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April 19, 2007

The Fight To Bar Arms

By [Janet Ellen Levy](#)

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With the recent tragedy at Virginia Tech in which 32 people were slain on campus by a lone gunman who turned his weapon on himself, no doubt the clamor to ban personal ownership of guns will be raised again. Yet amidst the grief and anguish over this terrible incident it should be noted that the campus itself had gained a well-known reputation as a "gun free zone."

Virginia Tech earned that reputation from widespread, national coverage arising from the 2005 disciplining of a student who brought a permitted firearm on campus. That reputation was further enhanced in January of 2006, when H.B. 1572, a bill that would have

given students and employees the right to carry handguns on campus, was quashed in subcommittee review before it ever got to the Virginia General Assembly for a vote. Meanwhile, last June, Virginia Tech's governing board passed a violence prevention policy that further strengthened the ban against weapons on campus.

With the notoriety of its no-gun policy as a backdrop, the Virginia Tech campus thus ensured that students and faculty were practically sitting ducks, stripped of their ability to defend themselves during Monday's tragic sniper shooting. Who can say if the methodical shooter, Seung-Hui Cho, a senior who was a Virginia Tech student during the 2005 student-disciplining incident, was aware of the school's reputation and took it into account? What can be said, however, is that this most recent disaster, featured prominently on the national stage, underscores for many how necessary is our constitutional right to bear arms.

The right to bear arms is exercised by over 40% of American households.[i] Guns are used to ward off criminal threats about 2.5 million times each year, according to John Lott, author of *The Bias Against Guns* and *More Guns, Less Crime*. Indeed, in most defensive gun uses, the gun is not even fired, according to the National Rifle Association - Institute for Legislative Action (NRA-ILA). In only 1% of instances are criminals wounded and in only 0.1% of instances are criminals killed, the NRA-ILA says. Lott argues in *The Bias Against Guns* that gun ownership prevents crime, while efforts to impede law-abiding citizens' access to guns actually increase crime.[ii] Further, gun controls penalize and endanger law-abiding citizens while criminals continue to acquire guns illegally.

These arguments and the tragedy at Virginia Tech should be borne in mind because, today, efforts to curb private gun ownership are underway at international, national and local levels. Despite our constitutional right to bear arms and American avowal of the importance of guns for self defense, many proposed treaties, court rulings and local measures threaten to take away those rights. With anti-gun forces at work on all these fronts, many more of us could end up helpless like those who met their fate on campus at Virginia Tech. The efforts, outlined below, would not guarantee our safety, but would put all of us at greater danger.

International Efforts to Bar Guns

In the international arena, the United Nations is at the forefront of a global movement to limit worldwide gun production and eliminate private firearms ownership. Total disarmament of civilian populations is the U.N. goal. For the past five years, the United Nations has convened an annual, international gun control summit to discuss strategies to forestall the "proliferation of small arms and light weapons." Participating countries have included Iran, China, Algeria, Nigeria and Bangladesh, among others, as well as anti-firearms, non-governmental organizations (NGOs) which have pressured governments worldwide to eliminate civilian gun

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ownership. Conspicuously absent at the summit were staunch U.S. supporters of the right to bear arms, such as the National Rifle Association and the Second Amendment Foundation.

Organizations supportive of the right to bear arms often find themselves squaring off against NGOs leading the civilian disarmament movement. These NGOs include "Biting the Bullet Consortium," a joint project of International Alert, Saferworld, the Department of Peace Studies at England's University of Bradford and the International Action Network on Small Arms (IANSA). IANSA is a network of over 700 NGOs funded by the Open Society Institute, the Ford Foundation, the Rockefeller Foundation and others. It works against individual gun ownership in over 100 countries.

Biting the Bullet consortium member, International Alert, has focused its attack, in part, on the very definition of the right to bear arms. The organization has declared that "the U.S. Constitution does not guarantee individuals the right to possess or carry guns. The Second Amendment only protects 'the right to form militias under the control of state authorities.'"[iii]

Despite five years of effort and failure to reach consensus on international gun control standards, the United Nations, participating countries and NGOs still agreed in July to continue their efforts for five additional years. They seek implementation of the U.N.'s 2001 Programme of Action, whose full title explains its mission, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. They also seek a worldwide Arms Trade Treaty.

Pressure to pass an international Arms Trade Treaty intensified after Oxfam International, Amnesty International and IANSA launched an arms treaty proposal three years ago. In October, their efforts paid off when the U.N. General Assembly voted on the draft resolution. Out of 164 U.N. members, 139 countries voted in favor of the proposal. The United States stood firm and voted against it, despite appeals from U.S. Senator Diane Feinstein (D-CA) and 13 other senators that the Administration reconsider its position.[iv]

The resolution charges the U.N. to set up a committee to create "a comprehensive, legally-binding instrument establishing common standards for the import, export and transfer of conventional arms." [v] The Arms Trade Treaty would impose an international code of conduct on arms transfers and stop the sale of civilian arms worldwide.

The U.N. Programme of Action issues policies and standards for gun production and sales, weapons collection and destruction, and the control of the use of small and light weapons. It also endeavors to control management of the existing stocks of small and light weapons currently used by police, military, private security companies, border guards and other bodies charged with national security responsibilities.[vi]

The United Nations has been instrumental in the collection and destruction of guns in over 60 countries. Weapon destruction has been accomplished through bonfires, steamrolling and dumping of weapons into the ocean. The United Nations has pledged to curtail gun manufacturing, require registration of all weapons and make private gun ownership illegal. It has advanced the view that civilian possession of firearms constitutes a human rights violation and that the United States is negligent for allowing law-abiding citizens the right to decide if they want to own guns for self-defense. The United Nations has arbitrarily deemed gun ownership to be a privilege, not a right, and has declared American self-defense laws to be human rights violations. Further, the United Nations maintains that there is no universal right to self-defense and that the absence of gun control violates human rights. According to the U.N. standard, deadly force may only be used in a life-threatening attack as determined by international law.

In 2006, the United States voted against the Arms Trade Treaty, but signed on to the U.N. Programme of Action. U.S. officials of the current administration were unwilling to compromise Second Amendment provisions. Future administrations may be more willing to comply with such a "non-binding" U.N. treaty. Compliance could put the United States at risk of having an unelected, government appointee sign the treaty, have it unwittingly ratified into law by Congress and supersede our Bill of Rights.

As with other international treaties and agreements, democratic governments such as our own and those as in Australia, Canada and the United Kingdom, will comply with the regulations. Rogue states and third world countries will subvert provisions of the treaty. The world will be unable to force them to comply, in effect, placing us all at the mercy and whim of others bearing guns.

National Efforts to Bar Guns

At the national level, the tactic used by gun opponents has been to heavily regulate and redefine the Second Amendment in the quest to eliminate private gun ownership. Until the beginning of the 20th century and the use of the Fourteenth Amendment to impose federal rules on state governments, police powers were almost exclusively the domain of states, which regulated individual gun ownership. The assault on Second Amendment rights began in 1934 and arose from federal district courts reinterpreting the spirit of the Bill of Rights to enact



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federal laws curtailing the rights of gun owners and sellers.

The history of federal regulations reveals a gradual increase over time in restrictions on gun sales and ownership. Gun controls began in the early 20th century as part of the fight against organized crime. The first major gun control initiative, the National Firearms Act of 1934, was enacted by Congress to regulate the sale of fully automatic firearms by requiring gun registration and imposing a prohibitive tax of \$200 per firearm. The Federal Firearms Act of 1938 introduced a federal firearms license for gun dealers and prohibited the sale of guns to convicted felons.

With the assassinations of President John F. Kennedy, Attorney General Robert Kennedy and Martin Luther King, as well as the 1960's unrest, which included campus violence and ghetto riots, more legislation was enacted, this time focusing on controlling criminal and dissident segments of the American public. The Gun Control Act of 1968 expanded gun-dealer licensing requirements and regulated imported guns. It expanded the list of ineligible gun owners to include drug users, the mentally incompetent and minors. The Firearm Owners Protection Act of 1986 established mandatory penalties for gun use in the commission of a federal crime and prohibited manufacture or sale of armor piercing bullets. In 1990, the Act was amended to ban manufacture and import of semi-automatic assault weapons.

Following the attempted assassination of President Reagan, more legislation arose. The Brady Handgun Violence Prevention Act of 1994 created a five-day waiting period and local law enforcement background checks for all gun purchasers. The law was revised to eliminate the waiting period and the background check is now completed through a national computerized system. The 1994 Violent Crime Control and Law Enforcement Act outlawed manufacture of semi-automatic assault weapons, even though assault weapons are rarely used in crime and represent only 2.25% of the total gun stock in America.[vii] Viewed at the time by gun proponents as a step toward broader controls, the ban expired in 2004.

Clearly, regulation of activities related to the Second Amendment has increased over time. This worrisome trend toward greater regulation directly affects the free exercise of Second Amendment rights. Essentially, over-regulation of a right renders that right nearly impossible to exercise. It is essentially usurped.

Equally worrisome are court interpretations that chip away at the Bill of Rights. The first ten amendments to the U.S. Constitution limit federal government power and protect the rights of the people, including the right to bear arms. That right has been compromised since 2002 because of inconsistencies between the 5th and 9th federal Circuit Courts of Appeal over interpretations of that right under the Second Amendment.

In a 1999 opinion, the 5th Circuit Court affirmed the constitutional right of individuals to possess firearms through its examination of language in the Bill of Rights. The court stated that the word *rights* referred solely to *the people*. It ascribed *powers* or *authority* to state governments. Within the Bill of Rights, the court found that the Second Amendment is grouped with three other amendments that deal with *individual* as opposed to *states'* rights. The court further examined use of the term *the people* and deemed it consistent throughout the Constitution to confer the right of individual gun ownership under the Second Amendment.

In 2002, in an attempt to refute the 5th Circuit Court's decision, the 9th Circuit Court argued in *Silveira v. Lockyer* that the Second Amendment did not refer to individual rights to bear arms but to state rights, despite the fact that no mention of "collective rights" had ever existed in court rulings before the 20th century. Nonetheless, the 9th Circuit Court ruled that the Second Amendment did not give individuals the right to bear arms but protected only a state's right to equip its militia. At the time the Second Amendment was codified, the court said, America's national military consisted primarily of state militias commanded by the president in times of war. The 9th Circuit Court maintained that under this state militia system, Congress would not likely grant funding for training and equipment, thus, the right of states to do so needed to be specified in the constitution.

The contradictory opinions on this issue by federal circuit courts, which often reflect the political views of their districts, mean that the statutes must give differing rights to individuals in different regions of the country. Conceivably, a citizen in the 9th Circuit region doesn't enjoy the same rights afforded to someone living within the 5th Circuit region. By redefining *the people* referred to in the Bill of Rights as a collective entity, namely, the state, gun opponents can now advance an argument questioning the legitimacy of any right to bear arms.

Yet, to date, the U.S. Supreme Court has heard only five cases related to the Second Amendment and none of the rulings debated the issue of whether the right to bear arms is an individual or collective right. The Second Amendment opinions all cited the right to bear arms as an individual right of every citizen, along with voting, speaking and assembling, and as exempt from federal government infringement. The high court never linked the right to bear arms with states' rights to organize militias. It also clarified the intent of the Fourteenth Amendment to protect Bill of Right guarantees from abridgement by states. In the most recent case in which the Supreme Court dealt with the Second Amendment, *U.S. v. Miller*, the court indirectly reaffirmed Americans' private and personal right to keep and bear arms for self-

defense. Most likely, the split between the 5th and 9th Circuit Courts of Appeal will be resolved in the near future by a review and ruling on the interpretation of the Second Amendment.

Local Efforts to Ban Guns

At the local level, Second Amendment rights are under attack by anti-gun lobbyists who focus on individual cities and states across the nation and attempt to use municipal actions to restrict Second Amendment rights. Methods include restrictive municipal regulations regarding guns passed by governing bodies, anti-gun ballot measures and government-sanctioned, police confiscation of firearms. Examples of each have occurred in Washington D.C., San Francisco and, shockingly, in post-Katrina New Orleans. No matter what rationale preceded these actions, all effectively suspended the right to bear arms guaranteed in the U.S. Constitution.

In Washington D.C., residents are under the strictest gun restrictions of any major city in the nation as a result of municipally imposed regulations. In 1976, the Washington D.C. City Council passed the Firearms Control Regulations Act. It prohibited ownership of handguns entirely, in effect, disarming citizens and robbing them of the ability to defend themselves in their homes from criminal attacks. It also required registration of all privately owned firearms, such as hunting weapons, and mandated that they be unloaded, disassembled and trigger locked. Further, guns obtained before the 1976 ban could not even be carried from one room to another without a permit. These restrictions at the local level were taken despite guarantees made earlier under the Federal Gun Control Act of 1968. Section 101 of the 1968 Act clearly states that the spirit of the law is not to place "any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes..."[viii]

Yet, Washington D.C.'s strict measures have not deterred crime, the intended rationale for such regulations. The District of Columbia has the highest rate of gun violence in the nation. Interestingly prior to 1976, D.C.'s murder rate was declining, but, following implementation of the 1976 law, the murder rate rose significantly. In fact, between 1976 and 1991, the murder rate climbed to 200%, at a time when the overall U.S. murder rate rose only 9%.[ix] (Ironically, the district ruled in *Warren v. District of Columbia* that the city's police department "is not generally liable to victims of violent criminal acts for failure to provide adequate police protection...")[x]

District of Columbia residents are now in the untenable position of having to choose between endangering their lives or breaking the law and illegally owning a handgun. That firearms discourage crime is a given. A U.S. Department of Justice study found that 40% of criminals changed their minds about committing a crime when the victim was armed.[xi] National Crime Victimization Surveys show that "robbery and assault victims who used a gun to resist were less likely to be attacked or to suffer an injury than those who used any other methods of self-protection or those who did not resist at all."[xii]

A legal challenge to Washington D.C.'s firearms restrictions is currently underway in *Parker v. District of Columbia*. Shelly Parker and other parties to the lawsuit are suing for the right to own handguns for home self-defense. The plaintiffs live in an area with rampant drug problems and have been threatened on numerous occasions. They argue in their lawsuit that the city's overtaxed 911 service cannot protect them and that they have no other means to protect themselves apart from exercising their Second Amendment right to bear arms. The city's response has been to argue the position taken by the 9th Circuit Court of Appeals. Todd Kim, the D.C. Solicitor General has stated in the U.S. Court of Appeals for the District of Columbia, that "we interpret the Second Amendment in military terms."

In an attempt to help citizens living in our nation's capitol, the District of Columbia Personal Protection Act (H.R. 1288) was introduced in Congress by Rep. Mark Souder (R-Ind.) and Sen. Kay Bailey Hutchison (R-Tex.). They maintained that the mayor and the District of Columbia City Council do not have the authority to pass laws that override the Constitution and infringe on the rights of law-abiding citizens. The bill would end Washington D.C.'s prohibition on using guns for self-defense in the home and conform city gun laws to federal laws. If H.R. 1288 passes, the Parker lawsuit will be dismissed. If not, the Supreme Court will most likely decide *Parker v. District of Columbia*. A decision on this issue could have broader consequences, since a number of cities nationwide have similar, if less restrictive, firearms regulations passed by municipal authorities.

Cities and states also labor under gun restrictions when anti-gun lobbyists push for ballot measures. In 2005, San Francisco voters approved the nation's toughest ban on handguns, making gun ownership illegal in their city. Proposition H, which required city resident gun owners to turn in their firearms by April 1st, was approved by 58% of voters. The measure made it illegal to buy, sell, distribute or manufacture firearms and ammunition in the city of San Francisco.

However, in June of 2006, Superior Court Judge James Warren threw out the measure and declared that state law governing handgun ownership supersedes any local law. He sided with

the National Rifle Association which sued on behalf of gun owners and stated that Proposition H exceeded the powers of local government and intruded into an area regulated by the state.

Another and unexpected, local battle front on gun restrictions can arise from local law enforcement officials. Amidst complete anarchy in post-Katrina New Orleans with looting, carjacking, rapes and random shootings, the police disarmed surviving residents and left them defenseless. No 911 assistance existed at the time and law enforcement was fully engaged in search-and-rescue missions. This locally enforced suspension of Second Amendment rights led to the Disaster Recovery Personal Protection Act of 2006 (H.R. 5013) introduced by Congressman Bobby Jindal (R-LA). The Act prohibits confiscation of legal firearms from law-abiding citizens during states of emergency and protects the right of citizens to bear arms. But 33 states have emergency powers to suspend the sale and use of guns, and, in some states, authorities can seize guns from citizens who have committed no crimes. The NRA is working to overturn such legislation.

Although some may argue that prohibition of firearms ensures a civilized society, the opposite is actually true. The Second Amendment, which guarantees law-abiding citizens the right to bear arms, is the cornerstone of American freedom and independence. It was the intent of the founding fathers to provide American citizens with the ability and responsibility to protect themselves against crime and tyranny. The preservation of a civilized society and a secure democracy depends on a strong citizenry worthy of a government for the people by the people. Curtailing the right of citizens for self-protection violates their civil liberties. A free and democratic America depends on the protection of all of our rights under the U.S. Constitution.

Notes:

[i] *Sourcebook of Justice Statistics Online, 31st Edition*, <http://www.albany.edu/sourcebook/pdf/t2592005.pdf>

[ii] *The Bias Against Guns: Why Almost Everything You've Heard About Gun Control Is Wrong*, John R. Lott, Regnery Publishing, Inc., March 25, 2003

[iii] *Regulation of Civilian Possession of Small Arms and Light Weapons, Biting the Bullet - Briefing 16*, <http://www.international-alert.org/pdf/pubsec/BB-Briefing161.pdf>

[iv] *Fourteen Senators Call for U.S. Involvement in United Nations Global Arms Trade Treaty*, December 5, 2006, <http://feinstein.senate.gov/06releases/r-un-small-arms1205.htm>

[v] *International Arms Trade Treaty Aim of Draft Resolution*, Press Release, General Assembly, GA/DIS/3335 <http://www.un.org/News/Press/docs/2006/gadis3335.doc.htm>

[vi] *Reviewing Action of Small Arms 2006: Assessing the First Five Years of the U.N. Programme of Action*, Biting the Bullet, IANSA, 2006, http://www.international-alert.org/pdfs/red_book_2006.pdf

[vii] *NRA-ILA 2006 Firearms Fact Card*, <http://www.nra.org/Issues/FactSheets/Read.aspx?ID=83>

[viii] *The Gun Control Act of 1968, Public Law 90-168, Title I, Sec. 101*, http://www.af.gov/pub/fire-explo_pub/gca.htm

[ix] *Crime in the United States, U.S. Department of Justice, Federal Bureau of Investigation, 1976-1991* http://www.fbi.gov/ucr/05cius/offenses/violent_crime/murder_homicide.html

[x] *Warren v. District of Columbia*, 444 A.2d (1981)

[xi] James D. Wright and Peter H. Rossi, *Armed and Considered Dangerous: A Survey of Felons and Their Firearms*, 1986, p. 155

[xii] Gary Kleck, *Targeting Guns: Firearms and Their Control*, 1997, p. 171

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