

**Firearm Stockpiling as a Symptom of the White Patriot  
Identity**  
**Or: How Whites Learned to Start Worrying and Love The Gun**

Julia Markham-Cameron\*

It is easy to think of examples of white men stockpiling guns: Randy Weaver in Ruby Ridge; Adam Lanza in Sandy Hook; Stephen Paddock in Las Vegas. Often, we hear about these men because they commit massive acts of violence with their arsenals of weapons. But the phenomenon of the white male stockpiler is a bit more complicated. Studies suggest people who stockpile firearms are indeed white men, far and above any other demographic.<sup>1</sup> However, the white male stockpiler does not necessarily own and accumulate weapons to commit acts of violence: rather, he does it to assert his importance and personhood in a diversifying country.<sup>2</sup>

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\* Julia Markham-Cameron is a 2019 Juris Doctor graduate of the University of California Los Angeles School of Law.

<sup>1</sup> A study from the Injury Control Research Center at Harvard University found that 3% of Americans now own 50% of the country's guns. Deborah Azrael, et al., *The Stock and Flow of U.S. Firearms: Results from the 2015 National Firearms Survey*, 3(5) *The Russel Sage Foundation J. of Soc. Sci.* 38–57 (2017) (available at <https://www.rsjournal.org/content/3/5/38.abstract>). Further studies suggest that this three percent is overwhelmingly white and male. *America's Complex Relationship with Guns*, PEW RESEARCH CENTER, (June 2017), <https://www.pewsocialtrends.org/2017/06/22/americas-complex-relationship-with-guns/>. According to Pew Research, about half of all white men (48%) say they own a gun, compared with about a quarter of white women and nonwhite men (24% each) and 16% of nonwhite women. *Id.* About three-quarters of male gun owners (74%) say they own two or more guns. *Id.*

<sup>2</sup> A 2013 study analyzing the relationship between gun ownership and implicit racial bias showed that, after accounting for all explanatory variables, logistic regressions found that for each 1-point increase in symbolic racism there was a 50% increase in the odds of having a gun at home. Kerry O'Brien, et al., *Racism, Gun Ownership and Gun Control: Biased Attitudes in US Whites May*

This paper examines the phenomenon of white, male gun stockpiling from a critical race and legal perspective. I aim to determine how the law has intertwined gun ownership, whiteness, and patriotism to create and perpetuate what I call the “White Patriot Identity”. This identity is centered around the idea that owning multiple guns affirms one’s identity as an American, and to be American requires being white. Therefore, stockpiling guns is the ultimate expression of patriotism and whiteness.

I will begin this paper by offering a definition of firearm stockpiling to better separate White Patriot gun owners from those who may own multiple guns for reasons other than patriotism and white supremacy. I will trace the development of the White Patriot Identity through the evolution of the National Rifle Association (NRA), and how it has co-opted patriotic and racial rhetoric to tie together whiteness, patriotism, and gun ownership. To do this, I will examine the NRA’s legal and rhetorical responses to three important events in the gun debate: the arming of the Black Panthers in the 1960s and the resulting gun control legislation; the

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*Influence Policy Decisions*, PLOS ONE (Oct. 31, 2013), <https://doi.org/10.1371/journal.pone.0077552>.

In a 2017 study, researchers from Baylor University found that “white respondents who have undergone or fear economic distress tend to derive self-esteem and moral rectitude from their weapons.” F. Carson Mencken & Paul Froese, *Social Problems, Gun Culture in Action*, OXFORD ACADEMIC, (Nov. 20, 2017), <https://doi.org/10.1093/socpro/spx040>. Gun owners who feel more emotionally and morally empowered by their guns are more likely to think that guns can solve social problems and make communities safer, and that citizens are sometimes justified in taking violent action against the government. *Id.*

Ken Ballew raid in 1971; and the Ruby Ridge siege in 1992. By examining the NRA's popular rhetoric and legal strategies, I will attempt to discover how the White Patriot Identity encroached into the gun debate in both the media and the halls of Congress.

I will then draw on this history to discuss three interrelated legal and political assumptions undergirding the White Patriot Identity and how these assumptions are exemplified through firearms stockpiling. First, I posit that White Patriots define patriotism in reference to the Founding Fathers, white men who engaged in armed revolt against a tyrannical power threatening the United States through over-taxation and underrepresentation. Second, I examine the individual rights theory of the Second Amendment as decided in *District of Columbia v. Heller*<sup>3</sup> and conclude that an individual right to bear arms under Second Amendment protects white supremacy. Finally, I examine the White Patriot fear of government tyranny, and conclude that this fear comes from a mistaken belief that White Patriots actually comprise a majority of American citizens. Therefore, when government actors, hostile to their identity, act they are engaging in unconstitutional and tyrannical overreach and are worthy of overthrow. Finally, I will conclude this paper with

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<sup>3</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008).

recommendations for how progressive judges and policymakers can combat the White Patriot Identity through law and policy.

### **I. What is firearm stockpiling?**

There is no commonly-accepted definition of stockpiling weapons. The Oxford English Dictionary defines “stockpile” as “A large accumulated stock of goods or materials, especially one held in reserve for use at a time of shortage or other emergency.”<sup>4</sup> The United Nations’ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction prohibits any State party to the convention to “develop, product, otherwise acquire, stockpile or retain chemical weapons” but does not define what “stockpile” means.<sup>5</sup> 50 U.S.C.S. § 98, the National Defense Stockpile Act, defines its purpose as “to provide for the acquisition and retention of stocks of certain strategic and critical materials”—a hoard known as the National Defense Stockpile.<sup>6</sup> 18 U.S.C.S. § 229 makes it unlawful for a person to knowingly “develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile,

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<sup>4</sup> *Stockpile*, ENGLISH OXFORD *LIVING* DICTIONARY, <https://en.oxforddictionaries.com/definition/stockpile>. (last visited April 2, 2019).

<sup>5</sup> *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, HEIN ONLINE (1993) <https://heinonline.org/HOL/P?h=hein.hoil/cpdvstkcw0001&i=13>.

<sup>6</sup> 50 U.S.C. § 98a (West, Westlaw through P.L. 116-5).

retain, own, possess, or use, or threaten to use, any chemical weapon.”<sup>7</sup> But once again, the verb “stockpile” is not defined.

One would expect such an ill-defined word to have limited legal significance. One would be wrong. A search of “stockpil!” in LexisNexis, limited to statutes and legislation, returns over 10,000 hits. In the U.S. Code, “stockpil!” returns 180 results. But of these 180 results, all relate to national defense: they include the authorization of a weapons stockpile, the destruction of a chemical weapons stockpile, and the compilation of a national stockpile of drugs, vaccines, and biomedical devices for use in case of a terrorist attack.<sup>8</sup>

State definitions are more varied. “Stockpil!” turns up 592 times in state statutes—at least once in every state. State definitions of “stockpiling” are not as limited as those on the federal level. Iowa prohibits stockpiling dry manure 200 feet from “a terrace tile inlet or surface tile inlet.”<sup>9</sup> Minnesota defines “stockpiled iron ore” as “any artificial pile or other accumulation of any type of iron-bearing material... belonging to the state or in which the state has an interest.”<sup>10</sup> California prohibits stockpiling

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<sup>7</sup> 18 U.S.C.S. § 229 (West, Westlaw through P.L. 116-5).

<sup>8</sup> *See, e.g.*, 115 P.L. 91, 131 Stat. 1283, 2017 Enacted H.R. 2810, 115 Enacted H.R. 2810; 50 U.S.C.S. § 1521 (West, Westlaw through P.L. 116-5); PROJECT BIOSHIELD ACT OF 2004, 108 P.L. 276, 118 Stat. 835 (2004).

<sup>9</sup> Iowa Code Ann. § 459.311B (West, Westlaw through 2019 Regular Session).

<sup>10</sup> Minn. Stat. Ann. § 93.285 (West, Westlaw through 2019 Regular Session).

used tires.<sup>11</sup> Regardless of what stockpiling means, both the federal and state governments have shown their propensity for using this word—and both criminalizing and promoting the act itself. However, there are no criminal statutes specifically preventing stockpiling weapons, whatever that may mean.

With all of the various definitions we are no closer to an understanding of what firearms stockpiling means. For the purposes of this paper, I am defining a firearm stockpiler as: *a person who owns five or more guns for the explicit purpose of using them to defend himself, his family, and his property against attack.*

The dictionary provides the backbone of this definition. I have chosen to interpret a “large stock” as one that cannot be operated by one person at one time. Five guns seems an appropriate minimum that could not be moved, fired, loaded, and re-loaded by one person without some sort of outside help.

Both the dictionary definition and the statutory context in which the word stockpile is most often found point to a stockpile being a reserve, so I have added that to my definition with the clause showing that the guns are not commonly in use but are expected to be used. The OED definition links stockpiling with a potential emergency. This emergency link is reflected in the

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<sup>11</sup> Cal. Pub. Res. Code § 42870 (West, Westlaw through urgency legislation through Ch. 4 of 2019 Reg.Sess).

federal usages of stockpiling but is less clear in the state-level statutes.

Finally, I wanted to exclude people who collect guns recreationally, or for the purpose of hunting from this definition. “Stockpiling” frequently appears in the context of either attacks or defense—or, as shown by the Minnesota statute, in a use “in which the state has an interest.” As a matter of common sense, I have decided that my definition of stockpiling should mirror not just that stockpiling happens because of an emergency; but that they will be used in the manner in which the state would have the most interest in: being used for violence.

Perhaps the group most responsible for promoting firearms stockpiling in furtherance of the White Patriot Identity is the National Rifle Association (NRA). In the next Part of this paper, I will address the NRA’s history of forming and perpetuating the White Patriot Identity.

## **II. The NRA as a Proxy for the White Patriot Identity**

*The elites don’t care not one whit about America’s school system and schoolchildren ...*

*They care more about control, and more of it. Their goal is to eliminate the Second Amendment and our firearms freedoms so they can eradicate all individual freedoms... They hate the NRA, they hate the Second Amendment, they hate individual freedom.<sup>12</sup> – Wayne LaPierre*

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<sup>12</sup> David Smith, *NRA head breaks silence to attack gun control advocates: 'They hate individual freedom'*, THE GUARDIAN, (Feb. 22, 2018), <https://www.theguardian.com/us-news/2018/feb/22/nra-wayne-lapierre-gun-control-cpac-speech-2018>.

To ask NRA CEO Wayne LaPierre—or many members of the NRA—gun ownership is both a symptom of a free society and the cause of it.<sup>13</sup> The Second Amendment is not just a freedom to bear arms, but the mechanism through which freedom is ensured. Freedom is defined reflexively: it is the ability to do what you want, own the property you want, and have the government get off your back. This is the foundation of the White Patriot Identity.

The NRA’s language and history of interactions with the political and legal system were relied upon in defining and promoting the White Patriot Identity. This is not to say that all NRA members are racists, nor that all people who own five or more guns are racist. But the political and legal stances that the NRA has taken over the decades, as well as the language they use to justify those stances, has had a tremendous impact on the gun debate in the United States. Regardless of whether all of their members believe in the white nationalist and supremacist ideals inherent in the White Patriot Identity, the group as a whole has been, arguably, the most influential voice in establishing and furthering it.

**a. The Early NRA and the Adoption of the Individual Right to Bear Arms**

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<sup>13</sup> See e.g., *A Doctor and a former NRA member discuss the Kentucky school shooting*, NPR (Feb. 25, 2018), <https://www.npr.org/2018/02/25/588642998/a-doctor-and-former-nra-member-discusses-the-kentucky-school-shooting> (“And if you are a patriot then, you know, guns are just a part of that patriotism”) *Id.*



The NRA was founded in 1871 by two Union Army veterans and a *New York Times* reporter for the purpose of improving marksmanship skills among urban northerners; whose lack of skill against the Confederate soldiers was believed to have prolonged the Civil War.<sup>14</sup> In the early 20th century, the NRA proposed and lobbied for a variety of gun control regulations.<sup>15</sup> These included, but were not limited to, regulations requiring permits to carry a concealed weapon, higher sentencing for crimes involving guns, waiting periods between the purchase and receipt of a gun, and that records of gun sales be made available to the police.<sup>16</sup> Their advocacy for gun control continued in the violent 1930s; when, spurred on by the crime of the Prohibition Era, the NRA assisted President Franklin Roosevelt in drafting the National Firearms Act in 1934 and the 1938 Gun Control Act, the first federal gun control laws.<sup>17</sup> NRA president Karl T. Frederick in a testimony before Congress concerning the National Firearms Act, stated “I have never believed in the general practice of carrying weapons. I do not believe in the general promiscuous toting of guns. I think it should be sharply restricted and only under

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<sup>14</sup> Arica L. Coleman, *When the NRA Supported Gun Control*, TIME (July 29, 2016), <http://time.com/4431356/nra-gun-control-history/>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

licenses.”<sup>18</sup> When asked whether the National Firearms Act violated “any constitutional provision,” Frederick replied, “I have not given it any study from that point of view.”<sup>19</sup>

But some people had. By the 1950s, Black leftist groups, like the Black Panthers, had begun to openly carry guns and described their right to bear arms in explicitly constitutional terms.<sup>20</sup> As Malcolm X explained, “Article number two of the constitutional amendments gives you and me the right to own a rifle or a shotgun.”<sup>21</sup>

In the 1960s, the Black liberation movement introduced the idea of an individual right to bear arms as a protected legal right, sanctified in the Constitution, that was a means to freedom. The Black Panthers used gun laws to challenge local police departments, openly carrying guns around Oakland. In “The Secret History of Guns,” Adam Winkler recounts an encounter between Panther Huey P. Newton and a police officer in 1967.<sup>22</sup> Newton was openly carrying weapons when a police officer stopped him, and asked for his identification. Newton responded that under California law, he did not need to show the officer anything, and that he had a legal right to his firearm. The confrontation drew a

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<sup>18</sup> *Id.*; accord Adam Winkler, *The Secret History of Guns*, THE ATLANTIC, (September, 2011), <https://www.theatlantic.com/magazine/archive/2011/09/the-secret-history-of-guns/308608/>.

<sup>19</sup> Winkler, *supra* note 18.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

crowd, and Newton shouted at the onlookers to stay and watch: citizens had a right under the law to observe a police officer making an arrest. Loudly, he told the officer, “if you try to shoot me or if you try to take this gun, I’m going to shoot back at you, swine.” The officer let Newton go.<sup>23</sup>

This encounter now seems like a funhouse mirror’s reflection of firearm encounters today. Instead of Huey P. Newton, rural whites like Ammon Bundy now stand off against government forces and assert their individual rights to bear arms. Newton’s bold assertion that he had a legal right to a firearm is echoed in the NRA’s current rhetoric about protecting every member’s Second Amendment rights. The individual rights theory of a right to bear arms was borne out of the struggle for civil rights: so how did it get co-opted by white people?

For the Black Panthers, the government was a manifestation of white supremacy. Cops were white, lawmakers were white, and judges were white. Reinterpreting a Constitutional provision to use against these people was a way to manifest their inability to apply the Constitution in a non-racialized way. By openly bearing arms, the Black Panthers were telling the government: *we’re being Americans. We’re exercising the rights the Constitution gives us. What is it about this that you think is*

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<sup>23</sup> *Id.*

*wrong?* The implicit answer, of course, was: *You're Black, that's what's wrong.*

These early gun control measures further supported that claim. From as early as the 1930s, the NRA-endorsed gun control measures passing through Congress were a means to a racist end. The legislation that the NRA proposed to local law enforcement left discretion for who could, and could not, obtain a gun.<sup>24</sup> Predictably, local law enforcement then denied immigrants and racial minorities access to guns.<sup>25</sup> In 1957, Martin Luther King, Jr. was denied a permit for a concealed firearm after his home was firebombed.<sup>26</sup> By the 1960s, gun control proponents admitted that restricting access to firearms wasn't about controlling guns, it was about controlling blacks.<sup>27</sup> The gun legislation of the 1960s backed up that claim. The Gun Control Act of 1968 barred felons from purchasing firearms. It also barred imports of "Saturday Night Specials"—cheap guns often associated with urban, Black use.<sup>28</sup>

Conversely and simultaneously, the individual rights theory was catching on. Harlon Carter, the NRA president in 1967, was an early adopter to the individual-rights theory of the Second Amendment and a strong believer in the idea that the right to bear

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<sup>24</sup> Adam Winkler, *Gun Control is Racist?*, THE NEW REPUBLIC, (Feb. 4, 2013), <https://newrepublic.com/article/112322/gun-control-racist>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Winkler, *supra* note 18.

arms “meant freedom.”<sup>29</sup> A decade later, Carter would co-opt the Panthers’ liberationist use of the individual right to bear arms to cast gun owners as oppressed patriots in need of firearms to protect themselves. In the NRA’s hands however, the individual right to bear arms meant something different. While the Black Panthers saw the gun as a tool of liberation, the NRA saw it as an entitlement. The NRA agreed, at least implicitly, that Black people shouldn’t be carrying guns; hence their support for gun control in the first part of the twentieth century. This stance didn’t mean that *nobody* should enjoy an individual right to bear arms. Members of the NRA—experienced riflemen themselves—would clearly be the kinds of people who should have an individual right to bear arms.

Had the NRA had a different history and president, we could have seen a history where the NRA and the Black Panthers bonded together to form an alliance, in which the individual right to bear arms was a cornerstone of cementing civil rights and equal protection for all. If any individual could bear arms, then perhaps there was a case to be made that any individual, regardless of his skin tone, could enjoy all the freedoms enjoyed by white Americans.

Unfortunately for those from the non-dominant culture this was not to be, because Carter was a virulent racist. His promotion

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<sup>29</sup> Harlon Carter, NRA ON THE RECORD <http://nraontherecord.org/harlon-carter/>. (last visited April 3, 2019).

of freedom was limited to freedoms for white people—often at the express expense of minorities. From 1950-1957, he led the Border Patrol, and headed the Southwestern Region of the Immigration and Naturalization Service from 1961 to 1970. In 1954, he headed up “Operation Wetback,” a surge of border patrolmen from California to Arizona to conduct raids throughout cities in those states.<sup>30</sup> Carter oversaw the “capture” of thousands of Mexican nationals, who were imprisoned in security camps before being boarded on trains that would drop them off in central Mexico.<sup>31</sup> Carter bragged that this was “the biggest drive against illegal aliens in history.”<sup>32</sup> In 1981, reporters uncovered court documents that when he was 17, Carter had killed Ramon Casiano, a Hispanic teenager who had been loitering outside Carter’s family home.<sup>33</sup>

The Black Panthers introduced the idea of an individual right to bear arms as a bulwark against government overreach and tyranny. While NRA leaders like Carter were quick to catch onto the idea of an individual right, they had not yet needed to co-opt the idea of the Second Amendment preventing government tyranny. As the 60s turned into the 70s, the NRA had the chance to justify an individual right to bear arms as essential to both

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<sup>30</sup> *Wetbacks’ Detention Camp Slated: Elysian Park Will Be Focal Point in Alien Roundup*, LOS ANGELES TIMES (June 12, 1954), <http://documents.latimes.com/june-12-1954-wetbacks-detention-camp-slated/>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Gil Troy, *The Teen Killer Who Radicalized the NRA*, THE DAILY BEAST, (Oct. 8 2017), <https://www.thedailybeast.com/the-teen-killer-who-radicalized-the-nra>.

whiteness and patriotism—and to link all three with armed resistance to a tyrannical government.

**b. The Ken Ballew Raid and the “Gestapo” Government**

In May 1971, agents from the Bureau of Alcohol, Tobacco, and Firearms (ATF) received information from a local police officer that a “confidential reliable source” had told him about an illegal quantity of hand grenades within an apartment in Silver Spring, Maryland.<sup>34</sup> The source also said that he had seen “a quantity of firearms, mainly a carbine, a .44 caliber pistol, a .45 caliber pistol, and other firearms” in the house.<sup>35</sup> In other words, there was a weapons stockpile in the Silver Spring apartment, and the ATF needed to check it out.

This apartment was the home of Kenyon Ballew, an NRA member and weapons stockpiler.<sup>36</sup> The ATF agents learned that Ballew had been arrested the previous year for unlawfully carrying a concealed weapon, and had no firearms registered to him.<sup>37</sup> The ATF agents obtained a search warrant for Ballew’s apartment, and on June 7, 1971, went to execute the warrant.<sup>38</sup> The agents knocked on the apartment door, announced their presence, and

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<sup>34</sup> *Ballew v. United States*, 389 F. Supp. 47, 50 (D. Md. 1975), *aff’d*, 539 F.2d 705 (4th Cir. 1976).

<sup>35</sup> *Id.* at 51.

<sup>36</sup> Kristin Goss, *Disarmed: The Missing Movement for Gun Control in America*, 81 (2006).

<sup>37</sup> *Ballew*, *supra* note 34, at 51.

<sup>38</sup> *Id.* at 52.

demanded that they open the door.<sup>39</sup> Putting his ear to the door, one agent heard what sounded like people moving away from the door, and concluded that the occupants of the apartment did not intend to comply with their orders.<sup>40</sup> The agents broke down the door and noticed that “some effort had been made to barricade the door” with pillows and furniture.<sup>41</sup> They noticed Ballew standing in another room, aiming a long-barreled shotgun at them, and the agents opened fire.<sup>42</sup> Ballew was shot in the head.<sup>43</sup> He was left paralyzed on one side of his body and severely brain-damaged.<sup>44</sup> The ATF seized four hand grenade casings and 26 guns, 16 of which were loaded.<sup>45</sup>

The Ballew raid happened as a schism in the NRA was beginning to form. While the majority of NRA members remained marksmanship and hunting hobbyists, a growing faction within the organization had begun to adopt the Black Panthers’ ideas that guns were essential to freedom from tyranny.<sup>46</sup> This faction capitalized on the Ballew raid to cast the federal government as

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 53.

<sup>43</sup> *Arms Raid in Maryland Leaves Collector Paralyzed*, NY TIMES, (Sept. 26, 1971), <https://www.nytimes.com/1971/09/26/archives/arms-raid-in-maryland-leaves-collector-paralyzed.html>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> German Lopez, *How the NRA Resurrected the Second Amendment*, VOX.COM, (May 4, 2018), <https://www.vox.com/policy-and-politics/2017/10/12/16418524/nra-second-amendment-guns-violence>.



hostile to gun owners, tyrannical, and anti-American. *American Rifleman*, the NRA magazine, reported that ATF agents had broken into Ballew's apartment without warning, shot Ballew for no reason, and found nothing in the apartment to warrant their suspicion.<sup>47</sup> In a lawsuit Ballew filed stemming from the raid, a court found that none of those claims were true.<sup>48</sup>

Rather than delegitimizing the statements in *American Rifleman*, the court finding in Ballew's case added fuel to the NRA's fire. Following the raid, NRA board member and journalist William Loeb began calling the ATF the "Treasury Gestapo" in his articles.<sup>49</sup> Harlon Carter told his followers that any federal action taken to regulate guns would lead to an outright ban of guns altogether.<sup>50</sup> Gun violence, he said, was just "the price of freedom."<sup>51</sup> It was on this no-holds-barred platform that Carter led a 1977 revolution within the NRA, purging its leadership of those more interested in marksmanship than politics.<sup>52</sup> From then on, the NRA became an unabashedly political lobbying force, focused on rolling back existing gun laws and promoting an "individual rights" interpretation of the Second Amendment."<sup>53</sup>

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<sup>47</sup> ADAM WINKLER, *GUNFIGHT: THE BATTLE OVER THE RIGHT TO BEAR ARMS IN AMERICA* 256 (2013).

<sup>48</sup> Ballew, *supra* note 34.

<sup>49</sup> WINKLER, *supra* note 47, at 256.

<sup>50</sup> Lopez, *supra* note 46.

<sup>51</sup> *Harlon Carter*, *supra* note 29.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

The Ballew raid signified a turning point in the NRA's development into a White Patriot force. It was the first opportunity for NRA leadership to utilize the Black Panthers' language for its own goals. The Ballew raid showed that legally stockpiling weapons would provoke a reaction by a tyrannical federal government—but also, that stockpiling weapons in such a manner was the only thing that could allow an individual to respond to such tyranny. In Ballew, the NRA found a sympathetic hero: a gun owner, offering no explicit danger to the people around him, who was brutalized by the federal government (through the ATF) and then denied redress through the courts. Without a doubt, the raid was a tragedy and—likely—a misstep by the ATF and related law enforcement departments. But the record is unclear about how much of a danger Ballew actually posed; the trial court found that the grenades he had, while not then-operational, could be made operational by adding powders that the federal agents seized from Ballew's apartment.<sup>54</sup>

Regardless of what Ballew meant to do with the guns, powders, and grenades he had in his apartment, the raid also thrust a stockpiler into the national news. Ballew undoubtedly had an arsenal of firearms in his apartment. *Why* he had that many weapons remains a mystery. But the raid provided the NRA the

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<sup>54</sup> Ballew, *supra* note 34, at 55.

notion that a white gun-owner was a threat to the federal government, and the government would engage in brutal, tyrannical force against these people because of their stockpile of arms. This, in turn, allowed the NRA to provide an answer as to why *others* may need to stockpile weapons: if you're already a gun owner, you're already at risk. A gun stockpile is the only way to defend yourself against the ATF and other federal powers. Arguing that if you aren't ready with plenty of firepower—and if you're not always on high alert—you may end up like Ken Ballew.

**c. Ruby Ridge: Armed Whiteness as Patriotism**

The early 1990s saw the federal government badly botch enforcement against two groups of white stockpilers. The federal raids of the Weaver family compound in Ruby Ridge, Idaho, and the Branch Davidians in Waco, Texas, provided stark examples of the kinds of federal government tyranny the new NRA was warning its members about. But in these raids, the White Patriot Identity was truly formed. Ruby Ridge especially furthered the idea that not just a gun, but a gun stockpile was a necessary tool for freedom. Inherent in that idea was that such a gun-stockpiling patriot could only be white.

Weaver and his wife Vicki were convinced that the world was about to end: the global increase in famine, war, and

earthquakes was a sure sign of the apocalypse.<sup>55</sup> The Weavers moved their three children from their home in Iowa to a remote homestead in Idaho that would come to be known as Ruby Ridge.<sup>56</sup> The Weavers spent time at a nearby Aryan Nations compound “for social reasons.” While the Weavers never joined the Aryan Nation, they espoused white separatist beliefs and a deep distrust of the federal government.<sup>57</sup> While never confirmed by the Weaver family, they were closely associated with a doctrine called Christian Identity, which holds that white Europeans are the true Israelites, that Jews are agents of Satan, and that Blacks are subhuman.<sup>58</sup>

In these compound visits, a confidential informant for the ATF struck up a relationship with Weaver.<sup>59</sup> He advised and persuaded Weaver to saw off the tops of shotguns and sell them,

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<sup>55</sup> Cori Brosnahan, *Ruby Ridge, Part One: Suspicion*, PBS: AMERICAN EXPERIENCE, <https://www.pbs.org/wgbh/americanexperience/features/ruby-ridge-part-one-suspicion/>. (last visited April 3, 2019).

<sup>56</sup> *Id.*

<sup>57</sup> In a 1995 interview with Tom Brokaw, Randy Weaver stated: “Racist to me means loving your race. Being proud of yourself and who you are. And that’s the way I have believed. I have never for, you know, I’ve always believed that way... Part of the separation was to get out away in a remote area. Not just because of the racial thing, but because we wanted to teach our children at home and in case of, at the time was believing that, you know, this government seemed shaky at times.” Interview by Randy Weaver with Tom Brokaw, on CNN’s Larry King Live, (Sept. 8 1995), (available at [http://www.cnn.com/US/9508/fbi/ruby\\_ridge/09-08/am/trans.index.html](http://www.cnn.com/US/9508/fbi/ruby_ridge/09-08/am/trans.index.html)).

<sup>58</sup> Timothy Egan, *White Supremacist Surrenders After 11-Day Siege*, NY TIMES, (Sept. 1, 1992), <https://www.nytimes.com/1992/09/01/us/white-supremacist-surrenders-after-11-day-siege.html>.

<sup>59</sup> Meghan Keneally, *Ruby Ridge siege, 25 years later, a 'rallying cry' for today's white nationalists*, ABC NEWS, (Aug. 18, 2017), <https://abcnews.go.com/Politics/ruby-ridge-siege-25-years-called-rallying-cry/story?id=49296439>.

breaking federal law.<sup>60</sup> When Weaver did, he was arrested—and then failed to appear in court.<sup>61</sup> A bench warrant was issued for his arrest.<sup>62</sup> For months, the U.S. Marshals Service tried to get Weaver to surrender, to no avail. The Weaver family was heavily armed with guns and ammunition and refused to leave the cabin and surrender to federal authorities.<sup>63</sup> On August 21, 1992, federal marshals approached the cabin. Alerted to their presence by the family dog, a firefight ensued between marshals on one side and Sammy Weaver, the 14-year-old son of Vicki and Randy Weaver, and Kevin Harris, a Weaver family friend on the other.<sup>64</sup> Afterwards, Sammy and Deputy U.S. Marshal Bill Degan were dead.<sup>65</sup>

The next day, SWAT teams and the FBI were called in to assist in apprehending Randy Weaver. The resulting siege of the Ruby Ridge compound was a historic fiasco. Shortly after the SWAT teams were in place, Weaver came outside.<sup>66</sup> A sniper shot at him, wounding him, and then shot through the open door of the

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Kristi Turnquist, *PBS 'Ruby Ridge' documentary explores a Northwest standoff and the militia movement*, THE OREGONIAN, (Feb. 9, 2017), [https://www.oregonlive.com/tv/2017/02/pbs\\_ruby\\_ridge\\_documentary\\_exp.html](https://www.oregonlive.com/tv/2017/02/pbs_ruby_ridge_documentary_exp.html).

<sup>64</sup> Keneally, *supra* note 59.

<sup>65</sup> *Id.*

<sup>66</sup> Betty A. Dobratz et al., *What Happened on Ruby Ridge: Terrorism or Tyranny?*, *Symbolic Interaction*, 26(2) SYMBOLIC INTERACTION 315-342 (2003), (available at [www.jstor.org/stable/10.1525/si.2003.26.2.315](http://www.jstor.org/stable/10.1525/si.2003.26.2.315)).

Weaver house, inadvertently killing Vicki Weaver.<sup>67</sup> The Weavers' worst fear was being realized: they were being attacked for their views by a hostile government. Two members of their family were dead. If this wasn't Armageddon, what was?

It took until August 31 for Randy Weaver to surrender and for the siege to end.<sup>68</sup> By that time, a group of protesters had taken up residence at the police roadblock that had been set up down the road.<sup>69</sup> Skinheads, neo-Nazis, local and out-of-state right-wing organizations had all come to support the Weavers and decry the federal government.<sup>70</sup> They held signs and screamed "baby killer!" and "this means war!" at agents.<sup>71</sup> They described themselves as patriots.<sup>72</sup>

At the same time, the NRA was facing its first serious challenge from the right. In October 1992, the modern militia movement was being birthed in Estes Park, Colorado. Sparked by the Ruby Ridge siege, Pete Peters, the leader of Christian Identity (to which the Weavers were associated),<sup>73</sup> had called together a

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<sup>67</sup> *Id.*

<sup>68</sup> Kenneally, *supra* note 59.

<sup>69</sup> Cori Brosnahan, *Ruby Ridge, Part Three: Fear and Faith*. PBS: AMERICAN EXPERIENCE, <https://www.pbs.org/wgbh/americanexperience/features/ruby-ridge-part-three-fear-faith/>. (last visited April 3, 2019).

<sup>70</sup> *Id.*

<sup>71</sup> Kenneally, *supra* note 59.

<sup>72</sup> *Id.*

<sup>73</sup> In Randy Weaver's own words, he was "not a joiner," and so probably was not an active member of Christian Identity. *See* Interview by Randy Weaver, *supra* note 57. But regardless of whether the Weavers were or were not members of Christian Identity, their beliefs certainly line up. Like the Weavers, Christian Identity believed in stockpiling weapons as part of their preparations for Armageddon. They also believed that Northern Europeans are racial

meeting of far-right extremist groups to focus on a common enemy: the tyrannical federal government.<sup>74</sup> This three-day meeting, now known as the “Rocky Mountain Rendezvous,”<sup>75</sup> had three main, interrelated themes: guns, resisting the federal government, and white supremacy.<sup>76</sup>

The white supremacy element of the Rocky Mountain Rendezvous played out both openly and covertly. Some speakers confessed they were “100 percent bigot,” while others couched their language in religion and patriotism.<sup>77</sup> Speakers urged for “Christian resistance” and warned of “concentration camps for patriots.”<sup>78</sup> They agreed that the goal of the conference was to return the United States to a “Christian government” in which the “Christian Israelites” would occupy their rightful place of power.<sup>79</sup>

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descendants of the biblical Hebrews; the American government is run by satanic Jews; and that black people were created before Adam and are therefore less than human. See Leonard Zeskind, *Armed and Dangerous* 720 ROLLING STONE, 54-61 (Nov 02, 1995), <https://www.leonardzeskind.com/1995/09/02/armed-and-dangerous-the-nra-militias-and-white-supremacists-are-fostering-a-network-of-right-wing-warriors/>.

<sup>74</sup> *The Roots of the Modern-Day Militia Movement*, NEWSWEEK, (Nov. 11, 2010), <https://www.newsweek.com/roots-modern-day-militia-movement-6922>.

<sup>75</sup> *Id.*

<sup>76</sup> Zeskind, *supra* note 73.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* Recent studies have analyzed the link between Christian nationalism and other political viewpoints. They have found that Christian nationalism is a powerful predictor of intolerance toward various out-groups, including (nonwhite) immigrants and racial minorities as well as strong negative sentiments towards racial equalization efforts like welfare, economic regulation, and affirmative action. See Andrew L. Whitehead, et al., *Gun Control in the Crosshairs: Christian Nationalism and Opposition to Stricter Gun Laws*, SOCIUS, (July 23, 2018) <https://journals.sagepub.com/doi/10.1177/2378023118790189> (citing Eric L. McDaniel, et al., *Divine Boundaries: How Religion Shapes Citizens' Attitudes toward Immigrants*, 39(1) AMERICAN POLITICS RESEARCH 205-33 (2011));

The Rocky Mountain Rendezvous thrust the militia movement into the spectrum of political discourse. While the militia movement is difficult to define—it has no central organization or leadership—it consists of loosely-connected paramilitary groups that perceive that the federal government is totalitarian; seeks to disarm its citizens; and create a “New World Order” run by an elite few worldwide.<sup>80</sup> One such group at the Rocky Mountain Rendezvous was the Militia of Montana (MOM). MOM remains one of the largest distributors of militia propaganda, and sells everything from books with titles like *The Illuminati Today* and *America In Crisis* to bumper stickers saying “Angry White Man” and “I love my country, but hate my government.”<sup>81</sup> Also present at the Rocky Mountain Rendezvous was the Gun Owners of America (GOA), an NRA alternative.<sup>82</sup> GOA executive director Larry Pratt made clear that he considered the NRA an ally of the cause, but that they “tended to perceive the whole issue of firearms freedom as one of recreation, as one of the right to

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Penny Edgell & Eric Tranby, *Shared Visions? Diversity and Cultural Membership in American Life*, 57(2) SOC. PROBLEMS 175-204, (2010); Paul Froese and F. Carson Mencken, *A U.S. Holy War? The Effects of Religion on Iraq War Policy Attitudes*, 90(1) SOC. SCI. Q. 103-16 (2009).

<sup>80</sup> Michael Kimmel & Abby L. Ferber, “*White Men are this Nation: Right-Wing Militias and the Restoration of Rural American Masculinity*,” 65(4) RURAL SOC. 582, 586 (Dec. 2000).

<sup>81</sup> *Id.* at 586-87.

<sup>82</sup> Zeskind, *supra* note 73.



hunt,” and that even though change was happening in the NRA, it was not enough.<sup>83</sup>

The NRA responded, in 1991, Wayne LaPierre became the executive vice president and CEO of the organization.<sup>84</sup> LaPierre took the rhetoric of Harlon Carter had co-opted from the Black Panthers and turned it into something more. Not only was the gun the tool protecting Americans’ freedom, but freedom itself was under constant and terrifying attack from the government in Washington. What had only been implicit in Carter’s rhetoric was explicit in LaPierre’s. On January 7, 1993, LaPierre called NRA members to arms, saying, “Only with your direct input can we stop President Clinton and his anti-gun allies from RIPPING THE SECOND AMENDMENT RIGHT OUT OF THE CONSTITUTION” (emphasis in original).<sup>85</sup> In 1994, LaPierre said the American media had become “the master over the very Constitution that created it... forget Stalin’s Russia. Forget Hitler’s Germany. The mightiest propaganda machine the world has ever known is right here in 1994 America.”<sup>86</sup>

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<sup>83</sup> *Id.*

<sup>84</sup> Sheryl G. Stolberg & Jodi Kantor, *Shy No More, N.R.A.'s Top Gun Sticks to Cause*, NY TIMES, (April 14, 2013), <http://comment-news.com/story/d3d3Lm55dGltZXMuY29tLzlwMTMvMDQvMTQvdXMvd2F5bmUtbGFwaWVycmUtdGhlLWd1bi1tYW4tc3RpY2tpbmctdG8taGlzLWNhdXNlLmh0bWw>.

<sup>85</sup> Elspeth Reeve, *Two Decades of Paranoid Pronouncements from the NRA's Wayne LaPierre*, THE ATLANTIC (Jan. 30, 2013), <https://www.theatlantic.com/politics/archive/2013/01/two-decades-wayne-lapierre-saying-hyperbolic-things-about-guns/318915/>. (emphasis in original).

<sup>86</sup> *Id.*

And famously, in 1995, an NRA solicitation letter signed by LaPierre stated “If you have a badge, you have the government’s go-ahead to harass, intimidate, and even murder law-abiding citizens ... [like] Randy Weaver at Ruby Ridge ... not too long ago, it was unthinkable for federal agents wearing Nazi bucket helmets and black storm trooper uniforms to attack law-abiding citizens.”<sup>87</sup> The solicitation then called for lifting the assault weapons ban passed under President Clinton only months earlier to “even the odds” in the struggle between ordinary citizens and “jack-booted government thugs [who have] more power to take away our constitutional rights, break in our doors, seize our guns ... and even injure or kill us.”<sup>88</sup>

The siege at Ruby Ridge provided the final necessary elements to complete the White Patriot Identity. It was a clear example of the federal government overreaching in spectacular fashion into the lives of individual citizens. Randy Weaver was entrapped by federal agents into committing a crime—saw off shotgun barrels with the intent to sell—and, because he did not appear in court for this charge, his wife and son were murdered. Weaver’s possession of a gun stockpile, manipulation of those guns, and then use of those guns were the cause of the federal

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<sup>87</sup> Guy Gugliotta, *NRA, Backers Have Focused Ire on ATF: Gun Group’s Ad Charges ‘Rogue Agency’ with Misconduct, Abuse and ‘Contempt for Civil Rights,’* WASH. POST., Apr. 26, 1995 at A16.

<sup>88</sup> *Id.*

government's actions against him. From a White Patriot perspective, this was a clear threat to the Second Amendment, and a clear sign that federal government was a threat to the freedom of American citizens?

At the same time, Ruby Ridge was also read as a showing of the federal government's specific hatred and oppression of white men. Randy Weaver was obviously a white man—one who may have held white separatist beliefs. But regardless of what Weaver and his family truly believed, the Ruby Ridge siege was picked up immediately by white separatists and supremacists. In the Weavers, the radical right saw true Christians. They were religious, they used their guns to protect themselves, their isolation made them pure in a corrupted world, and they were white. The Weavers were the perfect example of Christian, American identity. And on the right, that Christian identity was intrinsically tied with what America *should* be. As such, the Weavers weren't just sympathetic to those of the white patriot identity: they were true patriots.

#### **d. The NRA Now**

Today, the NRA's language and actions take cues from their long history. Using their massive organization funding, they promote their ideas by giving money to sympathetic candidates and attacking unfriendly lawmakers that disagree with their strong

second amendment rights. They still promote an individual right to bear arms. They still rail against the government, especially the ATF, and energize their followers with exhortations that the federal government wants to take their guns. And the NRA has adopted the dog-whistle language of the kind seen at the Rocky Mountain Rendezvous. Specifically, NRA publications now speak about “the elite” and their efforts to take away rights from real Americans, echoing the threats of a New World Order espoused by groups like MOM.<sup>89</sup>

In 2018, Wayne LaPierre spoke at the Conservative Political Action Conference. He said: there is no greater personal, individual freedom than the right to keep and bear arms, the right to protect yourself, and the right to survive. It is not bestowed by man, but granted by God to all Americans as our American birthright.<sup>90</sup>

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<sup>89</sup> See, e.g., *Washington: Anti-Gun Group Announces 2019 Agenda*, NRA.ORG, (Dec. 7, 2018), <https://www.nraila.org/articles/20181207/washington-anti-gun-group-announces-2019-agenda> (“Alliance for Gun Responsibility, a group backed by out-of-state elites, announced it will pursue its most extreme anti-gun legislative agenda to date...”). *Id.*; *Retired Anti-Gun Justice Reveals Attempts to Thwart Landmark Heller Decision*, NRA.ORG (Nov. 30, 2018), <https://www.nraila.org/articles/20181130/retired-anti-gun-justice-reveals-attempts-to-thwart-landmark-heller-decision>. (“The Times article is revealing, however, in depicting the obsession that some elites have with suppressing the Second Amendment rights of ordinary Americans. It also underscores the importance of what President Trump has accomplished, and continues to pursue, through his appointment of federal judges who respect the original meaning of the U.S. Constitution, including the individual right to keep and bear arms”). *Id.*

<sup>90</sup> *Conservative Political Action Conference, Wayne LaPierre Remarks*, C-SPAN, (Feb. 22, 2018), <https://www.c-span.org/video/?441475-3/conservative-political-action-conference-wayne-lapierre-remarks>.

Claiming that the Second Amendment is not just a legal right but a God-given right, and that the Constitution is a divinely-inspired document, is hearkening back to the Christian identity espoused after Ruby Ridge. By espousing this kind of rhetoric, LaPierre and the NRA forward the idea that the United States is a Christian nation, and that its laws are supposed to protect free, white, Christian citizens (or do you even just mean men?).

This kind of rhetoric encapsulates the White Patriot Identity. In the next Part of this paper, I will draw on the history of the NRA and the White Patriot Identity to discuss the three interrelated assumptions about how the law justifies the White Patriot Identity through firearm legislation and discourse.

### **III. Patriotism is defined by reference back to the Founders: White, Christian men who engaged in armed revolt against a tyrannical, illegitimate government.**

*“The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure.”<sup>91</sup> - Thomas Jefferson*

It is undisputed that the Founding Fathers were all white men. Many of them owned slaves. Many of them were landowners. All of them, in 1776, felt that the government of King George was “an absolute tyranny” over their lands.<sup>92</sup>

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<sup>91</sup> Letter from Thomas Jefferson to William Stephens Smith (Nov. 13, 1787) (available at <http://tjrs.monticello.org/letter/100>).

<sup>92</sup> Declaration of Independence para. 2 (U.S. 1776).

The Declaration of Independence provides a litany of grievances that together can be understood as grievances against tyranny. Included in the Declaration are claims that the British monarchy purposely left the American colonies unrepresented in the legislature, levied unreasonable taxes on the colonies, kept standing armies in the colonies without their consent, propped up a corrupt justice system, and “waging war” against the colonies.<sup>93</sup> According to the Declaration, it was a matter of divine right that citizens subject to such tyranny could and should engage in revolt against it and institute a new government. The Founders did. This was the legacy that Huey P. Newton was drawing on when he and his fellow Black Panthers openly carried their guns through the streets of California: America’s founders were revolutionaries.

In addition to being revolutionaries, the Founders were also racists. Some of the Founders themselves thought of the United States as a white nation. Benjamin Franklin wrote, “why increase the Sons of Africa, by Planting them in America, where we have so fair an Opportunity, by excluding all Blacks and Tawneys, of increasing the lovely White and Red?”<sup>94</sup> The Founders either actively participated in, or excused, the practice of slavery.

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<sup>93</sup> *Id.*

<sup>94</sup> Derrick Bell, *The Supreme Court, 1984 Term: Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4, 7 n. 10 (citing Benjamin Franklin, *Observations Concerning the Increase of Mankind, reprinted in 4 Papers of Benjamin Franklin* 227, 234 (L. Labaree ed. 1959)).

Although not all agreed that the institution of slavery was wise, neither the Constitution nor the Declaration of Independence extended the divinely-endowed inalienable rights of life, liberty, and the pursuit of happiness to slaves. As Derrick Bell says, the Founders rationalized depriving slaves of these rights by prioritizing the protection of property in the founding documents, and by omitting them from these documents, implicitly casting Black Americans as a subset of property.<sup>95</sup>

It is this history of revolution *plus* racism that made White Patriots' claim to carrying on the Founders' legacy more compelling than that of the Panthers. The Black Panthers could say that they were similar to the Founders in that they were revolutionaries against tyranny. White Patriots had a different claim: they were revolutionaries, but they were also white. The Founders would have thought of White Patriots as fellow men, while the Black Panthers, by virtue of their skin, would be thought of as property. Would the Black Panthers be able to create a new government after revolution? White Patriots thought not—but the structures of white supremacy were already in place that would allow them to do so. In their minds, the Founders would never accept a Black America, but a White Patriot America was what they intended.

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<sup>95</sup> *Id.*

Furthermore, the Founders excused white violence, while they condemned violence from minorities. As Noah Shusterman points out, white insurrectionary groups at the time of the Founding, like the Carolina Regulators and Pennsylvania's Paxton Boys, were not only tolerated, but excused. In late 1763, when the Paxton Boys murdered 20 Conestoga Native Americans on suspicion that they were conspiring with others to pillage white settlements in Pennsylvania (an event now referred to as the Conestoga Massacre), none were ever prosecuted.<sup>96</sup> Conversely, Native Americans who attacked whites, or slaves who resisted their masters, were not given such forgiveness under the law.<sup>97</sup>

The 1763 Conestoga Massacre and its aftermath displays racial tensions that quite mirror today's. While many white Pennsylvanians were outraged by the massacre, the Paxton Boys also had a fair amount of (at least implicit) support.<sup>98</sup> Many thought that the Paxton Boys had been driven to action by the government. Supporters denounced the government for allocating

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<sup>96</sup> Noah Shusterman, *What the Second Amendment Really Meant to the Founders*, WASH. POST., (Feb. 22, 2018), [https://www.washingtonpost.com/news/made-by-history/wp/2018/02/22/what-the-second-amendment-really-meant-to-the-founders/?utm\\_term=.7c3ba8a5b0b1](https://www.washingtonpost.com/news/made-by-history/wp/2018/02/22/what-the-second-amendment-really-meant-to-the-founders/?utm_term=.7c3ba8a5b0b1).

<sup>97</sup> *Id.*

<sup>98</sup> *A Narrative of the Late Massacres, [30 January? 1764]*, NATIONAL ARCHIVE, (last modified June 13, 2018), <http://founders.archives.gov/documents/Franklin/01-11-02-0012>. [Original source: *The Papers of Benjamin Franklin*, vol. 11, *January 1, through December 31, 1764*, 42-69 (New Haven and London: Yale University Press, 1967).]



funds to support Native Americans, who they saw as dangerous (regardless of the truth), instead of spending money to better conditions of white settlers.<sup>99</sup>

This forgiving treatment of white Americans who used force to protect their property against (suspected) threat or to challenge the government laid the legal foundation for what a White Patriot sees himself as today. Identifying with the Founders allowed for White Patriots to think of the American identity as formulated on whiteness by whites and for whites only. The United States was created by documents written by white men. By excluding slavery from the Constitution and the Declaration of Independence, the Founders erased any mention of race. By referencing Native American tribes in the Constitution as foreign powers, rather than the original inhabitants of American land, the Founders cast Native Americans as outside of the nation. Thus, the “We the People” of the founding documents could be read to mean “We, the White Americans.” Therefore, the “true American” is white, and the “true America”—the United States as it was when it was founded—was made up of exclusively white people.

By basing the Declaration of Independence largely on grievances of property theft, the Founders also instilled the idea that the White American Patriot is at threat of having his property

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<sup>99</sup> *Id.*

taken—and that part of his identity is inherently tied to protecting all the sticks in the property bundle from theft. While this property can obviously take many forms, history shows three kinds have been especially contentious in forming the White Patriot Identity: money (taken through taxes), slaves (taken by granting Black Americans human rights), and guns. The Founders fought the American Revolution because the British government levied high taxes on the colonies and diminished their abilities to defend themselves. The Civil War was predicated on rising objections to slavery threatening the economy of the Confederate states. And as discussed, today, the threat of losing guns undergirds much of the far-right's opposition to the federal government.

This threat of losing their guns is especially powerful for White Patriots, because for them, white violence is patriotic. In incidents like the Conestoga Massacre, the Founders also excused other forms of white violence, affirming their identity and importance in the formation of the White Patriot Identity. The American Revolution showed that, when used to defend one's individual property against a tyrannical government, white armed violence is the apex of patriotism. The Founders used guns to defend their property against the British, and in doing so, created America. The response to the Conestoga Massacre affirmed that white armed violence, when used against people not covered in the

Declaration of Independence or the Constitution (i.e., non-white people), is at least excusable.

The Conestoga Massacre can also be seen as an early example of the idea that government assistance for non-whites is the same as a *denial* of assistance for whites. If the United States is a white nation, when the government benefits non-whites, they are benefitting non-Americans. Allocating funds to non-Americans at the expense of Americans is thus an example of illegitimate, if not treasonous conduct by the government. And if the government collects American taxes to fund this illegitimate activity, it is not difficult to say that the government is acting tyrannically. Therefore, responding with violence is patriotic.

Finally, linking patriotism, whiteness, and guns legitimizes and justifies stockpiling firearms. On a basic level, having a stockpile of guns makes it harder for the government to take away your weapons: you can hide them, keep backups, and make sure your family has access to guns as well. If the Founders were able to succeed in creating the country by using guns, accumulating multiple guns makes a stockpiler feel closer to the Founders. Also, guns exist at the intersection of the values that the Founders prioritized: ensuring individual property rights and, when those rights are threatened, defending them violently. A gun is both property and the means of defending property. Therefore, to have a

stockpile of weapons is to maximize both of those values, and more fully honor the Founders.

**IV. As construed by the NRA (and as reflected in *District of Columbia v. Heller*) the individual right to bear arms affirms white supremacy.**

For over 200 years, the meaning of the Second Amendment seemed not to be in question. The Supreme Court had addressed the Amendment three times since the founding of the country, and each time had found that the right to bear arms was not an individual right.<sup>100</sup> In the 1939 case *United States v. Miller*, the Court held that the Amendment granted the right to bear arms to those in the militia—and that the militia in question was that organized by Congress and defined in Article I, Section 8 of the Constitution.<sup>101</sup>

In 1960, the stirrings of an alternate interpretation of the Second Amendment could be heard in the legal sphere. A student-written article in the William and Mary Law Review argued that the Second Amendment right should be read as comprising both a collective right of the people to an armed government militia and an individual right to own arms for self-defense.<sup>102</sup> Nothing in the article suggested the student's motivation for writing it, but the

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<sup>100</sup> *United States v. Cruikshank*, 92 U.S. 542 (1876); *Presser v. Illinois*, 116 U.S. 252 (1886); *United States v. Miller*, 307 U.S. 174 (1939).

<sup>101</sup> *Miller*, 307 U.S. at 178.

<sup>102</sup> Carl T. Bogus, *Symposium on the Second Amendment: Fresh Looks: The History And Politics Of Second Amendment Scholarship: A Primer*, 76 CHI.-KENT L. REV. 3, 5 (2000).

first source cited was the American Rifleman, the NRA's magazine.<sup>103</sup> Five years later, the American Bar Association formulated its annual essay contest on constitutional law on whether the Second Amendment included a right to bear arms for people unconnected with the militia.<sup>104</sup> The winning essay advocated for an individual right to bear arms.<sup>105</sup>

In the 1970s and 1980s, twenty-five articles were written endorsing the view that the Second Amendment included an individual right to bear arms.<sup>106</sup> At least sixteen of these articles were written by lawyers who had either represented or been employed by the NRA or other gun rights groups.<sup>107</sup> The individual rights theory began to receive support from high-profile voices in the legal field, including Sanford Levinson at Yale and Supreme Court Justice Antonin Scalia.<sup>108</sup> In contrast, twenty-five articles adhering to the militia-based interpretation of the right were published in these two decades.<sup>109</sup>

It was in this time as well that an insurrectionist theory of the Second Amendment developed. Stephen Halbrook, an NRA-

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 6.

<sup>106</sup> *Id.* at 8.

<sup>107</sup> *Id.*

<sup>108</sup> See Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637 (1989); ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 136-37 n.13 (1997) (praising the individual right theory as discussed by Joyce Lee Malcolm in her book *To Keep and Bear Arms: The Origins of an Anglo-American Right*).

<sup>109</sup> Bogus, *supra* note 102, at 8.

associated academic,<sup>110</sup> argued that the Amendment was designed to ensure that the citizenry as a whole as able to rise up and “counter inroads on freedom by government” and “to guarantee the right of the people to have ‘their private arms’ to prevent tyranny.”<sup>111</sup>

By the early 1990s, there was enough academic legal support for the NRA to launch a concerted press campaign promoting the individual rights position. In 1992, the NRA helped to fund Academics for the Second Amendment, an organization headed by Joseph E. Olson of Hamline University School of Law, and a member of the NRA’s National Board of Directors.<sup>112</sup> In 1994, the NRA began their annual “Stand Up for the Second Amendment” essay contest, offering a \$25,000 prize for first place.<sup>113</sup> “Standing up” for the Second Amendment was accomplished by promulgating an individual rights theory, as opposed to justifying the collective rights theory. This hearkened back to how the Founders protected American rights through rebellion, the ultimate form of “standing up” for one’s ideas. By the end of the decade, at least fifty-eight law review articles endorsing the individual right were published, compared to twenty-

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<sup>110</sup> *Id.* at 9.

<sup>111</sup> STEPHEN P. HALBROOK, *THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT* 195 (1984).

<sup>112</sup> Bogus, *supra* note 102, at 14.

<sup>113</sup> *Id.*

nine favoring the collective right position,<sup>114</sup> and two Supreme Court justices (Thomas and Scalia) had hinted that they wished to reconsider the Second Amendment.<sup>115</sup>

In 2008, the individual right to bear arms was condified law. *District of Columbia v. Heller* concerned a Washington, D.C., law that banned handguns from the District and required residents to keep lawfully-owned firearms, like registered long guns, inoperable unless they were in a place of business or used for lawful recreational purposes.<sup>116</sup> Written by Justice Scalia, the *Heller* opinion parted with existing Supreme Court jurisprudence to find that the right to bear arms was an individual right. Justice Scalia did so by engaging in a strict originalist reading of the Amendment. The “militia” of which the Second Amendment speaks refers not to a body that could be called up by Congress, but to all citizens as individuals.

The NRA’s *amicus* brief in *Heller* provides a succinct review of the legal policies underlying Scalia’s decision. In justifying why the Second Amendment should not be militia-based, the NRA brief begins by discussing the centrality of owning a gun to early American homesteaders. “While, to be sure, the

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<sup>114</sup> *Id.*

<sup>115</sup> *Printz v. United States*, 521 U.S. 898, 939 n.2 (1997) (Thomas, J., concurring) (“a growing body of scholarly commentary indicates that the “right to keep and bear arms” is, as the Amendment’s text suggests, a personal right”); SCALIA, *supra* note 108, at 136-137 n.13 (noting that he would find it “strange” if the Second Amendment did not contain an individual right).

<sup>116</sup> *District of Columbia v. Heller*, 554 U.S. 570, 575 (2008).

Second Amendment refers to the utility of an armed population in preventing government tyranny,” the brief argues, “the Founders did not consider the right limited to that purpose. The Founders were well aware ... a significant segment of the population depended upon private ownership of arms to provide food for their families and to defend themselves and their families from attack.”<sup>117</sup>

The brief dwells on why an individual right to bear arms is necessary for guarding against federal overreach. It argues that arms dispersed among the population, rather than held in militia depots, would be more difficult for an oppressive government to confiscate.<sup>118</sup> An individual accustomed to handling guns would be a more effective militiaman against the federal government than one who only handled guns during infrequent militia drills.<sup>119</sup> The brief holds up the NRA itself as an example of why the individual right is appropriate, since “individual NRA members have brought their civilian firearms experience with them in the many conflicts fought by this nation since the NRA’s founding” and the NRA had provided assistance to the government by loaning out their firing

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<sup>117</sup> Brief for the National Rifle Association as Amici Curiae Supporting Respondents at 8, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (No. 07-290).

<sup>118</sup> *Id.* at 9.

<sup>119</sup> *Id.*



ranges, developing training materials, and encouraging members to serve as guards.<sup>120</sup>

Finally, the brief argues that reading the Second Amendment as referring to the Congressionally-organized militia as defined in *United States v. Miller* would make the Amendment hollow. Congress, the brief notes, has no obligation to organize a militia—so if they chose not to organize one, the right to bear arms would extend to no individual. Thus, the Founders *must* have intended the Second Amendment to extend to the people, so that they would be a bulwark for “the security of a free State.”<sup>121</sup>

As discussed, relating back to the Founders is necessarily relating any argument to a group of white, Christian men who believed in the racial inferiority of minorities, especially Black people. It also contrasts the pluralistic modern United States with the white-nationalist United States at the time of the founding; this exalts and privileges the old view. The NRA brief reflects this.

Strict adherence to originalism and Founders’-intent arguments, promotes white supremacy. At the very least, this is due to the Founders’ less-inclusive view of who could be in the militia than we currently believe could serve. If we were to interpret the Second Amendment literally, as the Founders intended and as Scalia divined, the right would only be available

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 12-13.

for white, property-owning men: the only people who could be in the militia at the time. The *Heller* decision does not say that only white men can bear arms. But originalism as a theory of Constitutional interpretations centers the white man as “the individual.” The only people who enjoyed the full benefits of citizenship at the time of the Founding were white property-owning men. Thus, white men are the real citizens; the ones with the longest history of bearing arms and the best claim to that right.

By propping themselves up as the ideal gun-owners, the NRA positions themselves as the natural heirs to the Founders. The Founders were the prototypical American patriots in large part because of their successful, armed rebellion against the tyrannical British government. The NRA carry on that legacy by being the most prepared individuals who can and should bear arms. By acknowledging the NRA’s history of assisting in military campaigns, the group demonstrates its members’ patriotic bona fides. However, this demonstration carries with it a threat. While the NRA may assist the federal government when they are acting appropriately, individual NRA members are also able to act as militiamen *against* the government if they deem it necessary to the security of a free State. Part of their preparation is not only their experience with firearms, but also their whiteness and their willingness to fight back against government tyranny. The NRA is

an overwhelmingly white group with a history of extolling white supremacist language. Thus, affirming their belief in the individual right to bear arms also implicitly centers NRA members as ideal arms-bearers, adding further credence to their claims of being true American patriots.

Finally, the brief argues that the Second Amendment was adopted to prevent government tyranny, but the text of the Amendment is silent on this topic.<sup>122</sup> By centering the combat of tyranny, the NRA implicitly frames the prevention of tyranny as a necessary condition of freedom. And by couching the prevention of tyranny in the Second Amendment, the NRA argues that prevention of tyranny can only be achieved by bearing arms. By that logic, only those who bear arms in the prevention of tyranny are those who are truly free, and truly American.

**V. White Patriots actually comprise a majority of American citizens, so when government actors, hostile to their identity, act, they are engaging in unconstitutional and tyrannical overreach.**

The gun regulations of the 1970s; the Ruby Ridge standoff; and the D.C. law at issue in *D.C. v. Heller* all provoked strong White Patriot reactions because they were clear examples of the federal government threatening to limit gun owners' rights to bear arms. Yet, as hinted at by the Conestoga Massacre, White Patriots have similar reactions when the federal government challenges the

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<sup>122</sup> U.S. Const., amend. 2.

idea that White Patriots are not the majority of the country. Even democratically-elected, anti-White Patriot leaders (like President Obama) are illegitimate. This rejection of democracy hangs on the assumption that White Patriots are actually the majority of American citizens. If, assuming they *are* the majority, any federal action taken to disenfranchise them (or enfranchise others) is a tyrannical, undemocratic overreach of federal power.

Of course, White Patriots are not the most numerous demographic in the United States. They believe the American democratic process should be open to Americans. Everyone other than White Patriots are either not real Americans (immigrants, minorities); Americans whose voices shouldn't be heard (felons—who are construed as people of color); or elites intent on destroying the country. While there is overlap between these three groups<sup>123</sup>, they in the view of white patriots are all illegitimate voices and votes within the American democracy. As such, the only identifiable group of *real* Americans, who *can* participate in democracy, are the White Patriots. Accordingly, white patriots must be the majority.

This is not merely conjecture. White Patriots have litigated claims to say that they are a special kind of citizen, able to enjoy

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<sup>123</sup> Consider, for example, former president Barack Obama being labeled as a Kenyan Muslim (and thus not an American), and an arugula-eating elite attempting to take away guns and liberties.

rights more fully than others. In *Lonsdale v. United States*, Eugene and Patty Lonsdale appealed a lawsuit aiming to prevent the IRS from tax collecting their taxes to the Tenth Circuit. The Lonsdales alleged, *inter alia*, that they were not legal “persons” subject to the jurisdiction of the IRS.<sup>124</sup> They defined themselves, rather, as “individuals (free born, white, preamble, sovereign, natural, individual common law ‘de jure’ citizens of a state, etc.).”<sup>125</sup> The Lonsdales had argued in other, similar lawsuits that individuals, by virtue of their whiteness, did not need to pay income taxes because such taxes were a violation of the Thirteenth Amendment’s prohibition on involuntary servitude.<sup>126</sup>

While the Tenth Circuit dismissed these arguments as patently frivolous, the fact that the Lonsdales argued that white individuals are somehow exempt from taxation because of their race is still significant. Taxes have long been contentious in White Patriot circles. The NRA has argued that “your tax dollars” have gone to funding anti-gun studies<sup>127</sup> attacking “our Second Amendment rights.”<sup>128</sup> And as Angela P. Harris says in her article

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<sup>124</sup> *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990).

<sup>125</sup> *Id.* It is not clear what some of these words—including “preamble” and “free born” mean in this context. The court struggles to determine what the Lonsdales mean as well.

<sup>126</sup> *Lonsdale v. Egger*, 525 F. Supp. 610, 612 (N.D. Tex. 1981).

<sup>127</sup> *Three more wins in Congress for Gun Owners*, NRA.ORG, (Dec. 22, 2011), <https://www.nraila.org/articles/20111222/three-more-wins-in-congress-for-gun-owners>.

<sup>128</sup> *Obama's budget is a sneak attack on our Second Amendment freedoms*, NRA.ORG, (Feb. 17, 2012) <https://www.nraila.org/articles/20120217/obamas-budget-is-a-sneak-attack-on-our-second-amendment-freedoms>.

“Vultures in Eagles’ Clothing: Conspiracy and Racial Fantasy in Populist Legal Thought,” militia movements have espoused arguments that filing tax returns doesn’t just violate the Thirteenth Amendment, but also the Fifth Amendment’s prohibition on self-incrimination and the Ninth Amendment’s right to privacy.<sup>129</sup>

Inherent in this discourse is the idea that the Constitution protects individual rights absolutely—at least for white people. By raising other amendments in the Bill of Rights, White Patriots bolster the idea that the Second Amendment must be read as an individual right, since the other nine amendments are. But these rights only extend to white people, since, as the Lonsdales say, whiteness is a prerequisite to be an American individual. Therefore, whenever prominent political figures appear whose ideas are contrary to those of the White Patriots, these figures must be illegitimate and un-American. When they are in charge of American cities, states, or the country as a whole, then, the government is acting contrary to the wishes of the true White Patriot majority. If that’s not tyranny, what is?

Borrowing from right-wing conspiracy theories about a New World Order controlling the government, the NRA has long stoked fears of “liberal elites from Hollywood to New York City, to the political elites of Washington, D.C., are doing everything

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<sup>129</sup> Angela P. Harris, *Vultures In Eagles' Clothing: Conspiracy And Racial Fantasy In Populist Legal Thought*, 10 MICH. J. RACE & L. 269, 281.

they can to impose their utopian and, frankly, un-American vision upon us all.”<sup>130</sup> This language appeared in the November 2017 issue of *NRA: America’s 1st Freedom*, an official NRA journal. This statement was sparked by an outpouring of gun control messages in the weeks leading up to publication. Less than a month earlier, Stephen Paddock had killed at least 59 people and injured more than 500 in a mass shooting in Las Vegas.<sup>131</sup> The most direct statements calling for gun control and attacking the NRA came from two historically-hated elites: Hillary Clinton and Michael Bloomberg.<sup>132</sup>

The NRA hates Michael Bloomberg. They run a website called [MeetBloomberg.com](http://MeetBloomberg.com), in which they claim that Bloomberg “has dedicated his \$36 billion dollar fortune to taking away your freedom” and that as mayor of New York, he “presided over a

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<sup>130</sup> Wayne LaPierre, *Standing Guard | More Americans Stand By The NRA As Liberal Elites Try To Foist Their Values On Everyone*, *NRA: AMERICA’S 1ST FREEDOM*, (Nov. 21, 2017), <https://www.americas1stfreedom.org/articles/2017/11/21/standing-guard-more-americans-stand-by-the-nra-as-liberal-elites-try-to-foist-their-values-on-everyone/>. (The word “elite” or “elites” occurred ten times in just over 900 words—more than “at,” “where,” “with,” “why,” or “gun”). *Id.*

<sup>131</sup> Ken Belson, et al., *A Burst of Gunfire, A Pause, Then Carnage in Las Vegas That Would Not Stop*, *NY TIMES*, (Oct. 2, 2017) <https://www.nytimes.com/2017/10/02/us/las-vegas-shooting-live-updates.html>.

<sup>132</sup> On Twitter, Clinton wrote “Our grief isn’t enough. We can and must put politics aside, stand up to the NRA, and work together to try to stop this from happening again.” Hillary Clinton (@HillaryClinton), TWITTER, (Oct. 2, 2017, 7:04 AM), <https://twitter.com/HillaryClinton/status/914853632083877888>. Bloomberg wrote: “US has a gun violence problem. @Everytown & @MomsDemand are working to solve it. I’ll match every donation. Give now” and included a link to donate to gun control groups. The tweet included a photo of anti-NRA signs. Mike Bloomberg (@MikeBloomberg), TWITTER, (Oct. 4, 2017, 10:04 AM), <https://twitter.com/MikeBloomberg/status/915625847977074688>

"nanny state" where he tried to control every facet of people's lives, proving **no American is safe from Bloomberg's meddling**" (emphasis in original).<sup>133</sup> They allege that Bloomberg's municipal policies, from bans on trans fats, cell phones in schools, and large sodas to his food composting program and distribution of contraceptives to high schoolers, were all part of an "anti-freedom agenda" in which Bloomberg wants to "tell you how to live your life."<sup>134</sup> His gun control organization, Everytown for Gun Safety, is about "taking away the Second Amendment rights of law-abiding citizens."<sup>135</sup> In other words, Bloomberg is the ur-elite: a radical, shadowy, immoral figure who secretly controls the world through money and influence. He has already run a municipal government that is anti-American and tyrannical, and his influence and money make him a real threat to all Americans. Bloomberg has often toyed with running for president: if he did, he would represent a massive, clear threat of government tyranny to the White Patriots.

An essential element of the threat Bloomberg poses to White Patriots is not just his soda taxes, but his Jewishness. Were Bloomberg to hold government office, he would divorce the American government from its white, Christian, freedom-loving roots. The NRA's rhetoric around Bloomberg plays into a long

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<sup>133</sup>*Meet Bloomberg*, DEFEND FREEDOM. DEFEAT BLOOMBERG., <https://www.meetbloomberg.com/>. (last visited April 3, 2019).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*



history of anti-Semitic conspiracy theories that the Jews control the world and hate freedom. *The Turner Diaries*, a 1978 novel often called the “bible of the racist right,” begins with the passage of legislation confiscating civilian firearms referred to as the Cohen Act.<sup>136</sup> This prompts the book’s protagonist to take up arms against the federal government, which is controlled by Jews.<sup>137</sup> Echoing this kind of rhetoric, Oliver North, the NRA president, has called Bloomberg part of a “small cabal of billionaires and their pet politicians are conspiring to permanently transform America into a socialist state.”<sup>138</sup> Bloomberg is not just a leader of the opposing political wing for the NRA: he is a threat to the White Patriot Identity. He may start with taking away the freedom to order a Big Gulp, but it is a slippery slope to him taking away the right to bear arms.

In the White Patriot view, elites are most often either minorities or those who promote gun control. After he stated that he circulated his *Heller* dissent before the majority was written,

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<sup>136</sup> Nick Wing, *How the NRA Stokes Conspiratorial Anti-Semitism*, HUFFINGTON POST (Oct. 29, 2018), [https://www.huffingtonpost.com/entry/nra-anti-semitism-george-soros\\_us\\_5bd70d7ce4b0a8f17ef9f36a](https://www.huffingtonpost.com/entry/nra-anti-semitism-george-soros_us_5bd70d7ce4b0a8f17ef9f36a).

<sup>137</sup> *Id.*

<sup>138</sup> Oliver North, *Will We Let A Billionaire Buy America’s Future?*, AMERICA’S 1ST FREEDOM, (Oct. 4, 2018), <https://www.americas1stfreedom.org/articles/2018/10/4/will-we-let-a-billionaire-buy-america-s-future/>. (The other billionaires mentioned are George Soros and Tom Steyer. Soros is also Jewish, and while Steyer is Episcopalian, his father is Jewish and a rabbi officiated his wedding.)

Justice John Paul Stevens was deemed an elite.<sup>139</sup> Other elites include Barack Obama and Hillary Clinton, of whom Wayne LaPierre said in 2015, “eight years of one demographically-symbolic president is enough.”<sup>140</sup> When elites control the presidency, there is an irrebuttable presumption that the federal government is anti-democratic. This, in return, justifies gun owners to stockpile weapons and get ready for the inevitable armed conflict that will happen, in which they and other real Americans rise up against tyranny. It makes sense, then, that gun ownership reached its highest levels during the Obama years—with most gun sales going to people who already owned firearms.<sup>141</sup>

## VI. Recommendations and Conclusion

It is extremely likely that the White Patriot Identity is endemic to American thought. Ever since the original White Patriots, the Founders, created the country the link between the right to bear arms and American identity has been rooted in white

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<sup>139</sup> *Retired Anti-Gun Justice Reveals Attempts to Thwart Landmark Heller Decision*, NRA-ILA, (Nov. 30, 2018), <https://www.nraila.org/articles/20181130/retired-anti-gun-justice-reveals-attempts-to-thwart-landmark-heller-decision>. (“The Times article is revealing, however, in depicting the obsession that some elites have with suppressing the Second Amendment rights of ordinary Americans.”) *Id.*

<sup>140</sup> *NRA's Wayne LaPierre On Clinton And Obama: "Eight Years Of One Demographically Symbolic President Is Enough,"* MEDIAMATTERS, (Apr. 12, 2015), <https://www.mediamatters.org/video/2015/04/12/nras-wayne-lapierre-on-clinton-and-obama-eight/203250>.

<sup>141</sup> David Brennan, *Trump Gun Slump: Sales Plummet as Americans Don't Buy Gun Control Threats*, NEWSWEEK, (Mar. 2, 2018) <https://www.newsweek.com/trump-gun-slump-sales-plummet-gun-owners-dont-buy-presidents-gun-control-827947>. In contrast, gun sales plummeted during the Trump administration. *Id.*

supremacy. Dismantling the White Patriot Identity, therefore, requires a dismantling of white supremacy writ large.

Attempting to remedy the specific problem of weapons stockpiling, thus, cannot be viewed simply as a matter of gun control. Any legislative action taken to combat this phenomenon will be taken as an attack on White Patriots' personhood. Since stockpiling may happen when White Patriots are feeling especially vulnerable, efforts to combat stockpiling are more likely to provoke a violent reaction.

That being said, it is possible to diminish the White Patriot Identity by disentangling firearms ownership, American identity, and whiteness. And there *are* meaningful steps that lawmakers, judges, and normal people can do to accomplish that. A few recommendations are listed below.

**a. Create a legal definition of stockpiling and create legal disincentives to stockpile firearms.**

The dearth of federal and state-level definitions of stockpiling means that the phenomenon can continue unabated. By not codifying stockpiling as a crime, the government turns the other cheek to the dangers it presents, not only in signaling the White Patriot Identity, but in identifying potential violent criminals. Many mass shooters have stockpiled weapons before their assaults. By creating a legal definition of gun stockpiling and

applying it to American citizens rather than shunning stockpiling to applications limited to national defense, legislators would draw attention to firearms stockpiling.

While harshly criminalizing stockpiling is not recommended—the blowback from White Patriots would be intense and dangerous—creating disincentives to stockpiling firearms could reduce the urge to stockpile and thus reduce people’s affinity with the White Patriot Identity. Sentencing enhancements for firearm stockpiling, creating misdemeanor offenses for having multiple guns around children, or imposing longer waiting periods for purchases of multiple guns could all chill stockpiling and require White Patriots to ask themselves why they need a stockpile. This could deter some less-fervent gun owners from moving further into the White Patriot Identity.

**b. Shun the NRA.**

For more than half a century, the NRA has been allowed to shape the rhetoric around the gun debate. They have co-opted the most salient talking points and ideas from both sides of the aisle to become a political juggernaut. Politicians wear their NRA grades—from A to F—proudly, depending on the messages they want to send to listeners.

But by allowing the NRA to control the gun debate, we legitimize them and their ideas. Simply paying them less attention

would diminish their influence. Instead of acting with outrage at Wayne LaPierre's latest racist or anti-Semitic remark, the NRA's opposers should refuse to give them airtime.

Of course, that is easier said than done. Money speaks, and the NRA has a lot of money. If conflict becomes unavoidable, public figures should identify what facet of the White Patriot Identity is at work through the NRA's language, and respond directly to that. If actual gun ownership is at issue, lawmakers should address that. Then, they should point out the ideas of white supremacy and patriotism that underlie the NRA's message.

A recent successful example of combatting the NRA was the #thisismylane movement on Twitter. After the NRA told anti-gun doctors to "stay in their lane" following the publication of a series of research papers about firearm injuries and deaths, doctors responded with photos of their bloody operating rooms and gore-spattered scrubs.<sup>142</sup> The #thisismylane movement was successful because it isolated one facet of the NRA's rhetoric: gun use. There was nothing about patriotism, nothing about America, and nothing about the Constitution. Rather, doctors used their stories and expertise to reformulate the narrative around gun usage in the United States. By using shocking, graphic images, they disrupted

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<sup>142</sup> Jacqueline Howard, *Doctors start movement in response to NRA, calling for more gun research*, CNN.COM, (Nov. 20, 2018), <https://www.cnn.com/2018/11/19/health/nra-stay-in-your-lane-physicians-study/index.html>.

the NRA's story about guns, to make it one about violence and death instead of self-defense and patriotism. It worked: to this day, the NRA has not responded to press inquiries about this movement.

**c. Reinvigorate recreational firearms usage.**

Gun owners can disentangle their gun ownership from white supremacy and patriotism by de-romanticizing the gun and presenting it as a tool of recreation rather than rebellion. Establishing an alternative history of gun usage—one based on hunting and recreational shooting—can operate to at least complicate the history of guns as political weapons. Emphasizing that guns are to be used for hunting and recreation, combined with deliberately eschewing White Patriot rhetoric, can create a pro-gun but anti-White Patriot identity that does not rely on white supremacy to survive.

**d. Develop a meaningful liberal judicial philosophy based on individual freedoms.**

*Heller* was possible because of a concerted effort to prioritize individual rights, emphasize originalism in judicial analysis, and take advantage of constitutional vagueness to further ideas of federal tyranny and the importance of an individual right to bear arms. The *Heller* opinion (aside from its limiting clause), reads like a model of originalist analysis: it is logically sound, well-researched, and compelling. But as Justice Stevens points out

in his dissent, there is just as logical, well-researched, and compelling an argument to be made that the Second Amendment does *not* contain an individual right. And yet, the makeup of the court and Justice Scalia's argumentation carried the day.

Judges who believe in a living constitution can take lessons from *Heller*. The opinion speaks to the need for left-leaning judges to develop a body of Second Amendment jurisprudence that rethinks *Heller* along different, but equally compelling, analytical lines.

Part of *Heller*'s success was that it was one of only a handful of cases to really tackle the Second Amendment—and, arguably, the first case to address it head-on. The lack of precedent around the Second Amendment allowed for Scalia to engage in an originalist analysis unhampered by precedent. But post-*Heller*, there is enough of a body of precedent for left-leaning judges to reevaluate the Second Amendment, albeit as an individual right. For example: under a strict originalist viewpoint, the right to bear arms would only be allowed for men, who were allowed to serve in the militia. Scalia departs from this and holds that the right is open to everyone (except as proscribed by the limiting language in the opinion). Today, judges can exploit this tension to redefine who has access to guns and what “arms” are as the Amendment intended.

Furthermore, as seen through the language of the NRA, individual freedoms are held incredibly dear. But the original conception of an individual right to bear arms came from the left: The Black Panthers. Left-leaning judges can seize on this history to challenge the idea that the Second Amendment protects white people. Advocates should focus on creating a body of precedent with minority plaintiffs, particularly those who are young, urban, and female. This would diminish the closely-held link between White Patriots and firearms. Further, creating precedent in which guns have nothing to do with tyranny—perhaps, where they are used for self-defense against domestic abusers or thieves—would complicate the idea that a gun is necessarily political and show that guns can be used responsibly by people facing imminent threats of violence. Advocates may even be able to re-cast government tyranny as something that affects minorities, who are more likely to be victims of government violence and discrimination. This would almost certainly be met with backlash, but that backlash could then be used to cast doubt on existing ideas of tyranny within the White Patriot Identity.

**e. Wait it out.**

There have always been white men shouting about tyranny in the United States. These voices are loud and hard to ignore. Whether it's Benjamin Franklin or Donald Trump, the white man



has nailed down his soapbox in the rotunda of American democracy and may never stop yelling. These men may indeed drive some people to take up arms—lots of arms—and prepare to use them to defend an America that only exists in their minds.

Rebellion is hard. Talking about it is gratifying and affirming, but actually taking up arms against a government power is almost guaranteed to end poorly. And when the government is the United States—the most powerful military power to ever exist—that guarantee becomes even higher. White Patriots have shown little movement toward actually trying to overthrow the government or engage in open political violence, and it may be that they never will.

Perhaps the best way to combat the White Patriot Identity is by relying on inertia. If we accept that stockpiling weapons is a symptom of white supremacy, it may be that we simply see gun sales continue to fluctuate depending on how much white supremacy is challenged by government action.