senseless, preventable shootings before that day arrives. I appreciate the opportunity to talk with you this evening,

and I hope to be able to work with all of you to help make the day that we stop our country's epidemic of gun violence come sooner rather than later.

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[1] "Mass Shootings in 2017," Gun Violence Archive, accessed October 5, 2019, https://www.gunviolencearchive.org/reports/mass-shooting?year=2017.
[2] "Fatal Injury Data | WISQARS | Injury Center | CDC," Centers for Disease Control and Prevention, accessed September 11, 2016, http://www.cdc.gov/injury/wisqars/fatal.html.
[3] "WISQARS"; "Mass Shootings in 2017."
[4] "WISQARS"; "Mass Shootings in 2017."
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