



Why the Stevens gun manifesto is beyond irresponsible

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Perhaps the most blatant symptom of the cultural divide in America is the post-Parkland call to repeal the Second Amendment -- most recently jump-started by retired Supreme Court Associate Justice John Paul Stevens. He writes in The New York Times that repeal "would be simple" and "would eliminate the only legal rule that protects sellers of firearms in the United States." That's indisputably incorrect on both counts.

The notion that repeal would be simple is a fantasy. Two-thirds of both houses of Congress would have to craft the repeal, which would then have to be ratified by three-fourths of the states. That's inconceivable in a country that has more guns than people, and laws in 44 states that permit open carry, even though the Supreme Court has never ruled that such a right is compelled by the Second Amendment.

Not only is repeal unattainable, it would also be ineffective and unnecessary. Despite Justice Stevens' preposterous assertion that the Second Amendment is the "only legal rule" protecting gun sellers, 44 states include a right to bear arms in their state constitutions. And there are numerous laws both ensuring and limiting the rights of buyers and sellers.

On one hand, guns are our most heavily regulated consumer product. Handguns can't be purchased outside the buyer's state of residence. Retailers, wholesalers and manufacturers all require federal licenses. All dealer sales must be preapproved by federal or state authorities. On the other hand, the federal Constitution sets a floor, not a ceiling, on individual rights. States can and do enact laws guaranteeing additional rights. Repeal of the Second Amendment would have no effect on those state laws.

What makes the Stevens manifesto especially irresponsible is that it would rupture the social fabric in this country -- leading to turmoil, lawlessness and violence. Considering the fervor of many gun-rights advocates, it's quite possible that not even reversal of *Roe v. Wade* would incite such rage. And to what end? Very few Americans believe gun rights are absolute.

Clearly, the Second Amendment does not allow an 11-year-old to carry a machine gun in front of the White House when the president is strolling on the lawn. Some weapons, some persons and some circumstances are subject to regulation.

That's the same framework we have for other rights. For example, the First Amendment permits no law "abridging the freedom of speech." Yet the courts have not protected falsely shouting fire in a crowded theater, inciting to riot, defamation, and so on. Both the right to free speech and the right to bear arms can be limited -- even though both are constitutionally safeguarded.

In District of Columbia v. Heller, Justice Antonin Scalia concluded (over a dissent from Justice Stevens) that the Second Amendment secured an individual right to bear arms. But Justice Scalia explicitly noted that Heller did not "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 ..., or laws imposing conditions and qualifications [such as background checks] on the commercial sale of arms." He also noted historical support for "prohibiting the carrying of dangerous and unusual weapons."

Accordingly, states can likely adopt any of those restrictions without violating the Second Amendment as interpreted in Heller. Indeed, some states do -- regulating or even banning so-called assault weapons and high-capacity magazines. Those regulations have not been overturned by the courts. By contrast, other states, such as Florida, have imposed fewer restrictions than allowed by Heller. Once again, it's state law that has controlled, not the Second Amendment.

In the aftermath of the Parkland atrocity, Florida has approved a bill that, among other things, bans bump stocks (which convert semiautomatic weapons into illegal automatic weapons), gives the state new powers to remove guns and ammunition from people deemed to be a threat to themselves or others, imposes a three-day waiting period for most long-gun purchases and raises the minimum age for buying those weapons to 21.

So far, the only Second Amendment challenge (from the NRA) relates to the higher age limit for buying rifles. Many, if not most, legal experts expect that challenge to fail.

In a nutshell, the Supreme Court has ruled that the Second Amendment guarantees individual gun owners' rights, but it does not preclude reasonable regulations. Repeal would be needlessly provocative, counterproductive and hostile to core American liberties.

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