

“Preventing Gun Violence”  
House Judiciary Committee Hearing, February 6, 2019

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We are here today because of our common goal: public safety and how best to protect the lives of the American people. What divides us is the means by which we would accomplish that goal. The Supreme Court has explained in two landmark cases that the Framers of the Second Amendment were clear about the solution. They have bequeathed to us, as individuals, the right to keep and bear those weapons in common use for self-defense and other lawful purposes. In other words we are to have the means to protect ourselves.

Some argue that this right is outdated and that in 2019 we no longer need to protect ourselves, the police will protect us. Indeed, they go on to claim that permitting individual law-abiding citizens to have firearms to protect themselves will make all of us less safe. I would like to address both assertions.

First do we still need to be able to protect ourselves? Self defense has always been considered our most fundamental right. Despite the many police officers we now have, even with the best of intentions, they can never protect all of us all the time or even any one of us all the time. That is something only the individual on the spot can do. A means of self-defense is especially important to women and the elderly, or all those who live in more dangerous areas. “The future process of law,” William Blackstone, the great English jurist, explained, “is by no means an adequate remedy for injuries accompanied by force.” Self-defense, he adds, “is not, neither

can it be in fact, taken away by the law of society.” Depriving individuals of the means to protect themselves takes the possibility of effective self-defense away. Their safety is forfeit.

Do the police have a duty to protect you? This may seem a surprising question but a 1981 case involving three young women living in Capitol Hill provides a startling answer. The women who were brutalized by two men sued the police for failing to respond to their desperate and repeated calls to 911. The D.C. law banned their ownership of a firearm. The District of Columbia Court of Appeals dismissed the women’s complaints against the District and members of the police department pointing out: “the duty to provide public services is owed to the public at large, and absent a special relationship between the police and an individual, no specific legal duty exists.” In short the police have no legal duty to protect any one of us.

Sadly, in a more recent case those charged with protecting us fail dramatically as in the terrible shooting at the Stoneman Douglas High School in Parkland a year ago this month. Not only did the local sheriff’s department receive some 45 calls that the shooter Cruz posed a danger, they failed to block him from getting a gun or even to disarm him once he had weapons. After he had entered the school and began his killing spree the sheriff’s deputy failed to confront him as did three other officers, instead waiting outside the building. The Parkland school now has decided the best way to protect students is to permit some teachers to be armed.

Has the growing number of law-abiding Americans carrying arms increased the gun homicide rate? In the past few years state after state has passed “shall issue” legislation permitting their law-abiding citizens who fulfill certain basic regulations

to carry a concealed weapon, so they may keep and bear arms for self-defense and other lawful purposes as the Constitution permits. There are now 39 “shall issue” states. You can drive across the country from Florida to Washington State and never cross a state that does not have “shall issue” concealed carry. In 2018 the FBI reported some 26,181,936 requests for background checks to purchase a weapon. Has this increase in the number of firearms led to higher gun homicide rates? The answer is “no”. Since a high of gun homicide deaths in 1991 there has been a steep decline, with firearm homicides dropping by nearly half. A study of an uptick in the past two years found that more than 2/3 of the gun deaths were suicides. While that is little comfort for those who have been grievously harmed by shootings, it does show that permitting people to protect themselves does not increase the homicide rate.

On the other hand guns are invaluable to protect oneself or others. The FBI does not record defensive uses of guns, but national surveys have found between 700,000 and 3.6 million defensive uses of a gun annually. Normally all the defender has to do is brandish the firearm to halt the attack.

Will including private transfers of weapons on the FBI instant background check prevent gun violence? A large proportion of gun violence is caused by street gangs and they and others bent on misusing weapons obtain their guns illegally and are unlikely to submit to background checks or other requirements. More mental health facilities able to treat those deemed dangerous to themselves and others would be an aid in preventing mass killings. In 2016 Congress passed the Helping Families with Mental Health Crisis Act. This is a positive step in that direction.

On the other hand tactics to make it difficult for law-abiding Americans to keep and carry weapons in common use for their self-defense is a serious infringement of their constitutional right and rather than improving public safety will make the public more vulnerable to those who would seek to harm them. To conclude, Justice Scalia, in writing for the majority in *District of Columbia v. Heller* reminded us that “the enshrinement of constitutional rights necessarily takes certain policy choices off the table.”