

MEMORANDUM

TO Interested Parties
FROM Giffords Law Center to Prevent Gun Violence
DATE January 17, 2020
RE How Local “Gun Sanctuaries” Threaten Public Safety

The growth of “Second Amendment sanctuaries,” most recently across the state of Virginia, reflects a dangerous and misguided phenomenon that is out of step with the public’s widespread support for stronger gun safety laws. Gun-rights absolutists, inspired by renegade sheriffs and local officials, are employing a baseless argument to threaten and intimidate legislators who were elected to fight for stronger gun laws. This toxic mix has led the [governor of Virginia to declare a state of emergency](#) and has already resulted in the [arrest of neo-Nazis](#) seeking to violently disrupt an annual gun safety rally on Martin Luther King Jr Day.

This attempt to silence the majority and their democratically elected representatives has no place in our country. It’s also fundamentally misleading because those advocating for what are more aptly described as “gun sanctuaries” are dishonestly claiming to do so in defense of the Second Amendment and the Supreme Court’s decision in *District of Columbia v. Heller* (2008). But *Heller* explicitly said that the Second Amendment was not unlimited and that a range of gun regulations are fully consistent with the Second Amendment, a point that [hundreds](#) of court decisions have proven again and again since 2008 while upholding a broad array of gun laws against constitutional challenges.

Reckless sheriffs and local officials claiming that they can decide what laws are and aren’t constitutional are trying to usurp powers that reside in the courts, not to mention hiding from the simple fact that gun safety laws have been proven to make the public safer. These local leaders’ refusal to enforce these laws endangers their constituents—while flying in the face of the constitution. Now that this alarming trend has arrived in Virginia, it’s important to take a closer look at how we got here.

What to Know About the “Gun Sanctuary” Movement

Over the past two months, roughly [100](#) local governments in Virginia announced that they will not enforce firearms laws that they deem unconstitutional. These announcements followed Virginia’s landmark 2019 elections, in which [Virginians turned out to express unprecedented support for commonsense gun safety measures, such as universal background checks \(supported by about 90% of Virginia voters\) and extreme risk laws \(which 73% of Virginia voters support\)](#). Indeed, gun policy was the [top issue in the election](#), with three out of four Virginia voters calling it very important and 28% of voters in swing districts saying a candidate’s position on gun issues was the [most important issue in the election](#). Those voters voted 2:1 for gun safety candidates. **The gun sanctuary trend in Virginia ignores the will of the overwhelming majority of Virginia voters.**

Unfortunately, this trend is not new: local governments or officials across the country have recently made similar announcements, most notably in Illinois, Colorado, Nevada, and New Mexico. The declaration of

sanctuaries has done a real disservice to the communities officials are sworn to serve, since they've tended to be adopted in counties that have the [highest gun suicide rates](#) and could benefit the most from enforcement of stronger gun safety laws.

In a cruel twist of irony, this means that states' gun safety laws could be unavailable to some of the people who need them most. Earlier this year lawmakers enacted an extreme risk law in Colorado, where suicide deaths are among the [highest](#) in the country. Yet [nine of the 10 Colorado counties with the highest suicide rates](#) have declared themselves "Second Amendment sanctuaries," claiming they will refuse to enforce the extreme risk law. The same is true in Custer County, where the suicide rate is [five times the national average](#) and the highest in Colorado, yet the sheriff has opposed the state's extreme risk law.

Gun Sanctuaries Aren't Protected by the Second Amendment

The majority of Virginia's elected lawmakers favors moderate gun safety measures. This session, lawmakers will vote on the following solutions: closing the background check loophole, capping bulk gun purchases, allowing localities like Charlottesville to protect public places from unpermitted guns, and enabling courts and law enforcement to temporarily disarm individuals in crisis. Gun-rights activists argue that these safety measures are unconstitutional, but this simply isn't true. All of these measures are fully consistent with the Second Amendment and with Justice Scalia's majority opinion in [District of Columbia v. Heller](#).

Gun sanctuary proponents erroneously cite *Heller* to lend credence to their idea that the Second Amendment guarantees a broad, absolute right to carry firearms. This claim derives from the extreme claims that gun lobby groups like the NRA have advanced in litigation, rather than the *Heller* decision itself. In *Heller*, Justice Scalia wrote, "The right secured by the Second Amendment is not unlimited. [It is] not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." He offered several examples of "[presumptively lawful gun safety laws](#)", including prohibitions on firearm possession by felons and the mentally ill, prohibitions on "dangerous and unusual weapons," and restrictions on commercial firearm sales, and noted that this list was not exhaustive and that other laws could be constitutional as well.

Nonetheless, in the decade since *Heller* the gun lobby has filed hundreds of lawsuits to challenge nearly every gun safety measure. These challenges have [consistently failed](#), and courts have proven far less willing to distort or expand the Supreme Court's ruling in *Heller* than the gun lobby hoped. Courts have overwhelmingly upheld gun safety laws as fully compatible with the Second Amendment, and their rulings have not been partisan; Republican judges have [repeatedly upheld](#) gun policies, including gun laws adopted by Republican [legislatures](#) and [governors](#).

The four main gun safety bills that lawmakers in Virginia are considering fall within this category: they are exactly the sort of reasonable regulations that the Supreme Court and lower court judges across the ideological spectrum have repeatedly deemed lawful.

- **S.B. 70/ H.B. 2** is a universal background checks bill that would close the dangerous loophole through which felons, domestic abusers, and other prohibited people evade background checks to buy firearms. Such laws can [help stop mass shooters](#) like the Virginia Tech gunman, who exploited a related weakness in the [background checks system](#) to purchase the guns he used to kill 32 people in 2007, in what was then the deadliest mass shooting in American history.

[Twenty-one states](#) have already expanded their background check laws beyond federal law, a measure even [69% of NRA members](#) support. Universal background checks enable enforcement of the “presumptively lawful” regulations Justice Scalia endorsed: laws barring gun possession by felons, the mentally ill, and other dangerous people. Courts [routinely](#) uphold these laws against Second Amendment challenges, and a court has likewise never held that requiring a background check violates the Second Amendment.

- **S.B. 240/ H.B. 674** is an extreme risk law that provides for temporary firearm relinquishment when an individual poses a danger to himself or others. This law would enable law enforcement officers to petition a court for a protective order that requires a dangerous person to temporarily give up any firearms, and provides for subsequent court reassessment of the temporary protective order. Every court to examine extreme risk laws has upheld them as consistent with the Second Amendment and due process principles, including courts in [Indiana](#), [Connecticut](#), and [Florida](#).
- **S.B. 69/ H.B. 812** would reduce bulk gun purchases, capping handgun purchases at one per month. The bill provides an exception for people who undergo an enhanced background check. Such a narrow restriction would constitute a limited qualification on commercial firearms sales, and that Justice Scalia previously deemed presumptively lawful. Courts have similarly upheld commercial restrictions like [waiting period requirements](#), fees on [firearm sales](#), and [minimum age limits](#) for firearm purchases.
- **S.B. 35/ H.B.421** would create a narrow carveout from existing Virginia law, which bars localities from enacting their own firearms ordinances. This bill would allow localities to prohibit firearms possession during large events in certain public places, such as parks and government buildings. Aimed at protecting free expression from intimidation, the bill falls squarely within another type of policy *Heller* endorsed: Justice Scalia noted that the Second Amendment allowed for laws restricting “the carrying of firearms in public places, such as schools or government buildings.” Applying this caveat, courts have [upheld](#) a variety of “sensitive place” laws, including prohibitions on firearms in parks, places of worship, and college campuses.

Virginia lawmakers are considering reasonable, commonsense gun safety measures that are fully consistent with the Second Amendment. It is the views of gun sanctuary opponents that violate the Constitution—not the Virginia legislature’s gun safety proposals.

This Movement Disregards the Constitution

By branding these localities as “Second Amendment sanctuaries,” **Virginia’s gun-rights activists invite an association with the immigration sanctuary movement. But the comparison is apples to oranges.**

Immigration sanctuaries are jurisdictions that have determined not to use local resources to carry out federal immigration laws, a policy position protected by the [the Tenth Amendment of the US Constitution](#). Under the Tenth Amendment, the federal government cannot force a state or city to help it enforce a federal regulatory policy, which includes all immigration laws. States that decline to enforce federal marijuana laws rely on the [same](#) Tenth Amendment principle. But in neither case does a city or county actively try to stop enforcement of federal law; they just say it is the federal government’s responsibility to enforce the law for itself. And in neither case does a city or county purport to declare a *state* law invalid,

as the gun sanctuary movement does. Finally, in neither the immigration nor the marijuana context do any localities purport to declare a *federal* law unconstitutional—again, they just say it's up to the federal government to enforce the law and refuse to use local resources to do the job of the federal government (as the Tenth Amendment allows).

In contrast to the immigration sanctuary approach, gun sanctuaries disregard their responsibility to enforce *state* firearm regulations. There is no Tenth Amendment protection for this approach, which would have the [illegal result of declaring a law adopted by a higher level of government invalid](#) (based on [Virginia Code § 1-248](#), which is a supremacy clause requiring local ordinances to be consistent with state law). The Second Amendment does not support this approach either, because under the separation of powers doctrine, law enforcement and political leaders of cities or counties have no authority to act like a court and decide whether a gun safety law is constitutional. The decision to flout the separation of powers is especially egregious considering the US Supreme Court has already declared many gun safety regulations to be “[presumptively lawful](#)” and said that the Second Amendment allows state “[experimentation with reasonable firearms regulations](#).” **Rather than being grounded in the Constitution or the Second Amendment, gun sanctuaries are an unfounded backlash against Virginia’s—and many others states’—democratically elected legislature and its voting majority, modeled on the baseless legal theories once [peddled by the Ku Klux Klan](#).**

Even more alarmingly, some reckless local leaders have taken the additional illegal step of promising to arm and train citizens as militia, who would apparently serve to enforce local leaders’ erroneous interpretation of the Second Amendment. One Virginia sheriff threatened to “[deputize](#)” [civilians](#) to help oppose state gun safety laws that he deems unconstitutional. Another county passed a resolution [calling for all eligible citizens](#) to receive concealed weapons training. These tactics circumvent the judicial process, proposing to rely on force to advance an extreme and dangerous misinterpretation of Second Amendment rights.

Gun Sanctuaries Threaten Public Safety

The sanctuary movement jeopardizes existing and proposed gun safety laws that protect the public. Our [state-by-state research](#) confirms that people are less safe in states where gun laws are weaker, and vice versa. Furthermore, extreme risk laws like S.B. 240/ H.B. 674 have proven to substantially reduce suicide. In Connecticut and Indiana, extreme risk laws [prevented one suicide death for every 10 to 20 firearms](#) removed by law enforcement, and reduced suicide deaths by [14%](#) in Connecticut and [7.5%](#) in Indiana.

An extreme risk law could mean life or death for thousands of Virginians: [3,200 people](#) died by firearm suicide between 2013 and 2017. If Virginia lawmakers pass S.B. 240/ H.B. 674, more than 100 Virginians could be saved from suicide deaths this year alone (based on Connecticut’s 14% reduction). If lawmakers pass S.B. 70/ H.B. 2, they will close the background check loophole responsible for [80% of the firearms used in crimes](#) (96% of which are acquired by prohibited people). The decision to declare a gun sanctuary county directly threatens the lives of Virginia residents living in those counties.

Lifesaving gun safety measures hinge on enforcement. Rather than protection, local officials’ refusal to enforce gun safety laws endangers their constituents. A sanctuary is a refuge from harm. To whom does the term “sanctuary” apply here? Who—or what—is protected? Is it a sanctuary for the woman whose abusive husband will be able to buy a gun through a private sale loophole? For the teenager at risk of suicide death? For the citizen afraid to express his ideas in the town square? Virginia’s sanctuary counties are not sanctuaries for anyone in these groups—they are sanctuaries for guns. **If local leaders**

truly want to protect their constituents, they should enforce the sensible gun safety laws that Virginians overwhelmingly support.

Additional resources:

Giffords Law Center Report: [How “Second Amendment Sanctuaries” Are Threatening Lifesaving Gun Laws](#)

Factsheet: [The Supreme Court and the Second Amendment](#)

Factsheet: [Extreme Risk Laws at Work](#)

Giffords Law Center’s [Post-Heller Litigation Summary](#)