

The Great Gun Control War of the 20th Century

An overview of research from Dave Kopel, Independence Institute.

By TJ Martinell

In the ongoing struggle to preserve our right to keep and bear arms, we can look over the last hundred years for lessons learned that we can apply to today's fight.

In a paper titled "[The Great Gun Control War of the 20th Century — And its Lessons for Gun Laws Today](#)," David B. Kopel of the Independence Institute and the Sturm College of Law at Denver University recounts the gun debate that raged on at both the national and state level leading up to the 2008 *District of Columbia v. Heller* decision.

Kopel notes that gun control primarily originated after the Civil War as a means to keep freed slaves from having access to firearms, as well as to prevent dueling. Throughout the 1800s, he writes, gun control laws were almost "exclusively a Southern phenomenon." Outside of that region, the only type of gun control that really caught on was prohibition of concealed-carry, although open carry was still permitted.

What finally brought gun control into the national spotlight was apprehension over revolutionary movements after the communists overthrew of the Russian provisional government in 1917. The gun control movement gained further support for restricting handguns when Prohibition led to a major crime wave in the 1920s.

"Nationally, the leading voices for handgun prohibition were conservative, Northeastern, urban, upper-class businessmen and attorneys" Kopel writes. "Pacifists who wanted to end war by getting rid of all weapons, including firearms, also played a role, but they were much less powerful than the business élite, which was used to getting its way."

However, the movement mainly worked at the state-level, where the National Rifle Association (NRA) fought against it by promoting an alternative model law called the Uniform Pistol and Revolver Act, which required a license for concealed carry.

With the election of Franklin Roosevelt to the presidency, Homer Cummings became Attorney General and made a major push for national gun control, specifically "a national registration for all firearms and the de facto prohibition of handguns," according to Kopel.

The first move in the effort was the National Firearms Act (NFA). Rather than outright ban on handguns, the law utilized a hefty tax to get around the Second Amendment in order to create a de facto ban. This is not some conspiracy theory, either. According to Kopel, Cummings openly declared the intent to a House Committee. After the NRA protested, the application of the NFA to handguns was removed from the bill, at which point the NRA ceased its opposition.

The NFA became law in 1934.

But Cummings wasn't done. After FDR's re-election, he went for the next step: a national gun registry.

“Show me the man who does not want his gun registered, and I will show you a man who should not have a gun,” he declared.

This time, the bill went nowhere.

Ironically enough, the NRA itself supported a separate gun control law, the Federal Firearms Act of 1938 (FFA), which required persons engaged in the interstate business of selling or repairing firearms to obtain a one-dollar license before shipping or receiving any firearm in interstate or foreign commerce.

According to Kopel:

Licensed dealers were required to keep a record of firearms sales and were prohibited from shipping guns in interstate commerce to anyone indicted for or convicted of a violent crime or otherwise prohibited from owning firearms under state law.

The next concern over gun control was the Property Requisition Act passed during World War II, which gave the President the authority to seize privately owned “machinery, tools, or materials” that were immediately needed for the national defense. The bill's language was eventually altered to include guaranteed protections of gun rights.

The gun rights movement also gained support as the Nazis and communist regimes instituted gun confiscations in their respective countries, which Kopel writes “become central to American resistance against gun registration, as they remain to this day.”

During President Eisenhower’s second term in 1957, numerous federal bureaucracies, including the Alcohol and Tobacco Tax Division of the Internal Revenue Service, attempted to create a national dealer-based system of gun registration as part of a list of proposed regulations, but opposition in the House put a stop to it.

In a twist of irony, the 1960 election featured Republican candidate, Richard Nixon, who was against firearms, though he kept these thoughts private. Meanwhile, the two Democrat candidates John F. Kennedy and Hubert H. Humphrey, openly voiced their support for the Second Amendment.

Although JFK wasn't the first president to be assassinated, his murder in 1963, and that of his brother, Robert, several years later, brought new life to the gun control movement. In response, the Emergency Committee for Effective Gun Control was formed, with former astronaut and future Senator John Glenn as chairman.

Its objectives, according to Kopel, included “national gun registration, national gun licensing, a ban on interstate gun sales, and a ban on mail order sales of long guns (mail order handgun sales had been banned since 1927).” Gun control advocates also went after Saturday Night Specials, which were inexpensive handguns.

"The idea that civilian gun ownership should be entirely prohibited moved from the fringe into the mainstream of public debate," Kopel writes.

Once more, rather than merely oppose gun grabbers, the gun lobby and gun manufacturers countered these efforts by introducing their own legislation, which included some of the provisions from the ECEGC's agenda, such as the national ban on mail order gun sales.

Finally, Congress passed the Gun Control Act of 1968 following a compromise with the NRA. While there would be no federal licensing of gun owners, the sales would be registered, albeit by the gun dealer.

Kopel writes:

The Act required gun dealers to keep a federal form (now known as Form 4473) detailing information for each sale (such as the gun's model and serial number, the buyer's name, address, age, race, and so on). The forms would be available for government inspection and for criminal investigations, but the forms would not be collected in a central registration list. In addition, mail-order sales of long guns were effectively banned, as were all interstate gun sales to consumers (except where states enacted legislation allowing the purchase of long guns in contiguous states). The GCA also banned all gun possession by prohibited persons, such as convicted felons, illegal aliens, and illegal drug users. Buyers had to certify in writing that they were not in a prohibited category. Gun imports were banned, except for the guns determined by the Treasury Secretary to be "particularly suitable for sporting purposes." As initially implemented, this prohibited small, inexpensive foreign handguns, and surplus WWII rifles, but allowed almost all other gun imports.

In 1972, the Senate voted overwhelmingly to ban roughly one-third of all handguns by labeling them "Saturday Night Specials," and although it failed to become law, Nixon continued to pressure the NRA to compromise, especially when gun manufacturers were willing to accept some regulations.

At that point, the situation was growing bleak for the gun rights movement.

PART II

Prior to the 1970s, it was common, or at least not regarded with suspicion, for a northern liberal Democrat like John F. Kennedy to be a member of the National Rifle Association (NRA).

According to Kopel, that all changed when, a "a tremendous cultural shift took place among American elites." Suddenly, they viewed private gun ownership with disgust. An example of this attitude can be found in a statement by historian Richard Hofstadter lamenting how "Americans cling with pathetic stubbornness" to "the supposed 'right' to bear arms."

To new elites, it was acceptable to use guns perhaps for recreational hunting or sports shooting, but the notion that guns might be used as a defensive tool was considered barbarian. Their solution: America needed to embrace European-style gun control laws.

Prior to 1974, no national organization existed to promote this viewpoint to the public. Gun control activists merely relied on a sympathetic media. That all changed when the National Coalition to Control Handguns (NCCCH) was formed. It was headed by business executive Nelson "Pete" Shields, whose son had been murdered in San Francisco.

Like others before him, Shields was not discreet about his long-term plan, which included the following:

- Decrease the number of handguns being produced and sold in the country.
- Getting handguns registered.
- Making the possession of all handguns and all handgun ammunition—except for the military, policemen, licensed security guards, licensed sporting clubs, and licensed gun collectors—totally illegal

Meanwhile, a civil war of sorts within the NRA nearly brought its political lobbying days to an end in favor of focusing exclusively on outdoor recreation. However, the plan was crushed during the organization's Annual Meeting of the Members, known as the "Revolt at Cincinnati." According to Kopel, one of the reasons this shift in focus failed was the fact that one-fourth of NRA members did not even own a gun and supported the organization solely as a way to protect the right to keep and bear arms.

"The gun rights movement regained momentum," Kopel writes, and "the impulse for this growth in membership was also sufficient to fuel the birth of two new gun rights organizations, the Second Amendment Foundation in 1974 and Gun Owners of America in 1975."

Yet at the same time, the idea of a national handgun ban was also gaining support in no small part aided by President Ford's Attorney General Edward Levi. However, his proposed

plan would only apply to large cities with crime rates above a certain level. Obviously unenforceable, it went nowhere.

From there, gun control activists tried to implement bans state-by-state. The attempt came during the 1976 Massachusetts general election. A ballot initiative called for the confiscation all handguns in the state, including BB guns.

According to Kopel, if the initiative had passed, gun owners would have six months to surrender their firearms, after which they would face a mandatory year in prison for owning a handgun. The state Supreme Judicial Court had unanimously ruled that same year in *Commonwealth v. Davis* that "there was no individual right to arms in Massachusetts," despite the [1780 State Constitution](#) guaranteeing that "the people have a right to keep and to bear arms for the common defence."

The Massachusetts court joined New Jersey, where its Supreme Court became the first in American history to declare the Second Amendment to be a collective right, arguing that it "was not framed with individual rights in mind," but in connection with "a well-regulated militia."

"The New Jersey court's version of the 'collective right' in the Second Amendment," Kopel writes, "was akin to 'collective property' in a Communist dictatorship. The 'collective right' to arms supposedly belonged to everybody at once, but could never be asserted by an individual. Thus, the "right" actually belonged to nobody and nothing, and had no practical existence."

The Massachusetts referendum revealed the **true objective of gun-grabbers no matter what jurisdiction they're operating in**. As the election drew near, it became apparent that the initiative was aimed at **disarming law-abiding citizens, not criminals**. At an anti-gun rally the week before the vote, Kopel writes, Senator Edward Kennedy admitted, "We won't keep guns out of the hands of criminals."

This revealing statement about the futility of gun control as a means of keeping firearms out of the hands of criminals would later be substantiated in a 1982 document published by the Senate Subcommittee on the Constitution, a part of the Judiciary Committee. The document found, among other things, that an astounding **75 percent** of ATF gun prosecutions were "aimed at ordinary citizens who had neither criminal intent nor knowledge, but were enticed by agents into unknowing technical violations," according to Kopel.

After the Massachusetts election, an official with the League of Women Voters who had vigorously supported the ban said, "I think a lot of voters have the idea this was designed to get guns away from the criminals. **That's not the real purpose.**" [Emphasis added]

Both sides knew the implications of the vote and what it would mean if the ban was implemented.

"If handgun confiscation could win in Massachusetts, then it could be pushed in city after city and state after state," Kopel writes, adding that a similar initiative was being planned in Michigan, with the goal of getting enough states and local laws introduced to provide the backing for a national ban.

In a fundraising letter for the National Council to Control Handguns, board of directors member called the Massachusetts vote the "single most important event in the history of handgun control."

Gun control activists soon learned that staunchest opponents of the ban weren't just NRA members, but also state law enforcement agencies. If it passed, their officers would be prohibited from carrying handguns while off-duty. The opposition was so great, in fact, the Planning and Research Department of the Boston Police Department conducted first national survey of police attitudes toward guns, according to Kopel.

The result: **An incredible 83 percent of leading police officials did not believe that "only the police should be allowed to have handguns."**

The Massachusetts initiative was ultimately defeated by a wide margin, 69 percent to 31 percent.

"Police opposition would continue to be one of the most serious problems faced by handgun prohibition advocates almost everywhere in the United States," Kopel writes. "Many rank and file police supported self-defense by law-abiding citizens and viewed gun bans as unrealistic. Many police also had a long-standing respect for the NRA based on its decades of service in providing firearms training for police departments."

In the years that followed, the Firearm Owners' Protection Act of 1986 (FOPA) was passed, which revised several provisions of the Gun Control Act. Among them were restrictions on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) power of forfeiture, as well as search and seizure. The act also explicitly forbade a federal gun register and stated the Second Amendment was an individual right. But it also banned machine gun sales to the public.

Despite these setbacks, the gun control lobby was still in the fight, and in the years to come would find unexpected allies providing a vital impetus to their cause.

PART III

Despite setbacks in the mid-1980s, the gun control lobby stayed in the fight. Handgun Control, Inc. managed to recruit Sarah Brady, the wife of President Reagan's press secretary James Brady, who was shot during a failed assassination attempt on the president. James Brady would later join her.

For gun grabbers the Bradys' involvement signaled a small but important victory. As Kopel observed, the fact that they were Republicans "offered the possibility of taking the gun control message to the Republican establishment."

The gun control lobby also made an important strategic move, shifting away from the handgun debate, which had yielded virtually no results, focusing instead on "assault rifles." In 1987 memo, the Communications Director of the National Coalition to Ban Handguns, Josh Sugarmann wrote the following:

"The semi-automatic weapons' menacing looks, coupled with the public's confusion over fully automatic machine guns versus semi-automatic assault weapons—anything that looks like a machine gun is assumed to be a machine gun—can only increase that chance of public support for restrictions on these weapons."

Their campaign got a boost a year later when a man murdered five school children in Stockton, Calif. with a Kalashnikov-style, semi-automatic rifle. With momentum shifting in their direction, gun control advocates finally hit pay dirt with the 1993 Brady Act. Rather than fight the bill outright, Kopel writes, the NRA focused its efforts on influencing the bill via amendments, such as requiring background checks on sales to lawful purchasers be destroyed and ensuring the handgun waiting period would expire in five years to be replaced by a different system.

Kopel concludes that the amendments helped make the ban "mostly about appearances," and for those firearms actually affected, there were simply too many features for the ban to have any real impact.

"The generic definition focused on accessories such as bayonet lugs and adjustable stocks. So I observed that manufacturers **simply removed the prohibited features, renamed the guns, and were soon selling firearms that in internal operation were operationally the same as the banned guns.** On the other hand, the ban on new magazines over ten rounds was real. For some guns of recent vintage, I saw the price of grandfathered "high capacity" magazines increase tenfold. However, when one considers many of the older model guns on the list, such as the AR-15 (in production since the 1960s), I estimate that the world-wide inventory of ammunition

magazines holding more than 10 rounds was probably in the tens or even hundreds of millions." [Emphasis added]

Nevertheless, passage of the Brady Act's galvanized gun rights activists and spurred them to action. In the 1994 elections the Democrats lost the House for the first time since 1953, a coup President Clinton himself attribute to the NRA. Every single Democrat incumbent endorsed by the NRA was re-elected.

As the political fight raged, a philosophical tug-o-war played out in the background. For all the victories achieved by the pro-gun rights movement, it was no thanks to any similar triumphs among pro-Second Amendment legal scholars. As it turned out, it was politically incorrect to even talk about the Second Amendment, let alone write about it.

Then in 1983, the Michigan Law Review published an article titled "Handgun Prohibition and the Original Meaning of the Second Amendment" Written by Don Kates, it was "only the third time in history that a top ten law review had published a serious article on the Second Amendment."

Professor Sanford Levinson, a liberal who supported the individual right interpretation, later suggested the reason for the lack of discussion.

"The best explanation for the absence of the Second Amendment from the legal consciousness of the elite bar, including that component found in the legal academy, is derived from a mixture of **sheer opposition to the idea of private ownership of guns** and the perhaps subconscious fear that altogether plausible, perhaps even 'winning,' interpretations of the Second Amendment would **present real hurdles to those of us supporting prohibitory regulation.**" [Emphasis added]

By the 1990s, Kates "standard model" interpretation was mainstream (the model views the Second Amendment as a normal individual right, but bounded by permissible controls.

But it also had its critics.

One of them was Garry Wills, who claimed that "the Second Amendment had no legal meaning, but was in fact a clever trick by James Madison, deliberately written so as to have no significant content," according to Kopel.

He was not alone in this opinion. The American Bar Association ("ABA") also held this position, claiming "It is doubtful that the founding fathers had any intent in mind with regard to [the] meaning of this amendment."

This claim was indirectly, and perhaps unwittingly, contradicted when the Supreme Court declared in its *United States v. Verdugo-Urquidez* decision that the word "people" in the Bill of Rights had the same meaning in the First, Second, and Fourth Amendments. Constitutional

scholars supporting the individual right saw the logical conclusion: according to the court, if a person had an individual right to free speech, the same applied to gun ownership rather than being a "collective right" enjoyed through a militia.

Slowly, the academic community began to catch up with public sentiment on guns.

Yet the political battle raged on. The 1994 Congressional election had been a setback for gun control groups. Shortly after Columbine, Kopel writes, Vice President Al Gore cast the tie-breaking vote in the U.S. Senate for an amendment to a bill that would have given the ATF the authority to shut down any and all gun shows in the United States.

Gore would go on to win the Democratic nomination for the 2000 presidential race, which Kopel described as "the great showdown on gun control."

"Like the election of 1800 for the First Amendment, the 2000 election would decide the fate of the Second Amendment," he writes.

During a Supreme Court case that year, Clinton's Department of Justice claimed in front of the judges that the Second Amendment only applied to National Guardsmen. On top of that, Solicitor General Seth Waxman argued that "the Second Amendment does not extend an individual right to keep and bear arms," that it "could 'take guns away from the public,' as well as 'restrict ownership of rifles, pistols and shotguns from all people.'"

The backlash to these comments by the gun rights community was so intense, Kopel concludes that "If not for the gun issue, the election would not have been close." George W. Bush ended up beating Gore in a controversial finish.

As with the 1994 Congressional election, President Clinton later wrote that the NRA yet again cost gun grabbers electoral success.

For the next decade shall issue concealed carry laws, rather than handgun bans, were passed throughout the country. In 2004, the federal "assault weapon" ban expired. The next year, the Protection of Lawful Commerce in Arms Act was passed, preventing municipal lawsuits against gun manufacturers. The Handgun Control Inc. had even changed its name to the "Brady Campaign to Prevent Gun Violence," tacitly conceding the unpopularity of the term "gun control."

The right to keep and bear arms was so popular that during the 2008 presidential primaries, Hillary Clinton declared that "people have a right to bear arms" and criticized Obama for his anti-gun stance, even though he too claimed to believe it was an individual right.

"None of this is to say that Schumer, Clinton, or Obama believed that the Second Amendment prevented the various gun control proposals that they supported." Kopel

writes. "But it was quite a change from 1988 when the Democratic Party could nominate a candidate who would forthrightly declare that there was no individual right"

The gun debate finally culminated in the landmark *District of Columbia v. Heller* decision, in which the Supreme Court voted 5-4 that the Second Amendment protects an individual's right to possess a firearm."

"The Great American Gun Control War lasted nearly a century, and the greatest national battles of all were fought in the last quarter of the twentieth century," Kopel writes. "The results of that War are settled, and obvious: First, gun rights are no more "absolute" than are any other rights. Second, the most unconstitutional laws on guns are the laws which attempt to deprive law-abiding Americans of their right of armed self defense, and their choice of a proper firearm with which to exercise the right, or which attempt to limit self-defense solely to the home."

A vital lesson from this gun control war is that unless action is taken in the states themselves to nullify and resist unconstitutional federal gun laws, the threat will exist perpetually.

Gun rights activists no doubt fought with the best of intentions and attempted to thwart gun grabbers at every turn, but their strategy demonstrated that despite victory after victory at a federal level, and even at a state level, the enemy eventually recuperates and makes another attempted assault on our right to keep and bear arms. The only way to neutralize the threat is by getting states to pass [2nd Amendment Preservation Acts](#).

Had such laws been passed from the very beginning when gun control war first began, we might not have to fight it today.