

**Questions for the Record from Senator Lindsey O. Graham for Amy E. Swearer,  
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The Heritage Foundation  
“Protecting Public Safety After *New York State Rifle & Pistol Association v. Bruen*”  
March 15, 2023**

**1. What is the significance of *Bruen* for individuals, especially women, who want to defend themselves?**

For decades, states like New York have used the types of discretionary permitting systems struck down by *Bruen* to effectively strip millions of Americans of their Second Amendment rights outside of the home. This “right of the people” was instead turned into a “privilege of the special few.” While New York and its small cohort of anti-Second Amendment states have seemingly gone out of their way to undermine both the spirit and the letter of *Bruen* over the last year, and have—out of sheer spite—imposed a myriad of expensive and time-consuming barriers for concealed carry permit applicants, at the very least, because of *Bruen*, millions more Americans now at least have some plausible method by which they may legally exercise their rights. It is imperative, however, that the courts be watchful against attempts by New York and other states to render their carry permits practically useless, such as by dramatically expanding the number of prohibited places.

**2. Are there cases where individuals, particularly women, have been harmed because they weren’t able to get a firearm to protect themselves under one of these oppressive licensing schemes? If so, please describe a few such cases.**

It is impossible to know how many victims of violent crime were left defenseless due to gun control laws that either outright denied them the exercise of their constitutional rights, or that imposed such confusing, time-consuming, and expensive burdens that they were deterred from ever trying to exercise their rights in the first place. It is nonetheless statistically certain that restrictive gun control laws prevent many peaceable citizens who would otherwise choose to exercise their right to armed self-defense from doing so.<sup>1</sup> There are, however, striking examples of this type of preventable tragedy. One of the most well-known is that of Carole Browne, a New Jersey woman who, in 2015, was stabbed to death by her ex-boyfriend while still awaiting approval for a handgun permit that she had submitted months earlier.<sup>2</sup>

We also know that even gun control policies far less restrictive than New York’s can have devastating consequences for victims, often requiring them to choose between their unalienable right to self-defense and the risk of losing their jobs or being convicted of criminal offenses. For example, after a gunman fatally shot 12 of his colleagues in a

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<sup>1</sup> Compare, for example, the percentage of the adult population with concealed carry permits in “shall issue” states with the percentage in states like New York, New Jersey, and California, whose laws were implicated by *Bruen*. John Lott, *Concealed Carry Permit Holders Across the United States: 2022*, CRIME PREVENTION RESEARCH CENTER (Nov. 17, 2022), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4279137](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4279137)

<sup>2</sup> Jim Walsh, *Woman’s Accused Killer Kills Self in Berlin Home*, COURIER POST (Updated June 8, 2015), <https://www.courierpostonline.com/story/news/crime/2015/06/06/car-crash-gloucester-township/28605651/>.

municipal building in Virginia Beach, family members of one victim—Kate Nixon—disclosed that Nixon had seriously considered bringing her pistol to work the morning of the shooting.<sup>3</sup> She ultimately decided not to do so because it was against city policy for employees to bring guns to work, even if they have valid state-issued concealed carry permits.<sup>4</sup> Of course, no one knows for certain how differently that day might have turned out for Nixon, her colleagues, or their loved ones had she not been scared into surrendering her right to armed self-defense. It is certainly possible that she would not have been able to successfully defend herself or others. But, given the many cases in which armed civilians have successfully intervened to stop active shooters, it is safe to say that, at the very least, Nixon would have had (literally) a fighting chance.<sup>5</sup>

**3. If the United States rolled back *Bruen* and permitted extreme restrictions on the right to possess firearms in public such as New York’s old “may issue” licensing scheme, what effect would that have on public safety?**

Fortunately, in recent decades, the trend at the state level has been to roll back excessive burdens on the right to armed self-defense in public, and if *Bruen* were overturned, Americans in a majority of states would—at least in the immediate future—continue enjoying the exercise of their rights with relatively few burdens. It would, however, once again effectively allow states like New York to shut the door on the right for millions of other Americans, and return to a pre-*Bruen* status quo in which armed self-defense is the privilege of a special few.

**4. Approximately how many innocent lives have been saved or protected because a victim or a bystander had a firearm to protect him or herself or others in the face of an attacker?**

As with many statistics related to defensive gun use, it is difficult to know with any certainty just how many innocent lives are saved or protected because a victim or bystander was lawfully armed. Even if we just limit the scope to media-verified cases, it would still involve the particularly difficult feat of calculating harm that did not actually occur for an often-uncertain number of potential victims. Consider just cases where mass public shootings are thwarted by armed civilians—the precise number of casualties that the gunman might otherwise have caused could have been anywhere from “none” to the total number of people within the target zone, depending on hundreds of factors that never played themselves out in reality. Moreover, there is no way to count the number of victims protected by the majority of defensive gun uses that do not garner enough media attention to wind up in our database.

It is safe to assume, however, that the number is significant. As I noted in my written

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<sup>3</sup> Katherine Hafner, *Virginia Beach Shooting Victim Considered Taking Gun to Work Over Concerns About Colleague, Lawyer Says*, VIRGINIAN-PILOT (updated July 16, 2019 at 10:10 a.m.), <https://www.pilotonline.com/2019/06/10/virginia-beach-shooting-victim-considered-taking-gun-to-work-over-concerns-about-colleague-lawyer-says-2/>.

<sup>4</sup> *Id.*

<sup>5</sup> John Lott, *Corrections to the FBI’s Reports on Active Shooter Incidents*, CRIME PREVENTION RESEARCH CTR (May 31, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3857331](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3857331)

testimony, between January 1, 2021 and March 10, 2023, our database included 208 media-verified defensive gun uses in which victims of intimate-partner domestic violence either protected themselves with a firearm or were protected by another lawfully armed civilian. In just this limited subset of cases, representing only a fraction of the total of media-verified defensive gun uses compiled during these months, we estimated that defensive gun uses protected at least 395 potential victims, including 65 minor children and three unborn children.<sup>6</sup> Moreover, because all of the defensive gun users were deemed to have acted in lawful self-defense, and because by definition, lawful self-defense only occurs where there is a reasonable belief of imminent death or serious bodily injury, it is reasonable to conclude that this is precisely the danger from which these victims were protected. If that ratio of protected-victims-per-defensive-gun-use is representative (and there is good reason to believe it is), then our database alone would suggest that, at a bare minimum, lawfully owned guns are used to directly protect thousands of innocent victims from death or serious bodily injury every year.

Equally difficult to calculate is the number of innocent lives protected from death or serious injury every year due to crimes that never occurred in the first place because the would-be perpetrators were deterred by the mere possibility of being met with armed resistance. There are, nevertheless, several indications that widespread civilian gun ownership offers broad and substantial protective benefits through crime deterrence—benefits that are greatly undermined when laws significantly restrict the ability of ordinary people to defend themselves with guns.

Criminals generally consider the likelihood of armed resistance and adapt accordingly. One survey of imprisoned felons in the United States found that roughly one-third acknowledged being “scared off, shot at, wounded or captured by an armed victim,” while 40 percent admitted that they had refrained from attempting to commit a crime out of fear that the victim was armed.<sup>7</sup> Well over half of the surveyed felons acknowledged that they would not attack a victim that they knew was armed, and almost three-quarters agreed that “one reason burglars avoid houses where people are at home is that they fear being shot.”<sup>8</sup> Importantly, the study also found that felons from states with the greatest relative number of privately owned firearms reported the highest levels of concern about the possibility of confronting an armed victim.<sup>9</sup>

This finding is consistent with international comparisons of criminal behavior. For example, in the United States—where rates of civilian gun ownership are remarkably high compared to the international norm—only about 13 percent of burglaries take place when a home is occupied.<sup>10</sup> This is far lower than the typical “hot burglary” rate of countries like Canada, Great Britain, and the Netherlands, where significantly more restrictive and burdensome gun laws make civilian gun ownership far less common, and therefore reduce

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<sup>6</sup> Amy Swearer, *Bruen Promotes Public Safety Far More Than The Unconstitutional Gun Laws It Threatens*, Heritage Foundation (Apr. 11, 2023), <https://www.heritage.org/testimony/bruen-promotes-public-safety-far-more-the-unconstitutional-gun-laws-it-threatens-1>.

<sup>7</sup> James D. Wright & Peter H. Rossi, *The Armed Criminal in America: A Survey of Incarcerated Felons*, NAT’L INST. OF JUSTICE 26 (July 1985), <https://www.ojp.gov/pdffiles1/Photocopy/97099NCJRS.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> David B. Kopel, *Lawyers, Guns, and Burglars*, 43 Ariz. L. Rev. 345 (2001), <https://davekopel.org/2A/LawRev/LawyersGunsBurglars.htm#FN;F107>.

the likelihood that a criminal will be met with armed resistance.<sup>11</sup> “Hot burglaries” are far more likely to result in victims being assaulted, injured, or even murdered than are burglaries in which no one is home.<sup>12</sup> By some estimates, this lower percentage of “hot burglaries” results in over half a million fewer assaults in the United States every year than would otherwise occur without the deterrent effect of having a widely armed civilian population.<sup>13</sup> This deterrent effect offers protective benefits even to those individuals who do not personally own firearms, because criminals generally cannot be certain of which potential victims are armed.

**5. Please tell the Committee about the Heritage Foundation’s database on Defensive Gun Uses in the United States.**

**a. How is this data collected?**

The defensive gun uses featured in the Heritage Foundation’s Defensive Gun Use Database are all derived from news stories or police incident summaries that are readily available via online searches of publicly available sources.

**b. What is this data useful for?**

While the database is far from comprehensive, it does likely capture many of the most high-profile instances of defensive gun use and gives a snapshot into the various types of circumstances in which those defensive gun uses occur. Taken together, the thousands of cases provide incredibly useful insights into what actually occurs during defensive gun uses and help fill in many of the gaps left by earlier attempts to understand the effectiveness of guns as a tool for self-defense. As just one example, many early surveys on defensive gun use asked about injuries incurred during such instances, but did not ask about the timeline of when those injuries occurred in relation to the victim’s use of the firearm or ascertain the context in which the victimization occurred. Because surveys sometimes showed that victims who resisted with firearms were more likely to be injured than victims who simply complied or just called the police, some gun control advocates concluded that defensive gun use actually caused more victims to sustain injuries, perhaps by angering the perpetrator. While Second Amendment advocates countered that, in all likelihood, the more logical conclusion was that victims who resorted to lethal defensive force did so precisely because they were already in far greater danger than victims who could simply call the police, they did not have any solid evidence.

The thousands of cases in the defensive gun use database demonstrate a consistent pattern—when defensive gun users are injured or killed, it is rarely because they “goaded” an assailant into violent actions that otherwise might not have occurred. Rather, it is most often the case that they incurred their injuries either (1) prior to the defensive gun use, and the defensive gun use is what prevented a bad situation from becoming worse, or (2) during the defensive gun use but after a point in which the perpetrator had already evidenced an intent to cause serious injury or death while believing the victim to be defenseless.

Finally, as will be explained below, the examples are useful for debunking common gun

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

control narratives that downplay the importance of armed self-defense or make sweeping (but erroneous) assertions about ordinary gun owners.

**c. What lessons should we draw from the data collected thus far?**

- (1) Victims—especially those who are at a physical disadvantage—are far more likely to adequately use their firearms in self-defense than they are to be overpowered and have their firearms taken from them by their assailant.
- (2) On the whole, the cases show that ordinary gun owners are capable of defending themselves without endangering other innocent people, even in crowded public spaces.
- (3) Contrary to popular assertions that “no law-abiding citizen ever needs to fire more than 10 rounds in self-defense” or that certain semi-automatic weapons are “never useful for self-defense,” the database provides evidence that standard capacity magazines and so-called “assault weapons” can, in fact, have incredible impacts on the ability of ordinary Americans to defend themselves. While most media reports fail to specify either how many rounds were fired defensively or what specific type of firearm was used, some do. It is indisputable that some cases involve victims who needed to fire more than 10 rounds in self-defense, or who used an “assault weapon” for legitimate, lawful defense of self or others.<sup>14</sup>

**d. Is the data comprehensive? How many cases of defensive gun use might we not be aware of?**

No. The Defensive Gun Use Database is far from comprehensive, and represents, at best, merely the “tip of the iceberg” of how often Americans use their firearms to defend themselves or others. There is good reason to believe that, for various reasons, most defensive gun uses are either never reported to police, omitted from police reports, or otherwise do not garner enough attention to be written about by a media outlet.

The best data on defensive gun use comes from surveys, which consistently find that Americans use their firearms in lawful self-defense far more often than is captured by media reports. As the CDC itself acknowledged in a 2013 report, almost every major survey on the issue has found that Americans use their firearms in self-defense between 500,000 and several million times a year.<sup>15</sup> The 2021 National Firearms Survey—by far the most comprehensive survey of American gun owners ever conducted—further substantiated these earlier findings, concluding that roughly 1.6 million defensive gun uses occur in the United States every year, on average.<sup>16</sup>

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<sup>14</sup> See Amy Swearer, *If You Can't Beat 'Em, Lie About 'Em: How Gun Control Advocates Twist Heritage's Defensive Gun Use Database in the "Large-Capacity" Magazine Debate*, HERITAGE FOUND. LEGAL MEMORANDUM No. 331 (May 17, 2023).

<sup>15</sup> CTRS. FOR DISEASE CONTROL AND PREVENTION, PRIORITIES FOR RESEARCH TO REDUCE THE THREAT OF FIREARM-RELATED VIOLENCE 15 (2013), <https://www.nap.edu/read/18319/chapter/3#15>.

<sup>16</sup> William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned*, GEORGETOWN MCDONOUGH SCHOOL OF BUSINESS RESEARCH PAPER No. 4109494 at 23 (last revised Sept. 28, 2022), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4109494](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4109494).