

TESTIMONY OF JOSHUA HORWITZ  
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SENATE JUDICIARY COMMITTEE  
“HEARING ON THE ASSAULT WEAPONS BAN OF 2013”  
FEBRUARY 27, 2013

Mr. Chairman and Members of the Committee,

My name is Josh Horwitz, and I am the executive director of the Coalition to Stop Gun Violence (CSGV). I appreciate this opportunity to provide written testimony on behalf of my organization, a coalition of more than 47 national organizations dedicated to reducing gun death and injury in the United States. We seek to secure freedom from gun violence through research, strategic engagement, and effective policy advocacy.

As this committee considers the Assault Weapons Ban of 2013, Members should understand that assault weapons such as the AR-15 are the weapons of choice for violent insurrectionists in this country. Members should also recognize that—contrary to the assertions of the gun lobby—the taking up of arms against our government by individuals (or armed mobs) has always been considered treason.

An individual right to armed rebellion against the United States Government has never existed in our constitutional republic. Such a right would make each man a king unto himself; allowing him to make an individualized assessment that democratically-elected lawmakers have become despots and to fashion an arbitrary, violent remedy. From the drafting of our Constitution to our bloody Civil War to present day, our nation has categorically rejected such individual violence as a means to achieve political goals.

While the revolution of the American colonies established the right to self-governance, the breakdown of law and emergence of civil disorder—most notably Shays’ Rebellion—cemented the Founders’ belief in the need for a strong federal government to work in tandem with the states.<sup>1</sup> For this reason, the Framers included in the Constitution a series of clauses to address domestic insurrection. Specifically Article I, Section 8, Clause 15, which states that one of the primary purposes of the [state] Militia is to “suppress Insurrections”;<sup>2</sup> and Article IV, Section 4, which provides, “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”<sup>3</sup> Furthermore, in Article III, Section 3, the Framers defined the crime of treason, stating that, “Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.”<sup>4</sup>

It is important to note that our Founders rejected the legitimacy of insurrectionism and responded to it

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<sup>1</sup> Paul Finkelman, *A Well Regulated Militia: The Second Amendment in Historical Perspective*, 76 Chi.-Kent L. Rev. 195, note 293, at 211. (2000).

<sup>2</sup> U.S. Const. art. I, § 8, cl. 15.

<sup>3</sup> U.S. Const. art. IV, § 4.

<sup>4</sup> U.S. Const. art. III, § 3.

forcefully time and time again: during Shays' Rebellion; the Whiskey Rebellion of 1794; the Civil War, etc. The Second Amendment was meant to address the balance of military power between the federal and state governments, and the amendment's author, James Madison, made it clear that resistance to such tyranny would come from a Militia "officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by [state] governments possessing their affections and confidence,"<sup>5</sup> *not* by lone wolf-type domestic terrorists.

Contemporary arguments for the constitutionality of insurrectionist ideology stem largely from the 2008 Supreme Court case of *District of Columbia v. Heller*. In that ruling, however, the Court held only that the Second Amendment conferred an individual right to keep a handgun in the home for self-defense. Justice Scalia *did* muse about why the right was not limited to participation in an organized militia in *Heller*, stating, "If ... the Second Amendment right is no more than the right to keep and use weapons as a member of an organized militia—if, that is, the *organized* militia is the sole institutional beneficiary of the Second Amendment's guarantee—it does not assure the existence of a 'citizens' militia' as a safeguard against tyranny."<sup>6</sup> But the Court stressed in its findings that the individual right to keep and bear arms protects only *lawful* conduct.<sup>7</sup>

Certainly, proponents of insurrectionism have stretched Justice Scalia's words well beyond their intended meaning if they take them to mean that there is an *individual* right to use political violence to avoid following democratically-enacted laws. On January 30<sup>th</sup>, Members of this committee witnessed this type of dangerous rhetoric firsthand during the following exchange between Senator Durbin and witness Wayne LaPierre, the executive vice president of the National Rifle Association (NRA):

DURBIN: Mr. LaPierre, I run into some of your members in Illinois and here's what they tell me, "Senator, you don't get the Second Amendment." Your NRA members say, "You just don't get it. It's not just about hunting. It's not just about sports. It's not just about shooting targets. It's not just about defending ourselves from criminals," as Ms. Trotter testified. "We need the firepower and the ability to protect ourselves from our government—from our government, from the police—if they knock on our doors and we need to fight back." Do you agree with that point of view?

LAPIERRE: Senator, I think without any doubt, if you look at why our founding fathers put it there, they had lived under the tyranny of King George and they wanted to make sure that these free people in this new country would never be subjugated again and have to live under tyranny.<sup>8</sup>

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<sup>5</sup> James Madison, "The Federalist No. 46: The Influence of the State and Federal Governments Compared," New York Packet, January 29, 1778. (Constitution Society: 2011). <http://www.constitution.org/fed/federa46.htm>

<sup>6</sup> *District of Columbia v. Heller*, 554 U.S. 570, 600, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).

<sup>7</sup> *Id* at 620.

<sup>8</sup> Senate Judiciary Committee hearing on gun violence on Jan. 30, 2013 (Transcript), *available at* [http://www.washingtonpost.com/politics/senate-judiciary-committee-hearing-on-gun-violence-on-jan-30-2013-transcript/2013/01/30/1f172222-6af5-11e2-af53-7b2b2a7510a8\\_story.html](http://www.washingtonpost.com/politics/senate-judiciary-committee-hearing-on-gun-violence-on-jan-30-2013-transcript/2013/01/30/1f172222-6af5-11e2-af53-7b2b2a7510a8_story.html)

Other NRA leaders have followed Mr. LaPierre's example. For example, NRA board member Ted Nugent regularly invokes the threat of political violence. Consider these remarks in a recent interview he gave to Guns.com on January 22, 2013:

I'm part of a very great experiment in self-government where we the people determine our own pursuit of happiness and our own individual freedom and liberty not to be confused with the Barack Obama gang who believes in We the Sheeple and actually is attempting to re-implement the tyranny of King George that we escaped from in 1776. And if you want another Concord Bridge, I got some buddies.<sup>9</sup>

Recently, the pro-gun movement has been promoting the idea that our government cannot ban military-grade firearms and high-capacity ammunition magazines because this equipment is particularly useful in defending individual freedoms against government tyranny. Members of this committee will be familiar with academic David Kopel, an associate professor at Denver University and policy analyst at Cato Institute. Like Wayne LaPierre, Kopel testified before the committee on January 30<sup>th</sup>. In a prior presentation before the Second Amendment Foundation entitled "The 'Assault Weapon' Panic," Kopel affirmed that since "resistance to tyranny or invasion would be a guerrilla war... 'assault weapons' would be useful and citizen resistance might well prove successful."<sup>10</sup>

This idea is also prominent in far-right wing news sources and blog articles. The website *American Thinker* recently published a piece by Mark Almonte entitled "Why Do Civilians Need Assault Weapons?" in which he declared, "Assault weapons are necessary for defense against tyranny because they are the weapons of the common soldier ... [In order] to repel a standing army, the citizens must possess the weapon of the common soldier."<sup>11</sup> The idea of civilians needing parity in firepower with the U.S. military was reinforced in another recent editorial in *The News Star* entitled "Amendment is About Tyranny":

During [the Revolutionary] war the "assault rifle" [was] actually a musket. The most prevalent was called "Brown Bess," which fired a .75 caliber (3/4 inch) round or bullet capable of inflicting tremendous wounds. Brown Bess was perhaps, the best assault weapon of its day and was used for hunting ... The Founding Fathers approved the populace having an assault rifle to fight tyranny. Today's Brown Bess is the AR16/15.<sup>12</sup>

Pittsburgh gun shop owner Eric Lowry echoed that sentiment this month, stating, "Citizens should be armed well enough to defend themselves against a tyrannical government in which case they should be

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<sup>9</sup> Timothy Johnson, "Nugent At Gun Industry Trade Show: 'If You Want Another Concord Bridge, I've Got Some Buddies,'" *Media Matters for America*, January 22, 2013.

<http://mediamatters.org/blog/2013/01/22/nugent-at-gun-industry-trade-show-if-you-want-a/192340>

<sup>10</sup> David Kopel, "The 'Assault Weapons' Panic," *Second Amendment Foundation*, June 19, 2009, [http://www.saf.org/journal/5/5\\_kopel.pdf](http://www.saf.org/journal/5/5_kopel.pdf)

<sup>11</sup> Mark Almonte, "Why Do Civilians Need Assault Weapons," *American Thinker*, February 12, 2013, [http://www.americanthinker.com/2013/02/why\\_do\\_civilians\\_need\\_assault\\_weapons.html](http://www.americanthinker.com/2013/02/why_do_civilians_need_assault_weapons.html) .

<sup>12</sup> Mitchell Young, "Amendment is about Tyranny," *The News Star*, February 14, 2013 <http://www.thenewsstar.com/article/20130215/OPINION03/302150328/Amendment-about-tyranny>

able to own the same kind of firearms that any military soldier should be able to own.”<sup>13</sup> To reinforce this idea, Lowry’s shop gave away an AR-15, 1,000 rounds of ammunition, and 30 high-capacity ammunition magazines through a Facebook page promotion.

Gun manufacturer III Arms has gone even further in using insurrectionist rhetoric to promote the sale of AR-15s:

America is in trouble. One day soon, America will need her heroes to stand up and be counted, as did John Parker and the men who took to the Green at his shoulder in Lexington in defense of Liberty. When you are called upon to defend Liberty, when it is your turn to be John Parker and dare to stride into harm's way, the Fighting Arms branded with our III will do their job and tell the world who you are: Patriot.<sup>14</sup>

Other insurrectionist commentators have been meticulous about the hardware required for rebellion. Roy Kubicek, the primary author of the blog *Days of our Trailers: Consider This the Old North Bridge* (and a credentialed blogger at past NRA conventions) published a series of posts entitled “The Modern Militia,” in which he asserted:

The standard US Infantry field weapon is the ubiquitous M-16/M-4 series rifle... Obviously then, since the M-16 was based off of it, the ideal firearm for Militia compatibility would be the [sic] the AR-15 (or its many clones) chambered in 5.56 NATO.<sup>15</sup>

Finally, our staff received the following email from a pro-gun activist in New York on Thursday:

The 2nd amendment is not about hunting deer or ducks. I would like to make that clear. Our Governor is confused and he wants to spread the confusion. Let me be the first to clear the room of that misconception. The 2nd amendment is for hunting tyrants. For hunting rouge [sic] governments ... The second amendment guaranteed's [sic] law abiding citizens the right to keep and bear arms, the patriots of 1776 used the most advanced rifle at their disposal. the AR Musket, to defeat the British Government and their Muskets . Today Americans can no longer depend on a single shot Musket. We must have the best possible rifle to guard against tyranny by our own government or a foreign government ... I ask you which rifle if not the AR-15, will defeat tyranny today?

<sup>16</sup>

Sometimes, such insurrectionist rhetoric leads to real-world violence. Since the *Heller* decision in 2008, my organization has been documenting anti-government threats and incidents of violence through

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<sup>13</sup> Nick Kratsas, “Gun Shop Responds to Gun Control Debate by Giving Away Assault Rifle,” *News Radio 1020 KDKA*, February 6, 2013,

<http://pittsburgh.cbslocal.com/2013/02/06/gun-shop-responds-to-gun-control-debate-by-giving-away-assault-rifle/>

<sup>14</sup> “III Arms: About Us,” accessed February 21, 2013. <http://www.iiiarmscompany.com/about.html>

<sup>15</sup> Roy Kubicek (AKA Thirdpower), “The Modern Militia: Firearms,” *Days of our Trailers*, February 13, 2008 <http://daysofourtrailers.blogspot.com/2008/02/modern-militia-firearms.html>

<sup>16</sup> Chris Stehling, email message to csgv.org, February 21, 2013

our online “Insurrectionism Timeline.”<sup>17</sup> During that time, insurrectionists armed with assault weapons have murdered law enforcement officers, engaged in conspiracies to assassinate government officials, and attempted to effect civilian’s arrests on judges and jury members, among other crimes. Just days ago, Everett Basham was arrested for threatening to kill California state Senator Leland Yee, who had introduced gun reform legislation.<sup>18</sup> Three assault weapons and homemade bombs were found in Basham’s home.<sup>19</sup>

The insurrectionist argument that assault weapons are needed to protect against “tyranny” has no place in our current debate. Taking up arms against our government is treason, and neither patriotic nor an expression of liberty. Meanwhile, Americans have a basic, inalienable right to “Life, Liberty, and the pursuit of Happiness.” They should be able to live, work, play and pray without fear of facing military-style firepower in the hands of deranged individuals. Senator Feinstein’s Assault Weapons Ban of 2013 would be a meaningful first step to ending the tragic levels of gun violence in our communities.

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<sup>17</sup> “Insurrectionism Timeline,” Coalition to Stop Gun Violence, last modified February 16, 2013.

<http://www.csgv.org/issues-and-campaigns/guns-democracy-and-freedom/insurrection-timeline>

<sup>18</sup> “More Explosives Found; Yee Confirms Death Threat,” *KGO-TV/DT*, February 14, 2013.

[http://abclocal.go.com/kgo/story?section=news/local/south\\_bay&id=8993149](http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=8993149)

<sup>19</sup> “Man in Court for Threatening State Sen. Lee,” *KGO-TV/DT*, February 21, 2013.

[http://abclocal.go.com/kgo/story?section=news/local/south\\_bay&id=9001276](http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=9001276)