Firearms Rights and a Draft Concealable Firearms Statute

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Second Amendment

The opening words of the Preamble to the United States Constitution are, "We the people of the United States," not "We the elected officers of the United States." Self-interested behavior by elected officers, who are citizens-in-fact, notwithstanding, constitutional guarantees of pre-existing rights are not perquisites of public office.

The Second Amendment guarantee of one of the pre-existing rights is:

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

In this context, the key word is "people." The Second Amendment guarantee covers all Americans. The guarantee is not limited to elected officers, to the exclusion of ordinary men and women, who are serfs-called-citizens.

Judicial war fever

Human nature being what it is, no right can be really absolute. "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."[1] Similarly, there is no right to conduct a loud discussion in a hospital, or to stand outside a church and disrupt the worship, such as by entertaining a crowd.

The fame of the preceding quotation from *Schenck* obscures the wretched holding of the case in which the quotation appears. There was pro-war approval, by the United States Supreme Court, of a conviction, and subsequent imprisonment, the ground for which was opposition, made known in distributed flyers, to American involvement in World War I.

Among other statements, the flyer characterized the Conscription Act as a violation of the Thirteenth Amendment; said that a conscript is no better than a convict; pictured Wall Street as malignant; urged a petition to repeal the Conscription Act; and described as a conspiracy the sending of citizens to foreign countries to fight in a war.

The expressions of opinion in the flyers were read as the crime of obstruction of the draft. "Of course, the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out. The defendants do not deny that the jury might find against them on this point."

At about the same time, three po-war decisions of like animus toward the First Amendment approved of conviction and imprisonment for anti-war socialism,[2] approved of conviction and

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[1] Schenck v. United States, 249 U.S. 47, 52 (1919).

[2] Debs v. United States, 249 U.S. 211 (1919).

imprisonment of a newspaperman for criticizing the government in print,[3] and approved of shutting down German newspapers in Philadelphia for undercutting patriotism.[4]

Those four cases half-suffocated the Free Speech Clause and the Free Press Clause of the First Amendment. Allowing justices and judges to disregard the intention of the Framers is folly.

First Amendment whim

According to *Schenck*, "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

The terms, "such circumstances" and "such a nature," are fact-based criteria. *Schenck* is devoid of a guiding legal principle, with which a jury is enabled to determine, from the facts encompassed by "such circumstances" and from the facts encompassed by "such a nature," that a "clear and present danger" was presented.

How written words in a flyer can be a clear danger or a present danger, let alone "a clear and present danger," is unfathomable.

In equal measure, one cannot fathom that anti-war socialism, or criticism of the government in print, or undercutting patriotism (however that is measured), is a circumstance, or is of a nature, to present a clear danger or a present danger or "a clear and present danger."

The later *Brandenburg*[5] formulation lacks fact-based criteria. Without a guiding legal principle, a jury is unable to determine whether there was going to be an "imminent lawless action."

There is a sense that "imminent lawless action" is a narrower term than is "clear and present danger," but, without a guiding legal principle, the sense is inchoate.

Schenck and *Brandenburg* underscore that Supreme Court formulations are whims of the day, not accurate renditions and applications of constitutional words and clauses as written and understood by the Framers, and as understood and ratified by the states.

One day in 1919, the whim of the majority of the justices settled on "clear and present danger."

On another day, fifty years later, in 1969, the whim of the majority settled on "imminent lawless action."

The next Supreme Court formulatory whim about criminalization of speech will be handed down in 2019.

Second Amendment whim

The subject of *District of Columbia v. Heller*[6] was the Firearms Control Regulations Act of 1975, a law of the District of Columbia.

Among other provisions, the act required re-registration of firearms which had been registered under the 1968 firearms law of the District of Columbia. After the re-registration period, handguns

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[3] Frohwerk v. United States, 249 U.S. 204 (1919).
[4] Schaefer v. United States, 251 U.S. 466 (1920).
[5] Brandenburg v. Ohio, 395 U.S. 444 (1969).
[6] 554 U.S. 570 (2008).

could not be registered, but new acquisitions of long guns could be registered. All prospective firearms owners had to fill out an application form, and be screened for eligibility to own a firearm. Criteria of eligibility included no prior conviction for a violent act, no prior narcotics-related conviction, and no mental-health problem. An applicant had to provide two full-face photographs, provide fingerprints, pass a vision test, and pass a written test of knowledge of firearms laws and of safe use of firearms. A firearm maintained in a residence had to be unloaded and disassembled, or rendered inoperable by a trigger lock.

Heller held that the act is unconstitutional. Residents of the District of Columbia could not be barred from acquisitions of handguns, and the mandatory disabling of a handgun (unloaded and disassembled, or trigger lock) could not enforced.

Associate Justice Antonin Scalia, who wrote the majority opinion, concluded that the pre-existing right guaranteed by the Second Amendment is individual, not collective. Nonetheless, he took back as much as he gave. He negated, through relativization, the individual nature of the Second Amendment guarantee.

> Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.[7]

He added in footnote 26, with which the preceding extended quotation ends:

> We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.[8]

In the text, the paragraph which follows the extended quotation is:

> We also recognize another important limitation on the right to keep and carry arms. *Miller* said, as we have explained, that the sorts of weapons protected were those "in common use at the time." We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of "dangerous and unusual weapons."[9]

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[7] District of Columbia v. Heller, 544 U.S. 570, 626-27 (2008) (citations and footnote omitted).
[8] *Id*. at 627.
[9] *Id*. (citations omitted).

Summary: The *Heller* holding is, "The Second Amendment guarantee is individual, and is not applicable only to militias." The *Heller* dictum is, "The Second Amendment guarantee may be straitened and throttled in all sorts of ways."[10]

Second Circuit

Contemporary governments the world over are semi-authoritarian, authoritarian, semi-totalitarian, or totalitarian. There is no limited government.

In the United States and its states, governance ranges from authoritarian to semi-totalitarian. Elected officers will read the *Heller* holding narrowly and the dictum enthusiastically. The dictum will be employed, especially in hotbeds of firearms-loathing such as California, Connecticut, District of Columbia, Illinois, Maryland, Massachusetts, New Jersey, and New York, to defend restrictive firearms statutes stoutly.

Business-as-usual governmental restrictions of firearms rights is underscored by the New York firearms law, pursuant to which New York is a may-issue state. That is to say, a bureaucrat who reviews applications for firearms permits may grant or deny an application for a concealed-carry permit, based on whether an applicant has a "proper cause" for a permit.

The standard of "proper cause" is not met by an applicant who invokes his constitutional right to be armed, and is not met by an applicant who invokes his common-law right of self defense. Rather, an applicant is required to demonstrate "a good and substantial reason" for issuance of a concealed-carry permit, particular to the applicant, and different from that of the general public.

In practice, a may-issue state is a no-issue state. Applications for concealed-carry permits are denied routinely to ordinary men and women.

The "proper cause" standard was upheld. It was determined that the Second Amendment guarantee extends only to one's residence. The "right of the people to keep and bear Arms" is not operative in relation to bearing a concealable firearm in public.[11]

Contours

In a perfect world, governmental permission would not be needed by an adult citizen to purchase a firearm or to keep a firearm or to bear a firearm ("the right of the people to keep and bear Arms"), just as governmental permission is not needed by an adult citizen to go to church ("Congress shall make no law . . . prohibiting the free exercise thereof"), or to speak ("or abridging the freedom of speech"), or to publish a newspaper or book or law-review article ("or of the press"), or to assemble ("or the right of the people peaceably to assemble"), or to be involved in politics ("and to petition the Government for a redress of grievances").

In this world, the imperfections of which are worsened by legislative, executive, and judicial meddling, the Second Amendment guarantee goes only so far. Lawful purchasing, keeping, and bearing of firearms are hedged by a thicket of conditions precedent and conditions subsequent. Not

[10] The *Heller* holding and dictum, which apply only in the District of Columbia, were extended to the states. McDonald v. Chicago, 561 U.S. 3025 (2010).

[11] Kachalsky v. County of Westchester, 817 F. Supp. 2d 235 (S.D.N.Y.2011), *aff'd*, 701 F.3d 81 (2nd Cir. 2012), *cert. denied sub nom.* Kachalsky v. Cacace, ___U.S. ___ (4/15/2013).

much changed in the years since *Heller* was handed down. Ordinary men and women remain hobbled by barriers to the exercise of their Second Amendment rights.

It could have been worse. Had the Second Amendment guarantee been deemed collective, ordinary men and women would have been entirely without concealable firearms. They would not have had any shield against criminals, and they would not have had any sword against tyrannical elected officers.

There would not have been, however, a parallel inability of elected officers to protect themselves, with firearms, from armed criminals or from ordinary men and women. Firearms laws written by elected officers for their benefit would have been unaffected by a collective Second Amendment guarantee. As usual, ordinary men and women would have been left holding the bag.

United States Senator Diana Feinstein (D.-Cal.) is an implacable foe of the Second Amendment. Example: Her bill, Assault Weapons Ban of 2013.[12] As law, the bill would have banned magazines which hold more than ten rounds; banned 157 firearms by name; banned detachable-magazine semi-automatic rifles and semi-automatic shotguns not exempted by name; banned semi-automatic shotguns with fixed magazines which holds than five rounds; and banned fixed-magazine semi-automatic rifles and pistols, if the fixed magazines holds more than 10 rounds, except for tubular-magazine .22 caliber rifles. And so on and so forth.[13]

Like all elitists, Senator Feinstein denies the applicability, to her, of constrictions imposed by government on ordinary men and women. In 1979, she said:

> "Less than twenty years ago I was the target of a terrorist group. It was the New World Liberation Front. They blew up power stations and put a bomb at my home when my husband was dying of cancer. And the bomb didn't detonate. [...] I was very lucky. But, I thought of what might have happened. Later the same group shot out all the windows of my home. [...] And, I know the sense of helplessness that people feel. I know the urge to arm yourself because that's what I did. I was trained in firearms. I'd walk to the hospital when my husband was sick. I carried a concealed weapon. I made the determination that if somebody was going to try to take me out, I was going to take them with me."[14]

It was reported, "Feinstein claims that she has since relinquished both the handgun and the concealed weapons permit."[15] No skin off her nose. Senators and representative-in-Congress, and their family members, are under the protection of the United States Capitol Police, both in the District

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[12] Diane Feinstein, "Stopping the spread of deadly assault weapons" (n.d.) (page of Senate web site), available at http://www.feinstein.senate.gov/public/index.cfm/assault-weapons (accessed 10/13/2014).

[13] National Rifle Association – Institute for Legislative Action, "S. 150: The Biggest Proposed Gun and Magazine Ban in American History" (2/5/2013), available at http://www.nraila.org/news-issues/fact-sheets/2013/s-150-the-biggest-proposed-gun-and-magazine-ban-in-american-history.aspx?s=constitutional+carry&st=&ps= (accessed 10/13/2014).

[14] NNDB, "Diane Feinstein" (n.d.), available at http://www.nndb.com/people/535/000023466 (accessed 10/13/2014).

[15] *Id.*

of Columbia and elsewhere in the United States.[16] Plus, she has the wealth to hire private armed guards.

Culture war

The fight-in-progress about the scope of the personal-firearms right is one aspect of the wide-ranging culture war which has been fought for five decades in the United States. Fields of battle in the culture war, additional to firearms:

• Abortion (whether permissible; if so, whether narrow availability or general availability).

• Drugs (whether heroin, cocaine, or marijuana should be decriminalized).

• Homosexuality (male and female; pervies' "rights").

"Marriage" means "permanent relationship of a man and woman, actualized by a licensed celebrant of marriages." The key phrase in the definition is "of a man and woman."

The term "same-sex marriage" is inconsistent with this definition of "marriage."

If "marriage" were to take the qualifier "same-sex," then the term "marriage" would mean, impliedly, "permanent relationship actualized by a licensed celebrant of marriages." The qualifier would indicate that marriage is not solely between one man and one woman, and that the type of marriage, whether same-sex or opposite-sex, has to be specified by the qualifier.

No qualifier may be used with marriage, however, because a marriage may be entered into *only* by one man and one woman.

A same-sex relationship which lasts over time can be referred to as a durational aberrant interaction. Or as a long-term co-degeneracy. Or as a continuing perversional circumstance. Not as a marriage.

• Illegal immigration into the United States (enforcement of United States immigration laws vs. open border).

• Religion in public life (Christmas tree and menorah on public property; prayer at public event).

• Size and scope of government (limited government, self reliance, equality of opportunities vs. big government, enslaving programs, equality of results).

Positions applicable to public issues include religiosity (primarily Christianity) versus secularism; nationalism (the United States is a special country) versus internationalism (the United States is one country among many); and individualism versus collectivism.

Culture-war battles are fought between members of the elite on the one side, and common men and women on the other side. Members of the elite are secular; think of the United States as one

[16] United States House of Representatives, "U.S. Capitol Police" (n.d.), available at http://www.house.gov/content/learn/partners/capitol_police.php (accessed 10/14/2014).

country among many; and prefer collectivism. Common men and women are religious; think that the United States is a special country; and prefer individualism.

Sneers by members of the elite, about common men and women, illustrate the chasm between the former and the latter. A superlative sneer was produced in San Francisco, on April 6, 2008, at a fund-raiser on behalf of then-Senator Barack Obama, in the course of his running for the office of president. Mr. Obama, a member of the elite, said:

> You go into these small towns in Pennsylvania and, like a lot of small towns in the Midwest, the jobs have been gone now for 25 years and nothing's replaced them. And they fell through the Clinton administration, and the Bush administration, and each successive administration has said that somehow these communities are gonna regenerate and they have not.
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> And it's not surprising then they get bitter, they cling to guns or religion or antipathy toward people who aren't like them or anti-immigrant sentiment or anti-trade sentiment as a way to explain their frustrations.[17]

That the sneer of President Obama, as he now is, touched upon those topics is not accidental.

• Guns: Members of the elite, who have connections to get firearms permits, oppose firearms ownership by common men and women.

• Religion: Members of the elite are secular.

• Antipathy, anti-immigrant, anti-trade: Members of the elite think of the United States as one country among many, devalue patriotism, and deny the differences between the United States and other countries. There is no regard for the United States among members of the elite, so they encourage the exportation of manufacturing capacity out of the United States, and they encourage the importation of Third World labor into the United States.

• Frustrations: Members of the elite fail to recognize that concerns of common men and women are based on values, especially the United States Constitution, family, and church.

Soccer

The wide differences between collectivism and individualism are illustrated by soccer.

• Soccer is a simple game, because collectivism dumbs down. Real life is complex. Individualism rejects the conceit of collectivism that rule-makers, whether in the Congress, in the White House, in

[17] Ben Smith, "Obama on small-town Pa.: Clinging to religion, guns, xenophobia" (*Politico*, 4/11/2008), available at http://www.politico.com/blogs/bensmith/0408/Obama_on_smalltown_PA_Clinging_religion_guns_xenophobia.html (accessed 5/19/2013).

state legislative branches, or in state executive branches, are able to prescribe for everyone and for every circumstance.

• Soccer, like collectivism, fosters boredom. There is a lot of to-ing and fro-ing during a soccer match, so the circumstance of play is endless time spent awaiting a goal. A presenter might report sport news as, for example, "The first goal was scored in the 34th minute." Individualism perceives that life is exciting, and that every day counts because life is short.

• Players of soccer are prohibited from using their God-given abilities. Field players may not use their hands. A goal-tender may use his hands, but only in the penalty area. Collectivism loves laws and regulations which hamper talented people. Individualism specifies that laws and regulations should do no more than set the framework of society.

• The regularity of low scores in soccer matches (*e.g.*, 0-0, 1-0) is symptomatic of coercion, by collectivism, of equal or nearly-equal results. Individualism recognizes that there are greater and lesser personal capabilities, and encourages application of personal capabilities without dictation of results.

•• Equal results: Compare scores in baseball, American football, basketball, and cricket. Wins are clear, even decisive. Individualism is concerned with preparation, effort, and winning, and doesn't disallow the joy of winning.

•• Nearly-equal results: A concern of collectivism is that a decisive win by a team could result in a losing team being "bullied" (in the politically-correct sense of "required to face unadorned reality"), and that "bullying" (here, "commenting about inferior sport-related performance") should be prohibited.

• Although life is strife, whether in business or in war, soccer friendlies abound. Collectivism has a penchant for process. Individualism rewards substantive success.

International regime

Destruction of the right of ordinary men and women "to keep and bear Arms," which is intended by American collectivists, is supported abroad, and from abroad. Firearms-loathing is an international, and an internationalist, depravity.

On the grounds of the United Nations in New York City, there is a bronze sculpture of a .45-caliber revolver, the barrel of which is knotted on itself. The sculpture is titled "Non-Violence."[18] Were there truth in public art, the sculpture would be titled "Defenselessness."

[18] Reconstruction, "Art at United Nations" (2008), available at http://reconstructionblog.blogspot.com/2008/02/art-at-united-nations.html (accessed 5/23/2013).

Prohibition and criminalization of personal firearms are goals of the United Nations.[19] UN lovers do not explain how the United Nations came to take a position on the issue of firearms. Nothing in the United Nations Charter permits the United Nations to do so. What's more, the United Nations is an international institution, created by a multilateral treaty, not a government and certainly not a world government.

Intended prohibition and criminalization of firearms always means the prohibition and criminalization of *personal* firearms. There never is the intention to prohibit and criminalize *governmental* firearms. Collectivists, and collectivist institutions such as the United Nations and the United States, strive for maximization of power exercisable by government and for minimization of power exercisable by ordinary men and women.

Common law

Blackstone expressed the common-law right of self defense.[20] Prohibition and criminalization of personal firearms disparage that common-law right.

In Blackstone's time, the eighteenth century, every man had the common-law right of self defense. Every man owned a sword. Whether he was in his house or in a public place, he had it available to him.

In the twenty-first century, every man and every woman has the common-law right of self defense. Every man and every woman should own a firearm. Whether in a residence or outside, he should have it available, and so should she.

In fact, ordinary men and women are denied not only the personal benefit of protective personal firearms, but also the personal benefit of a protective police force. The duty of a police force as a whole is to protect society as a whole. Absent a special relationship between a government and an ordinary man or woman, the government is immune from tort liability when exercising a governmental function such as providing police protection.[21]

Primary law

Legal denial of those personal benefits makes a mockery of the Primary Law, which is self defense. How does any man protect his children, his wife and himself, when he has neither a personal firearm nor a personal police force? He cannot, and that is a contributing factor to contemporary lawlessness.

Criminals stalk the streets because they know that the number of police officers on the job at any one time is a fraction of the total number of police officers. The ratio of police officers to the general population is not high in any event, and the number of police officers engaged in law enforcement at any one time is reduced significantly by shifts, public events, supervisory duties, administrative

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[19] United Nations Office for Disarmament Affairs, "Arms Trade Treaty" (2013) (English; corrected text), available at https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf (accessed 9/3/2014); Dave Kopel, "The United Nations vs. the Second Amendment:" (*Volokh Conspiracy*, 7/21/2008), available at http://volokh.com/2008/07/21/the-united-nations-vs-the-second-amendment (accessed 5/23/2013).

[20] 3 Bl. Comm. *3-*4 (1768).

[21] Annotation, Modern Status of Rule Excusing Governmental Unit from Tort Liability on Theory that Only General, not Particular, Duty Was Owed Under Circumstances, 38 ALR4th 1194 (1985); 36(1) Halsbury's Laws of England, Police, para 479, p. 371 (4th ed 2007 reissue).

responsibilities, court appearances, and authorized absences. Risk of failure of a criminal endeavor is tempered, because a limited police force cannot be everywhere at once. Societal protection of ordinary men and women is semi-illusory.

Police ineffectiveness and personal helplessness combine to break the social compact by completely disempowering ordinary men and women. John Locke (1632–1704) wrote: "For nobody can transfer to another more power than he has in himself, and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another."[22]

Society is formed, among other reasons, for betterment of self defense, but Lockian group-effort is not socialism. It is not an entire transfer of individual rights to society. A person voluntarily gives over to society only that portion of a right which is necessary to improve his lot, and only on condition that his lot indeed be improved thereby. No one surrenders any right to society beyond the point of diminishing returns; no one gives up his rights entirely or unconditionally, nor may one do so. *Liberty* is the term for the Anglo-Saxon/English tradition of a reservoir of undiminished and inalienable rights. The tradition is unique, so the term is unique to the English language.

Self defense is an undiminishable and inalienable right. Various societies maintain differing degrees to which the right of self defense is exchanged for greater security. Where there is a complete lack of the right of self defense, one suspects the existence of a repressive regime. A conqueror wants all firearms to be under governmental control, and all persons other than those selected by the government to be disarmed. It is with good reason that repressive countries resemble conquered countries. The central power structure maintains the monopoly of firearms, and the population-at-large is impotent. In 1917, Lenin wrote a newspaper article, the title of which is, "All power to the soviets!"[23] The subtext of "All power to the soviets!" is "All firearms to the government!"

Slavery

A governmental monopoly of firearms is incompatible with liberty. That is why the Second Amendment guarantee is among the Bill of Rights. Put another way, an armed populace cannot be oppressed. Without the constitutional guarantee of "the right of the people to keep and bear Arms," there can be no republican government, no limited government, no liberty. The right to keep arms is the right to be free; the right to bear arms is the right to be free; "The right to buy weapons is the right to be free."[24]

Were keeping and bearing of firearms entirely prohibited, as it would have been had the United States Supreme Court decided that the Second Amendment right is collective, then ordinary men and women would have been reduced to the status of slaves. It is a truism of history that slaves have been prohibited from possessing weapons. Chief Justice Roger Taney, of the United States Supreme Court, for one, noted this sociological fact. In a decision handed down a few years before the War Between the States, he determined that blacks, as slaves, were not citizens of the United States. If blacks were

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[22] John Locke, The Second Treatise of Government, ch. 11 (1690).
[23] V. I. Lenin, "All Power to the Soviets!" (1917), available at http://marxists.org/archive/lenin/works/1917/jul/18.htm (accessed 5/20/2013).
[24] A. E. Van Vogt, "The Weapon Shop," 30 Astounding Science-Fiction 9, 10 (Dec., 1942).

free and were citizens, they would have all privileges and immunities of citizenship, including the right "to keep and carry arms wherever they went."[25]

The well-worn argument is that a society without personal firearms is safer than is one in which ordinary men and women may keep and bear firearms. That is comparable to arguing that a society without motor cars and complex machinery is safer that one which is mobile and industrial. A cost of technology, whether a crane or a printing press or a motor car or an electricity-generating plant or an autoloader, is risk of use. Nothing is free.

Public safety

Were individual keeping and bearing of firearms generally permitted, it is not necessary for each ordinary man or woman to keep and bear a firearm in order to effectuate an increase in public safety. The preventive effect on criminals is accomplished when people *generally* keep and bear firearms. Uncertainty whether a potential victim has a firearm; likewise, uncertainty whether a neighbor or passer-by has a firearm, suffices to give a would-be criminal pause, for the possibility of failure of a criminal enterprise is in direct relation to the possibility of an immediate response to a crime in progress. Delay in apprehension decreases the chance that a suspect will be found, arrested, and prosecuted.

Further, individual keeping and bearing of firearms improves public safety by reducing the resort to use of firearms, and by fostering civility.

> You don't need to disarm yourself to stay out of fights. . . . An armed man need not fight. * * *
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> Well, in the first place an armed society is a polite society. Manners are good when one may have to back up his acts with his life. For me, politeness is the *sine qua non* of civilization.[26]

Prohibition by government of personal firearms actually makes society less safe. Firearms statutes, like all legislation, are observed only by law-abiding people. A statute which prohibits bearing a firearm for a criminal purpose, for example, is no more effective than is a statute which prohibits bank robbery, when a criminal intends to bear a revolver for a criminal purpose or to rob a bank. Statutes do not prevent conduct. Rather, statutes set societal norms, and permit societal intervention, such as through the police, when a statute is violated.

When a criminal decides to rob a bank and to use a revolver for that end, who is at hand to respond to his disobedience of the bank-robbery statute and to his disobedience of the firearms statute? Prohibition of personal firearms is notice to the criminal that no one in the bank is able to do anything about his robbery-by-firearm challenge to societal norms. A different scenario arises when there is no prohibition of personal firearms. The same criminal faces a tough practical problem at the bank. A teller or a customer who bears a firearm is in a position to forestall the robbery or to prevent the escape of the criminal.

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[25] Dred Scott v. Sandford, 60 U.S. 393, 417 (1856).

[26] Anson MacDonald, "Beyond This Horizon—," Astounding Science-Fiction 55, 91 (May, 1942).

Drafting a concealable-firearms statute

The Brady Campaign to Prevent Gun Violence, and Everytown for Gun Safety,[27] support impediments to firearms ownership. One or the other organization is in favor of background checks on *all* potential firearms buyers; the California law (A.B. 1014) which authorizes a pre-hearing seizure by the police of a firearm of a person who is unilaterally asserted, by a complaining party (a police officer; a family member) to be at risk for violence; and a social practice of parents asking whether there is an unlocked firearm in a residence, before sending their child to that residence to play.

Abolish-private-firearms groups will make full use of the taking back and the relativization by Associate Justice Scalia of the judicial confirmation that the Second Amendment guarantee is individual, not collective. Those groups will fight tooth and nail against even minimal ameliorations of statutory restrictions on private firearms.

Inaccuracies perpetrated by abolish-private-firearms-groups[28] should be countered by pro-private-firearms-groups, but absolutist positions of abolish-private-firearms-groups should not be countervailed through absolutist positions of pro-private-firearms-groups. The public will be skeptical of a proposed firearms statute which does not distinguish between law-abiding ordinary men and women on the one hand, and lunatics and felons on the other hand.

A parallel: Supporters of the freedom of religion should not take absolutist positions on religious observance. A distinction has to be made between a religion which is an expression of faith and a pseudo-religion which is a cover for debilitating actions. No one is permitted to declare himself to be an adherent of the Aztec superstition, for example, and to claim the right, as an adherent, to engage in human sacrifice for the purpose of perpetuating creation.

Similarly, the right of a free press is subject to the requirement that military secrets must be preserved. It is impermissible for a journalist to publish the access codes of the military-computer systems of the United States.

It follows that constitutional carry cannot be absolute.

Constitutional carry

The term for the unburdened right to buy firearms, to own firearms, and to bear firearms everywhere, and for the companion unburdened right to buy, own, and possess ammunition, is "constitutional carry."

All but six states have constitutional firearms-related guarantees.[29] A state which guards its constitutional firearms-related guarantee against encroachment, as strictly as the state guards other constitutional guarantees (religion, speech, press) against encroachment, is a constitutional-carry state.

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[27] Brady Campaign to Prevent Gun Violence (n.d.), available at http://www.bradycampaign.org (accessed 10/2/2014); Everytown for Gun Safety (n.d.), available at http://everytown.org (accessed 10/2/2014).

[28] *See* John R. Lott, Jr., "John Lott's Website" (n.d.), available at http://johnrlott.blogspot.com (accessed 10/7/2014); Raven Clabough, "Bloomberg's Anti-Gun Group to Survey 2014 Midterm Candidate" (*The New American*, 7/7/2014), available at http://www.thenewamerican.com/usnews/politics/item/18640-bloombergs-anti-gun-group-to-survey-2014-midterm-candidates (accessed 10/7/2014).

[29] Eugene Volokh, "State Constitutional Rights to Keep and Bear Arms," 11 Texas Rev. of Law & Politics 191 (2006).

American exceptionalism

The principled starting point for implementation of constitutional carry is that the Second Amendment and its state-constitution equivalents are guarantees of preexisting rights, and are nigh-on absolute, as the First Amendment and its state-constitution equivalents are guarantees of preexisting rights, and are nigh-on absolute.

• There may not be a law which conditions the exercise of a Second Amendment right on an application for and an issuance of a firearms license or an ammunition license, as there may not be a law which conditions the exercise of a First Amendment right on an application for and an issuance of a worship license or a public-speech license.

• A government may not impose a fingerprints requirement or a background-check requirement on a purchase or a possession or a bearing of a firearm, and a government may not impose a fingerprints requirement or a background-check requirement on a news reporter or on a Web publisher.

• The Second Amendment is independent of a firearms-skills course, and the First Amendment is independent of a peaceful-assembly skills course or a submission-of-petition skills course.

Nigh-on absolute rights Second Amendment rights, and nigh-on absolute First Amendment rights, are central values of American exceptionalism. It does not matter in the least that those American values, and others, are unique.

> There are many policies in the United States that are radically different from those in other countries. For instance — and for the moment — when we talk about freedom of speech, we really mean freedom of speech . . .. Canada and the United Kingdom talk a pretty good game about freedom of speech, but . . . theirs is a hollow commitment. If you are a Canadian churchman whose sermon hurts the wrong set of privileged feelings, you can go to jail. Certain political ideas are officially verboten in Germany.
>
> So the United States is practically alone in the world in not suppressing unpopular political views and religious ideas. Should we change that, and become more like Venezuela or Singapore? * * *
>
> The entire American political model is based on codifying policies that were in effect practically nowhere else in the world in the late 18th century. The supposition that people could get along without a king or a state-run church or a national censor, that they could choose their own faiths, speak their own minds, print their own newspapers, carry their own guns, and choose their own leaders without oversight from a hereditary aristocracy — at the time of the American founding, those ideas were considered more or less bonkers in most of the civilized world.

> That's a real fault line between conservatives and progressives: The Right tends to see those policies and institutions unique to the United States as markers of our liberty and excellence, while the Left sees policies and institutions unique to the United States as indicators that we are simply a few rungs on the evolutionary ladder behind Finland. It's American Exceptionalism vs. anti-American Exceptionalism . . ..[30]

Suggested constitutional-carry law

The best implementation of constitutional carry would be a firearms law which is a page or two long:

> Section 1. *Constitution*. This Act implements a constitutional prescription (article __, section __): "The right of the citizens to bear arms in defense of themselves and the state shall not be denied." [[31]]
>
> Section 2. *Firearms rights and ammunition rights*. (a) Every person who is a citizen of the United States and is domiciled in this State may purchase, own, possess, or carry a firearm in this state, and may purchase, own, possess, or carry ammunition in this state.
> (b) No license of any kind shall be required for the exercise of a right protected by the preceding subsection.
>
> Section 3. *Firearms prohibition and ammunition prohibition*. No person may exercise a right protected by section 2, if he was adjudicated to be mentally retarded in any degree, or if he was adjudicated to be insane, or if he was confined involuntarily, pursuant to a court order, to a mental institution, or if he was convicted of a felony prohibited by the Penal Law, or if he was convicted of two misdemeanors prohibited by the Penal Law.
>
> Section 4. *Standard of adjudication*. An official action which derogates from a right protected by section 2 shall be adjudicated under the standard of strict scrutiny.
>
> Section 5. *Restriction*. No subdivision or instrumentality of this state may have any law or ordinance, or any regulation, concerning firearms and ammunition.
>
> Section 6. *Definitions*. — [ammunition; citizen of the United States; firearm; insane, mental institution, mentally retarded, strict scrutiny].

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[30] Kevin D. Williamson, "Anti-American Exceptionalism" (*National Review Online*, 10/12/2014), available at http://www.nationalreview.com/article/390065/anti-american-exceptionalism-kevin-d-williamson (accessed 10/15/2014).

[31] S.D. Const. art. VI, § 24.

Constitutional carry – New Hampshire

A bill, HB 536, the Constitutional Carry Act of 2011, was introduced in the New Hampshire House of Representatives.[32] The bill was enacted by the House of Representatives in early 2012, and was sent to the Senate.[33]

The prefatory Purpose explains the need for constitutional-carry legislation:

> The General Court finds that the laws in existence regulating firearms ownership, possession, and use, do nothing to prevent crime, and only interfere with the natural rights of law abiding citizens. The General Court also finds that citizens engaged in practices currently lawful under New Hampshire laws, such as open or concealed carry of a firearm, have been subjected to harassment by law enforcement. Therefore the General Court finds it necessary to codify the inherent right to such practices. The General Court also reiterates that the right to self-defense is an inherent natural right and is stated in Part First, Articles 2 and 2-a, and shall not be abridged in any manner.

The references in the Preface are to the New Hampshire Constitution:

> **[Art.] 2. [Natural Rights.]** All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.
>
> **[Art.] 2-a. [The Bearing of Arms.]** All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state.[34]

The major terms of the bill are:

1. Any person who is not imprisoned, is not a convicted felon, and is not confined, pursuant to a court order, to a mental institution, has

> the affirmative right to keep and bear arms, such right includes but is not limited to: carrying openly or concealed, carrying loaded or unloaded, possession, use, acquiring, purchasing, transferring, inheriting, buying, selling, giving, or otherwise disposing of or receiving any firearm or self-defense weapon or tool without any license, permission, or restriction of any kind from or by any government agency.

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[32] New Hampshire Liberty Alliance, "HB536 (2012) – 2012-01-05 revision" (n.d.), available at http://www.nhliberty.org/bills/view/2012/HB536/2012-01-05 (accessed 10/18/2014).
[33] New Hampshire General Court – Bill Status System, "HB 536," available at http://www.gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=709&sy=2012&txtsessionyear=2012&txtbillnumber=HB536 (accessed 10/18/2014).
[34] N.H. Const. arts. 2, 2-a.

2. Wrongful official interference with an affirmative right includes an arrest or an attempted arrest or a harassment of any person for the lawful possession of a firearm. Also, any denial, suspension, or revocation of any firearms license or any application for a firearms license, other than a denial, suspension, or revocation based on law.

A public official who wrongly interferes with the affirmative right is guilty of a misdemeanor.

In addition, that public official has personal responsibility to pay the attorney's fees and costs incurred by a person whose affirmative right was wrongly interfered with.

3. A voluntary pistol/firearms licensing program is permitted. An application form for a voluntary pistol/firearms license is not to request or require more information than was requested or required by Form DSSP 85, as in use in December, 2009. Submission of a photograph or providing fingerprints may not be required. At the request of an applicant, a photograph or fingerprints may be part of his application for a voluntary pistol/firearms license.

4. A decision on an application for a voluntary pistol/firearms license must be made within fourteen days of the submission of the application.

Denial of a license is to be in writing, and a reason for the denial must be given.

Judicial review of a denial is to be available. The burden is on the licensing authority to prove, beyond a reasonable doubt, that the denial was proper.

5. A voluntary pistol/firearms license remains valid for ten years, a change of residence regardless. A licensee is not obligated to inform a licensing authority of a change of residence.

6. The director of the division of state police has a duty to see to the entering into, by New Hampshire, of reciprocity agreements, with other jurisdictions, concerning the validity, in other jurisdictions, of a New Hampshire voluntary pistol/firearms license. A reciprocity inquiry is to be made by the director, with a jurisdiction with which New Hampshire does not have a reciprocity agreement, once every five years. A reciprocity agreement is not to have an expiration date, unless the laws of the reciprocity jurisdiction require that the reciprocity agreement be subject to an expiration date.

New Hampshire – current law

There are few firearms restrictions in New Hampshire.

1. No permit is needed to purchase a rifle, shotgun, or handgun.

2. There is no registration of rifles, shotguns, and handguns.

3. There is no licensing of owners of rifles, shotguns, and handguns.

4. No permit is needed to carry rifle or a shotgun.

5. There is no limitation on ammunition purchases or on magazine sizes. Fingerprints and background checks are not required for purchasing a firearm.

6. New Hampshire recognizes firearms permits issued by some other states, and some other states recognize firearms permits issued by New Hampshire.

It is illegal to carry a loaded handgun concealed about oneself or in a vehicle. Thus, it is legal to carry an unloaded handgun, or a loaded handgun which is locked in a trunk or in a glove box.

A concealed-firearms permit is to be obtained from a designated public official, such as a chief of police. The applicant will be granted the right to have a concealed firearm, if the public official finds that the applicant is a "suitable person," and that he demonstrated a "proper purpose."

Grounds for denial include insanity, drug addiction, and alcohol addiction.

A "proper purpose" includes hunting, target shooting, self defense, and a reasonable fear that of a danger to life or property.

An applied-for license must be acted on within 14 days of the date of application.[35]

Arizona law

Arizona law[36] does not require a permit to purchase a concealable firearm. There is no registration of concealable firearms, and there is no licensing of owners of concealable firearms.

A permit is required for concealed carrying of a concealable firearm. An Arizonan who is at least 21 years old, is a United States citizen, completed an approved firearms-safety program, submitted fingerprints, submitted the prescribed fee, and is not prohibited from possession of a concealable firearm, is entitled to a permit for concealed carrying of a concealable firearm.

Persons to whom concealable firearms are prohibited include felons and illegal aliens.

Background checks are to be completed within 60 days of receipt of an application, and a concealable-firearm permit is to be issued within 15 working days after completing the background checks.

Restrictions related to concealable firearms include:

• No transfer of a concealable firearm to a minor, without the permission of the minor's parent or guardian.

• No possession by a person who was found judicially to be a danger to himself or others, and whose court-ordered treatment was not terminated.

• No possession by a person who was convicted of a felony which involved violence, or which involved possession and use of a deadly weapon or a dangerous instrument, unless his civil rights were restored.

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[35] National Rifle Association, Institute for Legislative Action, Gun Law, "New Hampshire" (8/26/2013), available at http://www.nraila.org/gun-laws/state-laws/new-hampshire.aspx (accessed 9/10/2014); Laws.com, "New Hampshire Gun Laws" (n.d.), available at http://gun.laws.com/state-gun-laws/new-hampshire-gun-laws (accessed 9/10/2014). *See* N.H. Rev. Stat. Ann. ch. 159 (2014).

[36] A.R.S. Title 13 (Criminal Code), ch. 31 (Weapons and Explosives) (Ariz. 2014).

• No possession by a person who is in prison.

• No possession by a person who is in a public establishment, after a reasonable request by the operator of the public establishment, or the sponsor of an event, to transfer custody of the concealable firearm to the operator or sponsor. Exceptions: shooting ranges, shooting events, and hunting areas.

• No possession in a polling place on an election day.

Restrictions of concealable firearms do not include:

• Possession of a concealable firearm by a person who is in his dwelling, or in his place of business, or on real property owned or leased by him.

• Possession of a concealable firearm carried in a belt holster which is wholly or partially visible, or which is carried in luggage.

Moderate firearms statute

The ethos of a state might not support implementation of law equivalent of the proposed best constitutional-carry law, the proposed constitutional-carry law of New Hampshire, the current law of New Hampshire, or the current law of Arizona law.

There follows a moderate firearms statute. For states with vehement anti-firearms laws (California, Connecticut, Illinois, Massachusetts, New Jersey, and New York), and for the District of Columbia, which likewise has vehement anti-firearms laws, enactment of the moderate firearms statute would cause a marked improvement of the legal circumstances, in those places, of ordinary men and women.

The text is interspersed with explanatory comments.

An Act to Implement Concealable-Firearms Rights,
and for other purposes

The people of the state of _____, represented
in the Legislature, enact:

Section 101. *Short title*. This Act may be cited as the Concealable-Firearms Rights Act of 2020.

Section 102. *Purpose*. This Act implements the guarantee, in article __, section __, of the Constitution, to wit: "Every citizen has a right to bear arms in defense of himself and the state."[37]

[37] Conn. Const. Art. First, § 15.

Section 103. *Legislative finding*. The right to buy concealable firearms, the right to keep concealable firearms, and the right to bear concealable firearms, are components of the right to be free.

Section 104. *Definitions*. In this Act:

(a) "Bear" means "be in possession of a concealable firearm, other than on real property which one owns or controls."

(b) "Concealable firearm" means "firearm which, at the time it is kept or borne, has a barrel length of twelve inches or less, and is not capable of firing more than one projectile with one trigger pull."

Comment: The phrase, "at the time it is kept or borne," counteracts judicial miscategorization of firearms, based on a characteristic which firearms *could* have. There are cases in which classification of a rifle as a machine gun, to the detriment of a defendant, was supported by an *unexercised* ability of a firearms *craftsman*, not the unskilled defendant, to work for several hours in order to modify the firing mechanism of the rifle, so that the rifle would be capable of firing more than one projectile with one trigger pull.

The barrel length of a concealable firearm is typically set at 18 inches. That is excessive. Twelve inches is a sufficient demarcation between concealable and not concealable. The length of the remaining part of the frame adds to the overall length of a firearm.

A firearm with a barrel length of more than 12 inches would be classified as a long gun.

(c) "Felony" means "offense, under the penal code of this state, or under the penal code (or equivalent) of any other state of the United States, or of the United States, or of a district, territory or possession of the United States, which is punishable by death, or by life imprisonment, or by imprisonment for more than one year."

Comment: The definition specifies a felony set forth in a penal code, by whichever name known (e.g., penal law; crimes code). There are a hundred thousand United States laws and a myriad of state laws which criminalize acts and omissions. Many of those laws classify all sorts of acts and omissions as felonies, as if all them are as serious as murder, kidnaping, rape, arson, burglary, robbery, and like offenses. To avoid exclusion of an excessive number of people from the Second Amendment guarantee, only penal-code felonies would disqualify a person from keeping firearms and bearing firearms.

(d) "Firearm" means "device which fires a projectile by the rapid combustion of a propellant."

(e) "Keep" means "be in possession of a concealable firearm on real property which one owns or controls."

(f) "Mental institution" means "facility, licensed under the laws of this state, or of any other state of the United States, or of the United States, or of a district, territory

or possession of the United States, in which psychological disorders, of persons confined to the facility, are treated."

(g) "Misdemeanor" means "offense, under the penal code of this state, which is punishable by imprisonment of one year or less."

Comment: The definition excludes a misdemeanor which is in a code other than the state penal code.

Section 105. *Preclusion*.

(a) A person shall not bear a concealable firearm, unless he has a license, issued pursuant to this Act, to bear concealable firearms.

(b) Subsection (a) of this section is inapplicable to a police officer, only in relation to a concealable firearm which is owned by the government which employs the police officer, and which is issued to the police officer by the employing government.

Section 105-a. *Clarification*.

To dispel doubt and for avoidance of error, it is specified that no license pursuant to this Act is required to keep a concealable firearm.

Comment: Section 105(b) exempts police officers, so that they may keep and bear employment-related concealable firearms. The exemption does not extend to a firearm which a police officer owns personally.

Also excluded from the exemption is an unofficial employment-related concealable firearm, such as a firearm concealed in an ankle holster, which a police officer bears to meet his felt need for extra firepower.

Additionally excluded from the exemption is a concealable firearm which a police officer bears for use as a dropsy.

Outside of the scope of employment by a police department, police officers are subject to all statutory requirements which apply to ordinary men and women generally. It is hypocritical for police officers to enforce concealable-firearms statutes, when they habitually disregard those statutes.

Section 105 does not have a licensing requirement for the keeping of a concealable firearm. The definition of "Keep," in § 104(e) is "be in possession of a concealable firearm on real property which one owns or controls."

To prevent judicial amendment of the Act, § 105-a makes clear that there is no licensing requirement to keep a concealable firearm.

Section 106. *Eligibility*.

A license to bear a concealable firearm may be issued to a person who is a United States citizen, who domiciled in this state, and who is at least twenty-one years old.

Comment: Maturity is needed for bearing concealable firearms. A man or a woman who is old enough to drive a car, or to drink whiskey or beer, is not necessarily mature enough to handle a concealable firearm. To err on the side of caution, the minimum age of twenty-one, rather than the minimum age of eighteen, should be prescribed.

Section 107. *Ineligibility*.

(a) A license to bear concealable firearms may not be issued to a person who

(I) is not a United States citizen, or

(ii) is not domiciled in this state; or

(iii) was convicted, on or after his eighteenth birthday anniversary, of a felony as defined in this Act, or

(iv) was convicted, on or after his eighteenth birthday anniversary, of two or more misdemeanors as defined in this Act, or

(v) was committed involuntarily, pursuant to a court order, on or after his eighteenth birthday anniversary, to a mental institution.

Comment: Under subsection (a)(iv), account would be taken of misdemeanors when one considers eligibility for a concealable-firearms license, but many minor acts and omissions are criminalized. It is all too easy for a government to burden a person who is basically law-abiding with a misdemeanor conviction.

In Los Angeles County, California, for example, there is a prohibition of the exposure by a female, who serves food or drink or both, of one nipple or of one areola or of both nipples or of both areolae. Exposure is a misdemeanor.[38] The prescribed punishment is a fine of not more than $500, or imprisonment in the County Jail for not more than six months, or both.[39]

Exceptions: "A theater, concert hall or similar establishment which is primarily devoted to theatrical performances;" and "Any act authorized or prohibited by any state statute."[40]

No matter that topless waitressing is a misdemeanor, it is not a serious departure from societal norms. A conviction for a misdemeanor which is not serious, or for a misdemeanor which is of limited seriousness, should not give rise to ineligibility for a concealable-firearms license.

Under the proposed definition, accordingly, only a misdemeanor expressed in the state penal code is a measure of whether a concealable-firearms license may denied. Any penal-code misdemeanor is a serious departure from societal norms, so a conviction for two penal-code misdemeanors should give rise to ineligibility for a concealable-firearms license.

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[38] L.A. County Code § 13.22.070 (2014).
[39] L.A. County Code § 13.22.100 (2014).
[40] L.A. County Code § 13.22.090 (2014).

Only the penal code of the licensing state is within the definition. Other jurisdictions have different, perhaps unacceptable, notions of acts and omissions which are penal-code misdemeanors.

Subsection (a)(v) specifies commitment. Psychiatric counseling or psychological counseling is excluded. Neither indicates severe mental impairment.

> (b) A conviction as to which a pardon was issued by the president or governor of the jurisdiction in which the applicant was convicted shall not be considered a conviction for purposes of this Act.

Section 108. *Application*.

> (a) Each applicant for a license to bear concealable firearms shall complete a form wherein the following information is stated:
>
> (I) Applicant's name.
>
> (ii) Whether the applicant is a United States citizen.
>
> (iii) Address of the applicant's domicile.
>
> (iv) Applicant's date of birth.
>
> (v) Applicant's height.
>
> (vi) Applicant's eye color.
>
> (vii) Whether the applicant was convicted, on or after his eighteenth birthday anniversary, of a felony as defined in the Act.
>
> (viii) Whether the applicant was convicted, on or after his eighteenth birthday anniversary, of two or more misdemeanors as defined in the Act.
>
> (ix) Whether the applicant was committed involuntarily, pursuant to a court order, on or after his eighteenth birthday anniversary, to a mental institution.

Comment: The criterion in § 107(a)(iv) is, "was convicted, on or after his eighteenth birthday anniversary, of *two or more misdemeanors* as defined in this Act" (emphasis added).

An applicant must disclose a single misdemeanor conviction, although it is not disqualifying. In the event of a second conviction for a misdemeanor as defined, a sheriff, as an authorized issuer of firearms licenses (see § 109(a)) will have information sufficient to conclude that a licensee is no longer eligible for a license.

> (b) An application form shall be accompanied by documentary proof of the applicant's name, United States citizenship, domicile address, and date of birth.

(c) An application form shall have affixed thereto a photograph which is a likeness of an applicant.

Comment: The United States government and state governments require the obtaining of social-security numbers, which function as national-identification numbers, and make frequent demands for disclosures of SSNs.

The United States government and state governments require fingerprinting for driver licenses, for state identification cards, and for many types of employment, and make frequent demands for sets of fingerprints.

The United States government and state governments require DNA samples of many classes of ordinary men and women, and make frequent demands for DNA samples.

Warning: The day after tomorrow, the United States government and state governments will require, for official-identification purposes, the implantation of electronic chips into the bodies of ordinary men and women. Those chips will include GPS circuits, so that "security" agencies can track anyone and everyone 24/7.[41]

This section backs away from business as usual by the regime in Washington and by its cohort regimes in state capitals.

Accordingly, this section has no social-security-number requirement. Outside of tax collection, demands for social-security numbers are dangerous to liberty.

There is no fingerprinting requirement. Demands for fingerprints are dangerous to liberty.

There is no DNAing requirement. Demands for DNA samples are dangerous to liberty.

A separate reason for not requiring an applicant for a firearms license to disclose his social-security number, or to provide fingerprints, or to provide a DNA sample, is that bearing concealable firearm is a constitutional right. As there is not, and may not be, an obligation to disclose a social-security number, or to provide fingerprints, or to provide a DNA sample, to exercise a First Amendment right, there should not be an obligation to disclose a social-security number, or to provide fingerprints, or to provide a DNA sample, to exercise a Second Amendment right.

It may be that a non-obsessive application procedure will result in issuance, to an ineligible person, of a license to bear a concealable firearm. Mistaken issuance of a license is not, of itself, harmful to society. It is use of a firearm for a criminal purpose, not an improperly-issued firearm license, which is harmful.

(d) A concealable-firearms application form, and associated documents, are not public records.

Comment: The provision counteracts judicial decisions that concealable-firearms records are public records. A filed application form is no one else's business, as a filed tax return is not anyone else's business.

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[41] *See* Electronic Privacy Information Center, "Verichip," available at http://epic.org/privacy/rfid/verichip.html (accessed 5/26/2013).

(e) A copy of an application form for a license to bear a concealable firearm, and associated documents, may be released only on the request of an applicant or a licensee; or pursuant to an order of the Superior Court, on noticed motion, served by personal service on the person to whom the application form and associated documents relate.

Section 109. *Submission*.

(a) An application for a license to bear concealable firearms shall be made to the sheriff of the county in which an applicant is domiciled.

(b) A license to bear concealable firearms shall be issued within fifteen business days of the submission of an application form, unless information on the application form, or information revealed through investigation during the period of fifteen business days, shows that the applicant is ineligible for a license.

Comment: An investigation during the fifteen-business-days period can include, for example, a matching of an applicant's name and date of birth with records of convictions.

Specification of the period between submission of an application form and action by a sheriff prevents firearms-loathers who are in public office from undercutting, by means of delayed administrative work, the Second Amendment guarantee.

(c) A denial of an application shall be written, and shall state with particularity the reason or reasons for the denial.

Comment: The statute which provides for judicial review of an administrative decision would apply to denial of a firearms license.

Section 110. *Validity*.

A license to bear concealable firearms, issued under this Act, is valid for ten years from the date of issuance.

Comment: Renewals of driver licenses three years after issuances are for the raising of revenue. A 10-year period of validity of a firearms license is for the convenience of a licensee.

Section 111. *Reports*.

(a) A licensee of a license to bear concealable firearms shall report to the sheriff of the county in which the licensee is domiciled,

(I) a change of domicile by the licensee, and

(ii) a conviction of the licensee for a felony as defined in this Act or for a misdemeanor as defined in this Act.

(b) The director of a mental institution in this state shall report, to the sheriff of the county in which the mental institution is located, the name, date of birth, and residential address, as known by the director, of each person who was confined, voluntarily or involuntarily, in the mental institution.

Comment: "[A]s known by the director" precludes the responsibility of a director for reporting, to a sheriff, false information given to the director by, for example, the confined person or an ambulance driver.

(c) A report required subsection (a) of this section or by subsection (b) of this section shall be in writing, and shall be made within fifteen business days of an event. If an appeal is taken from a conviction for a felony as defined in this Act, or from a conviction for a misdemeanor as defined in this act, a report required by this section shall be made within fifteen business days of the entry into force of a final appellate judgment.

Section 112. *Prohibitions*.

(a) No person may bear a concealable firearm in

(I) the governor's official residence,

(ii) the building in which the governor's office is located,

(iii) the legislative building,

(iv) a court house, or

(v) a prison or a jail.

(b) No other place may be subject to a prohibition of the bearing of a concealable firearm.

Comment: The scope of a prohibitive provision must be carefully limited. Firearms-loathers use prohibiting provisions as a means of restricting the bearing of concealable firearms. By making many buildings and spaces firearms-disallowed zones, firearms-loathers cause inconvenience to ordinary men and women while they go about their daily errands. A concealable-firearms license is caused thereby to lose its vitality. Examples:

• A regulation of the United States Postal Service prohibits the bearing of firearms in post offices.[42]

[42] 39 C.F.R. § 232.1(l) (2013).

• A regulation of the State University of New York, which owns and operates 64 public-higher-education campuses in New York, prohibits possession of firearms on any campus, except for specified activities: educational programs, scientific research, skeet, trap, or other target shooting supervised by the university, or storage of sporting arms. The maximum period of validity of a firearms permit is one academic year.[43]

• A regulation of the Los Angeles County Law Library prohibits "Weapons" in the library.[44]

• In Michigan, holders of concealable-firearms permits, other than exempt persons, may not carry concealable firearms, which are in fact concealed, in identified places, except in parking lots of those identified places:

•• Schools, other than by a parent or a legal guardian who drops off or picks up a child, and the firearm is kept in the parent's or guardian's vehicle.

•• Public or private day-care centers.

•• Sports arenas or stadiums.

•• Bars or taverns in which liquor sold by the glass is the primary source of income, other than by the owner and employees.

•• Properties or facilities owned or operated by a church, synagogue, mosque, temple, or other place of worship, unless authorized by the presiding official.

•• Entertainment facilities which have a seating capacity of 2,500 or more.

•• Hospitals.

•• Dormitories or classrooms of a community college, college, or university.

•• Casinos.[45]

(c) Subsection (a) of this section does not apply to a police officer who is in a place listed in subsection (a) of this section, if the police officer is there for an official purpose. The exemption is limited to a concealable firearm which is owned by the government which employs the police officer, and which was issued to the police officer by the employing government.

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[43] 8 N.Y.C.R.R. § 590.3 (2014); SUNY, University-Wide Policies & Procedures, Document No. 5403 (2009), available at http://www.suny.edu/sunypp/documents.cfm?doc_id=367 (accessed 5/21/2013).
[44] Los Angeles County Law Library, "Rules of Conduct" (subheading: "Personal Conduct in the Law Library") (2104), available at http://lalawlibrary.org/index.php/about-us/rules-of-conduct.html (accessed 10/20/2014).
[45] MCL § 28.425o (Mich. 2014).

Comment: See the Comment to § 105(c), which explains the scope of the exemption for police officers.

Section 112. *Exclusivity of state law.*

No subdivision or instrumentality shall have any law, ordinance, rule, or regulation concerning concealable firearms.

Comment: Uniformity of state law is insured, and pockets of burdensome firearms restrictions are precluded.

Section 113. *Effective date.*

This Act shall take effect immediately.

Comment: For far too long, the constitutional "right of the people to keep and bear Arms" has been denied. Thereby, criminals have been armed while law-abiding persons have been defenseless. It is necessary for the public peace, health, and safety that firearms rights be implemented without delay.

Conclusion

The antagonism of elected officers to self reliance on the part of ordinary men and women notwithstanding, free men and women have the right to protect themselves. A state constitution, and state laws, should preserve that right, because of its importance. The negation by the Congress, the President, and United States courts of the Second Amendment guarantee is an additional reason to have state constitutional and legal protections of firearms rights.