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## **The Late Charlie Kirk and the Fraudulent Misrepresentation of the Second Amendment:**

### **The Connections, the Ironies, and the Deadly Consequences**

A message from the President of Americans Against Gun Violence

Speaking on the PBS NewsHour in 1991, the late Supreme Court Chief Justice Warren Burger called the misrepresentation of the Second Amendment, “[O]ne of the greatest pieces of fraud – I repeat the word ‘fraud’ – on the American public by special interest groups that I have ever seen in my lifetime.”<sup>1</sup> The consequences of this fraud have been deadly, including for 31 year-old Charlie Kirk, who was shot and killed on September 10, 2025, and who – ironically - helped perpetuate the fraud prior to his death.

### The fraudulent misrepresentation of the Second Amendment

The Second Amendment states, in its entirety:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Prior to 2008, the U.S. Supreme Court had stated unequivocally in four separate cases,<sup>2</sup> and lower courts had ruled in scores of others,<sup>3</sup> that the Second Amendment did not confer an individual right to own guns unrelated to service in the “well regulated Militia” described in the first half of the Amendment. In the 2008 *Heller* decision,<sup>4</sup> however, a narrow 5-4 majority of justices reversed over two centuries of legal precedent by ruling for the first time in U.S. history that the Second Amendment was intended to confer a right to private gun ownership unrelated to militia service.

The majority opinion in *Heller*, written by the late Justice Antonin Scalia, has been publicly condemned by respected constitutional authorities as a “radical departure” from prior legal precedent,<sup>5</sup> as an example of “snow jobs” produced by well-staffed justices,<sup>6</sup> and as “gun rights propaganda passing as scholarship.”<sup>7</sup> In his book, *The Making of a Justice*, the late Supreme Court Justice John Paul Stevens wrote, “*Heller* is unquestionably the most clearly incorrect decision that the Court announced during my [35 year] tenure on the bench.”<sup>8</sup>

Scalia’s majority opinion in *Heller* is egregiously flawed. Moreover, the pattern of errors and omissions, including circular reasoning, fragments of historical facts and quotations taken out of context, and bombast and sarcasm in place of unbiased, objective analysis in

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Scalia's majority opinion cannot be explained by accident or even negligence, but only by intentional deceit. In this president's message, I want to focus on one particular aspect of the *Heller* decision that's directly related to the murder of Charlie Kirk – namely, the fraudulent claim that one reason for including the Second Amendment in the Bill of Rights was to provide a constitutional right to armed insurrection against a tyrannical federal government. (For a more complete analysis of other aspects of the *Heller* decision, please see my essay, "[A Death Sentence, Wrongly Decided](#)," that's posted on the Americans Against Gun Violence website.)

According to Scalia's majority opinion in *Heller*, one of the reasons why the Second Amendment was included in the Bill of Rights is that "when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny."<sup>9</sup> Variations on this fraudulent claim have long been the bread and butter of NRA propaganda. For example, NRA Executive Vice President Wayne LaPierre has claimed, "Our Founding Fathers wrote the Second Amendment so Americans would never have to live in tyranny."<sup>10</sup> Scalia and the other four members of the *Heller* majority (including current justices Roberts, Alito, and Thomas) effectively codified this propaganda into the U.S. Constitution in the 2008 *Heller* decision, and it's been repeated in other subsequent cases that are the progeny of *Heller*.<sup>11</sup> As recently as 2024, in his majority opinion in the case of *United States v. Rahimi*, Chief Justice Roberts referred sanctimoniously to the "spark that ignited the American Revolution...struck at Lexington and Concord" and quoted an obscure 19<sup>th</sup> Century congressman as stating that if gun ownership is restricted, "you take away the inalienable right of defending liberty."<sup>12</sup>

There is no historical evidence whatsoever to support the contention that our country's Founders included the Second Amendment in the Bill of Rights in order to confer a constitutional right for disgruntled citizens to participate in armed insurrections against the federal government. It would have been not only absurd, but suicidal for the members of the first U.S. Congress who drafted the Second Amendment to do so. As the Supreme Court ruled unanimously in the 1939 *Miller* decision, one of the purposes of the Second Amendment was to provide for a well regulated militia that could be used to suppress insurrections, not facilitate them.<sup>13</sup> The militia was used to put down insurrections on several occasions following the ratification of the Second Amendment in 1791, including to stop the Whiskey Rebellion in 1794,<sup>14</sup> Fries' Rebellion in 1800,<sup>15</sup> and the Dorr Rebellion in 1842.<sup>16</sup> The perpetrators of these rebellions weren't found to be innocent on the basis that they were merely exercising their Second Amendment rights. Instead, they were found guilty of treason. As the counsel for the U.S. Government noted in the case of *State v. Dorr*, in providing for a peaceful, democratic process for resolving grievances, "The Constitution of the United States has annihilated the right of revolution."<sup>17</sup>

### Charlie Kirk's ironic endorsement of the fraudulent misrepresentation of the Second Amendment

Charlie Kirk opposed gun control. In a post on the "X" social media platform, he wrote:

Gun control, like vaccines and masks, is focused on making people feel "safe" by taking freedoms away from others. Don't fall for it.<sup>18</sup>

But more than just expressing his personal opposition to gun control, Kirk represented himself as an authority on the Second Amendment. On April 5, 2023, during an event held

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by Turning Point USA, an organization that Kirk co-founded, he said:

I think it's worth it to have unfortunately a cost of some gun deaths every single year so that we can have the Second Amendment to protect our other God-given rights. That is a prudent deal.<sup>19</sup>

He elaborated further the following day:

The Second Amendment is not about hunting. I love hunting. The Second Amendment is not even about personal defense. That is important. The Second Amendment is there, God forbid, so that you can defend yourself against a tyrannical government.<sup>20</sup>

One of the most obvious ironies in Kirk's opposition to gun control and his misrepresentation of the Second Amendment is that he himself became one of the "some gun deaths every single year" of which he spoke. His use of the word, "some," was obviously a gross understatement. Since 2020, the annual number people killed with guns in the United States has exceeded 40,000.<sup>21</sup>

Had the sniper's bullet that pierced his neck left Charlie Kirk quadriplegic for the rest of his life instead of killing him – like some patients I treated during my career as an emergency physician – I wonder if he would have still believed that the Second Amendment was intended to confer a right to private gun ownership; and if so, whether he still would have thought that such a right was in fact a "prudent deal" or "worth it." It's of note in this regard that President Ronald Reagan changed his views on gun control, but only gradually, after suffering a gunshot wound to his chest in an assassination attempt in 1981.<sup>22</sup> Reagan spoke in opposition to gun control at the NRA's annual national convention in 1983,<sup>23</sup> but he subsequently wrote an op-ed in the New York Times<sup>24</sup> in 1991 in support of the Brady Act that required background checks for certain gun purchases.<sup>25</sup> The Brady Act was named after his Reagan's press secretary, James Brady, who was caught in the crossfire during the 1981 assassination attempt and who suffered a devastating gunshot wound to the head that permanently disabled him and eventually led to his death.<sup>26</sup>

Donald Trump, who in 2017 became the first sitting president since Reagan to speak at an NRA convention,<sup>27</sup> has shown no signs of changing his opposition to gun control after the Charlie Kirk killing or after he himself suffered a minor gunshot wound to his right ear in an assassination attempt during a campaign rally in July of 2024 in which one attendee was killed and two others were wounded. On the contrary, Trump stated after the attempt on his own life, "I was saved by God to make America great again,"<sup>28</sup> and polling data indicated that a large sector of the American electorate apparently believed him. Trump's favorability rating rose by almost 10 percentage points after the assassination attempt.<sup>29</sup>

Another irony in the events immediately preceding Kirk's death is that his last words may have been an effort on his part to place undue blame for mass shootings on transgender individuals and gangs. A student at Utah Valley University where Kirk was speaking at the time that he was shot was apparently concerned about Kirk's anti-LGBTQ rhetoric.<sup>30</sup> The student asked Kirk, "Do you know how many transgender Americans have been mass shooters over the last ten years?"

"Too many," Kirk replied. (According to a report by the Secret Service concerning mass attacks in public spaces from 2016-2020, three out of 180 perpetrators (1.7%) were

identified as being transgender.)<sup>31</sup>

The student then asked, “Do you know how many mass shooters there have been in America over the last ten years?”

“Counting or not counting gang violence?” Kirk replied, in what would be his last words before he was shot and killed.<sup>32</sup> (The Secret Service report on mass attacks from 2016-2020 includes detailed information concerning attackers’ motives and relationships to victims, and it doesn’t describe any of the attacks as being gang related.)

### The contradiction between Charlie Kirk’s words and actions as they relate to the Second Amendment

In all the coverage of Charlie Kirk’s death that I’ve seen, including multiple references to Kirk’s statements about the Second Amendment, I haven’t come across a single comment concerning the fact that Kirk, who claimed that the purpose of the Second Amendment was to “defend yourself against a tyrannical government,” was himself serving a tyrannical government.

During Trump’s first run for President in 2016, Kirk, at the age of 22, was so instrumental in gaining support among youth for Trump and the MAGA movement that he was invited to speak at the 2016 Republican National Convention.<sup>33</sup> When Trump lost the 2020 election, Kirk endorsed Trump’s false claim that the election had been stolen. A few days before the January 6, 2021, insurrectionist attack on the Capitol, Kirk tweeted:

The historic event will likely be one of the largest and most consequential in American history....The team at @TrumpStudents & Turning Point Action are honored to help make this happen, sending 80+ buses full of patriots to DC to fight for this president.<sup>34</sup>

When the House committee investigating the January 6 attack questioned Kirk in December of 2022 about his role in the assault, he answered only a single question, revealing to the committee that he lived in Scottsdale Arizona (though without revealing that he lived in a \$5 million mansion).<sup>35</sup> Kirk invoked the Fifth Amendment in refusing to answer the other 69 questions that he was asked.<sup>36</sup>

Donald Trump himself credited Kirk with helping him win the 2024 presidential election, and Kirk was actively involved in the new Trump administration, including exerting influence on choices of appointees to key administrative posts.<sup>37</sup> White House Chief of Staff Susie Wiles described Kirk as “the highest profile MAGA person” outside of internal White House staff. Kirk had played golf with Trump, and he was described by Donald Trump Jr. as being “like a little brother to me.” Following Kirk’s death, Donald Trump posted a video on YouTube in which he called Kirk’s murder an “assassination” and in which he eulogized Kirk as a “patriot” who “fought for liberty, democracy, justice, and the American people;” as a “martyr for truth and freedom;” and as “the best of America.”<sup>38</sup> Trump ordered flags flown at half mast across the nation in honor of Kirk after his death, and Trump brought an entourage of high ranking members of his administration to Kirk’s memorial in Glendale, Arizona, on September 21.

The evidence that Trump is a tyrant – and worse – is irrefutable. Veteran journalist Bob

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Woodward, best known for his investigative reporting along with Carl Bernstein in the 1972 Watergate scandal that led to the resignation of President Richard Nixon, wrote in his 2024 book, *War*, about a conversation that he had in March of 2023 with retired Army General Mark Milley, who was chairman of the Joint Chief of Staffs during the first Trump administration. Woodward quotes Milley as telling him:

I had suspicions when I talked to you [in 2021] about his [Trump's] mental decline and so forth, but I now realize he's a total fascist. He is the most dangerous person to this country.<sup>39</sup>

Milley paused, then reiterated, "A fascist to the core!"

Independent of my position as president of Americans Against Gun Violence, I wrote an article for Common Dreams in April of this year entitled, "[When Fascism Comes to America](#)."<sup>40</sup> In that article, I noted that during his first few months back in office, Trump had already exhibited behavior in most of the 14 categories listed in a study of characteristics common to notorious 20<sup>th</sup> Century fascist dictators, including Hitler and Mussolini.<sup>41</sup> By now, Trump has demonstrated behavior in all 14 categories.

Here are just a few of the myriad examples of Trump's tyrannical, fascist behavior.

- During Trump's first term in office, the Washington Post documented that Trump made over 30,000 false or misleading statements.<sup>42</sup> His lies concerned issues as trivial as the size of the crowd and the weather during his inauguration ceremony to false claims that he'd created the greatest economy and the biggest tax cut in U.S. history to his biggest and most bold-faced lies in which he claimed that he'd won the 2020 presidential election.<sup>43</sup>
- Trump pressured elected officials across the country to help him overturn the result of the 2020 presidential election. During the Biden administration, the Justice Department appointed an independent Special Counsel, Jack Smith, to lead an investigation into Trump's election interference. By the time the report was completed, though, Trump had been declared the winner of the 2024 election. In his final report, Smith concluded, "Indeed, but for Mr. Trump's election and imminent return to the Presidency, the Office [of the Special Counsel] assessed that the admissible evidence was sufficient to obtain and sustain a conviction at trial."<sup>44</sup>
- After inciting a large crowd of his supporters on January 6, 2021, to march to the Capitol and "fight like hell" to overturn the 2020 presidential election result,<sup>45</sup> Trump watched the violent attack on the Capitol on TV for approximately three hours - "gleefully," according to then White House press secretary Stephanie Grisham<sup>46</sup> - before he finally recorded a video message telling the rioters to go home; and even in that message, he repeated the lie that he'd won the 2020 election by a "landslide," and he told the rioters, "We love you, you're very special."<sup>47</sup>
- Trump claimed that the January 6, 2021, insurrectionist attack on the Capitol was a "day of love."<sup>48</sup> On his first day back in office in 2025, he granted clemency to the more than 1,500 rioters who were charged with and/or convicted of crimes related

to the attack, including rioters convicted of assaulting police officers and rioters with past convictions for other violent crimes, including sexual assault.<sup>49</sup> In flagrant violation of constitutional principles, federal laws, and historical norms, Trump then pressured the Justice Department to retaliate against the lawyers involved in pursuing the convictions of January 6 rioters, resulting in more than two dozen prosecutors being either fired or demoted.<sup>50</sup> More recently, Trump has pressured the Justice Department to seek indictments on dubious grounds against his own long list of political enemies,<sup>51</sup> giving new meaning to the term, “trumped-up charges.”

- During his second term as president, Trump has nominated and appointed grossly unqualified sycophants to existing cabinet positions and other key government posts. Additionally, without congressional consent, Trump effectively created a new department, the so-called “Department of Government Efficiency (DOGE),” and announced that the world’s richest man, Elon Musk, who had serious financial conflicts of interest, would be running it.<sup>52</sup> Musk has since left DOGE, but during his tumultuous tenure, tens of thousands of federal employees were either fired without cause or pressured into early retirement, and important federal agencies were eviscerated and/or sent into chaos. There is no credible evidence that DOGE has made the federal government any more efficient. On the contrary, the chaos and confusion it’s caused has probably had the opposite effect.<sup>53</sup> Multiple lawsuits have been filed against DOGE, and federal district court judges have ruled various aspects of DOGE to be unconstitutional or otherwise illegal.<sup>54</sup>
- The Trump administration has been arresting, revoking visas, and/or threatening to deport foreign nationals, including students, researchers, and other legal permanent residents in the United States, who participated in peaceful protests, including protests against the genocide that Israel is conducting in Gaza with U.S. support.<sup>55</sup> Federal judges have ruled these actions to be unconstitutional.<sup>56</sup> The Trump administration has also been withholding billions of dollars in federal funding from universities and colleges where protests have taken place in another clearcut violation of the First Amendment right to free speech. Multiple universities have sued the Trump administration to restore the federal funding that they’re due, and federal judges have ruled against the Trump administration in most of those cases.<sup>57</sup>
- Based on Trump’s false claim that undocumented immigrants are disproportionately responsible for crime in the United States,<sup>58</sup> since Trump began his second term as President, armed, masked Immigrations and Custom Enforcement (ICE) agents have been terrorizing immigrant communities, including accosting residents on their streets and sidewalks and in their workplaces, churches, and parks, as well as in medical facilities and in immigration courts; detaining and physically and verbally abusing them, arresting and deporting allegedly illegal immigrants without due process and under inhumane conditions, including holding them in metal cages in U.S. detention centers<sup>59</sup> and sending them to brutal prisons in third world countries other than the immigrants’ countries of origin.<sup>60</sup> In many cases, ICE agents have targeted individuals on no basis other

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than their ethnic appearance, their limited fluency in English, the type of work they were doing, and the location in which they happened to be.<sup>61</sup> Such actions are a clear violation of the constitutional rights of all US residents, regardless of their immigration status.<sup>62</sup>

- After provoking public outrage by the types of immigration raids described above, Trump sent federalized California National Guard troops and U.S. Marines into Southern California for civilian law enforcement in Los Angeles without the Governor's consent. A federal judge ruled this was a violation of federal law (the *Posse Comitatus* Act), but Trump threatens to do the same in other states.<sup>63</sup>
- On his first day back in office, Trump issued an executive order intended to end birthright citizenship for children born to undocumented immigrants or immigrants on temporary visas. Federal courts have ruled this order to be in clear violation of the 14<sup>th</sup> Amendment.<sup>64</sup>

As I noted above, these are just a few of the innumerable examples of how Donald Trump and his administration are operating in a tyrannical manner typical of past fascist regimes in other countries. The gross abuses of power by Trump and his administration in just the first nine months of his second presidency are unprecedented, though, in our own nation's history. If Charlie Kirk truly believed his fraudulent claim that the Second Amendment confers an individual right to gun ownership "so that you can defend yourself against a tyrannical government," he should have been preaching to his followers that now, more than any other period in U.S. history, was the time to exercise that right. Instead, Kirk was actively supporting the tyrannical Trump administration.

In reality, of course, Kirk's assertion that U.S. citizens have a constitutional right to armed insurrection is absurd, including for reasons well beyond the fact that there's no historical evidence to support his claim. If some U.S. gun owners banded together and tried to violently overthrow our current federal government, they'd probably find that the majority of other gun owners, like Kirk himself, are Trump supporters. And even if all U.S. gun owners agreed that Trump is a tyrant and tried to violently overthrow the federal government *en masse*, they would be slaughtered by the U.S. military. If they tried to kill members of the Trump administration stealthily, one by one, the result would be a chain reaction of thousands more horrific murders like the Charlie Kirk killing and the subsequent deadly attack on the Mormon church in Michigan that may have been committed in retaliation for the fact that Kirk's killer, Tyler Robinson, was raised by Mormon parents.<sup>65</sup> Furthermore, any coordinated attack on members of his administration by armed insurrectionists would provide an excuse for Trump to declare martial law,<sup>66</sup> which he's already hinted at doing, including in a rambling speech to military leaders on September 30 in which he stated he intended to use the military to "quell civil disturbances" and handle "the enemy within."<sup>67</sup>

### Conclusion

The late Charlie Kirk's fraudulent misrepresentation of the Second Amendment is not only absurd, it's extraordinarily dangerous. But it's not any more absurd or dangerous than Scalia's fraudulent misrepresentation of the Second Amendment in his majority opinion in the 2008 *Heller* decision. As we note in our [Americans Against Gun Violence mission statement](#), the *Heller* decision and its progeny are literally death sentences for tens of

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thousands of Americans annually. It's not only absurd, but shameful that we as a country allow the fraudulent misrepresentation of the Second Amendment to prevent us from adopting stringent gun control laws in the United States comparable to the laws that have long been in effect in all the other high income democratic countries of the world – laws that might well have saved Charlie Kirk's own life and that would almost certainly save the lives of most of the "some" (more than 40,000) other Americans to whom Kirk referred who are killed by guns in our country every single year.

There's a lot more that I'd like to say on the topic of the connections between the murder of Charlie Kirk and the fraudulent misrepresentation of the Second Amendment, but this message is getting too long already, so I'll save those other comments for a "Part Two." Before closing this message, though, I'd like to explain why I've devoted so much of it to describing examples of the tyrannical, fascist behavior of Donald Trump and his administration.

If you've read my past Americans Against Gun Violence president's messages, you know that I've also been critical of Barack Obama, Hillary Clinton, Joe Biden, and Kamala Harris for not having the political courage to dispute the fraudulent misrepresentation of the Second Amendment. But they all demonstrated some sensibility to the gun violence issue and behaved within historical, legal, and constitutional norms for U.S. political leaders. Furthermore, while they were in power (or if Hillary Clinton or Kamala Harris had become President) there was some reasonable hope that that we could make at least modest gains on the gun violence prevention front.

Donald Trump's behavior, on the other hand, grossly violates all historical, legal, and constitutional norms for a U.S. president, and as long as he remains in office, I believe there is no reasonable hope for any significant progress in preventing gun violence. On the contrary, the chaos and fear that he is creating is likely to engender more gun violence, and the raids by armed, masked ICE agents and his deployment of heavily armed military troops in U.S. cities is a form of institutional gun violence. Also, it goes without saying that while the name of our organization is simply, "Americans Against Gun Violence," we're also against tyranny, fascism, genocide, scapegoating, sexual abuse, racial profiling, fearmongering, lying, bullying, cronyism, corruption, inciting political violence, and so on.

It's vitally important at this critical moment in our nation's history that at the same time as we work to expose the fraudulent misrepresentation of the Second Amendment to the U.S. Constitution, we don't allow ourselves - or our fellow human beings, whether they entered the United States legally or not - to be intimidated into giving up our true constitutional rights. These rights include, but are not limited to, the Article I, Section 9 constitutional guarantee of the right of *habeas corpus*, the First Amendment rights to free speech, freedom of the press, freedom of peaceful assembly, freedom of religion (including no religion), and freedom to petition the government for redress; the Fourth Amendment protection against unreasonable search and seizure; the Fifth Amendment guarantee of due process and protection against self-incrimination; the Sixth Amendment guarantee of a speedy and public trial and representation by legal counsel; the Eighth Amendment prohibition against cruel and unusual punishment; and the Fourteenth Amendment right to equal protection under the law.

I'll try to conclude this message on an upbeat note with two of my favorite quotations from Nelson Mandela, the South African leader who emerged from 27 years in South African



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prisons - with much of that time spent in solitary confinement - to become South Africa's first democratically elected president, to lead his country out of apartheid, and to win the Nobel Peace Prize. The first quotation is one that helps assure me that our work at Americans Against Gun Violence is worth the effort. Mandela said:

Education is the most powerful weapon that you can use to change the world.

And the second quotation is a reminder to never give up.

It always seems impossible until it's done.

Compared to the obstacles that Mandela overcame to accomplish what he did, it should be relatively easy for us to restore democracy in our country and end our shameful epidemic of gun violence.

Thanks for reading this message, thanks for your support of [Americans Against Gun Violence](#), and thanks for your own personal activism.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Bill Durston, M.D.  
President, Americans Against Gun Violence

Note: Dr. Durston is a former expert marksman in the U.S. Marine Corps, decorated for "courage under fire" during service in combat in the Viet Nam war. After his military service, Dr. Durston became a medical doctor and worked as a board-certified emergency physician for more than 30 years. He now volunteers as a preceptor at a student-run free clinic affiliated with the University of California, Davis.

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