

**THE NEED FOR
UNIVERSAL BACKGROUND CHECKS**

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Abstract

With a continuous rise in gun violence, particularly after the establishment of individual gun rights, and in order to facilitate public safety, the system needs universal laws that limit citizen's access to guns by those who represent a threat to public safety. In order to avoid violent events from mass shootings to domestic violence issues that use guns as their primary tools, we need to reconsider our current laws and Constitutional interpretations. The proposed solution to this is The Bipartisan Background Checks Act of 2021 which has already been passed in the House of Representatives. It is likely to be the first step in reducing gun violence across the nation.

The Second Amendment of the United States Constitution states, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”¹ The Amendment grants citizens the right to access guns for a variety of reasons. However, in recent years, the access to guns has become far too unrestricted and has led to the public being put in danger. The automatic right to guns should be reconsidered and have certain checks put on it including universal background checks.

Written by James Madison as part of the Bill of Rights, the Second Amendment was created to grant citizens the right to access weaponry. During the time of its writing, the Framers intended for the Amendment to allow citizens to be able to defend themselves against a potentially tyrannical government. After the failure of the Articles of Confederation, the current U.S. government was created by the Constitution which formed a central government with far more power. At the debates of the Constitutional Convention, it was feared, particularly by the Anti-Federalists, that this power would be mishandled and could lead to tyranny. This was also exacerbated by the way the Constitution centralized military power to the federal government. To combat this, citizens were guaranteed the right to bear

¹ *United States of America 1789 (rev. 1992) Constitution*, https://www.constituteproject.org/constitution/United_States_of_America_1992, (last visited Mar 13, 2022).

arms and gather in militias to fight against the federal government if such scenario occurred.²

A letter Thomas Jefferson wrote to J. Cartwright in 1824 said, “The constitutions of most of our States assert that all power is inherent in the people; that... it is their right and duty to be at all times armed.” He expanded upon this by stating, “A free state relies on its people to defend it when necessary and at all times to keep it free.”³ From the Jeffersonian perspective the main purpose of the right to bear arms is to protect citizens from an oppressive government, rather than their personal right.

The collective rights theory asserts the argument that the second amendment protects militias and a state’s right to protect themselves from the government.⁴ This interpretation of the amendment holds that rather than individual rights, it aims to protect larger state defense instead. The brief wording of the Amendment leaves its meaning a bit questionable, but the specific reference to a militia implies the use of collective gun rights within a regulated system.

² *Second Amendment*, Encyclopedia Britannica , <https://www.britannica.com/topic/Second-Amendment>, (last visited Mar 13, 2022).

³ Thomas Jefferson, *Jeffersonian Perspective, Guns & the 2nd Amendment*, (1824), <http://eyler.freesevers.com/JeffPers/jefpco29.htm>, (last visited Mar 24, 2022).

⁴ *Second Amendment*, Legal Information Institute , https://www.law.cornell.edu/wex/second_amendment ,(last visited Mar 13, 2022).

In 1939, the purpose of the second amendment was upheld as such. In *United States v. Miller*, the Supreme Court ruled that the right to bear arms extended to serving in the state militia, not beyond that.⁵ This meant that while citizens could own guns, the right was only protected if they were used to aid state militias. This case established that the purpose of the Second Amendment was to protect and arm militias, not an individual's right to arms.

However, this ruling was changed in a 2008 case, *District of Columbia v. Heller*. In this case, the Supreme Court ruled that the right to firearms did not solely exist for the purpose of serving in militias but included the right to exercise a lawful defense of home and family. The court did note that these rights were not unchecked, rather the federal government has the right to regulate their use. Felons, domestic abusers, or the mentally ill were still banned from owning arms.⁶ This landmark case was the first time that the Supreme Court clearly ruled that the Second Amendment did indeed protect the rights of individuals to own and carry guns.

Only within the last two decades have the individual rights to guns been established in the U.S.. Since the

⁵ *United States v. Miller*, 307 U.S. 174 (1939), Justia Law , <https://supreme.justia.com/cases/federal/us/307/174/> , (last visited Mar 13, 2022).

⁶ *District of Columbia v. Heller*, 554 U.S. 570 (2008), , Justia Law , <https://supreme.justia.com/cases/federal/us/554/570/>, (last visited Mar 13, 2022).

ruling, there has been a 17% rise in gun violence throughout the nation, but particularly in states with relaxed gun laws.⁷ With a shift in constitutional interpretation, a need to reconsider our current laws is crucial, especially when they can prevent rising gun violence.

Despite these limitations on who can own guns, universal background checks are not a federal law.⁸ This is particularly dangerous when private parties are selling guns to individuals who have previously shown violent tendencies or have their mental health in question. Currently, federal law only requires background checks to be done by licensed firearm dealers. This is done under the Brady Handgun Violence Prevention Act which uses the National Instant Criminal Background Check System (NICS) which has a registry of people who are banned from owning guns. While this system is useful, it is limited because it does not check private

⁷ *U.S. Gun Death Rate Jumps 17 Percent Since 2008 Supreme Court District of Columbia v. Heller Decision Affirming Right to Own a Handgun for Self-Defense*, Violence Policy Center (2018), <https://vpc.org/press/u-s-gun-death-rate-jumps-17-percent-since-2008-supreme-court-district-of-columbia-v-heller-decision-affirming-right-to-own-a-handgun-for-self-defense/>, (last visited Mar 13, 2022).

⁸ The Educational Fund to Stop Gun Violence, *Universal Background Checks*, The Educational Fund to Stop Gun Violence (2020), <https://efsgv.org/learn/policies/universal-background-checks/>, (last visited Mar 24, 2022).

sales in all states which might lead to firearms being sold to unfit individuals.⁹

This has become especially dangerous because guns are available for online purchase, oftentimes outside of federally licensed arms dealers. There have been several cases where violent offenders have been given the opportunity to buy guns through online shops and misuse them. According to a study done by the Center for Gun Policy and Research, 96.1% of offenders who were prohibited from owning firearms acquired them through methods that did not require background checks.¹⁰ By so easily allowing access to lethal weaponry, we place society at a greater risk for gun violence which statistics show has been on the rise over the past decade. According to Pew Research, there has been a 43% increase in the number of gun related deaths over the past decade.¹¹ These trends show the need for there to be greater restrictions placed on gun sales starting with universal background checks.

⁹ *Brady Law*, Bureau of Alcohol, Tobacco, Firearms and Explosives, <https://www.atf.gov/rules-and-regulations/brady-law>, (last visited Mar 13, 2022).

¹⁰ Katherine A Vites, Jon S Vernick & Daniel W Webster, *Legal status and source of offenders' firearms in states with the least stringent criteria for gun ownership*, 19 *Injury Prevention* 26–31 (2012), <https://injuryprevention.bmj.com/content/injuryprev/19/1/26.full.pdf>, (last visited March 31, 2022).

¹¹ John Gramlich, *What the data says about gun deaths in the U.S.*, Pew Research Center, February 3, 2022, <https://www.pewresearch.org/fact-tank/2022/02/03/what-the-data-says-about-gun-deaths-in-the-u-s/>, (last visited Mar 13, 2022).

Under the decision of *United States v. Cruikshank*, states have the right to regulate firearms, the Second Amendment is only meant “to restrict the powers of the national government.”¹² To that end, according to the Giffords Law Center article, 21 states have extended their gun laws beyond current federal regulation. Fourteen of these states typically require universal background checks on all gun purchases at the location of their sale. Others require purchasers to have a permit which includes a background check.¹³ These laws help keep firearms out of the hands that could use them in ways that are dangerous to the health and safety of U.S. citizens.

However, the rates of gun violence continue to soar even in states who have enacted stricter gun laws, such as Illinois. A majority of guns used in crimes are accessed through states that have more lenient gun laws, at 60%. They are bought in neighboring states, primarily Indiana, which does not have any requirements for permits, federal or state registration, and no background checks. When administrators are not taking action against gun violence within their own states, they cause a surge in

¹² *United States v. Cruikshank*, 92 U.S. 542 (1875), , Justia Law , <https://supreme.justia.com/cases/federal/us/92/542/>, (last visited Mar 13, 2022).

¹³ *Universal Background Checks*, Giffords Law Center (2020), <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/universal-background-checks/>, (last visited Mar 13, 2022).

violence in states close to them.¹⁴ It essentially makes Illinois's gun law ineffective when just crossing state borders will give individuals the gun access they lack in their own states. To fix these non uniform laws, a federal law must be passed to ensure that gun safety is upheld in every state in the nation.

It has been shown that more background checks prior to purchasing guns has reduced the number of gun related death in both cases of homicide and suicide.¹⁵ In Colorado, HB 1229 was passed in 2013, a policy that required all unlicensed firearms sellers to conduct background checks on all buyers. The background checks are done by the Colorado Bureau of Investigation (CBI) and have proven to be effective in gun control. Over a period of two years, nearly 30,000 background checks were conducted and 393 sales from unlicensed

¹⁴ Talib Visram, *Gun violence in U.S. territories is sky-high, thanks to lax gun laws in key states*, Fast Company, March 15, 2022, <https://www.fastcompany.com/90731181/gun-violence-in-u-s-territories-is-sky-high-thanks-to-lax-gun-laws-in-key-states>, (last visited Mar 24, 2022).

¹⁵ Bisakha Sen , Anantachai Panjamapirom, *State background checks for gun purchase and firearm deaths: An exploratory study*, 55 Preventive Medicine 346–350 (2012), https://www.researchgate.net/profile/Bisakha-Sen/publication/230591852_State_background_checks_for_gun_purchase_and_firearm_deaths_An_exploratory_study/links/5e9fd6c4299bf13079b1fedc/State-background-checks-for-gun-purchase-and-firearm-deaths-An-exploratory-study.pdf?origin=publication_detail, (last visited March 13, 2022).

sellers to unqualified buyers were prevented.¹⁶ On a national level, this could prevent tens of thousands of unfit individuals from acquiring guns. It is likely we would also see a decrease of gun violence and major shootings that have become far too prevalent within our society.

The Bipartisan Background Checks Act of 2021 aims to do exactly this and has already been passed in the House of Representatives. This Act establishes a new standard under which firearms will be bought and transferred. If it were to be passed, private dealers would have to first have licensed gun dealers do a background check before it is sold. This would close the loophole of unauthorized individuals using private sellers to gain access to guns.¹⁷

With stricter and more effectively enforced gun laws, we would likely have safer streets, schools, and overall daily lives. While the right to bear arms has been a right of every citizen since the founding of the country, a bipartisan bill needs to recognize newly developed issues and be able to properly combat them so that our laws remain relevant.

¹⁶ Jon S. Vernick, Ted Alcorn, Joshua Horwitz, *Background Checks for all Gun Buyers and Gun Violence Restraining Orders: State Efforts to Keep Guns from High-Risk Persons*, 45 *Journal of Law, Medicine, & Ethics* 98–102 (2017), <https://pubmed.ncbi.nlm.nih.gov/28661309/>, (last visited March 31, 2022).

¹⁷ Congress, H.R.8, *Bipartisan Background Checks Act of 2021*, [Congress.gov](https://www.congress.gov/bill/117th-congress/house-bill/8), <https://www.congress.gov/bill/117th-congress/house-bill/8>, (last visited March 31, 2022).

The right to bear arms was originally granted to the people because of the potential of a tyrannical government that would need to be overturned. However, in modern times, the U.S. stands as one of the longest lasting democracies in the world. The likelihood of the government becoming tyrannical is no longer as serious a threat as it was when the nation initially undertook the Constitution. As such, the right to bear arms shifted from purposes of the militia to individual protection and self defense. This posed the new issue of the misuse of guns causing an increase in gun violence. With the rise of a new danger to 'we the people' which the Framers did not foresee, the U.S. needs to adapt our laws to address these emerging threats and dangers. By doing so, unnecessary violence may be prevented and many innocent lives may be saved.