

# MMITM Ep 014 - 14 - A Revisit to: Constitutional Law Professor Eugene Volokh - 2nd Amendment and Gun Control

**Mike Thomas:** Hi, everyone, and welcome to Politics. Meet me in the Middle. I'm senior producer Mike Thomas. Well, the Second Amendment is once again in the news. So we thought it would be an appropriate time to revisit the topic of gun ownership and the Constitution. This episode features UCLA constitutional scholar Eugene Volokh, Curtco Media's chief curator Bill Curtis, and our Pulitzer Prize winning historian, Professor Ed Larson. It's an informative, lively debate regarding the Second Amendment on an encore episode of Politics. Meet Me in the Middle. And it's coming up right now.

**Announcer:** From Curtco Media. So what cha gonna do about it?

**Bill Curtis:** Welcome to Politics. Meet me in the middle. I'm Bill Curtis. Joining me in the middle today, as usual, is Pulitzer Prize winning author, historian and worldwide lecturer Ed Larson. How you doing Ed?

**Ed Larson:** Great to see you again.

**Bill Curtis:** In this episode, we welcome the highly respected UCLA constitutional law professor Eugene Volokh. He brings a knowledge and perspective that's hard to argue with. And in this episode, you'll certainly hear me try. We're going to dive into what the founding fathers might have really meant when they wrote the Second Amendment, which reads, A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Certainly this is a hotly debated subject, especially when trying to apply it to today's reality.

**Bill Curtis:** Ed, I'd like to start by asking you to give us a brief history lesson on the Second Amendment, its original intention, a bit on who drove it and how it's changed meaning over the years.

**Ed Larson:** The Second Amendment, like anything else, was a period of its time and it really wasn't this time. It was the period of the late seventeen hundreds. And at that time, we had the immediate history that the states were the repository of effective militia that had stood up to British tyranny and were the backbone of the revolution. They led the revolution. And so when they got to writing the Bill of Rights, the Bill of Rights was viewed as a limitation on the federal government, not on the state governments. And one right you wanted to have is the states have a right to have a militia. And so in a way to protect states rights and it's absolutely clear this is what they were thinking of at the time. There is no doubt at all in the history of following that the drafting and passing of this amendment, they were trying to protect state's rights. And in that way, protect individual rights. And that included people having a right to have guns in the context of having a state militia, because the amendment is clearly worded in that respect.

**Eugene Volokh:** Well, it's funny you said that talks about the rights of the states. It actually says quite specifically who has the right, it's the people. It's a well-regulated militia being necessary to the security of a free state, to be sure it says that. The right of the people to keep and bear arms shall not be infringed. So it's clear who the rights.

**Bill Curtis:** The people not each person

**Eugene Volokh:** Well, remember the people are also the ones mentioned in the First Amendment to the right of the people peaceably to assemble. Nobody thinks that that's just the right of state governments.

**Ed Larson:** That's because the First Amendment doesn't say to protect the states we have to give this right. The Second Amendment clearly says it in the context of having a state militia that would never have passed if it hadn't had that introduction.

**Bill Curtis:** Would it have passed if the arms were further defined?

**Ed Larson:** As long as, it wouldn't have passed but for in the context of protecting the state.

**Eugene Volokh:** So the Second Amendment says the right of the people and again the First Amendment says the right of the people. The Fourth Amendment, searches and

seizures, talks about the right of the people. There was a pre-existing right to have arms. It was in the English Bill of Rights. It was limited to Protestants. It was subject, though, specific language authorizing parliamentary regulation because the British rights were subject to parliamentary regulation and only protections against the king. But that was obviously not a right of states. There were no states in England. England had a unitary government, not a federal government. At around the same time as there were, in fact, shortly before the second amendment was written, state constitutions also had right to bear arms provisions. Pretty clear they weren't rights of states. The Pennsylvania and the Vermont Constitution, for example, talked about that. Today 44 of the 50 state constitutions have a right to bear arms provision that it seems to me can't be a right of the states. Why would a state bill of rights protect the right of the states?

**Ed Larson:** Well, of course they wouldn't.

**Eugene Volokh:** And it's quite clear also that the, a free state, a free state in the language of the legal language and the political language of the time meant roughly what we would call today, a free country, meaning places where there is not tyranny. So really what was going on is there was a rights secured to the people to keep and bear arms. One of the rationales, an important rationale is to preserve, to prevent tyranny. And that was through having a militia, which at the time wasn't a National Guard. And I think we'd agree on this. At the time, the militia was basically the armed citizenry. The first militia act of 1792 defined the militia to be, as I recall, all white males from age 18 to 45. So this was not just like a small national.

**Bill Curtis:** Is militia, by its nature, a group of people in a state, or is it the single individual?

**Eugene Volokh:** The militia is the citizenry who are armed as a means of, among other things, protecting the poor, protecting.

**Bill Curtis:** As an organized group?

**Eugene Volokh:** So the well-regulated militia would without doubt have been an organized group. But the people who have a right to keep and bear arms, those were people. That was wasn't, it could have been written as the right of the militia to keep and

bear arms or the right of the state to possess arms. Certainly the framers understood that states could have rights. It just, this wasn't written as that. And what's more, throughout the 19th century, with very few exceptions, there was one case, *State v. Buzzard* from Arkansas that took this view. But other than that, you look at court decisions, there were plenty throughout the eighteenth hundreds. It was understood as an individual right. Now, a right that was subject to some regulation. So, for example, the bans on concealed carry. it.

**Bill Curtis:** Well, there's the pivotal...

**Eugene Volokh:** Well no, well there is a pivotal point. I think there are two questions. One is, is it an individual right or is it a right only of states or of militia? I think the answer was pretty clear to me. There was an individual right. Now when the second.

**Ed Larson:** Now this is one we're going to fundamentally disagree on and I should say this here. I'm a legal historian. I've read all those documents. I've read them all. I totally agree that many states did, sure, many state constitutions did guarantee an individual right to bear arms. Absolutely. But when we were talking about the Second Amendment, which is what you ask about, the Second Amendment here was used during the election of eighteen hundred. One of the things that forced through the election of Jefferson was the direct threat of Virginia and Pennsylvania to raise their militias, to make sure that Jefferson, not Aaron Burr, became president. They, the governors actually called out their militias to enforce that. So there was a state militia aspect to it that was critical. Now, certainly, states protected their individual rights to bear arms. I agree with Eugene on that completely.

**Bill Curtis:** When you say bear arms, define arms.

**Ed Larson:** If the Congress could get around the protection of the states by limiting individual rights to bear arms, then they could effectively undercut these state militias.

**Bill Curtis:** The goal here was to make sure that the states and the people could defend themselves against a rogue government.

**Ed Larson:** Correct.

**Bill Curtis:** We've kind of migrated the Second Amendment, the NRA, the lobbyists, all the arguments that we have in today's world. Maybe you could tell us a little about the Heller case and how that kind of formed our view of the Second Amendment.

**Ed Larson:** I can talk about the Heller case and I will. But as a practical matter, I don't think the Supreme Court is doing a whole lot to effectively change a rational view of how this would apply.

**Bill Curtis:** Well, they haven't done a whole lot yet. Certainly.

**Ed Larson:** It's a, they take a pragmatic and if a person wants to have atomic weapons, they'd say, you can't have atomic weapons.

**Bill Curtis:** They'd say you can't.

**Ed Larson:** You cannot. Or you cannot have bumpstocks.

**Bill Curtis:** Where does it say that?

**Ed Larson:** Because they would say, if the federal government says you can't have atomic weapon,.

**Bill Curtis:** Isn't bearing arms, Can't I have a weapon of mass destruction?

**Eugene Volokh:** But wait a minute. If your position is that, oh, the Second Amendment secures states rights, then according to your argument, then the states could have atomic weapons. But you seem to, I mean, I take it you think that they wouldn't. And I think that's in part because it's understood that all of these provisions are read in some measure and context. And in fact, if it is an individual right, arms would refer to the kinds of arms that an individual person would generally possess, whether acting as a soldier or whether acting.

**Bill Curtis:** So that was a perfect definition, Eugene. The type of arms that an individual would possess.

**Eugene Volokh:** Right. So these are usually...

**Bill Curtis:** I think the argument that right now is in the streets, that I'd like to talk about here in the middle, is what are the types of arms that are reasonable for us to permit the individual to possess?

**Ed Larson:** I think we saw a little bit that recently when the current administration banned bump stocks, because I suppose the Supreme Court, I assume the Supreme Court will uphold that, and rule that doesn't violate the Second Amendment, because I think they're going to look at each of these things. But if somebody tried to ban individuals from having hunting rifles, they'd say, well, that doesn't seem to follow the Second Amendment.

**Eugene Volokh:** So let me tell you what we see from lower court cases. Now, it's not completely clear that's the way the Supreme Court will come out. But we have a good deal of experience in lower court federal cases. We also see a good deal of experience from state court cases interpreting state constitutions which indubitably secure an individual right. I can tell you, rightly or wrongly, but courts generally say that if you totally ban a kind of gun, especially kind of gun, a large class of guns that are common, in common use, such as handguns, that's unconstitutional. Likewise, there's a Supreme Court case that's pretty strongly suggests and lower courts agree that if you ban even somewhat rarer guns, but a broad category, stun guns, electric weapons mostly non-lethal weapons, that's unconstitutional. But generally speaking, if there is a ban on particular kinds of guns, that leaves citizens with broad access to comparable weapons. So such as bans on these so-called assault weapons, those have been upheld. I'm not saying that's necessarily right. Lots of people I know agree with that decision. Lots of people I know disagree with that decision. But descriptively, if you look at how courts have actually interpreted what they say is, more or less, if you do something that really seriously interferes with people's ability to keep and bear arms, such as banning all guns or banning all handguns or even banning stun guns, which are separate and important class of weapons, that's unconstitutional. Whereas if you say, well, you can't possess bump stocks or you can't.

**Ed Larson:** Assault weapons.

**Eugene Volokh:** Or you can't, again, I always say so-called assault weapons, because that is actually not a helpful label in many ways, which I'm happy to discuss. That's constitutional. So then the question is whether it's a good idea or not?

**Bill Curtis:** Is that part of the Supreme Court's responsibility to decide what is a good idea or not?

**Eugene Volokh:** No, no, I do not know. I think it's part of our responsibility as citizens to decide. It's part of legislators responsibilities, I think. As to this, I think actually my view is, generally speaking, it makes sense for the Supreme Court to give legislatures a considerable amount of latitude in restricting kinds of guns that are possessed, so long as it doesn't substantially burden people's ability to defend themselves with guns generally. So again, I think those decisions that uphold the bans on assault weapons are probably correct, even though I mean, I think that those bans are unsound laws, they're bad laws, but at least at this point, I don't think they're not unconstitutional laws.

**Bill Curtis:** Eugene, how did you get here today?

**Eugene Volokh:** I got here in my car.

**Bill Curtis:** You drove.

**Eugene Volokh:** Yes.

**Bill Curtis:** Does it say anywhere in the Constitution what kind of process you should go through in order to be able to use a weapon like oh, I don't know, a car.

**Eugene Volokh:** So the answer is if you wanted, so the answer's it doesn't say anything about that in the Constitution. But I've certainly heard people often say guns should be regulated like cars. And if they were, that would be very close to what many gun rights activists very much like. Here's the way cars are regulated in California. First in California, any body, certainly any adult age 18 on up with very few restrictions like if you're blind, for example, can get a car, not like limits in many places. And under federal law you have to be 21 to buy a handgun? No. If you're a eighteen, even if you're 16, you

can get a car. Second, if you want to possess a car on your own property you don't even need a driver's license. California law only applies to possessing them on the street. If you do want to possess a car on the street, then in that case you have to pass a test.

**Bill Curtis:** Why?

**Eugene Volokh:** It's an objective test, what?

**Bill Curtis:** Why? Why is there a test? Is that fair? Well, I mean, you actually you actually have to study. You have to know rules. You have to handle a car a certain way in order to maintain that license.

**Eugene Volokh:** Right. And likewise...

**Bill Curtis:** It can be taken away from you, by the way,.

**Eugene Volokh:** It can be taken away from you, but only if you either violate the law often enough or if there's some other reason, like, for example,.

**Bill Curtis:** Whatever the method, it can be taken away.

**Eugene Volokh:** So when it comes to possessing a gun,.

**Bill Curtis:** In fact it can be impounded can't it?

**Eugene Volokh:** It can be impounded if you violate the law, just like guns can be impounded if you violate the law. So what I'm saying is, if we regulated guns like cars, we would have most of the gun rights advocates agenda. Not all because in some states used to be only one, Vermont. Now it's maybe about a dozen. You actually don't need a license to carry a gun concealed on your person anymore. But in the great majority of states, there are about 40 plus states where you, where any law abiding adult can carry a gun in public. In about 28 or so of them you need a license, in about 12 you don't.



**Bill Curtis:** So it's pretty deep piece of research that they do on you before they give you a license. Right.

**Eugene Volokh:** For a license to drive a car?

**Bill Curtis:** For example, you have to go and you have to talk to people that we find at the DMV and they ask you to look over their shoulder and you have to read a document.

**Eugene Volokh:** But again, if you really were to regulate guns the way cars are regulated, then guns in California would be radically deregulated. And in most states there would be slightly deregulated. So the gun ownership age would be decreased to 16. You wouldn't need any license or registration to possess it on your own property. That's true in many states already. There wouldn't be a background check to check your, whether you have a history of criminal convictions. You would need a license just to carry it in public. Just like in most states, you do need a license to carry in public. But it would have to be given to anybody who passes a test as opposed to in California, where it's up to the tender mercies of your local sheriff. And many sheriffs don't actually issue such a, such things. And your license could be pulled, but only for actual violations of the law, which is much like the way concealed carry licenses operate.

**Bill Curtis:** OK. Whatever those attributes are that you just perfectly listed. The fact is we feel that cars can be dangerous to society, if handled in an inappropriate way.

**Eugene Volokh:** No doubt, as our guns.

**Bill Curtis:** So we are very careful with the way we allow people to bring them off their property and drive them in public places.

**Eugene Volokh:** Well, in fact, in California, possession of guns in public places is vastly, vastly more heavily regulated than possession of a car in a public place. Among other things, it's a crime to possess a gun in a public place in much of California, not interestingly in Sacramento, where they issues licenses regularly...

**Bill Curtis:** Don't you think that the registration process of a car should be that, at least, that significant for a gun.

**Eugene Volokh:** Well, you don't need to register a car in order to keep it on your own private property. Likewise, you don't need to register a gun in order to keep it at home, at least under federal law. Some states do require it. Now, if.

**Bill Curtis:** But you're splitting a hair here, Eugene.

**Eugene Volokh:** No No, you're the one who brought up.

**Bill Curtis:** Because you are just talking about personal property? I'm mostly concerned with what people are allowed to carry out in the right place. And endanger other people.

**Eugene Volokh:** And in fact in the great majority of states that allow concealed carry by any law abiding adult, you actually do need a license. Now, whether it covers registration of a particular gun with a license that's tied to the car. Remember, for car registration, it's really for tax purposes. The reason you're registering your car is chiefly so you have to pay the registration tax and you do need a license.

**Bill Curtis:** They check to see what kind of tickets you've gotten in the past and if you owe any money. You have a background check, in fact, don't you?

**Eugene Volokh:** You will have a check for your license as opposed to guns, where you have a background check for buying that that, that's the federal law.

**Bill Curtis:** The Problem is you don't always have a background check. There can be a gun show. I can get there by sitting in my car for the next two hours. There can be a gun show just outside of California. I can buy a gun without any kind of license.

**Eugene Volokh:** Right. Just like, again, if you want to possess a car on your private property, you don't need a background check. I don't think you need registration. You might need to re-title your car, I'm not sure. However, if you want to drive your car in a public place, then you do need to the registration. And again, in most states that have concealed carry licenses broadly available, you need to actually get the license. And that also involves a background check, it involves a background check that's more

aggressive than the background check that's done for cars. What you really want is you want guns to be regulated much more heavily than cars? No, we can talk about that.

**Bill Curtis:** I actually do. But I guess I have to ask you, what is the purpose of a gun that I am apparently constitutionally allowed to bear.

**Eugene Volokh:** I'm sorry. What is the purpose in the sense of what.

**Bill Curtis:** What is that purpose of the gun?

**Eugene Volokh:** It depends, it depends on why people would on my people own it. Some people use them for hunting.

**Bill Curtis:** The purpose of a car is to get me from here to there for the most part. I mean, it is its primary purpose is not to rip someone's flesh off or kill an animal or what have you. It has a. It has a different purpose. Right.

**Eugene Volokh:** Well, all right.

**Bill Curtis:** But we are protecting each other, by making sure that there's at least a registration process and a licensing in order to use it.

**Eugene Volokh:** So the registration process, again, is not aimed at protecting the public so much as it is protecting the public fisc. The licensing process is aimed at protecting the public from people who might misuse their cars in public. Just like the licensing process for concealed carry licenses in states like Oregon and Washington, where anybody can get a such a license, is aimed at the same thing. In California, of course, at least in Los Angeles, for example, people, you can't get a license unless maybe they're close friends of the sheriff.

**Ed Larson:** Now, just to make an observation here, we started out this conversation on the Second Amendment and the Second Amendment I don't think was designed to be pragmatic like these state rules. What various rights states have. I think if you look at the entire Bill of Rights, the purpose of the entire Bill of Rights was to protect against federal government access. What you're mostly talking about is what the states do as a

pragmatic matter to regulate guns within their own states. And I think that's mostly outside the purview. And the courts have acted this way, mostly outside of the purview of what the Second Amendment speaks to.

**Bill Curtis:** Well, you've got to take a 30 second break here and we'll come right back and talk about the controversial NRA and try to find a middle ground for reasonable gun control.

**Promo - HU:** Sometimes the exceptional is not the biggest budget. Sometimes the exceptional is someone's ability to actually take their soul and printed on the screen for a moment. I want to learn everything that there is to know about the filmmaking process. I think part of art is hearing from the artists who create it. And the number of different visions, the number of different qualifications that have to go into making any film is insurmountable. And hearing those stories can be just as exciting and insightful as the movies themselves. Certain movies or certain scores, certain actors have shaped who I am as a person. I have such an appreciation for the things that people produce and the work that goes into it. Whether it's the writer who came up with this story in general or how the filmmakers were able to take that from the page and put it onto screen. And then from the actors themselves who are able to kind of bring that all to life. All of it is what I want to hear, because it makes me love my favorite movies even more. I'm Scott Tallal if you love movies like I do, you're going to love Hollywood UNSCRIPTED.

**Bill Curtis:** Welcome back to Politics. Meet me in the Middle. I'm Bill Curtis. And again, I'm joined by my co-host, Pulitzer Prize winning author, historian and lecturer Ed Larson. And our guest, of course, is the UCLA constitutional law professor, Eugene Volokh.

**Bill Curtis:** I'm actually not arguing with the idea that someone is a hunter and wants to go out within the confines of the law and hunt in the places and the times where that is permitted. And I'm not arguing with the fact that someone can have a handgun to protect themselves in the event that they're somehow threatened. I'm referring more to the NRA and their unwillingness to consider what I would have to say is the most important word in the English language, at least for contracts. The word is reasonable. And I think that we're supposed to be, with our governance, we're supposed to be reasonable in our thought process. So let's go all the way back to the Second Amendment and talk about our right to bear arms and put the word reasonable in there

somewhere, because I think we have the right to bear reasonable arms for a reasonable purpose under reasonable circumstances.

**Ed Larson:** I think as a practical matter, the Supreme Court hasn't limited that. Where those limits, where that ban does.

**Bill Curtis:** Well they haven't limited anything at all. You can own all of this. Rapid fire machine guns are permitted in many states.

**Eugene Volokh:** No. So the Supreme Court specifically said that machine gun bans are constitutional. That's specifically there in Heller. They're very heavily regulated under federal law. They have been since late 1930s. New machine guns have been essentially outlawed under federal law since the mid 1980s.

**Bill Curtis:** I'm referring more to the type of gun that can deliver numerous bullets in a very short time.

**Eugene Volokh:** That is basically every gun. And these so-called assault weapons are actually not materially more rapid fire than others. They still deliver one bullet per trigger pull. That's what makes them not machine guns. Now, it's true. You can pull the trigger many, many times. You can do the same within your hand,.

**Bill Curtis:** And you don't have to reload.

**Eugene Volokh:** And you don't have to reload because they've got a magazine just like a handgun. You don't have to reload because they have a magazine. Now but as to reasonableness. First, I think the NRA thinks its position is reasonable because it actually thinks, maybe they're wrong, but they actually think that these, the gun controls of the government or that people are proposing would actually not work. They may be mistaken, but that's their reason.

**Bill Curtis:** How so, I'm interested.

**Eugene Volokh:** So let me give you an example. People talk about these bans on these so-called machine guns. Let's look at the most prominent example that was

enacted in 1994 and then expired after 10 years. There have been studies trying to see if it had any material effect on crime. Apparently it didn't. At least none that could be measured. How were those machine guns defined? This was proposed by the Clinton administration. They were defined as semiautomatic weapons that have at least two of the following features: bayonet lugs, folding stocks, pistol grips. These are basically cosmetic features. Now, I don't think that was such a big deal from a gun rights perspective, because you could buy a gun that was just as effective for your self-defense purposes. They didn't have those features. And by the way, my colleague Adam Winkler, who's a supporter of gun controls, has written op-eds that say exactly this, saying the assault weapons restrictions are a distraction because they have no real effect other than the symbolic. So that's an example of a law that I think is not a reasonable law. It's not a horrible law, but it's not reasonable in the sense that I think it's not reasonably calculated to actually work. Let me give you one other analogy. As a practical matter, today, as best we can tell from all the court decisions, both the Supreme Court decisions and the many in lower courts. In fact, the courts do say, is this a reasonable restriction, especially if it's not a total ban. As to abortion restrictions, that's more or less the test that's being used as well, which is bans on abortion are unconstitutional, but reasonable restrictions are not. You look at groups that support abortion rights and they say we oppose all these restrictions and people fault them. Why are you being so unreasonable? Why are you being so extremist? And their answer is, first of all, we actually think all of these restrictions are unreasonable. But beyond that, we feel we know what the end game of many of our enemies is, and that's a total ban on abortion. So we feel we need to fight each one of them because otherwise, if we concede on some, then our enemies aren't just going give up.

**Bill Curtis:** Well, that's certainly the NRA's strategy. They don't want to concede on anything regardless of that.

**Eugene Volokh:** Historically, it's been the ACLU strategy as to various free speech questions and criminal procedure questions, as it has been abortion rights advocates strategy as to others. Now, again, you may agree or disagree. You may think, you may be either take the polar opposite position and actually support broad bans or support something in the middle. But yes, of course. Advocacy groups that take seriously the rights that they're protecting, whether it's free speech rights or criminal defendants rights or abortion rights or gun rights. Yes, they're going to be quite militant about this, partly

because most of the restrictions they, that you may view as reasonable, they actually don't think are reasonable, and partly because they really are worried about the slippery slope. And reasonably so.

**Bill Curtis:** So you guys, just for a second, you're both literalists.

**Eugene Volokh:** Literalists? in what sense?

**Bill Curtis:** You are about the rule of law. And it's pretty black and white.

**Eugene Volokh:** No!

**Ed Larson:** Well not quite.

**Eugene Volokh:** Why are you making me out to be that? I mean, I support rule of law, but much of it is not black and white.

**Bill Curtis:** Well, then these gun laws. Shouldn't we, just for a second, Ed. Shouldn't we, shouldn't our governance of this country be designed to make our society a better place.

**Eugene Volokh:** At that level of generality? Sure. And it should be true about abortion and should be true about free speech and should be true about criminal defendants rights and should be true about all sorts of things. So the question that always comes out is what is likely to make our country a better place, both in the general sense that sometimes giving the government some power, even if it gives benefits in the short term, may cause harm in the long term.

**Bill Curtis:** Do we need in this case, in our time, do we need to have citizens bear arms and form a militia to protect us from our government?

**Eugene Volokh:** Well, so I actually think that as a practical matter, that's probably not going to be terribly effective today. And that's why I, in fact actually most of the debates about gun rights that come before the courts do not involve organized groups with guns, even though there is a plausible argument that is actually an important part of the

constitutional history and tradition. That's not what the cases are about. The cases are about another component, which state constitutions expressly recognized in the Heller decision, says the Second Amendment implicitly recognizes, which is the right to keep and bear arms in defense of one's self and family and property often and the like, and home, for example, and the like. And that I do think we need to be able to defend ourselves. There's a famous line that people use I think is quite apt. When seconds count, the police are only minutes away.

**Ed Larson:** Now, Bill, I'd say your main beef is not really with the Second Amendment here. Your main beef is with state legislatures or maybe Congress.

**Bill Curtis:** No its federal,

**Ed Larson:** or the federal Congress, but either state legislators and if you live in Georgia or someplace with a very expansive conceal and carry law,.

**Eugene Volokh:** Or could be Oregon or Washington,.

**Ed Larson:** Or their beef, you do have a beef with them because you don't think they're passing strict enough restrictions on guns.

**Bill Curtis:** For the betterment of society.

**Ed Larson:** For the better part of society. But that is not really a Second Amendment issue. So because even.

**Bill Curtis:** But the Second Amendment is used to argue that process.

**Ed Larson:** No. But virtually all of the things you're talking about were enacted and some states have them. The court would uphold them as reasonable, that it wouldn't be stopped by the Second Amendment. Now, I agree with you, as a rhetorical device, the NRA is wrapping itself in the Second Amendment. But as a court would do, I think most of the things you or I would think would be reasonable for a city or a state to adopt, the courts would say that doesn't violate the Second Amendment. So I don't really think



your beef is with the Second Amendment. Your beef is with Congress and certain state legislators.

It's like we think guns but instead we use the word Second Amendment as if as if that kind of captures the big picture. And it doesn't quite. It turns out that trying to prevent crimes, very serious crimes, which are overwhelmingly committed by people who are professional criminals is really hard. So to take an extreme example, which actually often not committed by professional criminals, but are committed by people who are obviously highly motivated: mass shootings. You have to ask yourself, how is it that we can stop a mass shooting through laws against gun possession or gun acquisition or gun carrying when this person is willing to ignore laws against murder? And how do we do that in a country that has 300 million guns in it? Maybe there's something we could do to try to give better mental health services or lock people up or if they seem dangerous. Interesting questions. But as best I can tell, there's virtually nothing that can be done by way of gun controls to solve that. What about ordinary crimes? What about ordinary street crimes? That's different because those people aren't bent on murder. Maybe they could be deterred on the borderline. But at the same time, if the gun is their tool of the trade, maybe there's not a lot to be done. These are interesting questions could be had. So, for example, another thing that people talk about is what about suicide? Because it turns out that the great majority,

**Bill Curtis:** It's a ridiculous law that that is illegal.

So it may be, so one possible answer is if people want it.

**Bill Curtis:** Unless you fall on someone else.

**Eugene Volokh:** Right. If people want to commit suicide with guns, we shouldn't be even trying to stop that. Because if they're ...

**Bill Curtis:** But I don't particularly want those people to own guns. So I would have to say, I don't agree with that.

**Ed Larson:** Well, that's the danger of people in a home, a kid in a home getting a gun and shooting his friend or shooting. All right. I'm sorry, but that's accident or homicide.

I'm talking about specifically about suicide. I'm just giving it as an example that if you want to try to prevent suicides with guns, then you basically have to ban all guns. It's particularly clear that you don't need an assault weapon to commit suicide. If you ban all handguns,.

**Bill Curtis:** I do believe that if you buy a gun collection and Sonny Boy grabs one of those guns and goes in and offs a school bus of people, I believe you as the owner of those guns has the responsibility in that case. And you are you should be liable.

**Eugene Volokh:** Well, that's in fact, that the current rule that you are civilly liable and in many states you'd be criminally liable, too. So interestingly, that's not that different from the way we deal with cars. How do we deal with cars? We generally ban their misuse. We do have a certain amount of preliminary licensing. But the general way is it's illegal for you to misuse them. It's illegal for you to drive drunk. If you kill someone with it or injure someone with it, you could be prosecuted or sued. It turns out that pretty much all those laws also apply to guns as well.

**Bill Curtis:** Well, Eugene Volokh, I want to thank you for coming in here today. This has been absolutely spectacular. I hope you'll come in and visit us again.

**Eugene Volokh:** I'd be delighted, too.

**Bill Curtis:** And Ed Larson, always a pleasure. You certainly bring a kind of a knowledge and a sensibility to these discussions that I really appreciate. And thank all of you out there for tuning in. If you like what you heard. Please help us by telling your friends. And, of course, subscribe to Politics. Meet me in the Middle so you don't miss our next argument. And if you have time, please leave a review. It really matters to us. You can also check us out at [Curtco.com](http://Curtco.com). [Curtco.com](http://Curtco.com). This episode of Meet Me in the Middle was recorded at Curtco's Malibu Podcast Studios and was produced and edited by Mike Thomas. Audio engineering was by Michael Kennedy and our theme music was composed and performed by Celeste and Eric Dick.

**Announcer:** From Curtco Media. Media for your mind.