

# Gun Law and Policy: Examples & Limitations

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Gun Safety is not concerned with a single problem—we need to think about how to address various problems posed by misuse or potential misuse of firearms.

There is no “solution.” Instead, we can make efforts to reduce risk and harm affecting specific aspects of gun safety.


#### EXAMPLES OF PROBLEMS (not complete list)

- Suicide (largest number of gun deaths each year)
- Accidental shootings (including children obtaining firearms not safety stored)
- Threats, injuries, and deaths from criminal events (robberies, assaults, and homicides)
- Risks, injuries, deaths in the context of domestic violence/intimate partner violence
- Risks, injuries, deaths from use of firearms by people experiencing rage or personal crises
- Threats to democracy when firearms used to threaten/intimidate voters, candidates, lawmakers



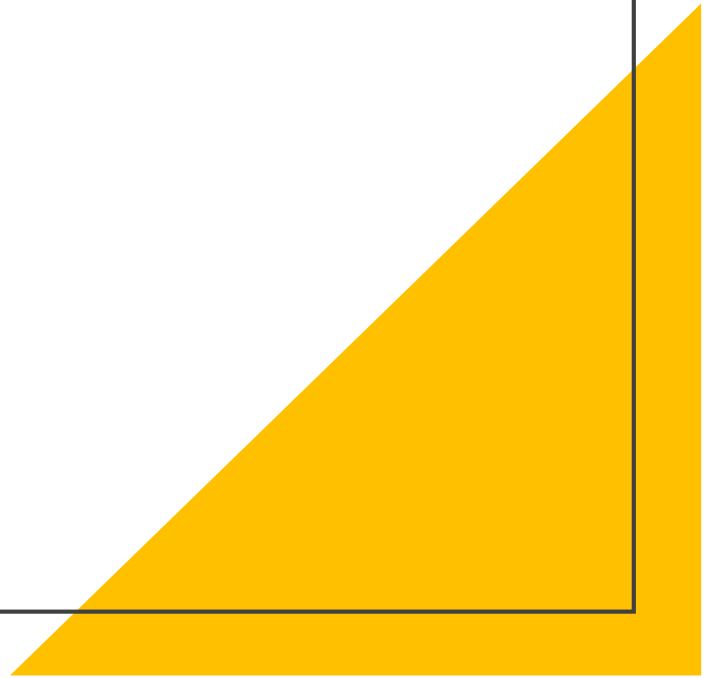
Regulating access to  
and permitted  
locations for  
firearms—  
Important to  
consider but we can  
also use additional  
policy approaches

#### EXAMPLES OF ADDITIONAL POLICY APPROACHES

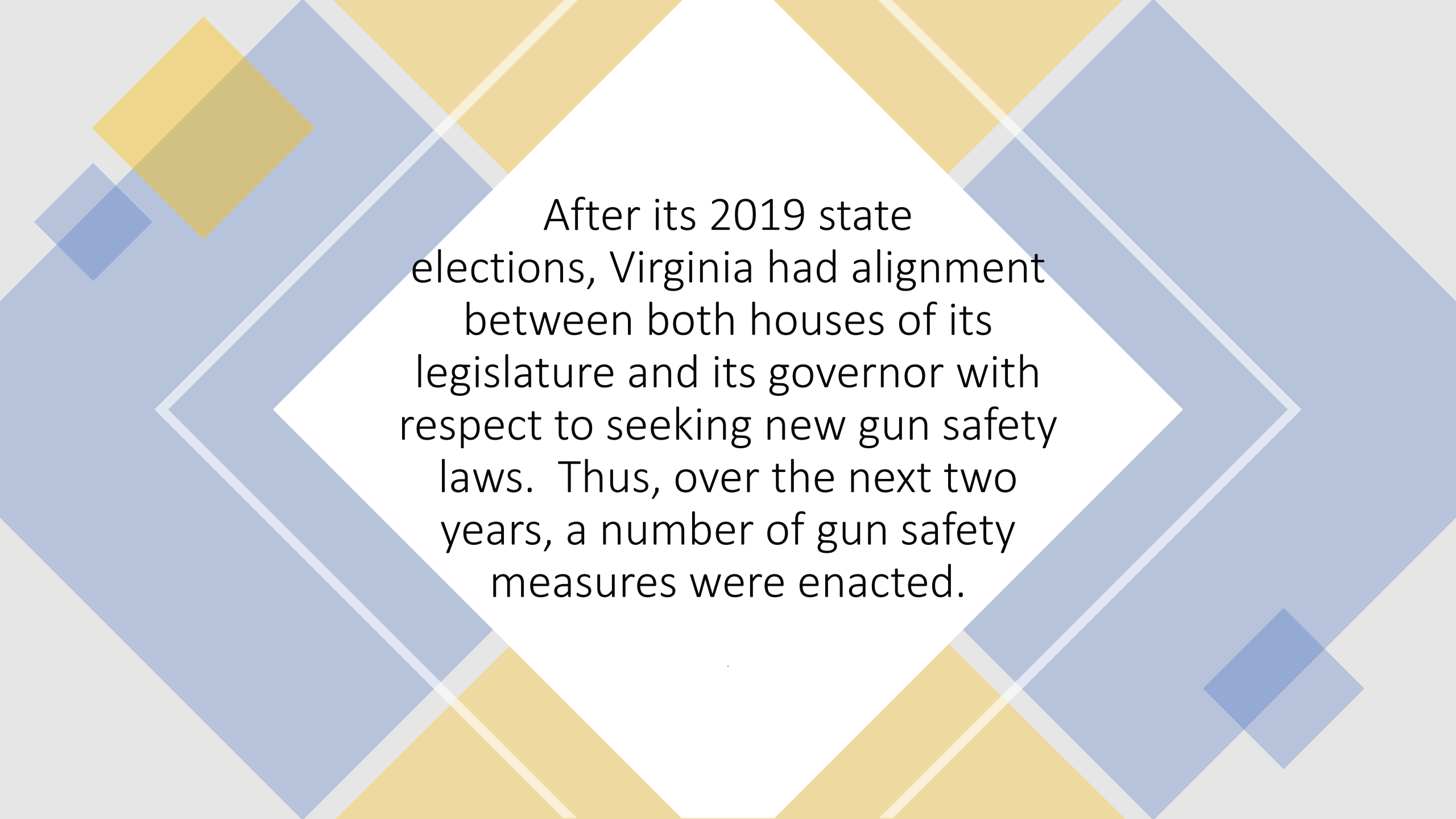
- Community and neighborhood conflict/violence intervention programs
  - Educational, vocational, recreational opportunities to help steer young people away from contexts in which firearms are available and attractive
  - Expanded access to health care (e.g., standard questions in medical visits that can detect domestic violence situations or unsecured firearms in home)
  - Expanded access to health care (e.g., reduce victims' cost burdens for physical injuries from gun violence)
  - Expanded access to mental health services (e.g., detection and treatment of people in crisis)
  - Expanded access to mental health services (e.g., counseling for victims and families)
  - Security measures at locations
- 

“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

Justice Louis Brandeis (1932)



Michigan need not “reinvent the wheel” because other states have already moved forward with gun safety laws—and Michigan can look to them for examples

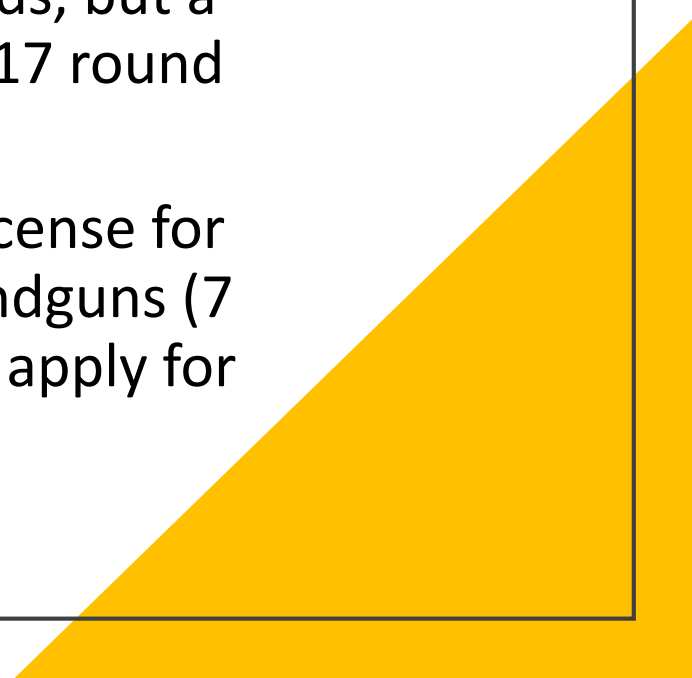


After its 2019 state elections, Virginia had alignment between both houses of its legislature and its governor with respect to seeking new gun safety laws. Thus, over the next two years, a number of gun safety measures were enacted.

# Examples of gun safety laws enacted in Virginia, 2020-2021

- Ban on civilian carried firearms in state buildings and state Capitol grounds
- Universal background checks
- Reporting requirements for lost & stolen firearms
- Safe storage requirements
- Extreme risk protection orders (“red flag” law)
- Temporary ban on gun possession for conviction of certain violent offenses against family members

# Examples of gun safety laws in other states

- Waiting period for firearms purchases (9 states including Florida)
  - Ban on “large capacity” ammunition magazines (14 states; limit is typically 10 rounds, but a couple states use 15 or 17 round limit)
  - Permit to purchase or license for all firearms, not just handguns (7 states; additional states apply for semiautomatic rifles)
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The Second  
Amendment:  
Legal Definition  
vs.  
Wishful Thinking

“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.”

In U.S. Supreme Court opinions, the “holding” of the case represents the rule of law established by the case

The holding answers the issue or question that was raised in the case. Everything else in the judicial opinion is discussion or guidance for other judges to consider in deciding cases on related issues.

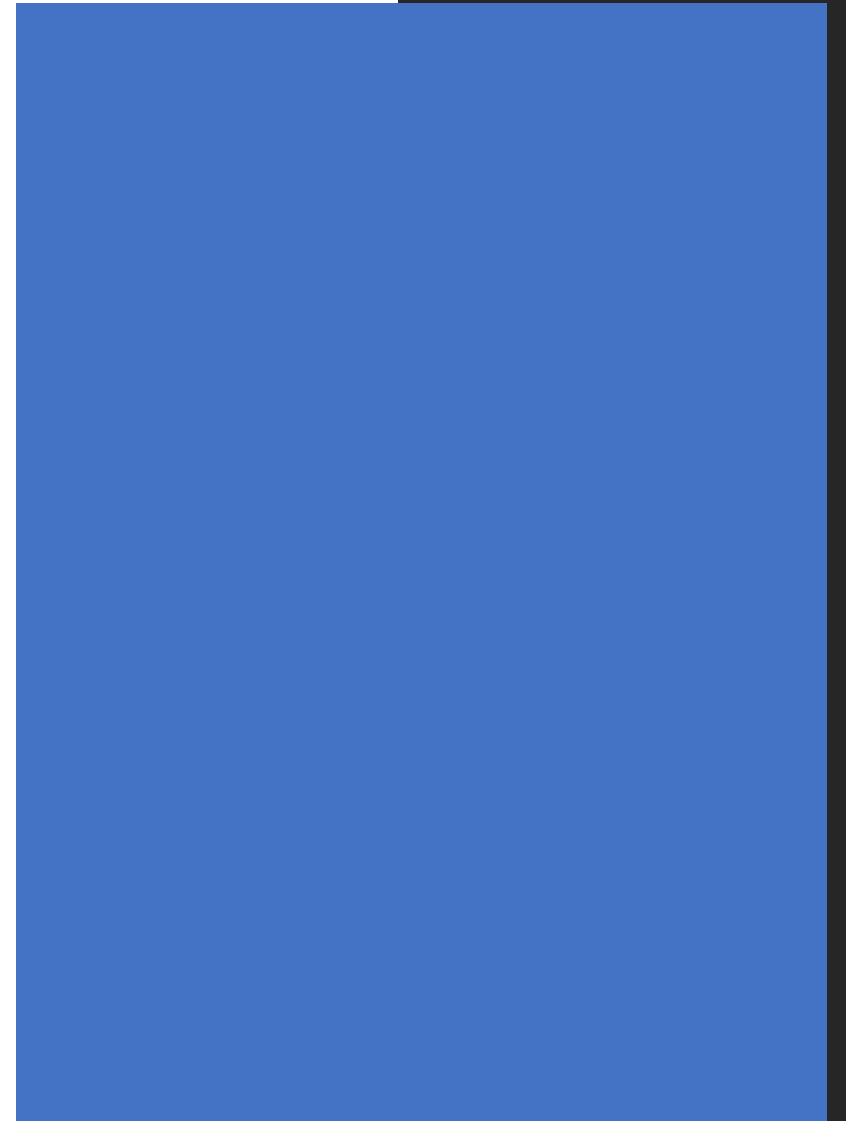
So- what are the holdings or rules of law established by the U.S. Supreme Court in interpreting the meaning of the Second Amendment?

# The meaning of the Second Amendment according to the U.S. Supreme Court

- 1) Law-abiding adults are entitled to keep handguns in their homes for self-protection when they live in federal jurisdictions, such as Washington, D.C. (District of Columbia v. Heller, 2008)
- 2) Law-abiding adults are entitled to keep handguns in their homes for self-protection when subject to state and local laws (McDonald v. City of Chicago, 2010)
- 3) Individuals who are otherwise qualified to obtain a permit to carry a firearm through state requirements for background checks, training, licenses, etc.—are entitled to a carry permit without being required to provide a reason for why they want or need to carry a firearm (New York Rifle & Pistol Assn. v. Bruen, 2022)

That's it. Any other claims about the meaning of the Second Amendment right are speculative, uninformed, dishonest, or relying on lower court decisions yet to be considered by the high court.

The U.S. Supreme Court's rulings on the meaning of the Second Amendment specifically invite legislatures to enact certain gun safety measures



# Example #1

Justice Antonin Scalia, majority opinion in *District of Columbia v. Heller* (2008):

"...nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

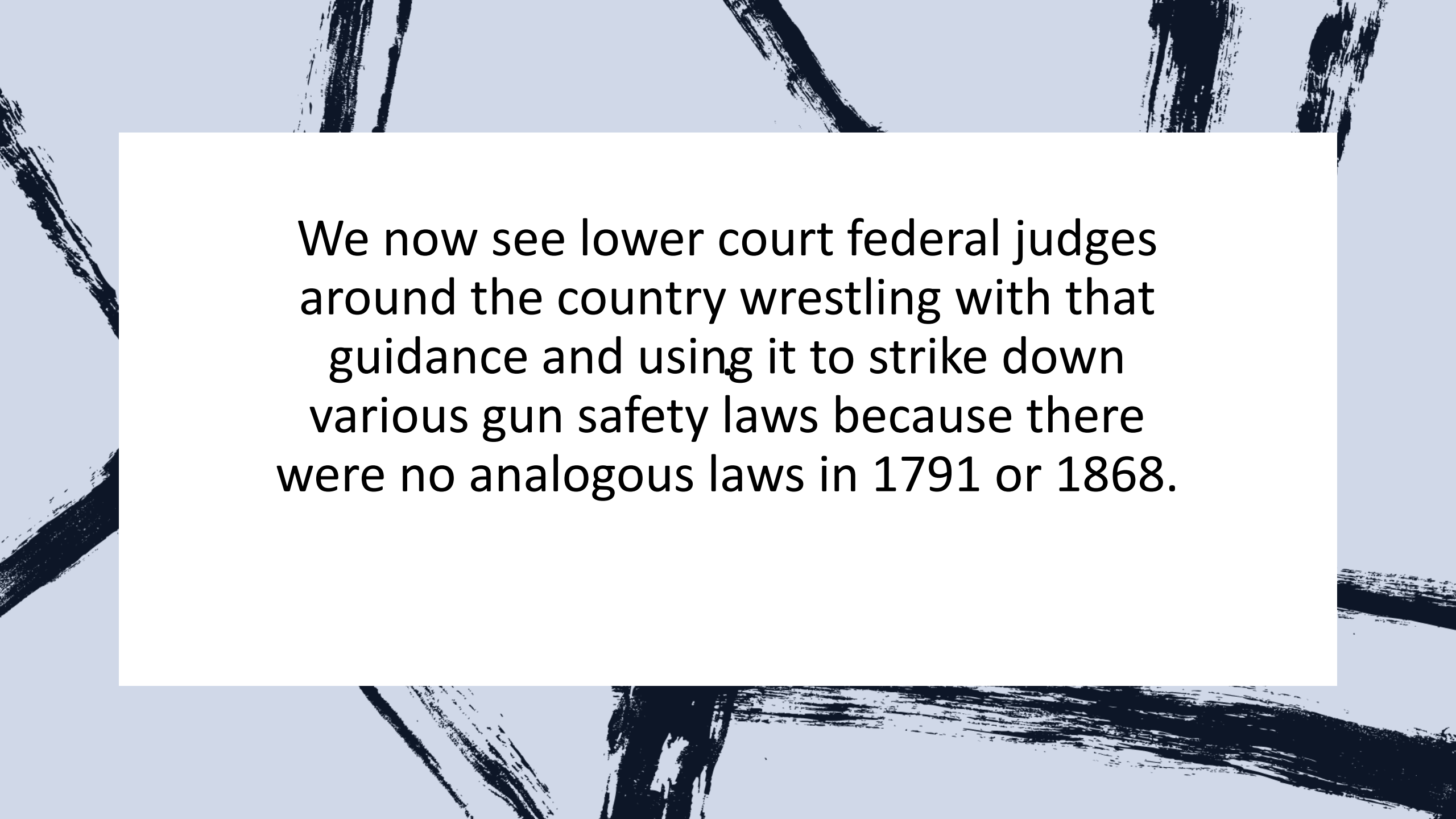
We also recognize another important limitation on the right to keep and carry arms. *Miller* said, as we have explained, that the sorts of weapons protected were those 'in common use at the time.' ...We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'"

## Example #2

Justice Clarence Thomas, majority opinion in *NY Rifle & Pistol Assn. v. Bruen* (2022):

“...18th- and 19th-century ‘sensitive places’ where weapons were altogether prohibited—e.g., legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions.... We therefore can assume it settled that these locations were ‘sensitive places’ where arms carrying could be prohibited consistent with the Second Amendment. And courts can use analogies to those historical regulations of ‘sensitive places’ to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive places are constitutionally permissible.”

Problem: The six-member majority of the U.S. Supreme Court in *NY Rifle & Pistol Assn. v. Bruen* (2022) has created a mess with its guidance to lower court judges to look for “historical analogies” in laws in 1791 (federal laws) or 1868 (state laws) to decide if today’s gun safety laws are permissible.



We now see lower court federal judges around the country wrestling with that guidance and using it to strike down various gun safety laws because there were no analogous laws in 1791 or 1868.



Examples of lower court  
decisions since Supreme Court  
decision in NY Rifle & Pistol  
Assn. case in June 2022



## Examples of the mess created by the Supreme Court's misguided historical analysis

- Struck down law keeping guns away from individuals subject to personal protection orders for acts of violence (Because lawmakers in 1791 did not care about husbands' violence against wives)
- Stopped law to prevent "ghost guns" with untraceable parts made on 3-D printers (Because this technology did not exist in 1868 so no laws against it at that time)
- Stopped laws to prevent carrying guns in New York's subways, Times Square, children's summer camps, etc. (Because such laws did not exist in 1868)
- Etc. etc.

# Problems

- Defining today's laws within the boundaries of knowledge, values, and priorities from sexist prior centuries where decision makers could not have anticipated the future social contexts and technology of the 21<sup>st</sup> century.
- Judges are not trained as historians and they tend to selectively pick and choose bits & pieces of historical evidence without expertise and without consideration of today's social and technological context
- We do not define other constitutional rights by placing ourselves in a historical straitjacket
- Etc.

Should the Michigan legislature be deterred by these unfolding developments in courts around the country?

No. I predict that at least two of the six justices in the majority for *NY Rifle & Pistol Assn. v. Bruen* (June 2022) will recognize that the guidance provided in that majority opinion is unworkable, causing massive confusion, and creating undesirable outcomes—and therefore they will accept some of these disputed cases for review, join with the three dissenters in *NY Rifle & Pistol Assn* case, and create a new majority that clarifies the guidance and gives state legislatures more space to enact gun safety laws that address the contemporary issues posed to American society by misuse of firearms.