

# OBSERVER

## Marches, guns and confusion

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Last month, there was a massive anti-gun protest in Washington, D.C. and more than 800 satellite protests. It is estimated that it involved at 1.2 million to 2 million people, thus, making it one of the largest protests in U.S. history. The protests were in part a response to the shooting in Parkland, Fla. The protesters demanded that some adults be stripped of their right to buy or own guns (18- to 21-year-olds), universal background checks on all gun sales, closing a gun show loophole, restoring the 1994 Federal Assault Weapons Ban, and a ban on high-capacity magazines.

Locally, hundreds of Fredonia middle and high school students and Dunkirk high school students walked out of school to support restricting people's gun rights. Fredonia Superintendent Jeffrey Sortisio, praised the walkout. He tweeted, "*Several hundred Fredonia Middle and High School students participated in the National School Walkout today. So proud of our students for their solemn approach to remembering the Parkland victims.*" Hundreds more local residents protested in favor of Washington Park in Dunkirk on March 24 in favor of the restriction. Dunkirk City attorney Richard Morrisroe even went so far as to blame gun owners' culture and belief in the Second Amendment. He said, "*What you're fighting is a cultural battle. It's the culture of gun ownership, the culture of Second Amendment rights.*"

A little perspective is helpful. According to Alan Reynolds of the CATO Institute, using data from the far left Mother Jones magazine, the number of mass-shooting deaths (unrelated to gangs, drugs, or domestic violence) between 1982 and 2018 averaged 23 per year. He notes that this means fewer people die from such mass shootings than die from falling or the flu. Ditto for drowning in a bathtub. There are roughly 51 million children in public school. Even if half of the mass-shooting deaths occurred in schools (12), and they don't, high school sports pose a greater risk of death than does mass shooting.

Also, the suggested remedies would likely have no impact on the number of random mass shootings. Consider the attempt to strip out gun ownership rights of 18-21 year-olds. Economist John Lott argues that there were 64 U.S. mass public shootings since 1998 and 10 were carried out by people under 21. He notes that five of the 10 were already too young to legally purchase guns. Hence, trampling on the gun rights of millions of Americans rests on the claim that the 5 would not have illegally obtained their guns anyway.

Consider next universal background checks. Lott claims that background checks on private transfers would not have prevented a single mass shooting. In addition, he argues, from 2000-

2015 states that had universal background checks had twice the rate of mass public shooting as those that didn't have the law.

Consider last the assault weapons ban. As has been pointed out in countless places, in the U.S., very few people are killed by rifles as opposed to handguns and shotguns. According to the FBI, in 2016 only 3% gun homicides (374 of 11,004) were done with a rifle and it's likely that a significant number of these were not assault weapons.

However, even if the focus on mass shootings in schools were not overblown and the proposed remedies likely unhelpful, there is the little issue of the Constitution. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual's right to own a gun and that this right does not depend on whether an individual serves in a militia. This conclusion is supported by a wealth of arguments, including the plain meaning of the language of the operative clause, the structure of the Bill of Rights, the protection of other individual rights in the parts of Bill of Rights that use nearly identical language (see, for example, the First, Fourth, and Ninth Amendments), the history of the Amendment (see, for example, English common law), what was likely intended by those who drafted and ratified the Constitution (consider, for example, the right to own a gun in four state constitutions that were in place before the Constitution was ratified and the Amendment's drafting history), original meaning (as indicated by relevant dictionaries), and so on.

Taking away the Second Amendment rights of Americans age 18-21 is no more constitutional than taking away their First or Fourth Amendment rights. Consider, for example, whether the Constitution permits the government to deprive 21-year-olds of their right of free speech or their right not to have their bodies or houses searched without a warrant and probable cause. Perhaps the Second Amendment permits some of the other proposed restrictions, but even if it does, it still remains an issue as to whether this would decrease American freedom.

The protesters' unconstitutional proposal with regard to 18- to 21-year-old adults is matched by the poor judgment of school leaders who greenlit the walkout. No one seriously thinks that one of the local principals would allow a mass walkout if the students wanted to protest the region's out-of-control property taxes, repeated hiring of teachers who were not stellar students in college, or New York's continued criminalization of marijuana. It is blackletter law that the school authorities may not engage in viewpoint discrimination in deciding which speech to permit.

Similarly, local attorneys are not going to talk about the fight against the culture of First, Fourth, or Eighth Amendments because it is unclear what this would mean other than that many people (consider, for example, voters and judges) think these Amendments should be followed.

Legal rights and freedom do not give way merely because respecting them makes students feel unsafe or even makes the population's lives go marginally worse. This is why it is wrong for the state to prohibit hate speech even if it is morally wrong and makes people feel less safe. Parallel reasoning applies to gun ownership.