



Americans Against Gun Violence  
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2024 Essay Contest First Place Winner - \$3,000 Scholarship Award

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*Heller: A Hidden Hurdle*

Almost always, the use of the phrase “off-the-charts” is a vast overstatement of the truth. The gun violence epidemic in the United States is one of the few cases in which the phrase perfectly encapsulates our reality. Both our rates of gun ownership and rates of gun-related deaths are far higher than those of other high-income democratic countries. In the wake of the Supreme Court’s rogue 2008 *Heller* decision, addressing our crisis means attempting to weave a path through the legal barriers that *Heller* presents. The sad reality of the Supreme Court’s radical reinterpretation of the Second Amendment in *Heller* is that we are left with few options, background checks and mental health support among them. Alas, none of these measures match the gravity of our off-the-charts problem.

Even sadder, many gun violence prevention advocates don’t adequately recognize the egregious flaws in the *Heller* decision and its disastrous public health consequences, and most Americans are hardly aware them. Americans Against Gun Violence is the only U.S. gun violence prevention organization that openly advocates overturning *Heller*, even though *Heller* and its progeny must be reversed before we can meaningfully address our plight. As a result, *Heller* is essentially an invisible obstacle.

How can we implement the measures needed to address our immense crisis when *Heller* stands in the way of valuable reforms? The only reforms that would make a significant dent in America’s horrifying statistics are policies such as the handgun ban implemented in Great Britain after the 1996 Dunblane Primary School massacre or the complete ban on civilian ownership of all automatic and semi-automatic long guns – not just so-called “assault rifles” - implemented in Australia after the 1996 Port Arthur massacre. Before *Heller* is overturned, the meaningful gun reforms that Britain, Australia, and other high income democratic countries have adopted decades ago cannot be enacted in the United States, and tens of

thousands of Americans will continue to die annually of preventable gunshot wounds.

Thanks in large part to the *Heller* ruling, Americans have come to accept that the Constitution guarantees a right to private ownership of firearms, semi-automatic weapons of war included, for personal use. I'd argue that *Heller* not so much affirmed the almost-unrestricted right to private firearm ownership as it created it. The *Heller* decision effectively deleted the "well regulated militia" phrase from the Second Amendment. And as early as 1840, the Tennessee Supreme Court noted in the case of *Aymette v. State*<sup>1</sup> that the term, "bear arms," did not refer to carrying a deadly weapon for personal use. In upholding William Aymette's conviction for carrying a concealed deadly weapon in violation of Tennessee law, the Tennessee Supreme Court stated:

A man in the pursuit of deer, elk, and buffaloes might carry his rifle every day for forty years, and yet it would never be said of him that he had borne arms; much less could it be said that a private citizen bears arms because he had a dirk or pistol concealed under his clothes, or a spear in a cane.

Abundant additional evidence has been amassed since 1840 documenting that the term, "bear arms," carried a distinctly military connotation at the time of the drafting and ratification of the Second Amendment, and this evidence has been presented to the Supreme Court in *amicus* briefs in the *Heller* case and its progeny.<sup>2</sup>

*Heller's* progeny has been no less destructive than the *Heller* decision itself. *Heller* has paved the way for the *Bruen* decision, in which the Supreme Court ruled that New York's stringent regulations concerning carrying concealed handguns violated the Second Amendment. And *Bruen* paved the way for Zackey Rahimi to successfully challenge his conviction for owning a gun in violation of federal law while he was under a domestic violence restraining order. Rahimi found success in the Fifth Circuit Court of Appeals in claiming that the law violated his Second Amendment rights, as the Amendment was interpreted in *Heller* and *Bruen*, and although a final ruling in this case has yet to be issued by the Supreme Court, its implications are frightening.

The gun violence crisis we are facing is nearly immeasurable - it extends beyond the scope of anything that can be confronted through background checks and other insignificant restrictions. *Heller* is the concealed barrier at the heart of our shameful crisis. Until *Heller* and its progeny are overturned, our rate of preventable gun-related deaths will remain off-the-charts in the worst way possible.

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<sup>1</sup> *Aymette v. State*, 21 Tenn. 154 (1840).

<sup>2</sup> "BRIEF FOR PROFESSORS OF LINGUISTICS AND ENGLISH DENNIS E. BARON, Ph.D., RICHARD W. BAILEY, Ph.D. AND JEFFREY P. KAPLAN, Ph.D. IN SUPPORT OF PETITIONERS in the Case of *District of Columbia v. Heller*," 2008; "BRIEF OF AMICUS CURIAE AMERICANS AGAINST GUN VIOLENCE in the Case of *New York State Rifle and Pistol Association v. Kevin P. Bruen et Al*," September 21, 2021.