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Colorado Consensus on Gun Laws

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After the Columbine High School murders, Colorado enacted eight specific gun-law reforms. Three of these reforms are examples of what people usually call "gun control," and five of them are in the "gun rights" category. But to many Coloradoans, all eight of the measures are cohesive and consistent. They are all based on the same principles: Guns in the wrong hands are very dangerous, and guns in the right hands protect public safety. Colorado strengthened its laws to make it harder for the wrong people to acquire guns and simultaneously strengthened laws to remove obstacles to the use and carrying of firearms by law-abiding citizens. As a whole, the laws embody a compromise that enjoys broad public support; they settled a gun-policy debate that had raged in Colorado for 15 years. The Colorado consensus has already saved lives.

CONCEALED CARRY ACT

The most important element of the Colorado reforms is the Concealed Carry Act, which became law in 2003. This law strongly protects the right of law-abiding adults to carry handguns for the defense of self and others. Forty other states have similar laws.

The reform has so far thwarted at least one massacre. In December 2007, a man murdered two teenagers at the Youth with a Mission training center in the Denver suburbs. He then drove south to Colorado Springs and attacked the New Life megachurch in Colorado Springs. He killed two people in the parking lot and then entered the building, carrying hundreds of rounds of ammunition. Fortunately, a volunteer security guard for the church, Jeanne Assam, was carrying a licensed handgun, and she quickly shot the attacker. According to Pastor Brady Boyd, "she probably saved over 100 lives."

Elsewhere in the United States, three school shootings have been stopped because teachers or other responsible adults had firearms: Edinboro, Penn.; Pearl, Miss.; and the Appalachian Law School in Grundy, Va.

Colorado law allows government buildings to be declared "gun-free zones," but Colorado law insists that when a government promises a gun-free zone, the government must keep the promise: Licensed carry may be forbidden in a government building *only* if all entrances to the building are controlled, and if the public entrances have metal detectors manned by armed guards.

Under Colorado law, therefore, government entities may not simply post a NO GUNS sign and leave law-abiding, licensed citizens defenseless against violent criminals. Earlier this year, in a unanimous decision, the Colorado supreme court ruled that the University of Colorado may not forbid licensed carry on its campuses. All the other public universities in Colorado had already been complying with the law by allowing licensed carry, and there have not been any problems.

K–12 schools have special restrictions: Licensed carry is allowed only in automobiles on school property, not in buildings or on sports fields. Although this approach is not ideal, it does allow the possibility that in case of an attack, an adult could retrieve a firearm from an automobile and then confront the attacker. That is how lives were saved in Pearl, Miss.

The Concealed Carry Act did not disturb the property rights of business owners — if they wish to, they may prohibit concealed carry on their business premises. Fortunately, very few Colorado businesses have done so. But one that did was Century Theaters. Compounding the problem, Century Theaters did not create an actual "gun-free zone" (as some government buildings in Colorado have). Instead, Century Theaters created a *pretend* gun-free zone. Century Theaters did *nothing* to prevent armed criminals from entering the theater.

As is common in mass homicides, the killer in this case chose to target victims in a "gun-free" zone — with predictable and horrific results. When

armed police finally confronted him, he surrendered quickly. This, too, is common; mass killers tend to be cowards who crumble at the first resistance.

The *San Francisco Chronicle* reports that the vest the Aurora killer bought from the website Tactical Gear was not bulletproof. An even if he was wearing a different vest that he procured elsewhere, such a vest does not make the wearer invincible. A shot to the chest can still knock a shooter down and break a rib, providing time for someone to tackle him.

Among the victims in the Century Theater's "gun-free" zone were members of the U.S. Armed Forces. Had one of them — or any other law-abiding adult — had a handgun on Friday night, the shot might have stopped the killer. Any resistance almost certainly would have saved lives by distracting the killer's attention.

The Concealed Carry Act was primarily written by the County Sheriffs of Colorado and was based on the permit-issuance policies developed by Larimer County (Fort Collins) sheriff Jim Alderdan. As in most American states, the procedure for issuing a permit is objective in routine cases: Has the applicant provided proper documentation of the required safety training? Did the applicant's ten-point fingerprints, collected and sent to the FBI and to the Colorado Bureau of Investigation, confirm that the applicant does not fit into any of the disqualifying categories?

But, as in many states, Colorado law goes farther and allows the sheriff to make discretionary denials — if the discretion is properly applied. The sheriff may deny a carry-permit application if the sheriff "has a reasonable belief that documented previous behavior by the applicant makes it likely the applicant will present a danger to self or others." In case of a denial, the applicant can appeal to a court, and the burden of proof is on the sheriff.

This provision is informally called "the naked man rule," meaning that the sheriff can deny a permit to the man who sits naked in his front yard, muttering about the Martians, but who has a clean record. The County Sheriffs of Colorado deemed it essential that the Concealed Carry Act

include the naked-man rule. Yet the Brady Campaign inaccurately claims that Colorado has zero "law enforcement discretion when issuing [concealed-carry] permits."

The National Rifle Association expressed strong support in the Colorado legislature for the Concealed Carry Act. By contrast, another group, Rocky Mountain Gun Owners, fought hard against the Concealed Carry Act, because of the naked-man rule and because of other provisions that failed to meet RMGO's standards of perfection. Ultimately, not a single pro-gun legislator voted with RMGO. The NRA-endorsed Concealed Carry Act won a bipartisan majority of 46–16 in the House (including almost every Democrat outside Denver and Boulder) and 23–12 in the Senate.

Surprisingly, an article in *Politico* on July 21 claimed that the Concealed Carry Act was written to RMGO's specifications. Exactly the opposite is true: To help the Concealed Carry Act become law, the NRA had to defeat RMGO just as much as it had to defeat the Colorado affiliates of national anti-gun organizations such as the Brady Campaign.

ADDITIONAL LAWS TO PROMOTE SELF-DEFENSE

A second post-Columbine reform in the "gun rights" category is the strengthening by the Colorado legislature of an existing state law that stops local jurisdictions from interfering with the carrying of firearms in automobiles, for which Colorado has never required a permit.

The third gun-rights reform is also in this area of state preemption: Another post-Columbine state law preempts some other aspects of gun control, such as a Denver ordinance that prohibited parents from teaching firearms safety to their children. The Colorado preemption law is nonetheless rather weak by U.S. standards — in the majority of states, local gun laws are prohibited, and many of the remaining states allow local gun laws only on certain enumerated topics — and it's weakened further by judicial interpretation. However, because most Coloradoans view the gun issue as well settled, local governments have enacted essentially no new gun controls recently, for they

know that if they did, the long-term result would be much stronger preemption laws at the state level.

Colorado was one of 34 states that enacted a statute prohibiting lawsuits against gun companies for the misdeeds of criminals — the fourth gun-rights law passed since Columbine. The laws protect self-defense rights by thwarting the attempts of anti-gun groups and a few big-city mayors to destroy the firearms industry through litigation. No such lawsuit against a gun company had ever been filed in a Colorado, and the legislature intended to make sure it stayed that way. Congress enacted a similar federal law in 2005, the Protection of Lawful Commerce in Arms Act.

In the early 20th century, during a period of labor strife caused by coal companies' refusal to recognize the rights of miners to join unions, a corporate-dominated legislature enacted a law allowing the governor to ban gun sales during an "emergency." That law had never been used, but the post-Columbine legislature, enacting its fifth gun-rights reform, repealed it — thus ensuring that guns would be available at a time when they were needed most.

STRENGTHENING GUN REGULATION

Complementing the five laws to protect the self-defense rights of law-abiding citizens, Colorado passed three laws that aim to keep guns out of the wrong hands.

A "straw purchaser" is someone who can legally buy a gun — but who buys a gun on behalf of a prohibited person, such as a convicted criminal. Straw purchases have been illegal under federal law since 1968, and in 1986 the straw-purchase ban was strengthened by the NRA's flagship bill, the Firearms Owners' Protection Act. Colorado's first post-Columbine "gun control" law is similar to the federal one, and it allows local law enforcement to bring cases in state court instead of depending on busy federal prosecutors to file federal charges.

The Columbine guns had been procured by adults who bought the guns on behalf of the killers. So, as the second gun-control measure, Colorado enacted a statute against transferring a firearm to a minor without consent of the minor's parent or guardian. Previously, Colorado law had forbidden such transfers of handguns, but not long guns.

Finally, Colorado voters in 2000 passed a law imposing some special restrictions on gun shows, because three of the four Columbine guns had been obtained at a gun show. In most states, the laws for selling guns at a gun show are exactly the same as for selling a gun anywhere else. Thus, persons who are in the business of selling guns must have a federal license and must conduct a background check on every sale.

In contrast, according to federal law, persons who are not "engaged in the business" of selling firearms are not covered by the rules applicable to firearms businesses. So if a private person sells a rifle to his neighbor or to his friend at a hunting club, the federal rules about background checks and paperwork do not apply. But under Colorado's 2000 law, if that very same private sale takes place at a gun show, then there must be a background check.

I didn't support that law, because I think that laws about gun sales should be uniform, not dependent on the location of the sale. However, the Colorado gun-show law is much more moderate than the gun-show bills that have been introduced in Congress. Unlike those laws, the Colorado law does not give a bureaucrat the administrative power to prohibit gun shows, does not structure the background checks so as to create a gun-registration system, and does not create new restrictions for licensed firearms dealers.

The gun-show initiative won 67 percent of the vote — only a little bit less than the proportion favoring Colorado's Concealed Carry Act. Polls found that the supermajority support for concealed carry actually increased slightly after Columbine.

While Colorado strengthened laws to keep guns out of the wrong hands and put them in the right hands, it rejected all proposals to restrict law-abiding gun ownership — such as bills that would have banned certain guns or magazines, or outlawed guns at schools and colleges.

In broad terms, the Colorado consensus matches the national consensus that solidified a few years later, and which was ratified by the Supreme Court's decisions in *District of Columbia v. Heller* (2008) and *McDonald v. Chicago* (2010).

There is still room for refinement and technical improvements in Colorado's statutes, but the post-Columbine period in Colorado resolved a contentious social debate. Coloradoans, including their liberal Democratic governor John Hickenlooper, are unlikely to let themselves by bullied by the national media into abandoning their consensus, which is based on strong rights and sensible regulations.

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