

# THE SECOND AMENDMENT

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## HEARING

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED NINETEENTH CONGRESS

SECOND SESSION

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APRIL 15, 2026

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## THE SECOND AMENDMENT

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WEDNESDAY, APRIL 15, 2026

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Rand Paul, Chair of the Committee, presiding.

Present: Senators Paul [presiding], Johnson, Lankford, Scott, Hawley, Moreno, Moody, Peters, Hassan, and Blumenthal.

### OPENING STATEMENT OF SENATOR PAUL

Chairman PAUL. The Committee will now come to order.

As we reflect on the 250th anniversary of our Nation, some of our most cherished rights stand at the crossroads. Modern prosperity and technology provide us with the means to enjoy and exercise our God-given rights to a greater extent than ever before. Yet as the means and interest of Americans in exercising those rights have increased, so has the desire and tools for tyrants, both inside and outside of government, to tighten control over who, where, and how these rights are exercised.

We have discussed, at great length, the grave attempts by our government to censor unfavored, unpopular, and inconvenient speech, no matter how true, during the pandemic and beyond. We have also examined the threats to privacy and collection of data about all aspects of our lives by a myriad of government agencies.

Today we examine the growing threats by our government to restrict the right to keep and bear arms, guaranteed by the Second Amendment. In the wake of a Federal officer shooting and killing a protester who was legally carrying a holstered firearm, a succession of Federal officials rushed to declare that citizens cannot exercise their First and Second Amendment rights at the same time.

Administration official stated, "You cannot bring a firearm loaded with multiple magazines to any sort of protest that you want. It's that simple." Another administration official said, "If you approach law enforcement with a gun, there is a high likelihood they will be legally justified in shooting you. Don't do it." These statements were alarming and are part of the reason we are here today.

Government employees take an oath to support and defend the entire Constitution of the United States, not just the parts which are convenient, depending on the political news of the day. It is not their job to decide when and which of your rights count on any given day, just as our constitutional rights are nonpartisan and be-

long to all Americans across the political spectrum. These liberties are also non-negotiable.

These freedoms are not independent of each other but are undeniably bolstered by one another. They ensure that not only Americans have rights but that they can defend and speak about those rights without fear of government overreach. Unlike free speech, free exercise, and privacy, the right to keep and bear arms has been strengthened recently by the courts, and restrictions on that right are being overturned.

In 2008, the Supreme Court upheld the *Heller* case, an individual's right to possess firearms in the home. Two years later, the Court ruled in the *McDonald* case that the right to bear arms is applicable to laws enacted at the State and local levels. In 2022, the Court again ruled on the side of liberty in the *Bruen* case, stating that the Second Amendment protects an individual's right to carry a handgun for self-defense outside the home.

Even though the Supreme Court has made these rulings, politicians have not given up. Their attempts to usurp our constitutional right to keep and bear arms continues. In recent months we have seen, in Virginia, the State where we won our independence from the tyrannical British crown, forced through the General Assembly countless pieces of misguided legislation intending to disarm lawful gun owners. In fact, just days ago, bills sent to the Governor from the State legislature aimed to prohibit the carrying of a loaded firearm in public across the commonwealth.

Another bill, poised to become law, makes it a Class I misdemeanor for any person who imports, sells, manufactures, purchases, or transfers an assault firearm, all while creating an exemption for any government officer. As we saw during the pandemic, the government's mantra continues to be "rules for thee but not for me."

Unfortunately, the case in Virginia is not unique. Many other states, including Colorado, Rhode Island, and California passed similarly egregious legislation. While most of these laws will undoubtedly be challenged through the courts, this should be a wake-up call for every State across the Nation. It is important to look at these and other specific instances of infringements on the right to keep and bear arms. We must be watchful to any and all violations and act accordingly.

But what we really should do is aspire to, in this 250th year of our Nation, is a government that stops asking how much restriction on our liberties it can get away with and instead asks how it can protect and promote all of our rights, including our right to keep and bear arms.

The Ranking Member is recognized for his opening statement.

#### **OPENING STATEMENT OF SENATOR PETERS<sup>1</sup>**

Senator PETERS. Thank you, Mr. Chair, and, Mr. Chair, I certainly appreciate you convening this Committee for the discussion here today.

But given President Trump's unconstitutional and unauthorized decision to go to war with Iran, his abuse of power to enrich him-

<sup>1</sup> The prepared statement of Senator Peters appears in the Appendix on page 29.

self and punish his political enemies, and his decision to usurp congressional powers, including the appropriations of funds, I am troubled by the topic that we have chosen. While I agree that the Constitution gives Americans the right to bear arms, the Second Amendment is one of many such liberties that are guaranteed by the U.S. Constitution. While there may be some discreet examples where the right has been tested, the Second Amendment is simply not under the same threat as so many of our other constitutional rights today.

The Trump administration's violations of Americans' First, Fourth, and Fifth Amendment rights, and the Administration's flouting of Congress' constitutional authorities are basically creating a crisis for the rule of law in our country. Meanwhile, Republicans in control of Congress have become mere cheerleaders of the Executive while they allow the constitutional power that Congress has to be undermined. That is something that as the Senate's top oversight body I believe this Committee should examine on a larger scale, and I hope that you would consider that, Mr. Chair.

Today I want to expand the discussion to address these other issues and what Congress must do to not only reclaim our own authorities, as the co-equal branch of government, but also how we can restore the checks and balances that our Constitution created to ensure that no single branch of government can infringe on the constitutional rights and protections that are the very core of our democracy.

The Trump administration has pushed the bounds of executive authority further than any other President, and our Republican-led Congress has failed to push back, instead ceding its constitutionally delegated responsibilities almost entirely to the President. Those in control have laid down and allowed loyalty to party to override duty, and even self-interest, when preserving a meaningful check on the President.

Now, there is no question that past administrations of both parties have tested these boundaries, so their authorities, and Congress, as led by both parties, has basically been responsible for delegating away these authorities over many years. But today, we have an Administration that has refused to follow the laws passed by Congress, abused emergency powers for political purposes, imposed chaotic tariffs that have raised prices on everyday goods for American families, bypassed Congress to wage unjustified military interventions, and is now trying to completely circumvent Congress' power of the purse by refusing to pass bipartisan appropriation laws to fund key functions of government. In return, we have a Republican majority that has almost entirely capitulated to the President's whims.

On top of that, this Administration has repeatedly violated the First Amendment rights of Americans by retaliating against, and even going so far as to arrest individuals who exercised their rights to free speech, assembly, religion, petitioning the government, and the press. This Administration has violated Americans' Fourth Amendment rights by allowing immigration enforcement officers to enter and search people's homes without a judicial warrant. It has violated America's right to due process under the Fifth Amendment, detaining and removing individuals to countries they have

no connection to and without any opportunity to petition for redress from the government in the courts.

Last year, I released a report detailing these constitutional violations and the overreach from the Executive Branch. In that report I laid out how the checks and balances designed in our Constitution are absolutely vital to protecting Americans' freedoms. I warned how President Trump's unprecedented actions to usurp Congress' Article I powers disregard the limitations of the Executive in Article II, and defy the judiciary's Article III lawful court orders have undermined our democratic principles and left us with a President who now is completely unaccountable.

The Constitution provides Congress with the means necessary to check an Administration that is eroding the very principles and the institutions that have always made this country great. But that is only possible if Congress, especially the party in power, currently the Republican majority, stands up and takes action. I know many of my colleagues on the other side of the aisle are eager to discuss their views of perceived attacks on the Second Amendment, but I urge all of you to join me in broadening this discussion and finding the courage to take action that will protect our laws and our most fundamental rights before it is too late.

Thank you, Mr. Chair.

Chairman PAUL. Our first witness will be Representative Thomas Massie. Thomas Massie represents Kentucky's 4th congressional District. He serves as the Chairman of the House Second Amendment Caucus and sits on the Judiciary Subcommittee on the Constitution and Limited Government. Congressman Massie, you are recognized for your opening statement.

**OPENING STATEMENT OF HON. THOMAS MASSIE, MEMBER,  
U.S. HOUSE OF REPRESENTATIVES**

Mr. MASSIE. Thank you, Chairman Paul and Ranking Member Peters for allowing me to speak to the upper chamber here today.

I am very passionate about this issue of the right to keep and bear arms. I got my first firearm when I was 12 years old from my father, and with that I learned the responsibility and the rights that come with owning a firearm.

I formed the Second Amendment Caucus about a decade ago, and have been using that venue to bring in people like Alan Gura, the lawyer who was responsible for arguing the Heller case and also the McDonald case, and he won both of those cases in the Supreme Court. In fact, we have had Dick Heller in our caucus, and we have had some of those brave men who have stopped mass public shootings. It has been a great venue for teaching myself and others more about the Second Amendment.

In keeping with the Committee's request, I prepared a speech, but I will only deliver part of that, and then with your indulgence, I would like to talk about some legislation that I think is important that is sitting in the House.

The simple and direct language of our Constitution is clear—the right of the people to keep and bear arms shall not be infringed. There are no qualifiers on who may keep arms, what types of arms they may keep, or for what purposes, and it certainly doesn't say that the right to bear arms is about trivial matters like deer hunt-

ing or skeet shooting. The Second Amendment exists for one clear reason—defense, for the defense of one’s home, one’s family, and one’s community, for the defense of liberty and safety, not only from a lone assailant but from the whole of tyrannical government. That is why we have the Second Amendment.

Our Founders understood the greatest risks to liberty are not always found outside a nation’s borders, even though we go looking for fights abroad, sometimes too frequently, but oftentimes from within, when a corrupt and dangerous few grow too ambitious and attempt to subjugate the masses. When such tyranny arises, snakes prefer the path of least resistance. They prefer a population that is vulnerable. As George Mason reminded us, in 1788, “To disarm the people is the best and most effectual way to enslave them.”

History is riddled with oppressive states that striped and abused their own people to keep riches for the assaulting cabal, and in every instance, before those snakes bit, they first took away the guns, whether it was Hitler, Stalin, Mao, Castro, or Chavez. Gun confiscations and restrictions came first. Then the infringement of all the other liberties, and in many cases, millions were killed by their own governments. It is not by the grace that America has averted similar atrocities. It is because of our Constitution’s design.

As Madison wrote, in Federalist 46, “The advantage of being armed, which the Americans possess over the people of almost every other nation, forms a barrier against the enterprises of ambition, a barrier against tyranny, and oppression by a ruling class.”

To this point, I think it is incumbent upon us to advance legislation that will protect the Second Amendment here. We have sworn an oath to the Constitution to protect it from enemies from within and abroad.

Four pieces of legislation that I have sponsored in the House that I want to talk about today, one is to repeal the Gun Free School Zone Act. Ninety-four percent of mass public shootings happen in gun-free zones, so we should not be advertising as the default that our children are sitting ducks, that are unprotected. In the states and school zones where they have allowed the carrying of firearms there have been no such catastrophes.

The other bill that is easy to explain is a bill to allow 18-to 21-year-olds to buy handguns from a federally licensed dealer. I think it is somewhat ridiculous that you can be conscripted to serve your country in a war, you can be 18, 19, or 20, and forced into service to fight for your country, but you cannot defend your own family with a handgun that you bought at a licensed dealer. We should repeal this Federal restriction.

A piece of legislation that is coming up in the House next month, which I think is very important, is to report some of the data that we collect in the National Instant Criminal Background Check System (NICS) database. When you go to buy a gun you fill out a Form 4473—it is that gold form—and they collect data on there that they never report. What we have discovered, through my friend, John Lott, who is an economist and a statistician and an author, is that there is inherent racism in the NICS background check system. Because it is sloppy and they check only phonetically similar names, when you go to purchase a gun you can be deprived of purchasing that gun, and the appeals process can get messy to

prove you are not the same person that they think is the person who is prohibited.

It turns out if you are a Black American or Hispanic, you are far more likely to share a name phonetically with somebody who is a prohibited person, who has been convicted of a crime, that has a punishment of a year or more. In fact, you are probably twice as likely, if you are Hispanic, to be falsely denied the purchase of a handgun and three times as likely if you are Black to be denied the purchase of a gun at a dealer.

This bill that is coming up in the House would just—and by the way, it has passed unanimously in our Judiciary Committee. Democrats and Republicans have both voted for it—simply requires the Department of Justice (DOJ) to publish that data, not of individuals but in the aggregate, of the denials by sex and also by race or ethnicity.

Finally, the bill that I am most excited about is the National Constitutional Carry Act, and Senator Lee has that here in the Senate now, and some of you are sponsors of that. I thank you.

Several years ago there was legislation advanced to force reciprocity among the states for concealed carry permits. Now, that made sense at the time because in most of the states you needed a permit to carry a firearm. But 29 states now recognize that the right to keep and bear arms should not require permission from your government to bear those arms, and so they have permit-less carry.

I have advanced a bill, the National Constitutional Carry Act, that would extend that to all 50 states and the territories. Now, you may ask, well, does that violate the Tenth Amendment? Are you infringing on State rights? Thanks to the McDonald case, in 2010, which came two years after the Heller case—see, Heller was decided in D.C. so it did not impinge on the states—but the McDonald case, versus Chicago, incorporated the Second Amendment to the states, so the states are constrained by the Second Amendment. So no, it does not violate the Tenth Amendment to tell the states that you must follow the right to keep and bear arms in the Second Amendment. I would love to see some action on that here in the Senate.

With that I will return to my prepared remarks and close.

When we look to our Constitution, remember it is a document by our people, for the purpose of constraining our government, not the other way around. The Second Amendment is the ultimate check on our government. Any attack on those core tenets, whether it is the Second Amendment, the First Amendment, or the Fourth Amendment, or any other provision of our Constitution, is dangerous and wrong, and one does not need to look too far back in history to find examples of why.

I will close with these words from Patrick Henry. “Guard with jealous attention the public liberty. Suspect everyone who approaches the jewel. The great object is that every man be armed.”

Thank you very much for allowing me to testify today.

Chairman PAUL. Congressman Massie, thank you for your statement today. We appreciate your time. Thanks for coming to be with us.

The next panel will now come forward and take your places.

[Pause.]

It is the practice of the Homeland Security and Governmental Affairs Committee (HSGAC) to swear in witnesses. Will each of you please stand and raise your right hand.

Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. CUCCINELLI. I do.

Mr. PRATT. I do.

Mr. BROWN. I do.

Mr. VLADECK. I do.

Chairman PAUL. Thank you. Our first witness will be Ken Cuccinelli. He currently serves as the Senior Fellow for Homeland Security and Immigration for the Center for Renewing America. He previously served in the Virginia Senate and as Virginia's Attorney General from 2010 to 2014.

Mr. Cuccinelli, welcome to the Committee.

**TESTIMONY OF HON. KEN CUCCINELLI,<sup>1</sup> SENIOR FELLOW FOR  
HOMELAND SECURITY AND IMMIGRATION, CENTER FOR RE-  
NEWING AMERICA**

Mr. CUCCINELLI. Chairman, Ranking Member, and Members of the Committee, thank you for the opportunity to testify today on the evolving landscape of Second Amendment rights.

I will focus on recent developments in the Commonwealth of Virginia, which provide a timely and instructive case study of how rapidly state-level policy can reshape the practical exercise of a constitutional right.

In 2026, Virginia's General Assembly passed a sweeping package of firearm-related legislation. These measures, taken together, represent the most significant shift in firearm policy in Virginia's modern history. They illustrate not only the breadth of regulatory approaches being pursued nationwide, but also the constitutional tensions that are likely to define Second Amendment and state-level equivalents jurisprudence in the coming years.

Most notably, Virginia lawmakers approved legislation that would prohibit the sale, manufacture, importation, and transfer of many commonly owned semi-automatic firearms classified as "assault firearms," along with magazines capable of holding more than 15 rounds. While generally allowing current owners to retain previously acquired firearms, it would effectively halt the future legal acquisition of entire categories of arms that are widely possessed for lawful purposes and makes it impossible for current owners to transfer their firearms, with exceptions for government officials, which I will touch on later.

This type of prospective ban raises serious constitutional questions under both the Federal and Virginia constitutions. In its individual rights jurisprudence, the U.S. Supreme Court has emphasized that the Second Amendment protects arms "in common use" for lawful purposes such as self-defense. Policies that prohibit future acquisition while allowing continued possession create a legal paradox. They implicitly acknowledge the widespread lawful own-

<sup>1</sup> The prepared statement of Mr. Cuccinelli appears in the Appendix on page 31.

ership of these firearms, while simultaneously restricting future citizens from exercising the same right.

In addition to firearm-specific bans, Virginia is expanding restrictions on where firearms may be carried beyond historically recognized “sensitive places,” to potentially encompass large portions of ordinary public life. This raises important questions under the Supreme Court’s framework requiring firearm regulations to be consistent with the Nation’s historical tradition of regulation.

Virginia lawmakers have also pursued policies imposing affirmative legal duties on firearm owners. Secure storage legislation would require individuals to store firearms in a manner that prevents access by others. While the goal of preventing unauthorized access is widely shared, such mandates must be carefully evaluated to ensure they do not unduly burden the core right of self-defense within the home, long recognized as a central component of the Second Amendment, as noted, for example, in the *Heller* decision.

Further, the commonwealth is expanding its use of “red flag” laws. These laws allow for the temporary removal of firearms from individuals deemed to pose a risk. Although courts have generally upheld the concept, expansions to these laws, particularly those affecting evidentiary standards, duration, or who may initiate proceedings, raise due process concerns that deserve careful scrutiny. I fully expect to see the 2026 expansions of these laws weaponized to punish gun owners for political purposes completely unrelated to gun safety.

Finally, the commonwealth has moved toward allowing civil liability actions against firearm manufacturers and distributors. Their approach seeks to navigate around existing Federal protections in an effort to destroy this industry through litigation. Taken together, these measures demonstrate a broader trend to transform firearm policy from a framework focused primarily on prohibited persons and background checks into one that increasingly regulates categories of arms, locations of carry, methods of storage, and the broader ecosystem of lawful commerce, all in an effort to cut into the rights of law-abiding gun owners and potential gun owners, and in many respects, to attempt to turn such citizens into law breakers of bureaucratic restrictions, in order to take their guns away or deter them from buying guns in the first place.

In addition to obvious litigation, this devolution also creates growing divergence among states, leading to patchwork of laws that may complicate compliance for ordinary citizens. I would respectfully suggest that that is part of the point. It is one way of attacking Second Amendment rights, as I noted, as a practical matter.

One law carried over to next year in the Virginia General Assembly is a double-digit tax rate on gun and ammunition purchases. As we know from the beginning of the republic, the power to tax is the power to destroy, and that is what is intended for it to be used as, and I expect to see that next year in my beloved commonwealth.

With that I appreciate your time and consideration, and look forward to answering your questions.

Chairman PAUL. Thank you.



Next up we have Erich Pratt, who is the Senior Vice President for Gun Owners of America (GOA), where he has been employed since 1990. Mr. Pratt, you are recognized for your opening statement.

**TESTIMONY OF ERICH PRATT,<sup>1</sup> SENIOR VICE PRESIDENT, GUN OWNERS OF AMERICA**

Mr. PRATT. Thank you. Chairman Paul, Ranking Member, Members of the Committee, my name is Erich Pratt, and I serve as Senior Vice President of Gun Owners of America. I represent more than two million Americans who believe the Second Amendment is the amendment that protects all the others.

I appreciate the opportunity to discuss some of the threats to our Second Amendment rights, and I want to begin with the gun owner registry that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is compiling. In 2021, GOA exposed that the Biden administration had accumulated 54 million gun owner records in a single year. Now, Representative Michael Cloud and 51 colleagues demanded answers from the ATF, and what they received was shocking. The ATF admitted to amassing nearly 1 billion records of American gun owners, with 94 percent already in digital format.

This is gun owner registration, pure and simple. It is a violation of Federal law, and it is the reason the Senate should pass Senator Risch's bill, S. 119. His bill would destroy this illegal, searchable gun registry, hopefully by dropping the ATF computers containing this database into the deepest part of the ocean. Basically, ATF needs to have their own boating accident.

Because, look. A database like this invites abuse, and we have already seen it happen. Biden's ATF tried to ban up to 40 million pistols with stabilizing braces, and these were firearms that had been legal during the Obama administration. But by a stroke of the pen, Biden's ATF turned millions of Americans into felons overnight.

Thankfully, GOA took this to court, and we won protection for our members. But had this rule remained in place, the ATF would have known where every single one of those firearms were, because of the 4473 forms on file. This is not a registry in name only. That is a confiscation list waiting to be used.

History tells us where this leads. The governments of Australia and Venezuela have carried out large-scale gun confiscations in recent years. Canada is now threatening to use its registry to do door-to-door confiscations.

But this is not just an other-world problem. It has already happened here. In the 1960s, New York City (NYC) began registering long guns with promises that they would never confiscate them. Yet by 1991, they banned many of those guns, and in 1992, a New York paper reported that, "Police raided the home of a Staten Island man who refused to comply." They seized his firearms and noted that spot checks were planned for other homes. That is the problem with maintaining records of gun owners' names. We are always just one step away from gun confiscation.

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<sup>1</sup>The prepared statement of Mr. Pratt appears in the Appendix on page 33.

Now, turning to some other important Federal issues, let me say this. The Trump administration has achieved many pro-gun victories in several departments outside of the DOJ, and I champion those in my written testimony and talk about them.

Sadly, the Department of Justice has continued to fight us in court at almost every turn, including on Biden's pistol brace ban, his engaged in the business rule, and the frame and receiver rule, which registers every gun sold after 2002. The fact that a Republican DOJ is still defending Biden-era gun rules, in whole or in part, should tell us everything. That is why Congress must repeal every Federal infringement and finish the job by defunding, dismantling, and abolishing the ATF. After all, the Second Amendment is not about hunting. It is not about sport. It ultimately about preserving freedom. But right now our rights are under attack, by databases, by bureaucrats, and by government attorneys who too often would rather defend unconstitutional laws than the Constitution itself.

By the way, just a word for the wise for Republicans on the Committee and in the rest of the Congress. These problems need to be fixed immediately, if you hope to win the gun vote in the midterms, because gun owners, as you know, are very politically active, and every time the DOJ attempts to moot our cases or continues to enforce a Biden-era policy, gun owners become less excited to vote.

Thank you, and I look forward to answering your questions.

Chairman PAUL. Thank you. Our next witness is Dudley Brown, who is the Chief Executive Officer (CEO) of the National Association for Gun Rights, where he has grown the group from a small grassroots organization to the Nation's second-largest gun rights group. Mr. Brown, you are recognized for your testimony.

**TESTIMONY OF DUDLEY BROWN,<sup>1</sup> PRESIDENT, NATIONAL  
ASSOCIATION FOR GUN RIGHTS**

Mr. BROWN. Thank you, Mr. Chair, Ranking Member, and Members of the Committee. My name is Dudley Brown. I live in northern Colorado. I am the President of the National Association for Gun Rights, and it has been my privilege to represent gun owners for 33 years now.

A few months ago a man was shot and killed at a protest in Minnesota. Now, I am not here to litigate Alex Pretti's actions, whether the shooting was legally justified, or to endorse the politics of the protest he attended. I suspect he and I would have agreed on very little. My concern is what the current Administration said afterward.

In those 33 years representing gun owners in State legislatures and the Federal Government, what is the main tool I have relied on to preserve firearms freedoms? Easy. The First Amendment.

Today, I find it prudent to speak on the intersection between the First and Second Amendments, and the reason is simple. We, as a Nation, have never seen these rights as wholly separate. The First Amendment is how free people speak to power. Americans have shown since the founding they will tolerate being governed, but not tolerate being ruled.

<sup>1</sup> The prepared statement of Mr. Brown appears in the Appendix on page 67.

That is the arrangement that makes this country different from every other on Earth, and it is precisely why an attack on the right to bear arms at a lawful public assembly is not a Second Amendment problem alone. It is an attack on the entire architecture of American liberty.

Before I go further, let me disavow the notion that this is a partisan issue. Regardless of the drastic changes of party control over the White House and the two legislative chambers, the one constant is that all those in power must be reminded that a civil right is in place to protect all the people, regardless of their politics, their race, or their creed.

Consider what was actually said by officials from the Administration in the wake of that shooting. The President of the United States said, "You can't have guns. You can't walk in with guns." The Federal Bureau of Investigation (FBI) Director remarked, "You simply cannot bring a firearm to a protest." The former Secretary of Homeland Security said, "I don't know of any peaceful protester that shows up with a gun and ammunition rather than a sign."

That last statement is the most revealing. Former Secretary Noem was not citing law. She was kind of declaring a worldview, that carrying a firearm is inherently incompatible with peaceful assembly. I think it is a worldview the Founders would not have recognized.

Just before the Second Amendment was ratified, 6 of the 13 colonies did not merely permit citizens to carry firearms to public assemblies, they actually required it. The generation that wrote "the right of the people peaceably to assemble" looked at an armed citizen in a crowd and did not see a threat to the peace. They saw its guarantee.

The argument being made implicitly is that you may have a Second Amendment right and a First Amendment right, but not both at once. Choose one. If you choose wrong, do not be surprised if Federal agents unceremoniously snatch one of those, or both of those rights from you.

Several states today forbid the carry of firearms at public demonstrations. Those laws deserve scrutiny not only on constitutional but also on historical grounds. Their roots trace directly to the Jim Crow laws. A law conceived to control a people does not become legitimate simply because time has passed and the target has changed. The states that enacted these laws were not concerned with public peace, but with public control.

Each party has the same capacity for authoritarianism as the other side when it serves their short-term interests. I will ask the members in this room directly: Is this the precedent we intend to set, that officials can decide, after the fact, that a citizen had no right to carry because the Administration disliked his politics? That is not a legal conclusion. That is a rationalization.

There is no textual, historical, or traditional basis for the proposition that Americans must choose between their First and Second Amendment rights. You do not forfeit one by exercising the other. These rights are not in competition. They are the same right expressed twice. An armed people is a people whose assembly the government must take seriously. A disarmed people protest at the government's pleasure.

The Second Amendment does not exist in isolation. It exists to ensure that all the others remain meaningful. The Founders understood that. The statements made by this Administration suggest they do not understand it. The Members of this Committee have the standing, the authority, and the obligation to say so. I hope they will find the courage to use it.

On behalf of the millions of members of my organization, who take this matter very seriously, let me thank you for your time.

Chairman PAUL. Thank you. Senator Peters will introduce the next guest.

Senator PETERS. Thank you, Mr. Chair. Our next witness is Professor Stephen Vladeck, the Agnes Williams Sesquicentennial Professor of Federal Courts at the Georgetown University Law Center. Professor Vladeck is a nationally renowned expert on the Supreme Court, Federal courts, national security law, and military justice. He is also a highly recognized appellate advocate, having argued before the Supreme Court, Federal civilian courts, and military courts.

Professor Vladeck is the recipient of numerous awards for his legal scholarship, including the 2024 University of Texas President's Research Impact Award and a selection by the Order of Cloth to serve as its Distinguished Visiting Professor for 2025.

Professor, thank you for taking the time to be here today.

**TESTIMONY OF STEPHEN I. VLADECK,<sup>1</sup> AGNES WILLIAMS SES-  
QUICENTENNIAL PROFESSOR OF FEDERAL COURTS,  
GEORGETOWN LAW**

Mr. VLADECK. Thank you very much, Ranking Member Peters, Chairman Paul, distinguished Members of the Committee. Thank you for the invitation to testify today.

Of all of the conversations that we can and should be having about the U.S. Constitution, this Committee's focus on the Second Amendment strikes me as singularly misplaced. Every day we see headlines documenting other unconstitutional behaviors by this Administration, from arrogating Congress' appropriations power to claiming the authority, to entering private homes without judicial warrants, to suppressing and chilling the constitutionally protected speech of law firms, universities, and political critics, to blowing up suspected drug boats, invading Venezuela, and going to war against Iran without even a scintilla of congressional authorization, which led one commentator to post on social media that, "It's a good thing Congress isn't alive to see this."

Indeed, all of this unconstitutional behavior has come not in the face of a hostile Congress but without any attempt to even obtain statutory authorization, even though the President's party also controls both legislative chambers, including this Committee.

Instead of making the case for why Congress should loosen or repeal the various mandates that the Executive Branch is regularly violating or should authorize the unilateral conduct in which the Executive Branch is regularly engaging, this Administration is effectively thumbing its nose at our elected representatives, that is, at you. In response, this Committee chose to hold this hearing.

<sup>1</sup> The prepared statement of Mr. Vladeck appears in the Appendix on page 70.

It seems to me, Mr. Chairman, that it would be far more useful for this Committee to discuss the structural problems that have been highlighted by this Administration's disdain for the Constitution, and two, in particular, stand out.

First, there is a large swath of unconstitutional behavior by the Federal Government that has proven to be effectively insulated from meaningful judicial review. On the individual rights side, a combination of rulings by the Supreme Court and legislation from Congress has all but foreclosed damages suits by Americans whose constitutional rights have been violated. That lacuna comes at the particular expense of First and Fourth Amendment claims, since unlike the Second Amendment claims, about which we have heard so much already this morning, violations of those provisions are typically fleeting.

On the separation of powers side, the Supreme Court has likewise made it effectively impossible for litigants to challenge the President's arrogation of Congress' two most important powers, its power of the purse and its control of the war power.

Second, the political constraints that have historically served to rein in systemic, unconstitutional behavior by the Executive Branch have also completely broken down. Examples abound, but an especially revealing one is a statement by House Appropriations Committee Chairman Tom Cole, who suggested last year that it was perfectly fine for the President to ignore congressional appropriations because, in his words, not mine, an appropriation, "is not a law." In fact, the Constitution requires that appropriations be, by law, entirely so that this branch, and not the President, will decide how the people's money will and will not be spent.

Both of these problems could be fixed quickly and easily by a Congress that cared more about the separation of powers than the separation of parties. For instance, it would take a one-sentence statute to ensure that everyone whose constitutional rights are violated by the Federal Government can have their day in court, and beyond new legislation, Congress, including this Committee, has numerous means to impose such accountability directly, through its oversight function, its ability to exact concessions out of the Executive Branch in exchange for everything from appropriations to appointments, and, if necessary, its impeachment power.

Finally, to whatever extent Members of this Committee may tell themselves that they can just reclaim these abandoned powers the next time a Democrat is President, history and common sense are both to the contrary. The more time passes, the harder these powers will be to claw back. In the interim, the Executive's lawlessness and Congress' abdication of responsibility have combined not just to produce an unprecedented breakdown in the separation of powers but a growing and seemingly unending array of deleterious impacts on both everyday people and, at the risk of bringing some of this back to this Committee's jurisdiction, the long-term security of our homeland.

If we are going to talk about the Constitution, we should talk about why and how it is being so systemically violated by the current Administration, why and how Congress is sitting idly by while that happens, why and how that attitude is destructive of our Nation's most fundamental ideals, and why and how a Congress that

actually took its constitutional responsibility seriously should and would respond.

As for the nominal topic of today's hearing, it seems to me that at this moment in our history, devoting resources to the Second Amendment is burying all of our heads in the sand. Even if we cannot agree on much, I hope we can all at least agree that it should not be the case that the only way to hold the Federal Government accountable is to elect a new one.

Thank you for inviting me to testify today, and I look forward to your questions.

Chairman PAUL. Thank you. We will now proceed to a round of questions, and I will start things off. I have been to, I don't know, thousands of rallies. I have probably been the speaker at thousands of rallies. I have attended hundreds and hundreds of rallies. At every rally I go to someone is armed, and the people that are with me are armed. My driver is armed, and we do it for self-defense.

I was also at the ballfield when 160 shots were fired at me and others, so I know what violence is like, and I know how important it is to have people there. We had Capitol Hill Police there that day, and they and the Alexandria police saved many lives. Steve Scalise almost died, and another young man was shot under the arm. The bullet traveled around his rib cage and came out the front of his chest, and did not get inside his rib cage, and he survived.

But, I think if we pass laws like we are talking about in Virginia, where maybe it is OK for me to get protection but not for you because you are a private citizen, I just cannot imagine the hypocrisy of something like that.

We have very prominent people in our society, some of the richest people in our society, who all the time lobby for gun control, and they want less guns out there. Yet they will have a phalanx of eight to ten people with them, all armed, because they can afford that, and most of us cannot.

I was wondering, Mr. Cuccinelli, if you would comment on the law and the distinctions that they are talking about between that the government could have security but a private CEO or a private person or even a bail bondsman, not a rich person but somebody who does a risky business of repossessing cars, that somehow it would be illegal for them to have a gun. I cannot imagine a government official, yes, and then the bail bondsman or the reposessor of cars, no?

Mr. CUCCINELLI. I will take the kind of highest profile. The law they are passing, the so-called Assault Weapons Ban, exempts government officials and employees, thereby acknowledging the utility of the guns in question, which gets to the Supreme Court's judge of historical utility of a particular weapon. The law itself acknowledges that, and yet denies it to ordinary citizens, but allows their own employees to carry.

To examples closer along the lines of what you described, there have been several amendments. The way Virginia's process worked, the General Assembly is now out of session. The Governor can propose amendments back to the General Assembly, and Governor Spanberger has done that this week. The General Assembly will be

back next week to either accept or reject those amendments and then vote on the original bill if they reject the amendments.

Several of those bills restrict exactly the kind of carrying rights and location that you are describing. In *Heller*, Justice Scalia spoke about sensitive places, and allowed room for regulation, meaning the banning of guns, in, for instance, school buildings was an example that he used.

But what the Virginia General Assembly is now proposing goes far beyond that. If you are a person whose business or whose safety involves being armed, or you would choose to protect yourself that way, you are now going, in Virginia, to be restricted, depending on how litigation ends up. I am sure all of this will be litigated. I hope to participate in that. But those restrictions are now very real.

Again, to my opening comment about the practical ability to utilize and exercise your right to self-protection, as we all know here, this is not granted by government. James Madison did not give us this right. The Bill of Rights was put in place to preserve what were understood to be already existing rights, in the case of self-defense, both of self and society.

Unfortunately, that is the direction that the current government in my home State is trying to go. I hope that we will be able to reintroduce them to the concepts of George Mason, Patrick Henry, and James Madison. I know they have driven by their houses while they have been driving around Virginia, since we have that history there. Nonetheless, it is being ignored and now abused, and it is going to, unfortunately, have to be fought out in the courts to protect it.

Chairman PAUL. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman. The Constitution guarantees each of us certain liberties, including the freedom to speak our minds, practice our religion, receive due process, and the right to bear arms, as we have been talking about here today. Our framers knew that the freedoms protected under our Constitution, however, would be at risk if any one branch of government was allowed to go unchecked. They did not trust anybody in government, figured you had to make sure there were checks and balances.

Ronald Reagan, I think, explained the importance of this system of checks and balances very well, and I will just quote Ronald Reagan. "The genius of our constitutional system is its recognition that no one branch of government alone could be relied on to preserve our freedoms. The great safeguard of our liberty is the totality of the constitutional system, with no one part getting the upper hand."

Professor Vladeck, as you noted in your testimony, President Trump has gone to war with Iran without congressional approval, as required in the Constitution, usurped Congress' appropriations powers under Article I, powers are being usurped, and turned Federal agencies against American citizens, all while, unfortunately, most of my Republican colleagues have either cheered him on or they just kind of look the other way.

My question for you, sir, is, is Congress currently functioning as a co-equal branch of government, as outlined in the Constitution, and if not, what is the danger that we are facing right now? What should the American people be concerned about?

Mr. VLADECK. The short answer, of course, is no, and I think the danger is both a short-term danger, Senator, and a long-term danger. Just briefly, the short-term danger is that without Congress, without the President having to look over his shoulder, there is nothing to stop him from engaging in ever-more aggressive usurpation of appropriations, spending money he does not have, not spending money he is supposed to, violating individual rights in a context in which there is no way to challenge that in court, and going on ever-more misguided, misbegotten military operations, all to the detriment of our national security, of our economy, of our rights.

Senator, in the long term, this destabilizes the ability of Congress to ever exercise those powers again. We have a Supreme Court that has interpreted the separation of powers, by reference to what Justice Frankfurter called "historical gloss." If the gloss of the 2020s is that the President can do whatever he wants as long as a majority of Congress is not going to stop him, that is a gloss that can be deployed by future Presidents, Senator, with whom you and I might agree more to do plenty of things that I think would be deeply problematic for our rule-of-law society.

Senator PETERS. You mentioned the courts as a possible check. Obviously, Congress is a major check, and I would argue that our Founders always thought Congress was the preeminent of the three branches. We are Article I. But the courts are important, and unfortunately we have seen this Administration, based on recent actions, believes that they are above the law, including court decisions. Time and time again, judges have found that the Administration has violated court orders.

One Federal judge found that the Department of Homeland Security (DHS) had, "utterly disregarded the court's earlier order," and, "made no attempt to offer any justification for their blatant lack of effort to comply, thumbing their nose at the court." Another found that U.S. Immigration and Customs Enforcement's (ICE) refused to provide information ordered by the court. Another case found that DOJ, "elected to simply ignore valid court orders."

I want to be clear. These are not liberal activist judges, as President Trump and some of my colleagues would claim. All of these quotes come from judges that were appointed by Donald Trump. These are judges he appointed, who saw how outrageous it was for them to ignore these orders.

What does it mean for Americans if there is not a consistent adherence to the rule of law and some laws just simply do not get followed?

Mr. VLADECK. Yes, I mean, John Adams, at the founding, said, "Ours is a government of laws, not of men." A world in which the Executive Branch does not abide by court orders and faces no repercussions in Congress for violating court orders is a world in which that is not true, and it is a world in which the President can do what he wants.

Senator, too many people may not care about those cases because those are immigration detention cases. But if the government puts one of us in immigration detention and says, "You are not a U.S. citizen," even if it is a mistake, the only way to get out is a government that is going to comply with an adverse court order. That is



the problem. That is the slippery slope. It is very slippery, and it is one that we are falling down way too quickly.

Senator PETERS. Thank you. The Fourth Amendment protects us from unjustified invasions of privacy by the government. However, this Administration has basically disregarded decades-old privacy protections, to combine and share Americans' most sensitive tax, health, and Social Security data. It is tracking Americans' location using data brokers. It is monitoring their social media activity, and potentially even using spyware to break into the phones of Americans. I am very concerned about these activities.

My question for you, sir, or Professor Vladeck, is at the time when so many people chose to share all kinds of details online, why should we be concerned about information the government is collecting right now, and how might they use these tools against us?

Mr. VLADECK. I think the concern, Senator, has been driven home by what we have seen this Administration do, which is retaliating against people because of, for example, what is in their social media profiles, denying visas to non-citizens who have done nothing wrong other than perhaps express sympathy for Palestinians. That is not supposed to be how the government uses our data, and there is a rich tradition, Senator, as you well know, of this Congress actually stepping in to protect Americans' privacy rights, even before the courts have had a chance to do so. The Wiretap Act was a response to the Supreme Court's refusal to apply the Fourth Amendment to wiretaps. That is the kinds of conversations we should be having, about what is happening in our government right now, not the possibility that some State laws might be subject to challenge in court, where those challenges are deeply available.

Senator PETERS. Thank you.

Chairman PAUL. Senator Johnson.

#### **OPENING STATEMENT OF SENATOR JOHNSON**

Senator JOHNSON. Thank you, Mr. Chairman. I appreciate you calling this hearing. It is, I think, a very interesting one. It is an important debate. I always like hearings that kind of stay focused on the actual title of the hearing, which is "The Second Amendment." You want to go into other areas, that is fine.

Mr. Pratt, you seem to not be particularly happy with this Administration's reaction to some of these things. The same with Mr. Brown. I am not disagreeing with you at all. Mr. Pratt, you said that Congress has to act. The problem is we have those of us who support the Second Amendment, the opposition party basically wants to disarm Americans. I mean, they say they won't but that is the direction, I think, is pretty obvious in terms of all these guns laws and stuff.

I would just ask, for the record, I would like you to list the things that the Executive Branch can do to undo some of the harm, some of the violations, I would say, of our constitutional right to keep and bear arms, and particularly that confiscation list, which I think is pretty much what it is going to be. I mean, why can't they just deep-six that? Is that something this Administration could do, and should we be putting a lot of pressure on President Trump and members of his Administration to do just that?

Mr. PRATT. Thank you for the question, Senator Johnson. Gun Owners of America has been working with the Administration to do just that with the registry. They are coming out with a new rule, because under Biden they made those records permanent.

Senator JOHNSON. We will go through the Administrative Procedures Act (APA) and that will happen.

Mr. PRATT. I am sorry?

Senator JOHNSON. They will go through the Administrative Procedures Act, and you believe that will happen.

Mr. PRATT. Yes.

Senator JOHNSON. OK.

Mr. PRATT. We are urging them, a "shall not be infringed" view would mean the ATF retains those 4473s for zero years, not 10, not 20, 30, or indefinitely, but zero.

Senator JOHNSON. Limited time. Mr. Cuccinelli, I think you are a pretty observant follower of the Supreme Court. A lot of President Trump's actions have been challenging in court. Correct?

Mr. CUCCINELLI. Yes.

Senator JOHNSON. The minority witness has pointed those out. But President Trump has actually got a pretty good record before the Supreme Court. Correct? Have you been keeping track of that?

Mr. CUCCINELLI. He does have a pretty good record before the Supreme Court. He has a better record before the Supreme Court than many of the lower courts. When you look at injunctions, for example, over 90 percent of them came in five districts. That is probably not a coincidence.

Senator JOHNSON. There has been a little venue shopping.

Mr. CUCCINELLI. There has been significant venue shopping.

Senator JOHNSON. OK. Professor Vladeck, I assume that you are not a Trump supporter. It does not sound like you are particularly enamored with this Administration.

Mr. VLADECK. I am not enamored with any administration, Senator, that does not commit to following the Constitution.

Senator JOHNSON. Right. You talked a lot about war powers. Has any President since the War Powers Act been passed, accepted that as a constitutional constrained on that President?

Has any President not acknowledged, admitted that this is a constitutional act?

Mr. VLADECK. I think we have seen Presidents follow it, including President Carter.

Senator JOHNSON. Again, I am asking has any President acknowledge this is constitutional? Has any Supreme Court ruled on the constitutionality of the War Powers Act?

Mr. VLADECK. No, because as I suggested in my testimony the Supreme Court has made it hard to challenge it.

Senator JOHNSON. Did President Obama ever get a congressional authorization in his military action against Libya?

Mr. VLADECK. No, he did not.

Senator JOHNSON. OK. Did President Clinton ever get congressional authorization in his military action in Kosovo?

Mr. VLADECK. I think that one is a tougher question because it depends upon how you interpret the North Atlantic Treaty Organization (NATO) treaty and some of the authorities under that.

Senator JOHNSON. He did not get authorization. Congress did not declare war. Congress has not passed——

Mr. VLADECK. I agree. Senator, I have been critical of the War Powers——

Senator JOHNSON. So you have blinders——

Mr. VLADECK [continuing]. By Presidents of both parties.

Senator JOHNSON. You have blinders on.

Mr. VLADECK. No. I think Presidents of both——

Senator JOHNSON. You have blinders on. Let me ask another question. I thought it was very interesting in Representative Massie's testimony the regime after regime after regime that he ticked off, that the first action these totalitarians, these tyrants, enacted was gun control, OK. I thought it was interesting because he was leading right up to, but he did not mention, the ayatollahs.

Professor Vladack, you are part of academia, who I just think—— I am not sure about Georgetown Law, but, it was shocking how many protests in favor of Hamas occurred on college campuses. That is because we have leftist professors poisoning the minds of our young people. But I hope our young people are watching. I am assuming, you do not support the ayatollahs in Iran, do you? Do you think they are anything less than a brutal, tyrannical threat and menace to world peace?

Mr. VLADECK. No, but I also do not think that is the standard for when Presidents have the constitutional authority to send Americans men and women into harm's way.

Senator JOHNSON. Do you think it would be a good thing if the ayatollahs were on the dustbin of history, that they no longer represented a threat and a menace to world peace? Do you think that would be a good thing?

Mr. VLADECK. What I think and what this government has——

Senator JOHNSON. You cannot even answer that question?

Mr. VLADECK. Senator, I do not know why what I think is relevant. Yes, I do, but I also think that you should be more interested in what the Constitution provides for.

Senator JOHNSON. The point I want to make is they were a menace. They are an existential threat. I mean, they get a nuclear weapon, they have got missile technology.

Mr. VLADECK. So the law does not matter?

Senator JOHNSON. Park a barge off the United States, lob a missile up, hit off, explode a nuclear weapon, wipe out our electrical grid. That is an existential threat. We had to act before we could not act. But the hope was in acting, the hope is still there, that if we weaken the regime the Iranian people can take control, regain their freedom. Why can't they? Because they have been disarmed. Getting right back to the purpose of this hearing, because the Iranian people have been disarmed by the brutal, tyrannical regime within Iran. When are we going to finally learn that lesson?

Thank you, Mr. Chairman.

Chairman PAUL. Thank you, and we will do another round if anybody has any other questions. I will start us off on that.

I opened by talking about that I have been to a lot of rallies with guns. I have never seen anybody commit violence. That is not why I support the right to have a gun at a rally. The right is separate of whether the practicalities are supportive of it. It is something

that precedes government. It is a natural right, the right of self-defense.

But I would be interested, Mr. Brown, if you know of any statistics looking at legal gun owners and whether they commit crimes, how frequently, compared to the criminal population, et cetera.

Mr. BROWN. Yes, thank you, Senator. The estimates are right now that there are somewhere around 22 million concealed handgun permits issued to Americans. There are, however, now, as you mentioned, 29 states that allow permit-less carry. The estimates are roughly that 16 million people carry on a regular basis in America, and that they commit crimes at one-third the rate of other Americans, people who do not carry. Of course, those are broad, general estimates.

But we know in states with permits that those people are arrested at a much lower rate, not just for gun crimes like, for instance, carrying in a, "illegal" place or a sitting duck zone, as Congressman Massie called them, but they are also, on a regular basis, not arrested for other means, like assault. I think we can surmise the reason.

I know, for me, I carry virtually every waking moment that I can. It is because there is an added level of seriousness when you do carry a firearm, and a responsibility. And so, yes, I think you just avoid problems wherever you can.

Chairman PAUL. Same question, Mr. Pratt.

Mr. PRATT. Yes, the statistics show that concealed carry permit holders, for example, commit crimes at a lower rate than the police do. Interestingly enough, you have more private citizens who stop—over 50 percent of mass shootings in non-gun-free zones are stopped by law-abiding citizens. That is actually a greater percentage than police. That is because if you are in danger and you are in a gun-free zone, the police are minutes away, but if you are able to protect yourself, you are able to immediately respond.

Chairman PAUL. Yes, and I think that is the thing about people who do not own guns and fear the sight of a gun, and the gun scares them, is that people who own and carry guns are some of the most responsible people, as far as safety, as far as everything else. They do not brandish their weapon. They are carrying a weapon for self-defense, and it does work.

On the idea of separation of powers, some of the discussion is the implication that this is a one-sided thing, that somehow this is Republicans are terrible, Trump is terrible, but maybe Democrats were somehow good. I would say both parties have been abysmal at this, and frankly, the court has not been very good either.

One of your colleagues, Randy Barnett, goes back to *Lochner*, and I am with him on that. I am a libertarian that thinks *Lochner* was correctly decided. But it has been opposed by most on the left, and many on the right, frankly, for the last 100 years. The problem is in *Lochner* the Court did decide that they were going to make assertive decisions based on constitutionality. They basically decided in *Lochner* that the right to contract is a right, and that states cannot infringe upon the right to contract. That was a great direction, which has been reversed by 100 years.

But for a 100 years now or more, the Court really has shown deference. I will not mention the Justice, but I recently met one in a

casual situation, and the discussion was concerning no longer giving deference to the administration overturning Chevron, which I am in favor of. But the question I had to the Justice was, "Well, you seem pretty deferential. Why wasn't there a discussion of the First Amendment in the TikTok case, or why was it sloughed over for national security?"

The point that was made by the Justice was that, oh well, we still give deference to Congress. When we have had questions of separation of powers, for example, some pretty explicit things. Taxes have to originate in the House. The Tax Reform Act of 1986 (TRA) was a bill, back in 1986. Congressmen took it there, and the Court basically will do stuff, like, you do not have standing, and so they never really decided on it.

Recently we had a really big case on tariffs. I agree with the Court's decision on the tariffs. But they also made the decision, I think based on Ashwander, that, oh, we are not really going to decide on the Constitution. Heaven forbid we make a constitutional decision. We are going to decide it on the statute.

I think there is some blame over there, and there is certainly a lot of blame in Congress, but really the blame is absolutely bipartisan and people tend to switch their positions. People who were once are now very critical of the war power under President Trump, which I have been. Many of them were very quiet when President Obama was bombing Libya, and that was the point I think Senator Johnson was making, is that the consistency on this position has been very partisan.

I will just finish with, let's start out with the Court, with Lochner. Decided correctly? Is that part of the problem? Not decided correctly? Then with Ashwander, should Ashwander be binding us and keeping the Court from making constitutional judgment on what they call political questions?

Mr. VLADECK. Mr. Chairman, I agree with, I think, a lot more of what you said than you might expect. I have been a consistent critic of abuse of the war powers by Presidents of both parties, and would have loved the chance to actually explain that to Senator Johnson.

I think the point, though, that you are making, Mr. Chairman, is that the deference the Court is showing assumes a Congress that is exercising its ordinary oversight and accountability powers. I am not here to blame one party or the other, Mr. Chairman. My point is just that at this particular moment in American history we are seeing, in technicolor, just how significant the cost of that abdication, whenever it started and whoever is to blame are for the rights of all Americans.

Chairman PAUL. Here is my question. I think you are right. Congress is abdicating their duty. What about the Court then? Congress is not doing their duty. Does the Court have a duty, and they skate political questions, and they try to decide things on non-constitutional, which gets back to Lochner. In Lochner they had a more certain idea that if a State is acting unconstitutionally, if they are bridging the right to contract, we will overturn the State law. Then they got away from that.

Really it is the question of Lochner being correctly decided or not correctly decided, and if the Court, if you want them to act in sepa-

ration of powers issues like this, then is Ashwander, should it be binding as far as trying to go to the least common denominator instead of deciding based on the Constitution?

Mr. VLADECK. Mr. Chairman, I think the Ashwander question is a nuanced one and really depends on exactly what Congress has done and said. A statute, Mr. Chairman, that was ambiguous, you and I might both think better to avoid the question. But where I think Congress has clearly tried to rein in the President, and has clearly tried to push back, the Court should be deciding on the question.

If I may, just very briefly, I think we are seeing some of the same problems in that direction that we are talking about with regard to the relationship between Congress and the Executive Branch, which is Congress also used to be much more active in regulating the courts, and the Supreme Court in particular. I think over the last generation we have seen that fall away, as well.

Chairman PAUL. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman. I agree. The Chairman and I agree. This has been an issue with both parties over time. In my opening comments I was very clear that we have seen Congress give powers to the Executive on a continuous basis. I think we could argue whether or not it is accelerating or not, which was part of your point, Professor.

But to that point, with war powers, I know, Mr. Chairman, I would actually like to hear your answer to the question our colleague asked about war powers. We are actually interested in learning about that, not just giving a speech.

Mr. VLADECK. Yes. I think that the point I was trying to make to Senator Johnson is that I think Presidents of both parties have abused the war powers, and I do not think it is a particularly Democratic or Republican or conservative or liberal phenomenon. Presidents are going to use the powers they have, Senator.

I think part of the problem is that we have seen perhaps more aggressive pushback when the President was a Democrat, perhaps because those were periods when you had some cross-party control. We have seen more aggressive pushback when a different party has controlled one or both chambers of Congress than when it has been the same party, and that has been true in both directions.

It seems to me the result should not be to say, so-and-so is a hypocrite, but rather to say, well then, let's fix the problem, period, as opposed to let's fix the problem when someone else is in charge.

Senator PETERS. Yes. I think that is right, and the checks and balances works. Sometimes when you do not have one control, one party in all control, based on the partisanship that we are seeing in the country right now, unfortunately.

Professor, you also stated in your testimony that the Trump administration has taken sweeping actions to undermine the First Amendment. The Chairman of the Federal Communications Commission (FCC) threatened the American Broadcasting Company (ABC) for airing a comedian who criticized the Administration. This Administration has also revoked the press credentials of journalists whose coverage it basically did not like. It targeted law firms, universities, and former government officials because it did not like their protected speech. It is trying to use Federal grants

now to force organizations to adopt the President's political ideology with Federal money.

Could you talk about Congress' role in addressing the scale of the Trump administration's systemic violations, particularly of the First Amendment right now?

Mr. VLADECK. Yes. It seems like there are a couple of different things that Congress could do and that prior Congresses have done. I think the first is more robust oversight, using, for example, nominations hearings, using oversight hearings, using budget hearings as opportunities to ask the Administration what exactly it is doing and why. I think there are ways in which Congress could condition funding for some of these agencies on not engaging in those behaviors. It is not unconstitutional for Congress to condition Federal funds on the Administration refusing to retaliate.

But also, Senator, I think Congress could make it easier for those who are having their speech chilled in these contexts to sue directly, because I do not think it is possible, even for a well-meaning Congress, to actually enforce every single flash point between the government and its citizens. That is why I think the absence of a meaningful remedy, even for ephemeral constitutional violations, is something that has been exposed over and over again as a structural flaw of our current moment.

Senator PETERS. Professor, you also noted in your testimony the Constitution grants Congress, not the President, the power to decide how the government spends taxpayer money. This power of the purse allows us to basically serve as a check on abuses by the Executive Branch.

After two American citizens were shot and killed by DHS officers as a result of the Administration's tactics, many of us tried to use the Congress' spending power to ensure reform as well as accountability. But when the President decides to ignore Congress and claims the spending power for himself, not Congress, it leaves Congress basically with no leverage and the American people with basically no accountability.

My question for you, sir, is are you aware of other instances in history where the President has violated Congress' power to appropriate funds and Congress basically did absolutely nothing? What are the consequences when the Administration ignores Congress' appropriations power, as granted in Article I of the Constitution?

Mr. VLADECK. Senator, I am not aware of another example where we saw this degree of appropriations misbehavior by the Executive Branch and no congressional reaction. I think, as you know, the Impoundment Control Act (ICA) itself was Congress' response to not comparable but at least loosely analogous behavior by the Nixon administration, and Congress responded by, I think quite powerfully, reclaiming its power, and indeed, authorizing, Senator, some of the behavior President Nixon had engaged in, while prohibiting the rest of it.

It seems to me that is the point I would have liked to have made to Senator Johnson, which is you can think the President having this power is a good thing or not. The point is that Congress has to provide it. It seems like what is missing from this conversation is the idea that if we like what the President is doing we should not worry about the separation of powers.

Just to quote the Supreme Court for a second, it would be ironic if in the name of national defense we would sanction the subversion of one of our civil liberties that makes defense of the Nation worthwhile.

Senator PETERS. Thank you.

Chairman PAUL. Senator Hawley.

#### **OPENING STATEMENT OF SENATOR HAWLEY**

Senator HAWLEY. Thank you very much, Mr. Chairman and thanks to all of the witnesses for being here.

Mr. Pratt, if I could just start with you, I want to ask you about something that I think deserves some answers. In fact, I have waited years for a substantive response on this. Back in 2021, I sent a letter to then President Biden's ATF asking about Rule 2021R-05, which is the rule that requires gun dealers to keep records on buyers permanently. They never gave me an answer.

Thankfully, we now have a new administration, but it is often the case that old rules live on in sort of zombie-like lifestyle through bureaucratic inertia. Do you know, Mr. Pratt, how many Biden-era ATF rules are still either on the books or continue to be enforced, that we ought to be concerned about?

Mr. PRATT. Thank you for the question. Unfortunately, there are several. With the one you just mentioned, the DOJ, even as of last week, was saying they intend to enforce the Biden rule. The same with the engaged in business rule. Same with the pistol brace rule. We are fighting every single one of those.

I am so glad you took an interest in the registry, because GOA actually the Freedom of Information Act (FOIA'd) the ATF manual, and you can search the make, model, and serial number of, let's say, every firearm made by Smith and Wesson. You could then use that as a confiscation list to know which ones were the pistols with stabilizing braces.

When ATF Director Steven Dettelbach testified before the Congress he told the Senate Judiciary Committee that they actually pay extra money to remove the search function on the names, and that was supposed to be our big defense against a confiscation list, our big defense against tyranny. They are paying extra money. What if they stop paying the extra money, or what if they open up that Adobe document in some other type of document? They would still be able to search by name.

The only answer that we really have is to delete the registry.

Senator HAWLEY. Speaking of registries, my understanding is that sitting right now in a warehouse in West Virginia, and you described this in your testimony, is roughly 1 billion gun owner records, 94 percent of them that are already in digital format.

Mr. PRATT. Yes.

Senator HAWLEY. Now, Federal law is supposed to prohibit a national gun registry, but I am wondering, what would you call that?

Mr. PRATT. We call that a registry.

Senator HAWLEY. It looks like it to me too. I mean, let's just walk through this. If a future administration that is hostile to Second Amendment rights in this country were to get its hands on those records, 1 billion gun owners' names, other information contained there, what do you think it might be able to do with them?



Mr. PRATT. That is absolutely the problem, is with any gun ban that is passed they are able to search the makes and models of those guns, and if they stop paying for the names attached to them they know exactly who is not in compliance with the law, which, again, is something that already happened in New York City when they registered guns in the 1960s, passed a ban in the 1990s, and then they did spot checks on people that they believed were not complying with the law.

Senator HAWLEY. In 1967, correct, New York required registration of rifles, I think it was.

Mr. PRATT. That is right.

Senator HAWLEY. Shotguns, as well. Promised then that, oh, it would not be used for confiscation. But then, in fact, they were confiscated. I think they went door-to-door back in the late 1960s.

Mr. PRATT. Mayor David Dinkens signed the ban, and that is exactly what they did.

Senator HAWLEY. Then, in 1991, New York City also banned another class of weapons, and officials used, as I understand it, an existing database to do the same thing, to force confiscation. There is also, I suppose, the example of our Australian friends. In 1996, I think it was, Australia passed the National Firearms Agreement (NFA), they called it, which, as I understand it, restricted gun ownership and mandated the creation of a firearm registry. Then, lo and behold, they went and used that to enforce mandatory buybacks.

I seem to recall more than one Democratic candidate for President talking about mandatory buybacks. I mean, this is not a far-fetched conspiracy theory. This is something that has happened in our country. It has happened in our ally nations. You have members of the opposition party who are saying it is a great model. I mean, we should be concerned about this, shouldn't we?

Mr. PRATT. We should be concerned about it, and that is why that registry cannot continue to exist, Senator.

Senator HAWLEY. What is the thing that we have to do? What is the most urgent action we need to take, Mr. Pratt, to make sure this registry (a) is not abused, and (b) is eliminated so that it cannot be used for nefarious purposes, namely the violation of the constitutional rights in the future?

Mr. PRATT. The No Registry Rights Act by Cloud in the House and Risch in the Senate would delete that registry. If Congress would take that up and send it to the President, that would be fantastic.

Senator HAWLEY. I hope we will do that post haste. Thank you very much for your testimony. Thank you, Mr. Chairman.

Chairman PAUL. I think this is a good discussion, and furthering on this I would just like to add that we have been requesting information also from the ATF for quite a while. We sent a letter<sup>1</sup> in April of last year, requesting some of the same information that you FOIA'd, and we have gotten no response and no documents, and we have followed up.

We are going to pursue, through the Committee, the process of subpoenaing that information. It will be in consultation with the

<sup>1</sup> The letter referenced by Senator Paul appears in the Appendix on page 80.

minority. But if you have an interest in that, if you will work with our office, if there is specific information you want to add to that subpoena. It is a friendly administration, but the ATF still is not giving us anything in a year. That is just too long, and we should figure out more about it.

In our letter we refer to some of the FOIA'd things, and apparently there is evidence now that ATF agents can have their own target that they can monitor for 30 to 180 days, and monitor, along with the FBI, through this. It sounds like no due process or courts or anybody involved with this. The fact that they will not tell Congress what they are doing, I think our patience should wear thin, and I think we should really find out what is going on over there. Because sometimes even when an administration changes, people at the top change, but somebody who is in charge of this program may be the exact same people that were doing it in the previous administration. But we are going to try to get to the bottom of that.

I do not have any further questions. We have gone a couple of rounds. Do you have anything you would like to say? I think we are going to wrap it up.

Mr. CUCCINELLI. Mr. Chairman?

Chairman PAUL. Yes.

Mr. CUCCINELLI. Can I just comment on that briefly?

Chairman PAUL. Yes.

Mr. CUCCINELLI. Senator Peters earlier, he did not use the phrase "third-party doctrine," but he described examples of what is the third-party doctrine. The third-party doctrine was established by the Supreme Court in the 1970s in a bank case and a phone case, back when we made a phone call and wires actually connected, that connected you to me. You could put a trap on it, and you could see everybody I dialed.

The theory of the third-party doctrine is that if I dial my phone, I know that I am giving the phone company that information, and therefore, giving up all constitutional rights to privacy—

Chairman PAUL. A terrible theory.

Mr. CUCCINELLI [continuing]. Regardless of whether I have a contract with that phone company to keep those records private, on the old, pre-privacy theory of Fourth Amendment rights, which was based on, oh, the Constitution, and trespass theory, et cetera. Contract would fit in there. Same with my bank records. When I use a bank, and we all do, they fall under the same rules.

You just commented, Mr. Chairman, about no warrants, no judicial, no due process. That is exactly right. Because all of our government agencies can just go ask the bank for your records. Now, then it is up to the bank whether they turn them over, or even let you know about it.

Chairman PAUL. Right. This is a huge issue—

Mr. CUCCINELLI. Until that is legislated—

Chairman PAUL [continuing]. A huge issue, and then the Court helped a little bit to abbreviate the expanse of the third-party doctrine in the Carpenter decision. I actually think and several Senators were caught up in this recently, in Carpenter—it was either Carpenter or the other case before that—they make the decision that your geolocation is actually among. It is all the data that the

Court does not care about, and they say you have no privacy interest and no personal interest in. You do have it in your location.

Mr. VLADECK. That was Jones, Mr. Chairman.

Chairman PAUL. Excuse me?

Mr. VLADECK. The Jones case, Mr. Chairman.

Chairman PAUL. Jones case. So there are two, but it was the Jones case.

I really think, absolutely, and I do not know if any of the Senators—you were not on that list, were you? You were on the list? But I think it needs to be pursued based on that case, because they did look at geolocation. They are looking at where you were on January 6th. Of course, the phone companies did not defend anyone. One phone company defended one Senator, and the other one did not defend anybody.

But I think you have a real case on this. The question is whether or not this is a violation of the government or whether the phone companies have an obligation to protect geolocation. You could sue the phone companies, but can you sue the government over it too?

Mr. CUCCINELLI. You are going to run into sovereign immunity, and with the third-party doctrine established by the Supreme Court you will not be able to successfully sue the government, absent trying to go all the way to the Supreme Court, to getting the third-party doctrine overturned.

Chairman PAUL. But even though they have allowed now that geolocation is not protected by the third-party doctrine.

Mr. VLADECK. Mr. Chairman, there was the bill that Congress passed last year, that I believe—Senator Hawley can correct me, but I believe authorized at least some Members, perhaps Senators, to sue over at least some of the phone records questions.

But I do think the larger point, Mr. Chairman, is that whether we are particularly concerned with the phone records of Senators or Americans who do not hold elected office, the problem is the same, which is that there are woefully insufficient remedies for any government violation of our Fourth Amendment rights.

Chairman PAUL. Oh, I agree completely. I think Smith and the other decisions were all incorrectly decided. It took 60 years to go from Olmstead and saying you could wiretap anybody's phone, all the way to Katz. You had a long period of time until the Court finally started getting it right, but they still are not completely getting it right, and Carpenter and Jones are a step in the right direction.

But I actually think Jones is on point here, and I do think that you can win a case. My suggestion is that you get—oh, you are a lawyer. I do not know. I think there still is an opening, the third-party doctrine does not, because geolocation, they say, is something that is not just that anymore. You have a personal interest in geolocation.

Mr. CUCCINELLI. They ratcheted or created exceptions, is how I would characterize it, to the third-party doctrine with respect to that level of nuance, which, of course, they did not foresee in the 1970s. But the 1970s technology was not foreseen by the Founders. I would suggest that it would be better, and it does not strike me as particularly difficult, to get bipartisan support to introduce this

kind of protection, particularly given what has happened around here recently.

Chairman PAUL. We have that legislation, and I will introduce it again. Thank you. Mr. Vladeck, did you have another comment on this?

Mr. VLADECK. No. Mr. Chairman.

Thanks, everybody. I think we actually covered more than just the Second Amendment. We did the Second Amendment, we got some of the Fourth Amendment, we talked about First Amendment, the separation of powers. I think it was a good hearing. Thanks, everybody.

[Whereupon, at 11:24 a.m., the hearing was adjourned.]

## A P P E N D I X

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### **Ranking Member Peters Opening Statement as Prepared for Delivery Full Committee Hearing: The Second Amendment April 15, 2026**

Mr. Chairman, I appreciate you convening the committee for this discussion here today, but given President Trump's unconstitutional and unauthorized decision to go to war with Iran, his abuse of power to enrich himself and punish his political enemies and his decision to usurp Congress's powers, including the appropriations funds, I am troubled at the topic that we've chosen.

So, while I agree that the Constitution gives Americans the right to bear arms, the Second Amendment is one of many such liberties that are guaranteed by the U.S. Constitution.

And while there may be some discrete examples where that right has been tested, the Second Amendment is simply not under the same threat as so many of our other constitutional rights today.

The Trump Administration's violations of Americans' First, Fourth and Fifth Amendment rights, and the Administration's flouting of Congress's constitutional authorities are basically creating a crisis for the rule of law in our country.

Meanwhile, Republicans in control of Congress have become mere cheerleaders of the executive while they allow the constitutional powers that Congress has to be undermined.

That's something that as the Senate's top oversight body, I believe this Committee should examine on a larger scale, and I would hope that you would consider that, Mr. Chairman.

So today, I want to expand the discussion to address these other issues, and what Congress must do to not only reclaim our own authorities as the co-equal branch of government, but also how we can restore the checks and balances that our Constitution created to ensure that no single branch of government can infringe on the constitutional rights and protections that are at the very core of our democracy.

The Trump Administration has pushed the bounds of the Executive's authority further than any other president, and our Republican-led Congress has failed to push back — instead ceding its constitutionally delegated responsibilities almost entirely to the President.

Those in control have laid down and allowed loyalty to party to override duty and even self interest in preserving a meaningful check on the President.

There is no question that past Administrations of both parties have tested these boundaries of their authorities, and that Congresses led by both parties have been responsible for delegating away these authorities over many years.

But today, we have an Administration that has refused to follow the laws passed by Congress, abused emergency powers for political purposes, imposed chaotic tariffs that have raised prices

on everyday goods for American families, bypassed Congress to wage unjustified military interventions, and is now trying to completely circumvent Congress's power of the purse by refusing to pass bipartisan appropriations laws to fund key functions of government.

And in return, we have a Republican majority that has almost entirely capitulated to the President whims.

On top of that, this Administration has repeatedly violated the First Amendment rights of Americans by retaliating against and even going so far as to arrest individuals who exercise their rights to free speech, assembly, religion, petitioning the government, and the press.

This Administration has violated Americans' Fourth Amendment rights by allowing immigration enforcement officers to enter and search people's home without a judicial warrant.

And it has violated Americans' rights to due process under the Fifth Amendment, detaining and removing individuals to countries they have no connection to, and without any opportunity to petition for redress from the government in the courts.

Last year, I released a report detailing these constitutional violations and the overreach from the Executive Branch.

In that report, I laid out how the checks and balances designed in our Constitution are absolutely vital to protecting Americans' freedoms.

And I warned how President Trump's unprecedented actions to usurp Congress's Article I powers, disregard the limitations of the Executive in Article II, and defy the Judiciary's Article III lawful court orders have undermined our democratic principles and left us with a President who now is completely unaccountable.

The Constitution provides Congress with the means necessary to check an Administration that is eroding the very principles and the institutions that have always made this country great.

But that is only possible if Congress, especially the party in power, currently the Republican majority, stands up and takes action.

I know many of my colleagues on the other side of aisle are eager to discuss their views on perceived attacks on the Second Amendment, but I urge all of you to join me in broadening this discussion, and finding the courage to take action that will protect our laws, and our most fundamental rights before it's too late.

**The Honorable Kenneth T. “Ken” Cuccinelli, II****Prepared Statement for the United States Senate Committee on Homeland Security  
Hearing on Threats to Second Amendment Rights**

Chairman, Ranking Member, and Members of the Committee:

Thank you for the opportunity to testify today on the evolving landscape of Second Amendment rights in the United States. My testimony will focus in particular on recent developments in the Commonwealth of Virginia, which provide a timely and instructive case study of how rapidly state-level policy can reshape the practical exercise of a constitutional right.

In 2026, Virginia’s General Assembly passed a sweeping package of firearm-related legislation that now awaits final executive action. These measures, taken together, represent the most significant shift in firearm policy in Virginia’s modern history. They illustrate not only the breadth of regulatory approaches being pursued nationwide, but also the constitutional tensions that are likely to define Second Amendment jurisprudence in the coming years.

Most notably, Virginia lawmakers approved legislation that would prohibit the sale, manufacture, importation, and transfer of many commonly owned semi-automatic firearms classified as “assault firearms,” along with magazines capable of holding more than a specified number of rounds. While the legislation generally allows current owners to retain previously acquired firearms, it would effectively halt the future legal acquisition of entire categories of arms that are widely possessed for lawful purposes and it makes it impossible for current owners to transfer their firearms.

This type of prospective ban raises serious constitutional questions under both the federal and Virginia constitutions. In its individual rights jurisprudence, the U.S. Supreme Court has emphasized that the Second Amendment protects arms “in common use” for lawful purposes such as self-defense. Policies that prohibit future acquisition while allowing continued possession create a legal paradox: they implicitly acknowledge the widespread lawful ownership of these firearms, while simultaneously restricting future citizens from exercising the same right.

In addition to firearm-specific bans, Virginia has advanced legislation expanding restrictions on where firearms may be carried. Proposed measures would broaden the scope of public spaces where certain firearms are prohibited, moving beyond historically recognized “sensitive places” to potentially encompass large portions of ordinary public life. This raises important questions under the Supreme Court’s framework requiring firearm regulations to be consistent with the nation’s historical tradition of regulation.

Virginia lawmakers have also pursued policies imposing affirmative legal duties on firearm owners. Secure storage legislation would require individuals to store firearms in a manner that prevents access by others. While the goal of preventing unauthorized access is widely shared, such mandates must be carefully evaluated to ensure they do not unduly burden the core right of self-defense within the home—long recognized as a “central component” of the Second Amendment.

Further, the Commonwealth is expanding its use of “red flag” or extreme risk protection order laws. These laws allow for the temporary removal of firearms from individuals deemed to pose a risk. Although courts have generally upheld the concept, expansions to these laws—particularly those affecting evidentiary standards, duration, or who may initiate proceedings—raise due process concerns that deserve careful scrutiny. I fully expect to see the 2026 expansions of these laws weaponized to punish gun owners for political purposes unrelated to gun safety.

Finally, the Commonwealth has moved toward allowing civil liability actions against firearm manufacturers and distributors under certain circumstances. This approach seeks to navigate around existing federal protections and represents a significant shift in how responsibility for criminal misuse of firearms may be allocated. Such efforts raise complex questions of federal preemption and the proper balance between state authority and national uniformity, to say nothing of the naked attempt by Virginia Democrats and Governor Spanberger to simply destroy the firearm industry by any means they can concoct.

Taken together, these measures demonstrate a broader trend: the transformation of firearm policy from a framework focused primarily on prohibited persons and background checks into one that increasingly regulates categories of arms, locations of carry, methods of storage, and the broader ecosystem of lawful commerce – all in an effort to cut into the rights of law abiding gun owners and potential gun owners, and in many respects, to attempt to turn such citizens into law breakers of bureaucratic restrictions, in order to take their guns away or deter them from buying guns in the first place.

This evolution carries important implications. First, it increases the likelihood of constitutional litigation, particularly under the Supreme Court’s recent guidance that firearm regulations must align with historical tradition. Second, it creates growing divergence among states, leading to a patchwork of laws that may complicate compliance for ordinary citizens. Third, it raises fundamental questions about how far states may go in restricting access to arms that are commonly owned and widely used for lawful purposes.

Virginia’s experience underscores the importance of clear constitutional standards. Regardless of one’s policy preferences, there is a shared interest in ensuring that laws are predictable, consistent, and respectful of enumerated rights.

As this Committee considers the future of Second Amendment protections, it should take seriously the cumulative effect of state-level actions like those in Virginia. These developments are not isolated; they are part of a broader national conversation about the scope of a fundamental constitutional guarantee.

Thank you for your time and consideration. I look forward to answering your questions.



# The Second Amendment

WRITTEN TESTIMONY April 15, 2026

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GUN OWNERS OF AMERICA

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### ***Introduction***

Chairman Paul, Ranking Member, members of the committee—thank you for the invitation. My name is Erich Pratt. I serve as Senior Vice President of Gun Owners of America, and I represent more than two million Americans who believe the Second Amendment means exactly what it says.

The Second Amendment declares that a “well regulated militia” is “necessary to the security of a free state.” That language is not accidental, nor is it merely historical—it reflects a foundational principle of American government. The Founders understood that a free society depends not on a permanent, centralized force, but on a capable and armed citizenry. As the Supreme Court explained in *District of Columbia v. Heller*, an armed people were considered necessary not only to repel invasions and suppress insurrections, but also because an armed populace is “better able to resist tyranny.”

In other words, the right to keep and bear arms is not just about individual self-defense—though it certainly includes that—it is a structural safeguard to ensure that the people remain sovereign. It ensures that power ultimately remains with the people, not solely with the government.

For that reason, any federal policy or administrative action that weakens the ability of law-abiding citizens to exercise this right does more than burden individual liberty—it undermines the very security the Second Amendment was designed to protect. And as this Committee evaluates matters relating to homeland security, it is essential to consider whether federal policies are reinforcing—or eroding—the constitutional framework that keeps the people, and therefore our nation, free.

This testimony begins by exposing the dangers of federal gun owner recordkeeping and the urgent need for Congress to eliminate the *de facto* registry being maintained by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). It then outlines the constitutional and practical necessity of nationwide concealed carry reciprocity to ensure Americans do not lose their rights when crossing state lines. Next, it examines how current federal gun policies are undermining the security of a free state by shifting power away from the citizenry. It also highlights Gun Owners of America’s decades-long record of successfully fighting back against federal attacks on the Second Amendment. Finally, it turns to the states, where GOA continues to secure critical courtroom victories against aggressive local and state gun control measures.

But first, I commence with the ATF registry of gun owners’ names.

### ***Eliminate ATF's Registry of Gun Owners***

In 2021, GOA uncovered that the Biden administration had accumulated 54 million gun owner records in one year alone.<sup>1</sup> Rep. Michael Cloud (R-TX) then took our information,<sup>2</sup> and with 51 other Representatives, demanded an accounting from the ATF.<sup>3</sup> Well, what they got back was far beyond what we could have imagined.

Biden's ATF admitted they had amassed almost one billion records of gun owners. And 94% of them are already in digital format. This is gun owner registration, pure and simple. And it's a violation of federal law.<sup>4</sup> Congress needs to take action by passing the Cloud-Risch legislation (H.R. 563/S. 119), which would demand the destruction of these lists. And then, we would implore Congress to defund and dismantle the ATF, by passing H.R. 221.

This is not the first time the ATF has been caught illegally retaining gun owners' names.<sup>5</sup> Currently, when Americans purchase guns from a dealer, they fill out a 4473 form, which contains all kinds of information about the gun buyer—their name and address, along with the type of gun that they bought.

This is a recipe for abuse, and we witnessed that abuse during the previous administration, when Biden's ATF attempted to ban up to 40 million pistols that contain stabilizing braces.<sup>6</sup> These guns were approved at one time by the ATF, but by a stroke of the pen, Biden did an about-face—issuing an Executive Action banning these firearms without Congress taking action.<sup>7</sup>

Of course, Gun Owners of America—along with several other groups—challenged this rule. And thankfully, we were able to secure injunctions and eventually the rule was vacated.<sup>8</sup> These victories were very important. Had the rule remained in place, the ATF would have been able to determine where every single one of those millions of firearms were because of the 4473 forms—and because of purchase orders the agency could obtain.

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<sup>1</sup> <https://www.foxnews.com/politics/gun-rights-atf-accuses-agency-illegal-gun-registry>

<sup>2</sup> <https://www.gunowners.org/wp-content/uploads/GOA-ATFs-Illegal-Gun-Owner-Registry.pdf>

<sup>3</sup> <https://cloud.house.gov/posts/congressman-cloud-leads-effort-opposing-unconstitutional-gun-registry>

<sup>4</sup> 18 U.S. Code § 926 (a)(3)

<sup>5</sup> <https://www.gunowners.org/oped08092016b>

<sup>6</sup> <https://www.gunowners.org/goa-and-texas-ag-paxton-file-suit-against-atf-pistol-brace-rule/>

<sup>7</sup> <https://www.justice.gov/archives/opa/pr/justice-department-issues-proposed-rule-and-model-legislation-reduce-gun-violence>

<sup>8</sup> <https://x.com/GunOwners/status/1801305291205529750?s=20>

This could have been a confiscation list—and this is why Congress needs to order these records to be destroyed.

### **Federal retention of gun records is NOT keeping Americans safe**

One key record the ATF requires firearms dealers to maintain is the “Firearms Transaction Record,” or ATF Form 4473. It includes identifying information on every person who buys a firearm from a licensed dealer.

The ATF considers these records valuable, under the thinking that they allow the federal government to trace the ownership of firearms. So for the first 17 years after the Gun Control Act of 1968, the ATF actually required dealers to keep these transaction records permanently. But that changed in 1985—for good reason.<sup>9</sup>

In 1985, ATF concluded that its original policy of permanent retention for out-of-business records was unsustainable. Citing “ever-increasing storage costs” and its own internal study on the limited usefulness of older records, ATF switched to a 20-year retention period.

The data simply didn’t support keeping these records forever.

ATF determined that, after roughly 15 years, the chance of a successful firearms trace drops sharply. In fact, what ATF claims are “crime guns” are not necessarily guns used in crime. It can be something as innocuous as local police running a trace on a firearm possessed by a person pulled over for speeding, where the gun was not used in a crime.

Even fresh traces have limited value, and even then, the agency cannot tell us how often those traces actually result in criminal prosecutions. In fact, ATF has admitted:

“The NTC [or National Tracing Center] has no ability to determine the successful prosecution of hundreds of thousands of crime gun traces it completes annually, nor does it have any way to link a trace for a specific prosecution for a particular year.”<sup>10</sup>

There is no solid evidence that this system meaningfully helps to solve crimes. At best, a trace only identifies the original buyer at the point of sale—not the person who

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<sup>9</sup> 50 FR 26704

<sup>10</sup> <https://www.gunowners.org/wp-content/uploads/Rep.-Cloud-Asks-ATF-For-OBR-Update-Letter-on-2.14.25.pdf>

ultimately used the firearm in a crime. Most of the time, guns used in crime are stolen, or purchased illegally—i.e., not acquired at licensed gun dealers. And as the records get older, their purported usefulness keeps declining.

So if these records are not reliably helping law enforcement solve crimes, then the real question is this: what exactly are they accomplishing?

### Registration to Confiscation

History shows repeated cases where gun registration paved the way for confiscation. Examples from the past century include Greece, Ireland, Jamaica, and Bermuda.<sup>11</sup> In more recent times, the governments of Australia<sup>12</sup> and Venezuela<sup>13</sup> carried out large-scale firearm confiscations. And Canada is now threatening to use its registry to do door-to-door confiscations.<sup>14</sup>

But the most severe examples occurred in countries like Turkey, China, Germany, Guatemala, Uganda, Cambodia and the Soviet Union—where strict gun control laws (including gun owner registration) were implemented prior to the genocides that were committed in each of these countries.<sup>15</sup>

Lest one think that registration-to-confiscation is simply an “other world” problem, we need to look no further than within our own borders. In the mid-1960’s, when officials in New York City began registering long guns, they promised they would never use such lists to take away firearms from honest citizens. But in 1991, the city banned (and soon began confiscating) many of those very same guns.<sup>16</sup>

In 1992, a New York City paper reported that, “Police raided the home of a Staten Island man who refused to comply with the city’s tough ban on assault weapons, and seized an arsenal of firearms. . . . Spot checks are planned [for other homes].”<sup>17</sup>

<sup>11</sup> David Kopel, ed., *Guns: Who Should Have Them?* (1995) at 88, 117 (fn. 75), and 122 (fn. 124).

<sup>12</sup> Australian National Audit Office, *Audit Report No. 25, 1997–98* (Canberra: Australian National Audit Office, 1998). [www.anao.gov.au/sites/default/files/anao\\_report\\_1997-98\\_25.pdf](http://www.anao.gov.au/sites/default/files/anao_report_1997-98_25.pdf)

<sup>13</sup> José Niño, *Gun Control Preceded the Tyranny in Venezuela*, Found. for Econ. Educ. (Jan. 22, 2019). [www.fee.org/articles/gun-control-preceded-the-tyranny-in-venezuela](http://www.fee.org/articles/gun-control-preceded-the-tyranny-in-venezuela)

<sup>14</sup> [https://www.youtube.com/watch?si=aiIVfKHnEQVK\\_z9q&v=dNBwQSAYYiI&feature=youtu.be](https://www.youtube.com/watch?si=aiIVfKHnEQVK_z9q&v=dNBwQSAYYiI&feature=youtu.be)

<sup>15</sup> Jay Simkin, Aaron Zelman and Alan Rice, *Lethal Laws: Gun Control is the Key to Genocide*, Jews for the Preservation of Firearms Ownership (1994).

<sup>16</sup> On August 16, 1991, New York City Mayor David Dinkins signed Local Law 78 which banned the possession and sale of certain rifles and shotguns. N.Y.C., N.Y., Local Law No. 78 (1991) (enacted Aug. 16, 1991). <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-219617>

<sup>17</sup> John Marzulli, “Weapons ban defied: S.I. man, arsenal seized,” *Daily News* (September 5, 1992).

This is the very reason that gun owners are concerned about their names and addresses being stored in ATF's billion records database. Keeping these records serves as an "infringement" ... they violate gun owners' privacy ... and the computers that are housing that information need to be sunk to the bottom of the ocean.

GOA implores the Congress to immediately pass the No REGISTRY Rights Act (H.R. 563 and S. 119).

#### **ATF retention of Out of Business records should be ZERO years**

Recently, Gun Owners of America has learned that ATF is preparing to issue a Notice of Proposed Rulemaking.

According to what we're hearing, the agency intends to seek public input on how long Federal Firearms Licensees should be required to retain their business records.

This comes on the heels of a major policy shift under the Joe Biden administration. In 2022, ATF imposed a mandate requiring FFLs to retain firearm transaction records indefinitely—ensuring those records are ultimately digitized and added to what has become a massive federal database containing roughly a billion firearm transactions.

Prior to that change, the rule was straightforward: FFLs were required to keep records for 20 years, after which they could lawfully destroy them.

The Biden-era mandate marked a significant escalation—one that aligns with a long-standing objective of the gun control movement: assembling a comprehensive registry of firearms and their owners, despite clear federal prohibitions on such a system.

And this effort doesn't stop at regulatory changes. Every few years, anti-gun lawmakers introduce so-called "Modernizing ATF" legislation, marketed as a "commonsense" public safety reform. In reality, these proposals are aimed at chipping away at the protections in the Firearm Owners Protection Act—specifically, its explicit ban on any federal gun registry.

From a constitutional standpoint, the proper retention period is zero years. That is the only position consistent with the Second Amendment's command that the right to keep and bear arms "shall not be infringed."

That said, GOA is concerned that ATF may attempt to walk back from its current permanent retention rule only slightly—perhaps proposing a fixed period of 20 years or longer.



But let's be clear: a 20-year requirement would simply revert to the pre-2022 status quo. Anything longer would be an expansion, not a reform.

Interestingly, even gun control advocates at Giffords Law Center have suggested a 10-year retention period for some firearm sale records, arguing that this would "align with the average time before a gun is recovered after use in a crime."<sup>18</sup>

Yet none of these options—10 years, 20 years, or permanent retention—comport with the constitutional standard. Maintaining the current system, where ATF indefinitely retains out-of-business records, effectively results in a national gun registry. That is a nonstarter.

GOA is urging Congress to pass legislation introduced by Rep. Michael Cloud and Sen. James Risch that would require the destruction of these ATF's out of business records of gun owners (H.R. 563/S. 119). But until Congress passes this legislation, these records must be destroyed after some period of time, regardless of whether they are held by the FFL or by the ATF.

Otherwise, these records could be kept for decades—far longer than any they have any reasonable law enforcement utility.

At that point, we are no longer talking about limited recordkeeping—we are talking about a de facto registry spanning generations of American gun owners. Such a system not only violates federal law multiple times over, but also lays the groundwork for future confiscation efforts.

### **A registry that outlives the American Citizen**

Consider the practical reality: federal law prohibits handgun purchases from dealers by individuals under 21. Combine that with a retention period of many decades, and many Americans will never live to see a time when the government no longer holds records of their lawful firearm purchases.

That's not an accident. The Biden Administration understood exactly what it was doing when it mandated permanent retention of Form 4473 records. Around that same time, the Department of Justice finalized another rule aimed at expanding background check requirements—what President Biden himself said was designed "to move us as close as

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<sup>18</sup> <https://files.giffords.org/wp-content/uploads/2020/11/Extend-ATF%E2%80%99s-retention-of-records-of-multiple-sales-of-firearms-so-that-they-are-deleted-after-ten-years-instead-of-two-years-1.pdf>

we can to universal background checks without new legislation.”<sup>19</sup> Biden’s ATF also tried to put as many gun stores out of business as possible, through its “zero tolerance” policy for FFL revocation.

When you put the pieces of this puzzle together—permanent recordkeeping, expanded background check mandates, and mass license revocations—the trajectory is clear. Step by step, under the banner of “public safety,” the infrastructure for a national gun registry is being assembled.

This is more than a Second Amendment concern; it is a homeland security risk. In the 1984 film *Red Dawn*, invading Soviet forces went straight to American gun stores to seize the paper Form 4473 records so they could identify and disarm gun owners. Today the ATF maintains those same records in digital form. A hack, a breach, or any other compromise of that database would instantly unmask the names, addresses, makes, models, and serial numbers of more than one hundred million law-abiding American gun owners. In the hands of a foreign adversary or domestic threat, such records would constitute an unprecedented targeting list.

Fortunately, GOA took action and successfully challenged the Biden Administration’s universal background (registration) check rule in court, preventing its full implementation. And our challenges to Biden’s “zero tolerance” regime ultimately led to ATF rescinding the policy.

But we would expect that a future anti-gun administration will renew efforts to retain these records permanently. And that’s why GOA implores Congress to immediately take up and pass H.R. 563 and S. 119, to delete all existing gun records.

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<sup>19</sup> <https://www.youtube.com/watch?v=dASR41GI0F4>

### ***Congress Must Pass Concealed Carry Reciprocity***

Gun Owners of America strongly supports the right of law-abiding Americans to carry firearms for self-defense anywhere in the country, without losing that right the moment they cross a state line.

In fact, GOA was the original national organization fighting for Constitutional Carry—even as far back as the 1990s, when it was then referred to as Vermont-style carry. GOA has been involved in one way or another in the passage of every permitless carry law in the 28 states that have followed Vermont into the Constitutional Carry “club.”

But while the states have made tremendous gains, the protections at the federal level lag behind. A constitutionally protected right under the Second Amendment should never carry less weight than the mere privilege of driving. Americans can drive across all 50 states with just a valid driver’s license, yet the fundamental right to bear arms often disappears at the border. That makes no sense.

Senator Mike Lee of Utah has recently introduced GOA-backed legislation (S. 4013) that would allow Americans to carry in all 50 states, with just their ID.

The bill, named The National Constitutional Carry Act, ensures that Americans are always able to defend themselves and their fellow countrymen regardless of state borders.

Like the act says, the Constitution and the Second Amendment are the carry permit for all Americans. Hence, this legislation reflects the principle that the Second Amendment itself is the foundation for the right to carry, eliminating the need for state-issued permission schemes.

In the House, H.R. 38 and S. 65 would provide for reciprocity among the several states, so that law-abiding Americans can protect themselves when traveling. Similarly, H.R. 645 would establish nationwide permitless carry for law-abiding Americans who are eligible to possess firearms.

All these bills would significantly strengthen the ability of law-abiding Americans to carry firearms for self-defense across state lines. And they would reduce state-level barriers that restrict the ability of law-abiding Americans to carry firearms for self-defense.

And of course, with these bills, never again will a story like Louis "Sandy" Javelle's be told. For those unfamiliar, Sandy Javelle was killed in Wakefield, Massachusetts by a rampaging killer.<sup>20</sup>

Javelle had a firearm and a carry permit in his home state of New Hampshire. Unfortunately, because he did not have a Massachusetts permit, he was unarmed at the time of the shooting. Not only did he lose his life, but he was unable to stop the killer from taking the lives of others.

The Second Amendment is our carry permit. We shouldn't lose our right to carry at our state border. And federal law should reflect that.

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<sup>20</sup> <https://www.gunowners.org/concealed-carry-reciprocity-would-save-lives/>

### ***How Federal Gun Policies Are Undermining the Security of a Free State***

The policies and legal positions advanced by the federal government do not exist in a vacuum—they shape the real-world security of the nation. When those policies respect the Constitution, they reinforce a system in which the American people remain an active part of their own defense. But when they undermine constitutional rights, they weaken that system and shift the balance of power away from the citizenry.

In recent years, a series of actions by the federal government have raised serious concerns about that balance. These actions do not simply affect gun owners in the abstract—they impact the broader principle that a free and secure nation depends on an armed and engaged populace.

Fortunately, President Trump has largely begun to reverse this trend in his second term. Upon being elected to federal office, he signed the historic Executive Order 14206, entitled “Protecting Second Amendment Rights.” The importance of this executive order cannot be understated. It recognizes that:

“The Second Amendment is an indispensable safeguard of security and liberty. It has preserved the right of the American people to protect ourselves, our families, and our freedoms since the founding of our great Nation. Because it is foundational to maintaining all other rights held by Americans, the right to keep and bear arms must not be infringed.”

President Trump’s executive order initiated a whole-of-government review of ongoing federal infringements on Second Amendment rights. Gun owners can see the fruits of President Trump’s pro-gun executive order across many departments:

- Assistant Attorney General Harmeet Dhillon is putting the Civil Rights Division to work challenging unconstitutional state-level gun control laws—an effort that’s drawing consistent praise from Second Amendment advocates.<sup>21</sup>
- The Department of Veterans Affairs has restored gun rights to more than 250,000 veterans who were previously flagged simply for needing help managing their benefits.<sup>22</sup>

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<sup>21</sup> <https://x.com/gunowners/status/1953571224522510685?s=46>

<sup>22</sup> <https://news.va.gov/press-room/va-undoes-decades-old-wrong-and-protects-veterans-second-amendment-rights/>

- The Treasury Department has backed off its “reputational risk” guidance that had been used to pressure banks into cutting off services to the firearms industry.<sup>23</sup>
- The Department of the Interior has expanded access to hunting on federal lands.<sup>24</sup>
- And Department of War Secretary Pete Hegseth signed a memo allowing soldiers to carry firearms on base.<sup>25</sup>

In fact, President Trump has signed the most pro-Second Amendment laws in recent American history:

- Repealed the Social Security Gun Ban,<sup>26</sup>
- Defunded the ATF,<sup>27</sup>
- Defunded veteran disarmament by VA bureaucrats,<sup>28</sup> and,
- Signed legislation eliminating the century-old \$200 tax on suppressors and short-barreled firearms.<sup>29</sup>

We are grateful to President Trump and his administration for protecting and restoring our lost Second Amendment rights in these ways.

However, there are ongoing problems with the ATF—an agency which has gone rogue and run roughshod over the rights of law-abiding citizens. Even former Attorney General Bondi recognized that “these people were targeting gun owners” during the Biden Administration. Indeed, the White House Office of Management and Budget described these attacks well in its FY 2026<sup>30</sup> and FY 2026<sup>31</sup> budget requests when it said:

“[R]egulations imposed by prior administrations... effectively criminalized law-abiding gun ownership. The previous administration used the ATF to attack gun-owning Americans and undermine the Second Amendment by:

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<sup>23</sup> <https://forms.gunowners.org/form/plan-of-action-for-white-house>

<sup>24</sup> <https://www.doi.gov/document-library/secretary-order/so-3447-expanding-hunting-and-fishing-access-removing-unnecessary>

<sup>25</sup> <https://www.afmcc.af.mil/NEWS/Article/4451297/hegseth-authorizes-off-duty-service-members-to-carry-private-firearms-on-install/>

<sup>26</sup> <https://www.nbcnews.com/news/us-news/trump-signs-bill-revoking-obama-era-gun-checks-people-mental-n727221>

<sup>27</sup> <https://www.npr.org/2025/07/02/nx-s1-5440343/trump-administration-atf-jobs-gun-restrictions>

<sup>28</sup> <https://news.va.gov/press-room/va-undoes-decades-old-wrong-and-protects-veterans-second-amendment-rights/>

<sup>29</sup> <https://www.newsweek.com/trump-bill-sparks-gun-group-lawsuit-2094946>

<sup>30</sup> <https://www.whitehouse.gov/wp-content/uploads/2025/05/Fiscal-Year-2026-Discretionary-Budget-Request.pdf>

<sup>31</sup> [https://www.whitehouse.gov/wp-content/uploads/2026/04/budget\\_fy2027.pdf](https://www.whitehouse.gov/wp-content/uploads/2026/04/budget_fy2027.pdf)

1. "requiring near-universal background checks;
2. "subjecting otherwise lawful gun owners to up to 10 years in prison for failing to register pistol braces that make it possible for disabled veterans to use firearms;
3. "the imposition of excessive restrictions on homemade firearms;
4. "and the revocation of Federal Firearms Licenses."

During Kash Patel's tenure as Acting ATF Director, the Biden Zero Tolerance Policy of revoking gun store licenses for simple and harmless paperwork mistakes immediately ceased. This was undoubtedly a huge and immediate victory for the Second Amendment.

But unfortunately, rogue bureaucrats at the ATF and the Department of Justice have continued to oppose gun owners, even during President Trump's administration. As a consequence, former Attorney General Bondi failed to deliver on President Trump's campaign promise to gun owners to eliminate the three major Biden-era ATF rules, and they all remain on the books to this very day. So, with this section of my testimony, I hope to highlight several ongoing issues within ATF and the Department of Justice that need to be rectified. (And to Republicans on the committee and in the rest of Congress, I will note that these problems must be fixed immediately if they hope to win the gun vote in the 2026 midterm elections.)

The following examples highlight a troubling pattern: policies that burden lawful firearm ownership, expand federal control, and erode the role of the citizen in maintaining the security of a free state. Fortunately, there is simple solution for President Trump: give the next attorney general a mandate to protect and restore Second Amendment rights and quickly deliver on the President's campaign promises to gun owners.<sup>32</sup> Likewise, we hope that during the confirmation hearings for the next Attorney General, the Senate will urge the president's candidate to fix these problems.

#### **Problem #1: Undermining Lawful Suppressor & Short-Barreled Firearm Ownership**

Since President Trump took office, the Department of Justice repeatedly has undermined the right to own firearm suppressors (or "silencers") and short-barreled firearms restricted by the National Firearms Act of 1934. In March 2025, Gun Owners of America broke the news—a Biden-holdover bureaucrat at the DOJ was arguing in a federal criminal appeal that suppressors were not protected by the Second

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<sup>32</sup> <https://www.zerohedge.com/political/second-amendment-roadmap-next-attorney-general>

Amendment.<sup>33</sup> In response to widespread publicity and criticism from gun owners, DOJ asked the court for time to withdraw and rewrite its brief.<sup>34</sup> This indicated a potentially huge win for gun owners.

Unfortunately, DOJ's subsequent brief wasn't much better. DOJ argued that, while suppressors are technically protected by the Second Amendment and cannot be *banned*, Congress nevertheless has the power to strictly regulate them, effectively discouraging their ownership altogether.<sup>35</sup> But if an object is acknowledged to be a Second Amendment-protected "Arm," then onerous taxation and universal registration is *obviously* an infringement.

DOJ then telegraphed why it was fighting so hard to restrict these popular firearm accessories.

Ultimately, DOJ's refusal to take a principled stand for the right to own suppressors in *U.S. v. Peterson* resulted in a highly flawed Fifth Circuit decision which largely parroted DOJ's briefing to reach DOJ's preferred result.<sup>36</sup>

DOJ has gone on to apply the same offensive language and anti-gun reasoning about suppressors to undermine the right to own short-barreled firearms as well.<sup>37</sup> Each time the Department of Justice opposes the right to own hugely popular firearms and firearm accessories free of government taxation and registration, it tarnishes the President's legacy. After all, if suppressors and short-barreled rifles "are especially susceptible to criminal misuse," then why did President Trump sign legislation to make them more easily accessible to the millions of American gun owners who want them?

**NOTE:** *The National Rifle Association ("NRA"), American Suppressor Association ("ASA"), and GOA all filed briefs in opposition to the Department of Justice on suppressors in the Firearms Policy Coalition-backed ("FPC") case U.S. v. Peterson. The Solicitor General also asked the Supreme Court not to take up the NRA's short-barreled rifle challenge in Rush v. U.S.—where the Second Amendment Foundation ("SAF") filed an amicus brief. Likewise, the Solicitor General opposed certiorari in Robinson v. U.S.—another short-barreled rifle challenge where GOA and SAF filed amicus briefs. In other words, on just this single issue, DOJ has managed to find itself crossways with every major Second Amendment group in the country.*

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<sup>33</sup> <https://x.com/GunFoundation/status/1901776688100360477?s=20>

<sup>34</sup> <https://x.com/GunOwners/status/1902753715473330667?s=20>

<sup>35</sup> <https://x.com/GunOwners/status/1926060595045884186?s=20>

<sup>36</sup> <https://www.facebook.com/gunpolicy/posts/the-5th-circuit-panels-decision-in-us-v-peterson-is-a-disaster-and-will-cause-im/733431615918866/>

<sup>37</sup> <https://x.com/GunOwners/status/1976714965924077799?s=20>



## Problem #2: Defense of Federal Gun Registration

The Department of Justice has ignored President Trump's Executive Order on gun rights and defended unconstitutional federal gun registration. The DOJ's defense of the National Firearms Act's onerous and invasive registration requirements contradicts President Trump's new changes to the law through the One Big Beautiful Bill Act, as well as pre-existing Trump Administration precedent.

After Congress used reconciliation to zero the Obamacare penalty, or "tax," then-Attorney General Barr conceded "that the individual mandate [was] no longer constitutional...."<sup>38</sup> In other words, DOJ sided with a conservative coalition of Texas and 11 other states in opposition to the unpopular individual mandate. AG Barr's decision was hardly surprising. As over 40 House Representatives and Senators put it recently:

"The Department [of Justice] is fully empowered to decline to defend statutory provisions that no longer rest on a valid constitutional basis. It has exercised that authority before...."<sup>39</sup>

But in stark contrast to DOJ's treatment of the Obamacare mandate, DOJ has disregarded the fact that Congress has now amended the National Firearms Act in an identical manner, reducing its excise taxes on short-barreled firearms and suppressors to \$0. But rather than concede that the registration of now-untaxed firearms is unconstitutional, DOJ has chosen to fight Texas (and now 14 other states), along with GOA, NRA, FPC, and SAF in federal court. As 40+ Members of Congress put it:

"The Department [of Justice]'s recent filing ... advances a theory that would effectively transform the NFA from a tax statute into an independent federal gun-registration regime—an outcome Congress has never authorized, has repeatedly rejected, and in fact expressly prohibited...."<sup>40</sup>

Indeed, under former Attorney General Bondi, DOJ had advanced perhaps the most expansive view of federal power since Franklin Delano Roosevelt. Not only has DOJ claimed that a \$0 tax is somehow "a valid exercise of Congress's taxing power," but DOJ alternatively claims that "the Constitution empowers Congress to adopt" a federal gun registration requirement without any link at all to the taxing power.<sup>41</sup> DOJ has argued that:

1. "Congress's power under the Commerce Clause independently authorizes the challenged NFA [registration] requirements;" and

<sup>38</sup> [https://www.supremecourt.gov/DocketPDF/19/19-840/130821/20200203172646530\\_19-840%2019-841%20-%20Cal%20House%20v%20Texas.pdf](https://www.supremecourt.gov/DocketPDF/19/19-840/130821/20200203172646530_19-840%2019-841%20-%20Cal%20House%20v%20Texas.pdf)

<sup>39</sup> <https://x.com/GunOwners/status/2001765452998209683?s=20>

<sup>40</sup> *Id.*

<sup>41</sup> <https://x.com/GunOwners/status/1991714801903677511?s=20>

2. "Congress's authority under the Necessary and Proper Clause further supports the challenged NFA [registration] requirements."

If the Commerce Clause and Necessary and Proper Clause are upheld as foundations for federal gun control, reaching even purely *intrastate* activity, then the DOJ will have laid the foundation for the future evisceration of the Second Amendment.

DOJ's additional arguments confirm our worst fears. For example, DOJ defended the NFA on the grounds that it "target[s] particularly dangerous and easily concealable weapons that 'could be used readily and efficiently by criminals.'" Of course, this argument could also be used to justify a total handgun ban,<sup>42</sup> as handguns are far more concealable and used in far more crimes than short-barreled firearms and suppressors.<sup>43</sup> DOJ even twice referred to firearms with short barrels as "weapons of war"—another move straight out of the gun control lobby's playbook.<sup>44</sup>

### **Problem #3: Demanding 2A Organizations' Membership Lists**

Even when the Department of Justice agrees that a gun control law is unconstitutional, pro-Second Amendment lawsuits still have faced major DOJ opposition. For example, the DOJ's opposition has even taken the form of requests for the court-ordered disclosure of pro-gun organizations' membership lists to the federal government as a condition of relief. DOJ has sought to chill the freedom of association in this manner on two occasions.<sup>45</sup>

Making matters worse, a federal judge even granted DOJ's request, ordering two major gun rights groups to turn over lists of gun owners to the federal government.<sup>46</sup> Of course, both groups refused, calling the idea "preposterous" and "legally baseless and morally bankrupt."<sup>47</sup> The Department of Justice backed down slightly, requesting the court make the disclosure optional. This is hardly the way to handle the enforcement of a law that even DOJ *agrees is unconstitutional*.

DOJ has taken the position that gun rights organizations must turn over their membership lists to the federal government as a condition of receiving relief from the very agencies enforcing federal infringements and violating our members' rights. These sorts of underhanded litigation tactics by DOJ must cease, and effective relief must be given when a law is declared unconstitutional.

<sup>42</sup> <https://x.com/GunOwners/status/1991717998391128514?s=20>

<sup>43</sup> <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/expanded-homicide-data-table-8.xls>

<sup>44</sup> <https://x.com/GunOwners/status/1991869208074781079?s=20>

<sup>45</sup> <https://x.com/GunOwners/status/1983566319376097642?s=20>

<sup>46</sup> <https://x.com/GunOwners/status/1975671887897501968?s=20>

<sup>47</sup> <https://saf.org/order-demanding-production-of-saf-membership-list-vacated/>;  
<https://www.firearmspolicy.org/fpc-statement-on-reese-v-atf-judgment>

#### **Problem #4: Fighting to Moot GOA's Lawsuits & Thwart Lasting Relief**

The Department of Justice has fought to moot Second Amendment lawsuits which otherwise would result in the codification of permanent pro-gun precedents. Usually, this would guarantee that a Biden-era infringement is struck down for good, and guarantee that a future Democrat administration would not be able to reinstitute unlawful or unconstitutional policies.

In contrast, DOJ has failed to moot Second Amendment lawsuits even when they were likely to result in anti-gun precedents. For example, DOJ ignored GOA's urgent request that the *VanDerStok v. Garland* lawsuit at the Supreme Court be mooted before it could be decided. This request went unanswered for months until the Supreme Court issued a 7-2 anti-gun opinion against the Second Amendment.

In contrast, DOJ has sought to moot (or has privately revealed the intent to moot) every major lawsuit that GOA filed against Biden-era gun control. Not only has DOJ refused to settle these lawsuits or allow the courts to proceed in deciding them on the merits, but the ATF has not actually rectified the Biden-era policies with lasting permanent solutions. Consider just three examples:

1. **"Frame or Receiver" Rule.** Even though the current White House denounced this Biden rule in May of last year, the current DOJ recently declared that, "[a]t this time, the government has decided to maintain [Biden's] definition of firearm 'frame' & 'receiver.'"<sup>48</sup>
2. **"Engaged in the Business" Rule.** The previous president signed this Executive Order as an attempt "to move us as close as we can to universal background checks without new legislation."<sup>49</sup> Subsequently, President Trump promised to repeal this rule during his first week in office.<sup>50</sup> Nevertheless, the current DOJ continues to defend the rule in court.<sup>51</sup>

<sup>48</sup> <https://x.com/GunOwners/status/2042288862441902204> and <https://x.com/GunOwners/status/204227780235133450?s=20>

<sup>49</sup> <https://www.youtube.com/watch?v=dASR41GI0F4>

<sup>50</sup> <https://x.com/GunOwners/status/1853558098952372236?s=20>

<sup>51</sup> In the conclusion in DOJ's latest brief defending the EIB Rule, they said that "the Court should grant Defendants' Motion for Summary Judgment" (*Butler v. Bondi*, No. 1:24-cv-00975-CLM (N.D. AL), ECF # 78 at 10). That summary judgment briefing was completed under the Biden era, and under the Biden administration's briefing. And now, since they are asking for the Court to "grant Defendants' Motion for Summary Judgment," they are relying on the Biden DOJ briefing for the court to deny plaintiffs' any relief against the Rule. Contrary to anything DOJ says, they are still defending the Rule for all the reasons raised in the Biden DOJ briefing.

3. **"Pistol Brace" Firearms Ban.** President Trump mocked this rule, as it criminalized the possession of up to 40 million estimated pistols that were equipped with certain stabilizing braces.<sup>52</sup> And even though a Federal Judge vacated the rule, the current "[ATF] continue[s] to enforce the NFA's and the GCA's regulation of short-barreled rifles against some brace-equipped pistols."<sup>53</sup>

DOJ's tactics—seeking to moot legitimate Biden-era lawsuits and avoid unfavorable rulings for the government—means that the next anti-gun administration retains maximum discretion to simply reimplement those same Biden policies in the future.

Tellingly, while this Republican administration moots conservative lawsuits designed to protect the Second Amendment, Democrat administrations have taken a far different approach. For example, when the left-leaning ACLU sued to challenge the first Trump Administration's "Zero Tolerance" policy for immigration, and the Biden Administration later took office, DOJ did not seek to undermine and moot the ACLU's case. Quite the opposite, the Biden DOJ gave its friends at the ACLU a permanent injunction and a \$6 million settlement for attorneys' fees.<sup>54</sup> Yet to date, no gun rights group has obtained a dollar's worth of attorneys' fees for the years spent fighting the Bump Stock Ban—which was found unlawful after five long years of litigation.<sup>55</sup>

#### **Problem #5: Violating GOA's First Amendment Rights with a Gag Order**

When the Biden administration accidentally sent GOA unredacted information in a FOIA production, the ATF secured a gag order against GOA.<sup>56</sup> This violated our First Amendment right to print the news about an unlawful FBI gun purchase monitoring system that we uncovered, and which the Trump ATF curtailed in April 2025. This program was also used to spy on January 6th defendants, and to enforce state "assault weapons" bans.<sup>57</sup>

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<sup>52</sup> President Trump stated: "I will eliminate the Biden ATF's ridiculous pistol brace rule, which orders law-abiding citizens to register or surrender guns with stabilizing braces." – President Trump on April 14<sup>th</sup>, 2023 in Indianapolis, Indiana. And then again, "[President Biden] imposed the so-called pistol brace rule which orders law-abiding citizens to register or surrender guns with certain equipment. You know that. Many of you are forced to do it. ... All of those Biden disasters get ripped up and torn out my first week but maybe my first day in office okay, okay maybe my first." – President Trump on Feb. 9<sup>th</sup>, 2024 in Harrisburg, Pennsylvania

<sup>53</sup> <https://x.com/GunOwners/status/2034683168523960546/photo/2>

<sup>54</sup> <https://www.aclu.org/press-releases/court-approves-historic-settlement-in-aclu-family-separation-lawsuit>; [https://www.tucsonsentinel.com/local/report/111124\\_family\\_separations/court-orders-feds-pay-6m-as-family-separations-lawsuit-ends/](https://www.tucsonsentinel.com/local/report/111124_family_separations/court-orders-feds-pay-6m-as-family-separations-lawsuit-ends/)

<sup>55</sup> <https://www.youtube.com/watch?v=vsFuk1E7FEY>

<sup>56</sup> <https://www.gunowners.org/wp-content/uploads/D.C.-Circuit-Court-of-Appeals-Opening-Brief.pdf>

<sup>57</sup> <https://www.youtube.com/watch?v=FfOqFko-iJY>

Inexplicably and inexcusably, the current DOJ has continued to defend this prior restraint on GOA's speech—despite clear First Amendment legal precedent prohibiting government censorship under these circumstances. Every major news outlet in the country—from the *Wall Street Journal* to the *New York Times*—recently filed an *amicus* brief supporting GOA's First Amendment rights and opposing the current DOJ. The DOJ's continued opposition to GOA's First Amendment rights is outrageous, and DOJ should cease fighting to censor GOA immediately.

Amazingly, instead of settling this case with GOA, the DOJ once again has tried to moot GOA's lawsuit by intentionally re-sending GOA the unredacted files.<sup>58</sup> Of course, if GOA had *used* these files, we would have been in violation of the court order prohibiting us from so much as viewing the information ATF claims to have "intentionally" sent us.

DOJ has no business trying to trick GOA into breaking the law. And the Trump Administration has no business trying to moot a First Amendment lawsuit to justify Biden-era censorship.

What is worse, ATF's actions also violate longstanding congressional appropriations restrictions that protect gun owner data.<sup>59</sup> Because DOJ "intentionally" re-sent the unredacted FOIA documents to GOA, an anti-gun precedent has been set. It allows ATF bureaucrats to violate acts of Congress, congressional appropriations, and gun owner privacy protections whenever they like. This is unacceptable and must be met with severe consequences for those responsible.

If anti-gunners were to get their hands on the sort of sensitive firearm trace data that ATF "intentionally" released to GOA, they will use it to make maps of where gun owners live.<sup>60</sup> They will make maps that target local gun stores for harassment.<sup>61</sup> And they will file lawsuits against gun stores and manufacturers using the trace data to satisfy the "proximate cause" element in their frivolous *prima facie* case of public nuisance, like they previously attempted in *Mexico v. Smith & Wesson*.<sup>62</sup> Because Everytown for Gun Safety filed an *amicus* brief in this lawsuit seeking to do just that, we know that the gun control lobby is fully aware of the situation and its consequences.<sup>63</sup>

### **Federal policy must reinforce—not undermine—a free and secure nation**

The issues outlined here point to a larger concern that goes beyond any single policy or agency. At stake is whether the United States continues to operate under a system

<sup>58</sup> <https://x.com/GunOwners/status/1996298569624453330?s=20>

<sup>59</sup> [https://www.youtube.com/watch?v=aiN\\_U9cHWew](https://www.youtube.com/watch?v=aiN_U9cHWew)

<sup>60</sup> <https://www.cnn.com/2012/12/25/us/new-york-gun-permit-map>

<sup>61</sup> <https://gunstoretransparency.org/>

<sup>62</sup> *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025), [https://www.supremecourt.gov/opinions/24pdf/23-1141\\_lkgn.pdf](https://www.supremecourt.gov/opinions/24pdf/23-1141_lkgn.pdf).

<sup>63</sup> <https://www.courtlistener.com/docket/71201655/gun-owners-of-america-inc-v-atf/>

where the people themselves are recognized as an essential component of national security—or whether that role is gradually diminished.

The Second Amendment reflects the Founders' understanding that security and liberty are not opposing forces, but mutually reinforcing principles. A nation is most secure when its citizens are trusted, equipped, and free to exercise their rights—not when they are monitored, restricted, or sidelined.

The accumulation of firearm records, the expansion of regulatory authority, and the advancement of novel legal theories all move in the same direction—toward greater centralization of power over a fundamental right. That trajectory does not strengthen the country. It weakens the very framework that has long preserved both freedom and stability.

If the goal is a secure homeland, then policy must reflect that constitutional reality. The right to keep and bear arms is not a secondary concern—it remains, as the Founders recognized and the Supreme Court affirmed, necessary to the security of a free state.

### ***GOA Combatting a Series of Attacks on 2A Rights***

Gun Owners of America has been on the front lines as a no-compromise defender of the Second Amendment since 1976, pushing back against a relentless wave of federal and state attacks from anti-gun politicians, bureaucrats, and special interests.

From attempts to renew the Feinstein semi-automatic ban, or inserting red-flag confiscation into defense bills, or disarming veterans without due process, the strategy has been a steady, piece-by-piece erosion of the right to keep and bear arms.

At every step, GOA has fought back—mobilizing tens of thousands of grassroots activists, scoring legislators, engaging Congress directly, and taking cases to court—successfully slowing, stopping, and in many cases rolling back major infringements on law-abiding gun owners.

Here are more than two dozen concrete examples from the past two and a half decades.

#### **Passing Legislation to Arm Pilots**

In the wake of the September 11, 2001, attacks on the U.S., GOA played a lead role in crafting legislation that created the Federal Flight Deck Officer program, allowing qualified commercial airline pilots to be armed as a last line of defense against terrorism. Through sustained grassroots activism and direct engagement with Congress, GOA helped secure the ultimate passage of this measure to strengthen aviation security and protect innocent lives.<sup>64</sup>

#### **Defeating a Nationwide “Assault Weapon” Ban (Round 1)**

In 2004, Gun Owners of America was proud to stand alongside a broad coalition of gun owners and allied organizations in defeating efforts to renew Senator Dianne Feinstein’s ban on commonly owned semi-automatic firearms.

Through coordinated grassroots activism and sustained pressure on Capitol Hill, these efforts helped stop the ban from advancing. As one Senate office told us, “GOA postcards killed the Feinstein ban!”<sup>65</sup>

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<sup>64</sup> <https://www.gunowners.org/goa-releases-feature-documentary-on-the-fight-to-arm-pilots-following-9-11/>

<sup>65</sup> <https://www.gunowners.org/a121404>

Likewise, the *National Journal* reported in 2024 that "[GOA's] lobbying probably torpedoed the best chance for [renewing the semi-auto ban] this year."<sup>66</sup>

### **Banning Gun Confiscation After Hurricane Katrina**

When New Orleans used "emergency powers" to confiscate legal guns in the wake of Hurricane Katrina, GOA spent the next year working to ban similar efforts from occurring in the future.

And once the federal law went into effect, U.S. Senator David Vitter (R-LA) expressed his thanks "for all of GOA's help in pushing my amendment to prohibit gun confiscation."<sup>67</sup>

### **Fighting the Brady Law Expansion**

Mail from tens of thousands of GOA members swamped Capitol Hill in 2006, leading one office to exclaim, "Oh s--t! We got a lot of postcards and emails from GOA members."<sup>68</sup> Thanks to this tidal wave of GOA opposition, the Brady expansion (a precursor to Fix NICS) died.

### **Repealing the National Park Gun Ban**

Senator Tom Coburn (R-OK) worked exclusively with Gun Owners of America to successfully craft and push a repeal of the National Parks Service gun ban in 2009. After the repeal was signed into law, Sen. Coburn declared that, "The real gun lobby in Washington is the GOA."<sup>69</sup>

### **Striking Gun Control from ObamaCare**

GOA's lobbying efforts get several anti-gun items removed from the socialized health care bill. *Slate* magazine acknowledged this, saying, "Score one for the Gun Owners of America, a lobby group positioned well to the right of the National Rifle Association."<sup>70</sup>

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<sup>66</sup> "Kristen Rand, the legislative director for the Violence Policy Center... agreed that [GOA's] lobbying probably torpedoed the best chance for action this year. 'I think their input was very significant,' Rand said of the gun-owners group." (*National Journal*, July 17, 2024).

<sup>67</sup> <https://www.gunowners.org/a121406>

<sup>68</sup> <https://www.gunowners.org/a121406/>

<sup>69</sup> <https://www.gunowners.org/wp-content/uploads/2008/09/n20090921.pdf>

<sup>70</sup> <https://slate.com/news-and-politics/2009/12/a-gun-nut-win-on-health-reform.html>



### **Defeating Universal Background Checks and Manchin-Toomey Gun Control**

When anti-gunners tried to exploit a tremendous tragedy to push sweeping gun control legislation, GOA pushed back. And according to the *New York Times*, GOA was the instrumental organization in defeating every restriction.<sup>71</sup>

Gun Owners of America mounted a fierce, no-compromise nationwide mobilization, flooding Senate offices with tens of thousands of calls and letters while refusing any new restrictions or “reasonable” compromises.

On April 3, 2013, the *New York Times* stated, “Gun Owners of America got busy, mounting a lobbying blitz that helps explain why a bipartisan Senate deal on background checks remains elusive.”

And five days later, TPM would report that “Democrats blame ‘Gun Owners of America’ for gun control setback” — *TPM*, April 8, 2013.

### **Fighting U.N. Gun Control**

Gun Owners of America strongly opposed the United Nations Arms Trade Treaty as serious negotiations gained momentum under President Obama, who ultimately signed the agreement. Following the 2016 election, GOA officials met with incoming White House staff, urging the new administration to reject the treaty outright. GOA has consistently warned that the ATT poses a serious threat to the Second Amendment—opening the door to international pressure for gun control and even backdoor gun registration in the United States. In April 2019, those efforts paid off when President Donald Trump announced that the United States would withdraw from the treaty and revoke its signature.<sup>72</sup>

### **Fighting Fix NICS Gun Control<sup>73</sup>**

Anti-gunners attacked the Second Amendment by trying to pass Fix NICS, a provision that would send hundreds of thousands of additional law-abiding veterans and seniors—or even those with outstanding traffic tickets—to the NICS ‘gun ban’ list without proper judicial process.

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<sup>71</sup> <https://www.gunowners.org/what-killed-post-sandy-hook-gun-control/>

<sup>72</sup> <https://www.gunowners.org/wp-content/uploads/2020/03/GOA-NL-5-31-19.pdf>

<sup>73</sup> <https://www.gunowners.org/fixnicsfactsheet>

Gun Owners of America mounted a fierce nationwide member mobilization and aggressive scoring campaign against the bill. Although the provision ultimately passed when anti-gunners crammed it into the 2018 Omnibus spending bill, gun owners came close to defeating Fix NICS, and GOA's efforts brought the House vote within two votes of stopping gun control, forcing them to hide it in must-pass legislation instead of passing it cleanly.

#### **Fighting Anti-Gun CDC and NIH Funding<sup>74</sup>**

The Fix NICS Act specifically earmarked the first funding in decades to CDC and the NIH to advocate for gun control. Anti-gunners used this money to attack the Second Amendment by trying to funnel millions in taxpayer dollars to the CDC and NIH for gun-control research that promotes radical new ideas like a 'firearm retirement' age for confiscating guns from senior citizens.

GOA fought these funding bills head-on, including supporting the GOA-backed Miller-Meeks Amendment to defund the CDC's Firearms Injury and Mortality Prevention Research.

While some funding survived in final appropriations packages, GOA's pressure repeatedly exposed the agencies' misuse of funds to advocate gun control and helped strip the most dangerous new proposals from clean passage.

#### **Defeating a Nationwide "Assault Weapons" Ban (Round 2)**

Anti-gunners attacked the Second Amendment by trying to pass the Assault Weapons Ban (H.R. 1808)<sup>75</sup> that sought to ban commonly owned semiautomatic rifles such as the AR-15. Gun Owners of America fought the ban with aggressive member alerts, legislative scoring, and key votes against final passage. The federal ban did not become law thanks in large part to GOA's no-compromise opposition that helped kill it in the Senate after the House passed it.

At the same time, anti-gunners attacked the Second Amendment by trying to pass the Enhanced Background Checks Act (H.R. 1446)<sup>76</sup> that would have eliminated the FBI's 3-business deadline to complete a NICS check, instead creating up to a 10-day waiting period and in the worst case allow the Attorney General to hold up gun purchases indefinitely.

<sup>74</sup> <https://www.gunowners.org/cdc-and-nih-are-weaponized-against-the-second-amendment/>

<sup>75</sup> <https://www.congress.gov/bills/117/congress/house-bill/1808?hl=H.R.1808&s=10&r=1>

<sup>76</sup> <https://www.congress.gov/bills/117/congress/house-bill/1446#:~:text=Enhanced%20Background%20Checks%20Act%20of%202021>

GOA fought these bills aggressively through member mobilization, motions to recommit, and public education exposing them as backdoor delays on the Second Amendment. The Enhanced Background Checks Act did not become law thanks to GOA's sustained pressure that helped prevent final passage.

### **Defeating Democrat Efforts to Protect Criminals, not Kids**

Anti-gunners attacked the Second Amendment by trying to pass the deceptively named Protecting Our Kids Act (H.R. 7910), which included: a gun ban for adults aged 18-20; banning homemade firearms and making it illegal to reassemble your own firearm; mandating national safe storage, with the Attorney General allowed to seize firearms if not stored according to bureaucratic standards; a backdoor bump stock ban on semiautomatic weapons; and banning standard-size magazines holding 16 rounds or greater.

GOA fought the entire package title-by-title with member mobilization and floor votes against retaining each anti-gun section. The bill did not pass in full thanks in large part to strong GOA opposition that prevented the most extreme provisions from becoming law.

### **Defeating Gun Control in the "Disarm Women Act"<sup>77</sup>**

Anti-gunners attacked the Second Amendment by trying to insert gun control into Violence Against Women Act (VAWA) reauthorizations, including the NICS Denial Notification Act to launch criminal investigations into firearm transfer background check denials—even though 9 out of 10 times the system falsely denies a law-abiding citizen.

Plus, there was funding for ATF to deputize local police to enforce federal gun laws, especially to undermine Second Amendment Protection Act (SAPA) states.

GOA fought the gun-control provisions for multiple years, warning that they pretend to help 'battered women,' but in fact leave them disarmed and vulnerable. While some elements passed, less than half of the original anti-gun proposals survived, and GOA's opposition helped limit the damage.

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<sup>77</sup> <https://x.com/GunOwners/status/1834710860813447609?s=20>

### **Defeating Red Flag Gun Confiscation for Military Servicemembers<sup>78</sup>**

Anti-gunners attacked the Second Amendment by trying to insert Red Flag Gun Confiscation Orders (GCOs) into the National Defense Authorization Act that would create a Military Court Gun Confiscation Order (GCO) program allowing judges to disarm service members on an *ex parte* basis.

GOA discovered the language, strongly opposed the military red-flag provisions in the NDAA (H.R. 6395), and mobilized against it as a disgusting violation of the Second, Fourth, Fifth, and Fourteenth Amendment rights of our armed service personnel.

The military red-flag language was defeated outright, was removed by leadership, and never became law.

### **Overturning COVID Lockdowns for Gun Stores and Shooting Ranges<sup>79</sup>**

Anti-gunners attacked the Second Amendment by trying to shut down gun stores and declare them non-essential during COVID lockdowns.

GOA pressured the federal government with letters and alerts demanding that gun stores be designated essential businesses. Trump's DHS ultimately reversed course and designated gun stores as essential, and GOA's efforts resulted in several states and jurisdictions reopening gun stores.

### **Fighting the Bipartisan Safer Communities Act or Cornyn-Murphy Gun Control<sup>80</sup>**

Anti-gunners attacked the Second Amendment by trying to pass the Bipartisan Safer Communities Act (S. 2938 / Cornyn-Murphy), which instituted mandatory wait times for 18-20 year old adults, funded state red flag law programs, and changed the definition of a firearm dealer. This eventually led to the ATF's 'Engaged in the Business' rule implementing backdoor registration checks.

GOA fought the bill aggressively and lost when it passed, but immediately filed a lawsuit challenging unconstitutional provisions such as the de facto waiting periods for adults under 21. GOA continues to fight the Biden Engaged in the Business Rule in court.

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<sup>78</sup> <https://www.gunowners.org/na12072020/>

<sup>79</sup> <https://www.gunowners.org/breaking-goa-and-goc-thank-the-trump-administration-for-designating-firearms-industry-as-essential/>

<sup>80</sup> <https://www.gunowners.org/03102023/>

### **Challenging the Biden Pistol Brace Ban**

Anti-gunners attacked the Second Amendment by trying to implement the Biden Pistol Brace Ban through ATF regulation, which could have outlawed as many as 40,000,000 lawfully owned, braced firearms such as AR-15s.

GOA and the Gun Owners Foundation filed suit<sup>81</sup> against the ATF Pistol Brace Rule and backed H.J. Res. 44 to disapprove the rule.

A federal court vacated the Biden pistol brace ban, GOA secured a preliminary injunction protecting members, and the House passed H.J. Res. 44 with strong GOA-backed support.<sup>82</sup>

### **Challenging Biden's Homemade Firearm Ban**

Anti-gunners attacked the Second Amendment by trying to ban homemade firearms through the ATF's Frame and Receiver rule, which imposed serialization, registration, and background check requirements on 80% kits and privately made firearms.

GOA and Gun Owners Foundation sued the Biden ATF over the Homemade Gun Ban and Gun Registry Rule, fighting to protect the historic right to manufacture firearms at home. This lawsuit continues today.

### **Challenging Biden's Backdoor Universal Registration Checks<sup>83</sup>**

Anti-gunners attacked the Second Amendment by trying to impose Biden's backdoor registration checks through changes that would expand the national gun registry via the Engaged in the Business rule.

GOA fought these efforts with member mobilization and public alerts exposing them as registration schemes.

GOA's opposition helped block or delay the most expansive backdoor registration attempts with our injunction for GOA members and Texans. This lawsuit continues today.

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<sup>81</sup> <https://www.gunowners.org/goa-gof-state-of-texas-secure-preliminary-injunction-against-biden-pistol-brace-ban/>

<sup>82</sup> <https://www.gunowners.org/goa-applauds-house-vote-to-block-pistol-brace-rule/>

<sup>83</sup> <https://www.gunowners.org/four-reasons-a-federal-court-found-atfs-engaged-in-the-business-rule-to-be-illegal/>

### **Biden's Zero Tolerance Policy Attack on the Firearm Industry<sup>84</sup>**

Anti-gunners attacked the Second Amendment by using the ATF's zero tolerance policy to shut down hundreds of gun dealers.

GOA sued the ATF over the Zero Tolerance policy twice and fought to protect FFLs from arbitrary revocation. The policy was later rolled back by Acting ATF Director Kash Patel after GOA's sustained pressure. Our lawsuits, however, have yet to conclude as we seek a permanent ruling that the policy was unlawful.

### **Protecting the firearm industry from Weaponization of Government and De-Banking<sup>85</sup>**

Anti-gunners attacked the Second Amendment by weaponizing banks and regulators against the firearm industry (Operation Choke Point 2.0 style de-banking).

GOA fought to protect the firearm industry from de-banking and regulatory weaponization. GOA's advocacy helped expose and push back against these attacks. As a result, President Trump has taken decisive action in his second term to curtail debanking and the use of reputational risk to target the firearm industry by directing federal bank regulators like the OCC and Federal Reserve to identify financial institutions engaged in debanking and take appropriate remedial action.

### **Defunding the Veteran Gun Ban<sup>86</sup>**

Beginning with the Clinton administration, anti-gunners have supported the VA's practice of arbitrarily reporting veterans to NICS simply because they had a fiduciary appointed, without any court finding of danger.

GOA fought for years to stop the Veteran Gun Ban, supporting the Kennedy Amendment, Bost Amendment, and Crane Amendment to defund the practice. GOA celebrated the Senate repeal and successfully defunded the VA fiduciary gun-control rule in appropriations, securing major policy reversals that protect veterans' Second Amendment rights. The second Trump Administration's Department of Veterans Affairs recently finished the job by deleting the remaining 270,000+ veterans names from the FBI's prohibited person list.

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<sup>84</sup> <https://x.com/GunOwners/status/190967739240832663?s=20>

<sup>85</sup> <https://x.com/GunOwners/status/1953571224522510685?s=20>

<sup>86</sup> <https://x.com/GunOwners/status/2023885011519500566?s=20>

**Defunding the ATF (Twice)<sup>87</sup>**

Anti-gunners defended the ATF's bloated budget and anti-gun enforcement agenda. GOA pushed for and achieved historic budget cuts to the ATF for a combined total of \$162,000,000 million.

**Speeding Up NFA Wait Periods<sup>88</sup>**

Anti-gunners wanted the ATF to remain slow and obstructive on NFA applications. GOA worked with Congress to prioritize ATF funding specifically to speed up NFA processing times in appropriations language, delivering faster service for law-abiding gun owners.

Anti-gunners also supported shutdowns that would keep the NFA Division closed and delay lawful gun owners.<sup>89</sup>

GOA fought to reopen the NFA Division in President Trump's ATF for the first time during a government shutdown, ensuring law-abiding Americans could still exercise their Second Amendment rights.

**Eliminating the National Firearms Act Tax on Suppressors and Short-Barreled Firearms<sup>90</sup>**

Anti-gunners long defended the \$200 NFA tax that imposed a senseless burden on suppressors, short-barreled rifles, and other items.

GOA worked closely with Rep. Andrew Clyde to eliminate the \$200 NFA tax on suppressors, short-barreled firearms, and AOWs as part of the One Big Beautiful Bill signed in 2025.

This represents one of the greatest Second Amendment legislative victories in nearly a century; GOA is now in court fighting to recognize that a \$0 tax is unconstitutional and that they are no longer subject to regulation under the NFA.

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<sup>87</sup> <https://x.com/GunOwners/status/2009389651573002447?s=20>

<sup>88</sup> <https://x.com/GunOwners/status/1980344359632662710?s=20>

<sup>89</sup> <https://www.gunowners.org/atf-recalls-nfa-examiners-to-work-during-shutdown-in-response-to-pressure-from-goa/>

<sup>90</sup> <https://www.gunowners.org/goa-to-file-one-big-beautiful-lawsuit-against-nfa-registry-as-one-big-beautiful-bill-heads-to-presidents-desk/>

## ***Taking the Fight to the States: GOA's Courtroom Victories Against Recent Local and State Gun Control***

While many of the most visible battles over the Second Amendment take place in Congress or federal agencies, some of the most consequential fights are happening in the states. Anti-gun politicians have aggressively pushed sweeping restrictions at the state and local level—often in direct defiance of Supreme Court precedent.

Gun Owners of America has met these attacks head-on in courts across the country, securing key victories and continuing to press forward in critical litigation. What follows are just four legal victories from the dozens of battles GOA has fought over the past few years.

### **Challenging New York's Post-*Bruen* Carry Restrictions**

In 2022, GOA sued New York over its inaptly named "Concealed Carry Improvement Act."<sup>91</sup> This was legislation hastily passed in the wake of *Bruen*, designed to make the New York permitting process impossible to navigate, and rendering the state inhospitable to those carrying firearms by designating nearly every public location a "sensitive place."

GOA quickly received a preliminary injunction against enforcement of much of the act. Unfortunately, the Second Circuit overturned much of that injunction, and later doubled down on its decision even after the Supreme Court vacated and remanded the case.

We are now back in the trial court, proceeding towards a final judgment. New York has already partially settled with us, consenting to permanent relief prohibiting it from demanding a person's social media history as a condition of licensure.<sup>92</sup> Litigation about the legality of New York's litany of sensitive places is ongoing.

### **Forcing Reform of California's Concealed Carry Permitting Abuse**

In 2023, GOA challenged the constitutionality of the Los Angeles Sheriff Department's concealed carry permit issuance policies, which charged exorbitant fees and imposed onerous wait times for permit issuance. We also challenged California state law which refused to grant carry permits to out-of-state residents, while failing to grant reciprocity to the permit of any other state.

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<sup>91</sup> <https://michellawyers.com/wp-content/uploads/2022/10/2022-09-20-Complaint.pdf>

<sup>92</sup> <https://thereload.com/new-york-agrees-to-stop-requiring-social-media-disclosures-for-gun-permits/>



After significant litigation, GOA secured relief on both fronts. The L.A. Sheriff's Department now issues permits within the time frame set by state law, and greatly reduced the fees it charges.<sup>93</sup> Meanwhile, California agreed to begin issuing out-of-state concealed carry permits on the same terms as permits are issued to California residents.<sup>94</sup>

### **Battling Illinois' Sweeping Semi-Automatic Firearm Ban**

In 2023, GOA challenged Illinois' newly enacted ban on so-called assault weapons and large capacity magazines. This tyrannical bill banned most semi-automatic firearms, including most of the most popular guns in the country. That same year, the federal judge in our case granted a preliminary injunction striking down the law.

However, Illinois quickly appealed its loss to the Seventh Circuit which, unfortunately, put the law back in place in a poorly reasoned, radical anti-gun opinion. But then, after returning to the district court, our trial judge again struck down Illinois' bans in late 2024.<sup>95</sup> Our case is now pending review (again) in the Seventh Circuit.

### **Overturning Virginia's Universal Background Check Scheme**

In 2020, GOA challenged Virginia's newly-enacted "universal background check" law. Later that year, we received a preliminary injunction, saying that the law could not be applied to young adults between the ages of 18-21, who the UBC law left entirely unable to purchase handguns (since federal law prohibits such purchases at licensed dealers).

Then, after years of litigation, the judge in our case threw out the entire law in late 2025, completely striking down Virginia's universal background check law.<sup>96</sup>

One final note: With Virginia enacting multiple gun control laws this year, Gun Owners of America is already gearing up for another round of court challenges.

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<sup>93</sup> <https://www.courthousenews.com/la-county-sheriff-settles-lawsuit-over-delays-in-concealed-carry-permits/>

<sup>94</sup> <https://thereload.com/analysis-some-non-residents-will-soon-be-able-to-carry-in-california-member-exclusive/>

<sup>95</sup> <https://isra.org/wp-content/uploads/2024/11/20241108-mcglynn-finding-of-fact.pdf>

<sup>96</sup> <https://www.gunowners.org/gun-owners-of-america-gun-owners-foundation-successful-in-overturning-virginias-universal-background-check-law-judge-halts-enforcement/>

***Federal Policies Must Strengthen,  
Not Undermine, Our Security***

The Second Amendment is not an abstract principle—it is a cornerstone of our national security. A free state is only as secure as the people who stand ready to defend it, and that security is weakened when lawful citizens are burdened, tracked, or discouraged from exercising their rights. This truth applies not only at the federal level, but equally in the states—where many of today’s most aggressive attacks on the Second Amendment are unfolding.

Despite a sustained push to expand federal control over firearms, the experience of Gun Owners of America shows that principled resistance can preserve and restore those freedoms. Time and again, efforts to impose sweeping restrictions have been stopped, scaled back, or overturned—protecting not just individual rights, but the broader balance of power that undergirds a free society. Whether in Congress, federal agencies, or courtrooms from New York to California to Virginia, GOA has demonstrated that these fights can be won.

But the concerns outlined here are not hypothetical or resolved. The continued accumulation of firearm records, the expansion of regulatory authority, and the advancement of novel legal theories all point in the same direction—toward greater centralization of power over a constitutionally protected right. And increasingly, that centralization is being driven through state-level restrictions designed to evade constitutional limits while reshaping the legal landscape nationwide.

That trajectory carries real consequences. Policies that treat law-abiding Americans as subjects of surveillance rather than participants in their own security do not make the nation safer—they move us further away from the constitutional framework that has long preserved both liberty and stability. Left unchecked, these policies—whether enacted in Washington or imposed in the states—risk normalizing a system where the exercise of a fundamental right is treated as a privilege to be managed.

If we are serious about homeland security, then we must also be serious about preserving the role of the American people within it. The right to keep and bear arms remains, as the Founders understood, necessary to the security of a free state—and it must be treated that way in both law and policy. Left unchecked, these policies—whether enacted in Washington or imposed in the states—risk normalizing a system where the exercise of a fundamental right is treated as a privilege to be managed.



TESTIMONY OF DUDLEY BROWN

PRESIDENT, NATIONAL ASSOCIATION FOR GUN RIGHTS

BEFORE THE U.S. SENATE COMMITTEE ON HOMELAND SECURITY &  
GOVERNMENT AFFAIRS HEARING ON “THE SECOND AMENDMENT”

342 DIRKSEN SENATE OFFICE BUILDING

APRIL 15, 2026

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Chairman, Ranking Member, and Members of the Committee —

My wheelhouse is the Second Amendment; it is my life’s work and I am thankful to have been given the opportunity to champion gun rights as a career for the last 33 years.

But a few months ago, a man was shot and killed at a protest in Minnesota. Now, I am not here to litigate Alex Pretti’s actions, whether the shooting was legally justified, or to endorse the politics of the protest he attended. I suspect he and I would have agreed on very little — that is not my concern today. My concern is what the current administration said afterward.

In the 33 years representing gun owners in state legislatures and the federal government, what is the tool I’ve relied on to preserve firearms freedoms? Easy. The First Amendment.

Today, I find it prudent to speak on the intersection of the First and Second Amendments, and the reason is simple: we as a nation have never seen these rights as wholly separate. The First Amendment is *how* free people speak to power. Americans have shown since the founding they will tolerate being governed, but not being ruled.

That is the arrangement that makes this country different from every other on earth — and it is precisely why an attack on the right to bear arms at a lawful public assembly is not a Second Amendment problem alone. It is an attack on the entire architecture of American liberty.

Before I go further, let me disavow the notion that this is a partisan issue. Regardless of the drastic changes of party control over the White House and the two legislative

chambers, the one constant is that all those in power must be reminded that a civil right is in place to protect all the people, regardless of their politics, their race, their creed.

That is what is happening here. Consider what was actually said by officials from the administration. The President of the United States said 'You can't have guns. You can't walk in with guns.'<sup>1</sup> The FBI Director remarked you simply cannot bring a firearm to a protest.<sup>2</sup> And the former Secretary of Homeland Security said 'I don't know of any peaceful protester that shows up with a gun and ammunition rather than a sign.'<sup>3</sup>

That last statement is the most revealing. Secretary Noem was not citing law. She was declaring a worldview — that carrying a firearm is inherently incompatible with peaceful assembly. It is a worldview the Founders would not have recognized. Just before the Second Amendment was ratified, six of the thirteen colonies did not merely permit citizens to carry firearms to public assemblies — they required it. The generation that wrote 'the right of the people peaceably to assemble' looked at an armed citizen in a crowd and did not see a threat to the peace. They saw its guarantee.

The argument being made implicitly is that you may have a Second Amendment right and a First Amendment right, but not both at once. Choose one. And if you choose wrong, don't be surprised if federal agents unceremoniously snatch one or both of those rights.

Several states today forbid the carry of firearms at public demonstrations. Those laws deserve scrutiny not only on constitutional but also on historical grounds. Their roots trace directly to the Black Codes.

A law conceived to control a people does not become legitimate simply because time has passed and the target has changed. The states that enacted them were not concerned with public peace, but with public control.

Each party has the same capacity for authoritarianism as the other side when it serves their short-term interests. So, I will ask the members in this room directly: is this the precedent we intend to set? That officials can decide, after the fact, that a citizen had no right to carry because the administration disliked his politics? That is not a legal conclusion. That is a rationalization.

There is no textual, historical, or traditional basis for the proposition that Americans must choose between their First and Second Amendment rights. You do not forfeit one by exercising the other. These rights are not in competition. They are the same right expressed twice. An armed people is a people whose assembly the government must take seriously. A disarmed people protest at the government's pleasure.

The Second Amendment does not exist in isolation. It exists to ensure that all the others remain meaningful. The Founders understood that. The statements made by this

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<sup>1</sup> Liz Landers and Joshua Barajas, "You can't have guns. You can't walk in with guns," Trump says of Alex Petti killing, PBS News, Jan. 27, 2026, <https://bit.ly/4bLerUb> (last accessed Feb. 9, 2026).

<sup>2</sup> Bill Hutchinson, 2nd Amendment backlash follows portrayal of Alex Petti by some Trump administration officials, ABC News, Jan. 27, 2026, <https://bit.ly/3MBTqB7> (last accessed Feb. 10, 2026).

<sup>3</sup> *Id.*

administration suggest they do not. The members of this committee have the standing, the authority, and the obligation to say so. I hope they find the courage to use it.

On behalf of the millions of members of my organization, who take this very seriously, let me thank you for your time.

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— END —

**The Second Amendment**

**Hearing Before the Senate Homeland Security  
and Government Affairs Committee**

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Testimony of Stephen I. Vladeck  
Agnes Williams Sesquicentennial Professor of Federal Courts  
Georgetown Law

**Wednesday, April 15, 2026**

Chairman Paul, Ranking Member Peters, and distinguished members of the Committee:

Thank you for the invitation to testify before the Committee today.

Of all of the conversations that we can and should be having about the U.S. Constitution today, this Committee's focus on the Second Amendment strikes me as singularly misplaced. Against mountains of evidence of unconstitutional behavior by the current administration and its officers and employees, there is, to my knowledge, virtually no evidence of the kind of widespread Second Amendment violations that would justify *any* congressional attention to the topic—let alone attention by *this* Committee.<sup>1</sup>

But even for those who would point to a handful of existing local and state gun control laws and claim that *they* violate the Second Amendment, the nature of such legislation makes it uniquely amenable to legal challenge—since virtually all laws regulating firearms impose the kinds of forward-looking consequences that can be challenged by those whose rights have allegedly been infringed through suits seeking prospective relief.

The same cannot be said with respect to the overwhelming majority of the current administration's unconstitutional behavior—from arrogating Congress's appropriations power to claiming the power to enter private homes without judicial warrants to chilling the constitutionally protected speech of law firms, universities, and non-citizen critics to going to war against Iran without even a scintilla of congressional authorization. Thanks to a combination of Supreme Court decisions and *inaction* by Congress, one need look no further than each day's headlines to see examples not just of constitutional rights and structural mandates over which this administration is running roughshod, but of constitutional violations for which there is—and has been—no remedy whatsoever.

In my opinion, *that* is the conversation we ought to be having, and the capital that this Committee (and Congress) ought to be expending on reforms: Not to focus on a small class of local and state laws that may not actually

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1. See U.S. Senate Homeland Security & Gov't Affairs Comm., *About—Jurisdiction and Rules* (last visited Apr. 11, 2026) (this Committee's "primary" responsibilities are "to study the efficiency, economy, and effectiveness of all agencies and departments of the federal government; evaluate the effects of laws enacted to reorganize the legislative and executive branches of government; and study the intergovernmental relationships between the U.S. and states and municipalities, and between the U.S. and international organizations of which the U.S. is a member").

violate the Second Amendment (and that have adequate remedies insofar as they do), but to look closer to home at all of the ways in which the executive branch is *currently* acting unconstitutionally while Congress sits silently on the sideline—refusing to avail itself of the political remedies that are already available, and the legal remedies for which it could easily provide.

In *Federalist 51*, James Madison argued that the Constitution would work only if the branches pushed aggressively against each other. In his words, “ambition must be made to counteract ambition.”<sup>2</sup> We certainly have an ambitious President and an ambitious Supreme Court. We certainly *don’t* have an ambitious Congress. That fecklessness has costs that go way beyond the Second Amendment, and that we (and this Committee) ignore at not only at *our* peril, but at the increasing peril of the rule of law.

#### I. LACK OF REMEDIES FOR INDIVIDUAL RIGHTS

I have written elsewhere, and in significant detail, about how difficult it has become for victims of constitutional violations by federal officers to pursue *any* redress.<sup>3</sup> Unlike what’s true for state and local officers, where suits under 42 U.S.C. § 1983 remain a viable (if not robust) remedy in many cases, there is no statutory basis for bringing damages suits against *federal* officers. For most of our history, that lacuna was not decisive; victims of federal official misconduct could bring suits under *state* tort law—and, unless the officer was entitled to some kind of official immunity, could obtain damages through that mechanism. Likewise, starting with the Supreme Court’s 1971 decision in *Bivens*,<sup>4</sup> federal courts would recognize circumstances where, just like what was (and remains) true for *injunctions*,<sup>5</sup> they could award damages for constitutional violations *without* an express federal cause of action authorizing such relief.

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2. THE FEDERALIST No. 51, at 322 (James Madison) (Clinton Rossiter, ed., 1961).

3. See, e.g., Steve Vladeck, *Accountability After Minneapolis*, ONE FIRST, Jan. 24, 2026, <https://www.stevevladeck.com/p/204-accountability-after-minneapolis>; see also Stephen I. Vladeck, *The Disingenuous Demise and Death of Bivens*, 2020 CATO SUP. CT. REV. 263.

4. *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

5. See *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) (“The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England.”).



But for better or worse, Congress in 1988 took almost all of those state tort remedies away.<sup>6</sup> And in the decades since, the Supreme Court has narrowed *Bivens* suits to a fare-thee-well<sup>7</sup>—to the point where, except for a fortuitous sliver of claims that can be brought directly against the United States under the Federal Tort Claims Act, it is nearly impossible to obtain damages for constitutional violations by federal officers today.<sup>8</sup>

In other words, even where federal officers would *not* be entitled to qualified immunity—where their conduct was not just unconstitutional, but violated *clearly established* constitutional rights of which every reasonable officer in their position would have known—they still cannot be sued for damages today. The result has been the disappearance of any *deterrent* for unconstitutional conduct by those officers—a disappearance that has been driven home by events in Minneapolis, Chicago, Portland, and elsewhere.

Injunctive relief, of course, remains available for *ongoing* violations of the Constitution—like the Second Amendment violations about which this Committee claims to be so worried. But for most of those whose rights are violated by the government, the violations are ephemeral. Unlike a local or state gun control law, an ICE agent who enters a home without a warrant or probable cause, or who uses excessive force, cannot be sued for prospective relief. Even efforts to block what appeared to be *policy-level* decisions by ICE to engage in racial profiling of suspected undocumented immigrants in and around Los Angeles foundered in the Supreme Court last September on this precise distinction—with Justice Kavanaugh’s solo concurring opinion in *Vasquez Perdomo*<sup>9</sup> arguing that the plaintiffs lacked standing to seek injunctive relief under the Supreme Court’s 1983 ruling in *City of Los Angeles v. Lyons*.<sup>10</sup>

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6. Federal Employees Liability Reform and Tort Compensation Act of 1988, Pub. L. No. 100-694, § 5, 102 Stat. 4563, 4564 (codified at 28 U.S.C. § 2679(b)).

7. *See, e.g.*, *Goldey v. Fields*, 606 U.S. 942 (2025) (per curiam); *Egbert v. Boule*, 596 U.S. 482 (2022); *Hernández v. Mesa*, 589 U.S. 93 (2020); *Ziglar v. Abbasi*, 582 U.S. 120 (2017). I should note that I was counsel of record for the petitioners in *Hernández*. Needless to say, nothing contained herein necessarily represents the views of my co-counsel or our clients.

8. *See* Steve Vladeck, *Damages as a Missing Deterrent*, ONE FIRST, Oct. 9, 2025, <https://www.stevevladeck.com/p/bonus-182-damages-as-a-missing-deterrent>.

9. *Noem v. Vasquez Perdomo*, 146 S. Ct. 1, 2–3 (2025) (Kavanaugh, J., concurring).

10. 461 U.S. 95 (1983).

Nor is this problem limited to misconduct by ICE. As this Committee well knows, ever since Congress significantly expanded the scope of the Foreign Intelligence Surveillance Act (FISA) after September 11, it has been exceedingly difficult for those Americans whose communications have been intercepted through warrantless electronic surveillance conducted under FISA's auspices to vindicate *their* Fourth Amendment rights, either—given the structural insufficiency of the judicial review provided by the FISA Court.<sup>11</sup>

Beyond the Fourth Amendment, we have also seen an unprecedented number and degree of executive branch behavior flatly inconsistent with the First Amendment's Free Speech Clause—from executive orders targeting law firms and universities to revocations of immigration status from non-citizens who have done nothing other than exercise their constitutional right to peaceably protest.<sup>12</sup> Although First Amendment violations, in the abstract, can often be vindicated through suits for declaratory or prospective relief, the *scale* of the administration's behavior in this context has made it all-but impossible for *everyone* whose speech has been chilled to vindicate their rights—creating much the same gap that already exists with respect to Fourth Amendment violations.

In *Marbury v. Madison*, Chief Justice Marshall famously quoted Blackstone's invocation of the Latin maxim *ubi jus ibi remedium*—"where there is a right, there is a remedy."<sup>13</sup> Although that principle has been honored in the breach for most of American history, today's jurisprudential landscape is one in which it is just not being honored at all, and in which countless constitutional rights have *no* legal remedy. That seems like a much bigger—and more immediate—problem than the one that is the putative basis for today's hearing. It's also a problem Congress could easily and quickly fix.

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11. See, e.g., Steve Vladeck, *It's Time to Fix the FISA Court (the Way Congress Intended)*, NBC News, Aug. 1, 2013, <https://www.nbcnews.com/id/wnba52640684>.

12. See CTR. FOR AM. PROGRESS, PROTECTING CONSTITUTIONAL FREEDOMS OF SPEECH AND ASSEMBLY DURING THE SECOND TRUMP ADMINISTRATION (2026), <https://www.americanprogress.org/article/protecting-constitutional-freedoms-of-speech-and-assembly-during-the-second-trump-administration/>.

13. See 5 U.S. (1 Cranch) 137, 163 (1803) ("[I]t is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress." (internal quotation marks omitted)).

## II. LACK OF REMEDIES FOR THE ERODING SEPARATION OF POWERS

One can make much the same point about many of the *structural* constitutional violations we've seen from this administration—especially with respect to executive branch's unprecedented arrogation of Congress's appropriations power and its increasingly alarming—if distressingly familiar—arrogation of Congress's war powers.

Taking appropriations first, as this Committee knows, the *single* power the Constitution gives to Congress and then expressly denies to any other actor is the appropriations power. Article I, Section 9, Clause 7 is explicit that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” Just as the President cannot spend money Congress *hasn't* appropriated, he also can't refuse to spend appropriations that Congress had mandated.<sup>14</sup>

Nevertheless, this administration has engaged in an unprecedented number and degree of violations of both principles. It has regularly refused to spend money Congress required it to spend; and it has regularly spent money no statute authorized. In both cases, there has been neither a legal remedy nor a political one.

On the legal front, even after lower courts ordered the Trump administration to spend upwards of \$4 billion in mandatory foreign aid funding, the Supreme Court last September issued a stay.<sup>15</sup> Although the Court did not write a majority opinion, its cryptic and unsigned order suggested that the lower courts had erred because only the Comptroller General could invoke the Impoundment Control Act of 1974 against the President.<sup>16</sup> In other words, it wasn't that the President had acted constitutionally; it was that Congress hadn't authorized *those* plaintiffs to obtain relief against his unconstitutional conduct (a conclusion that, even if it was remotely persuasive, could easily be fixed).

On the political front, well, I don't need to tell this Committee just how little Congress has stood up for its own appropriations power. But in one exchange that strikes me as especially revealing, Rep. Tom Cole, Chairman of

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14. See Anti-Deficiency Act, 31 U.S.C. § 3141.

15. *Dep't of State v. AIDS Vaccine Advisory Coalition*, 146 S. Ct. 19 (2025) (mem.).

16. *Id.* at 19 (“The Government, at this early stage, has made a sufficient showing that the Impoundment Control Act precludes respondents’ suit, brought pursuant to the Administrative Procedure Act, to enforce the appropriations at issue here.”).

the House Appropriations Committee, suggested last January that it was perfectly fine for the President to refuse to abide by congressional appropriations—because an appropriation “is not a law”; it’s just a “congressional directive.”<sup>17</sup> Leaving aside the point that, under Article I, Section 9, Clause 7, appropriations can *only* be laws, this attitude drives home the broader problem: Congress has been not just passive, but willfully complicit, in the President’s . . . appropriation . . . of the legislature’s most important constitutional power.

Of course, one can tell the same story about the drift of war powers from Congress to the executive branch. Among countless other scholars of all ideological stripes, I’ve been arguing for decades, across multiple presidencies, of the need for more accountability in that space.<sup>18</sup> Indeed, the only real difference here is that the story is a longer one.<sup>19</sup> But the Trump administration’s campaign of lethal boat strikes in international waters;<sup>20</sup> its invasion of Venezuela on the highly dubious ground that it needed military force to “support” law enforcement personnel as they arrested Nicolás Maduro;<sup>21</sup> and its large-scale uses of offensive military force against Iran<sup>22</sup> are all exemplars of what happens when there are neither legal nor political remedies for unconstitutional behavior by the executive branch: nothing.<sup>23</sup>

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17. John Fritze, *Trump’s spending freeze sets up a future possible Supreme Court showdown over presidential power*, CNN.com, Jan. 28, 2025, <https://www.cnn.com/2025/01/28/politics/spending-freeze-presidential-power>.

18. See, e.g., Stephen I. Vladeck, *Targeted Killing and Judicial Review*, 82 GEO. WASH. L. REV. ARGUENDO 11 (2014), [https://www.gwlr.org/wp-content/uploads/2014/02/Vladeck\\_SME2.pdf](https://www.gwlr.org/wp-content/uploads/2014/02/Vladeck_SME2.pdf); Stephen I. Vladeck, *War and Justiciability*, 49 SUFFOLK L. REV. 47 (2016).

19. See JOHN HART ELY, *WAR AND RESPONSIBILITY: CONSTITUTIONAL LESSONS OF VIETNAM AND ITS AFTERMATH* (1995).

20. See Steve Vladeck, *Five Questions About “Extrajudicial Killings,”* ONE FIRST, Nov. 6, 2025, <https://www.stevevladeck.com/p/188-five-questions-about-extrajudicial>.

21. See Steve Vladeck, *Five Questions About the Maduro Arrest Operation*, ONE FIRST, Jan. 3, 2026, <https://www.stevevladeck.com/p/200-five-questions-about-the-maduro>.

22. See Steve Vladeck, *The Supreme Court and Vietnam*, ONE FIRST, Mar. 9, 2026, <https://www.stevevladeck.com/p/215-the-supreme-court-and-vietnam>.

23. A good example of this nihilism can be found in Jack Goldsmith, *Law Is Irrelevant to the U.S. Attack on Iran*, EXECUTIVE FUNCTIONS, Feb. 28, 2026, <https://www.execfunctions.org/p/law-is-irrelevant-to-the-us-attack>.

### III. THE WAY FORWARD

What is perhaps most disappointing about this Committee’s refusal to take up these far more important questions is that it would—and should—be remarkably easy for Congress to assert itself in each of these areas (and others), both directly and indirectly. Indeed, meaningful accountability for government officers who violate the Constitution isn’t—and shouldn’t be—a political or ideological issue.

One can accept that we’re all going to have widely varying views on exactly which rights the Constitution protects (and how), and still believe that, whatever rights the Constitution recognizes, there ought to be a meaningful way to enforce them against all government officers—or, at the very least, against everyone other than the President himself.<sup>24</sup> Otherwise, what’s the point of having those rights in the first place? A world in which the Constitution is only enforceable against the federal government *prospectively* is a world in which the federal government and its officers can do whatever it wants to the people—so long as the misconduct is brief and fleeting. And it’s a world in which the only penalty the government pays for *violating* the Constitution is having to cease its unconstitutional behavior.

Across all of the federal accountability controversies of my professional career—torture; warrantless wiretapping; the unlawful surveillance programs leaked by Edward Snowden; drone strikes on U.S. citizens; the George Floyd protests; and on and on—it has boggled my mind that there isn’t bipartisan support for such legislation. And, although this may lead members of this Committee and others to call me “partisan,” it’s worth stressing that, at virtually every turn, the reason why these legislative proposals haven’t advanced has invariably been opposition from Republicans—not Democrats. I fear that today’s hearing is, however unintentionally, an illustration of why that has been the case.

Indeed, what is especially striking about all of the unconstitutional behavior of the current administration is that they are coming not in the face of a hostile Congress, but without any attempt to even *obtain* statutory authorization—even though the President’s party also controls both legislative chambers, including this Committee. Instead of making the case

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24. Even if the President is entitled to absolute immunity for official acts under the Supreme Court’s decision in *Trump v. United States*, 603 U.S. 593 (2024), his subordinates are not. See *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).



for why Congress should loosen or repeal the various mandates that the executive branch is violating, or should authorize the unilateral conduct in which the executive branch is engaging, this administration is effectively thumbing its nose at our elected representatives in the House and the Senate—*i.e.*, at you. And in response, this Committee chose to hold ... this hearing.

Nor should such a conversation be limited to new statutes Congress can (and should) pass—whether to provide more specific authorization for the executive branch's conduct or to empower *courts* to hold the executive branch more accountable for acting *without* such authority. Congress has a broad array of well-settled powers to impose such accountability directly—through its oversight function; its ability to exact concessions out of the executive branch in exchange for everything from appropriations to appointments; and, if necessary, its impeachment power. Even without going through the rigors of bicameralism and presentment, the Constitution gives Congress myriad tools to wield against a lawless President. That Congress is choosing not to wield them is a profoundly dispiriting reflection on its commitment to the separation of parties, rather than the separation of powers.

Instead, the result of the executive's assertion of authority and Congress's abdication of responsibility has been not just an unprecedented breakdown in the separation of powers; but a growing and seemingly unending list of negative, real-world impacts on everyday people. And to tie this back to this Committee's actual mandate, these developments are necessarily coming at the expense of our homeland security—not only because our friends abroad will become increasingly reticent to trust us, but because the very government agencies tasked with defending all Americans from threats foreign and domestic are being turned into vehicles for carrying out nothing more than the President's personal policy priorities of the day.

Against that backdrop, it strikes me as more than a little ironic that this Committee believes the most important thing that it can and should be discussing today is whether to enact the legislation discussed by the other witnesses. It seems to me, instead, that this Committee should be focused on (1) rigorous oversight hearings to document the unconstitutional behavior by the government agencies over which it has jurisdiction; (2) ways in which this Committee specifically, and Congress as a whole, can reassert legislative primacy in the area of spending and appropriations; (3) legislation to provide meaningful and adequate remedies to *everyone* whose rights are violated by

the federal government; and (4) more generally, underscoring the importance of the moment we find ourselves in—and the dangerous precedents we risk setting for the future, including, perhaps, when Congress and the White House are controlled by a different party than the one currently in power.

I would look forward to participating in those discussions, Mr. Chairman. As for the nominal topic of today's hearing, it seems to me that it is sending exactly the *wrong* message at this moment in our history about the institutional autonomy, constitutional authority, and democratic responsibility of the legislature—the branch of the federal government that the Constitution, quite deliberately, put first. If we're going to talk about the Constitution, we should talk about why and how it is being so systemically violated by the current administration, why and how Congress is sitting idly by why that happens, and why and how a Congress that actually took its constitutional responsibility seriously should—and would—respond. After all, it just shouldn't be the case that the only way to hold the federal government accountable is to elect a new one.

Thank you again for inviting me to testify today; I look forward to your questions.

RAND PAUL, KENTUCKY, CHAIRMAN  
 RON JOHNSON, WISCONSIN  
 JAMES LANKFORD, OKLAHOMA  
 RICK SCOTT, FLORIDA  
 JOSH HAWLEY, MISSOURI  
 BERNIE MORENO, OHIO  
 JONI FINST, IOWA  
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 RICHARD BLUMENTHAL, CONNECTICUT  
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 ANDY KIM, NEW JERSEY  
 RUBEN GALLEGO, ARIZONA  
 ELISSA SLOTKIN, MICHIGAN

**United States Senate**  
 COMMITTEE ON  
 HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
 WASHINGTON, DC 20510-6250

April 10, 2025

Daniel Driscoll  
 Acting Director  
 Bureau of Alcohol, Tobacco, Firearms and Explosives  
 U.S. Department of Justice  
 99 New York Avenue, NE  
 Washington, DC 20226

Dear Acting Director Driscoll:

I write requesting information regarding the use of certain systems by the Federal Bureau of Investigation (FBI) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

Pursuant to a Freedom of Information Act request by Gun Owners of America, the ATF inadvertently released unredacted documents regarding a system monitoring Americans seeking to exercise their rights under the Second Amendment. Upon realizing their error, the ATF initiated an ongoing, yearslong effort to prevent the release of those documents.

Based on limited public information, the NICS Audit Log Review (Monitoring) system appears to allow ATF agents to request monitoring of a target for time frames ranging from 30 to 180 days after providing identifying information and applicable or potential violations of statute. Upon approval, the ATF would receive alert(s) from the FBI using information in its National Instant Criminal Background Check System (NICS). The existence of this program, and the ATF's longstanding push to conceal it from the public, raise questions about its general use and its potential to infringe on Americans' civil liberties.

For this reason, I request you provide complete, original, and unredacted copies of the following no later than 5:00 p.m. ET on April 24, 2025.

- Records showing the number of individuals for whom ATF is requesting or has requested NICS monitoring, since April 28, 2020.
- Records demonstrating the purpose(s) for which each individual has been monitored.
- Records discussing the legality of NICS monitoring.
- Records demonstrating the number of individuals prosecuted as a result of being "monitored" by the program.
- Records demonstrating any reported unlawful or otherwise improper misuse of NICS monitoring by ATF personnel (or contractors of ATF).

I appreciate your attention to this important matter.



Sincerely,

A handwritten signature in blue ink that reads "Rand Paul". The signature is fluid and cursive, with the first name "Rand" and last name "Paul" clearly distinguishable.

Rand Paul, M.D.  
Chairman  
U.S. Senate Homeland Security  
& Governmental Affairs Committee