CONGRESSIONAL AUTHORITY TO PASS CONCEALED CARRY RECIPROCITY LEGISLATION

*Clayton E. Cramer**

Congress is considering passage of national concealed carry legislation requiring all states to recognize concealed weapon licenses issued by any state, rather like the way that every state recognizes driver's licenses issued by another state. Are there any constitutional problems with such legislation? What practical problems might result? This paper seeks to answer those questions.

---

* Adjunct History Faculty, College of Western Idaho. Mr. Cramer is the author of CONCEALED WEAPON LAWS OF THE EARLY REPUBLIC: DUELING, SOUTHERN VIOLENCE, AND MORAL REFORM (1999) (cited by Justice Breyer in McDonald v. City of Chicago, 561 U.S. 742, 933 (2010) (Breyer, J., dissenting)), and ARMED AMERICA: THE REMARKABLE STORY OF HOW AND WHY GUNS BECAME AS AMERICAN AS APPLE PIE (2006), and co-author of, among other articles, Clayton E. Cramer & Joseph Edward Olson, *What Did "Bear Arms" Mean in the Second Amendment?*, 6 GEO. J.L. & PUB. POL'Y 511 (2008) (cited by Justice Scalia in District of Columbia v. Heller, 554 U.S. 570, 588 (2008)), and Clayton E. Cramer, Nicholas J. Johnson & George A. Mocsary, *"This Right is Not Allowed by Governments that Are Afraid of the People": The Public Meaning of the Second Amendment When the Fourteenth Amendment Was Ratified*, 17 GEO. MASON L. REV. 823 (2010) (cited by Justice Alito in *McDonald*, 561 U.S. at 772 n.21, 776 n.25, 780). Mr. Cramer's website is *Clayton Cramer's Web Page*, http://www.claytoncramer.com (last visited Feb. 19, 2018). Thanks to Bob Dowlut for his suggestions and comments.

I. PROPOSED FEDERAL LEGISLATION

Congress is currently considering a bill that would require every state to recognize "concealed carry permits from every other state—as they would a driver's license—regardless of different permitting standards."[1] The net effect would be a dramatic increase in the number of people who would be legally authorized to carry concealed weapons for self-defense throughout the United States. The objective as stated by Rep. Goodlatte (R-Va.): "This bill is about the simple proposition that law-abiding Americans should be able to exercise their right to self defense, even when they cross out of their state's borders."[2] Opponents argue that it "endanger[s] the citizens of the states whose laws will be overruled."[3]

The passion on both sides of this position suggests that passage of such a law might well lead to attempts to overturn it judicially. This article asks, "does Congress have authority to override state laws in this area?"

II. BACKGROUND

Every state except Vermont now issues concealed weapon licenses.[4] In most of the U.S., those licenses are "shall-issue"; the statute provides a list of disqualifiers (*e.g.*, felony conviction, involuntary mental hospitalization, domestic violence misdemeanor conviction) but otherwise creates a presumption in favor of the applicant.[5] By contrast, several states remain "may-issue"; discretion is left to the issuing authority as to whether an applicant has an adequate reason for such a license.[6] Bribery and political influence are significant issues in who has an adequate reason in many of these states.[7]

---

1. Nicole Gaudiano, *House Committee Approves NRA-Backed Concealed Carry Bill, as Other Gun Measures Stall, USA TODAY* (Nov. 29, 2017, 6:00 AM), https://www.usatoday.com/story/news/politics/2017/11/29/house-committee-takes-up-nra-backed-concealed-carry-bill/903001001/ [https://perma.cc/P3BH-9DUD].

2. *Id.*

3. *Id.*

4. Caitlyn G. McEvoy, *Second Amendment, The New Illinois Concealed Carry Law*, 101 ILL. B.J. 620, 620 (2013) ("On July 9, 2013, after much litigation and political wrangling, Illinois became the last state in the country to allow carrying firearms in public."). Vermont has never required licenses for individuals to legally carry firearms. David Brooks, *The Ins and Outs of N.H.'s New Firearms Law*, CONCORD MONITOR (Feb. 25, 2017), http://www.concordmonitor.com/gun-law-concealed-carry-8281016 [https://perma.cc/AG5W-A3RP].

5. Clayton E. Cramer & David P. Kopel, *"Shall Issue": The New Wave of Concealed Handgun Permit Laws*, 62 TENN. L. REV. 679, 668–86 (1995).

6. *See generally id.* at 679–85 (providing an overview of the history of concealed handgun permit laws and the effects on murder rates as of 1994).

7. Victoria Bekiempis & Stephen Rex Brown, *Brooklyn Businessman Pleads Guilty to Bribing NYPD Cops for Gun Permits*, N.Y. DAILY NEWS (Nov. 10, 2016, 4:09 PM), http://www.nydailynews.com/new-york/brooklyn/brooklyn-man-accused-bribing-cops-allowed-feds-home-article-1.2867337 [https://perma.cc/62S6-WBYS] ("'I had a good and friendly

Unsurprisingly, "may-issue" states usually do not honor licenses issued by other states. National Concealed Carry Reciprocity is an attempt to get every state to recognize every other state's concealed weapon licenses, much like automobile driver's licenses, which allow you to drive a car in every state, once you are licensed in one.

In the last few years, a number of states have repealed their laws requiring a license to carry concealed; it is argued that many, if not most persons charged with unlicensed concealed carry are already prohibited from firearms possession because such persons are already in classes prohibited under federal law from firearms possession;[8] the addition of an unlicensed carry violation is thus usually irrelevant. For Wyoming, only residents of the state are exempt from the license requirement; residents of states that honor Wyoming licenses must still have a concealed carry license from their home state.[9] All of these states (Alaska,

---

relationship with New York City police officers. During these years, I gave police officers in the Licensing Division things of value, including money, knowing that by giving them those things, the officers would do me favors, including expediting gun license applications.'"); Gene Maddaus, *Sheriff Lee Baca and the Gun-Gift Connection*, L.A. WEEKLY (Feb. 14, 2013, 4:30 AM), http://www.laweekly.com/news/sheriff-lee-baca-and-the-gun-gift-connection-2612907 [https://perma.cc/GU4W-YQUB] ("In L.A. County, records show, most of the permits go to judges and reserve deputies. But there is another group that seems to have better luck than most in obtaining permits: friends of Lee Baca. Those who've given the sheriff gifts or donated to his campaign are disproportionately represented on the roster of permit holders."); Norberto Santana Jr., *Sheriff Begins Taking Away Concealed Weapons Permits*, ORANGE CTY. REG. (Oct. 9, 2008, 3:00 AM), http://www.ocregister.com/2008/10/09/sheriff-begins-taking-away-concealed-weapons-permits/ [https://perma.cc/69KP-QKGC] ("Records reviewed by the Orange County Register show that concealed weapon permits soared under [former Sheriff] Carona, from 38 in 1998 to 468 the next year. By 2006, it was up to 1,400, a four-fold increase. When Carona took over in 1998, Orange County ranked 34th in terms of the numbers of permits granted. By 2006, Orange County was ranked number nine. However, the Register also found numerous instances where campaign donors received the permits. A Register analysis of Carona campaign contributions from 1996 to the end of 2001 shows that at least 95 contributors – who gave at least $68,000 – got licenses. Indeed, the federal indictment against Carona details one specific instance where a wealthy contributor was granted a license under questionable circumstances."); Gillian Flaccus, *America's Sheriff' Faces Calif. Corruption Trial,* SAN DIEGO UNION-TRIB. (Oct. 28, 2008), http://www.sfgate.com/bayarea/article/America-s-sheriff-faces-corruption-trial-3188610.php [https://perma.cc/8V8H-ADQW] ("In court papers, the government accuses the square-jawed, three-term sheriff and his friends of accepting nearly $700,000 in cash, gifts, kickbacks and questionable loans in exchange for political favors beginning in 1998. Prosecutors say many of those bribes came from Don Haidl, a wealthy businessman. In exchange, authorities say, Carona made Haidl an assistant sheriff and put him in charge of a new reserve deputy program that allowed him to hand out badges and concealed weapons permits in a pay-to-play scheme.").

8. *See* 18 U.S.C.S. § 922(g) (LEXIS through P.L. 115-117) (prohibiting firearm or ammunition possession by convicted felons, convicted domestic violence misdemeanants, fugitive from justice, "unlawful user of or addicted to any controlled substance," "has been adjudicated as a mental defective or who has been committed to a mental institution," illegal alien, dishonorably discharged from the military, renounced U.S. citizenship, or subject to a domestic violence restraining order).

9. *Concealed Firearm Permits*, WYO. DIV. CRIM. INVESTIGATION, http://wyomingdci.wyo.gov/dci-criminal-justice-information-systems-section/concealed-firearms-permits [https://perma.cc/XCP7-ZR2G] ("A change to the Wyoming Concealed Firearm Permit State Statute in 2011 removed the requirement for Wyoming residents that wanted to carry a concealed

Arizona, Idaho, Maine, Missouri) continue to issue concealed carry licenses to residents for travel to states that recognize out of state licenses.[10]

Many states recognize licenses issued by all other states;[11] a number recognize licenses on a reciprocal basis, requiring both recognition of their licenses *quid pro quo*, and similar standards of issuance.[12]

III. CONGRESS HAS AUTHORITY TO IMPOSE A NATIONAL STANDARD IN THIS AREA

At first glance, the idea of the federal government directing states to recognize concealed carry licenses issued by other states seems like a disturbing interference in the federal system, where Congress' powers are limited to the relatively narrow list contained in Art. I, § 18. Some would say *that* horse left the barn a very long time ago, but even reading the existing case law very

---

firearm in our state from having a valid permit in order to carry a concealed firearm.").

10. *See* John Sowell, *With Permitless Carry, Idahoans Still Seek Out Training, Permits for Concealed Guns,* IDAHO STATESMAN (Dec. 18, 2016, 11:44 PM), http://www.idahostatesman.com/news/state/idaho/article121708597.html [https://perma.cc/5E6S-2JDZ]; *Alaska Concealed Handguns*, STATE OF ALASKA DEP'T PUB. SAFETY, http://dps.alaska.gov/statewide/permitslicensing/concealedhandguns.aspx [https://perma.cc/F9ZE-TC5T] ("Alaska's laws do not prohibit anyone 21 or older who may legally possess a firearm from carrying it concealed. A special permit is not required."); *Concealed Handgun Permits*, ME. ST. POLICE, http://www.maine.gov/dps/msp/licenses/weapons_permits.html [https://perma.cc/7PP7-RC6P] ("Effective October 15, 2015, Public Law 2015, Chapter 327 (LD 652), 'An Act To Authorize the Carrying of Concealed Handguns without a Permit,' allows a person who is not otherwise prohibited from possessing a firearm to carry a concealed handgun in the State of Maine without a permit."); Tim O'Neil, *New Missouri Gun Law Changes the Rules, but Some Restrictions Remain*, ST. LOUIS POST-DISPATCH (Sept. 16, 2016), http://www.stltoday.com/news/local/metro/new-missouri-gun-law-changes-the-rules-but-some-restrictions/article_52cae4d3-310c-5c89-a55e-007ec99fefbf.html [https://perma.cc/KUU3-VWNU] ("The marquee section generally allows gun owners to pack them concealed without the need of passing the special training and paying permit fees the state has required since 2004. The issue has divided Missouri politics, largely along urban-rural lines, much longer than that."); Alia Beard Rau, *Arizona to Allow Concealed Weapons Without Permit,* ARIZ. REPUBLIC (Apr. 16, 2010), http://archive.azcentral.com/news/election/azelections/articles/2010/04/16/20100416arizona-concealed-weapons-bill16-ON.html [https://perma.cc/4J5G-UPX9] ("Starting later this summer, U.S. citizens 21 and older can begin carrying a concealed firearm without a permit in Arizona.").

11. *See, e.g.*, OHIO REV. CODE ANN. § 109.69(B)(3) (LEXIS through Legislation passed by the 132nd Gen. Assembly and filed with the Secretary of State through file 42 (HB 44)) ("If, on or after the effective date of this amendment, a person who is not a resident of this state has a valid concealed handgun license that was issued by another license-issuing state, regardless of whether the other license-issuing state has entered into a reciprocity agreement with the attorney general under division (A)(1) of this section, and the person is temporarily in this state, during the time that the person is temporarily in this state the license issued by the other license-issuing state shall be recognized in this state, shall be accepted and valid in this state, and grants the person the same right to carry a concealed handgun in this state as a person who was issued a concealed handgun license under section 2923.125 of the Revised Code.").

12. *See, e.g.*, 18 PA. CONS. STAT. § 6109(k)(1) (LEXIS through 2017 Reg. Sess. Acts 1-82) (directing Pennsylvania Attorney-General "to enter into reciprocity agreements with other states providing for the mutual recognition of a license to carry a firearm issued by the Commonwealth and a license or permit to carry a firearm issued by the other state.").

narrowly, Congressional authority seems sufficient on several grounds.

A. Enforcement of the Fourteenth Amendment's Due Process Clause

Since *McDonald v. Chicago*, the Supreme Court has recognized that the Fourteenth Amendment's Due Process clause extends the Second Amendment to the states.[13] The Fourteenth Amendment authorizes Congress "to enforce, by appropriate legislation, the provisions of this article."[14] The Court has at times shown a preference for use of the interstate commerce clause in conjunction with Section 1 with an "obscuring neglect of Section 5's meaning and role in providing for equality."[15] This is no surprise; *U.S.* v. *Stanley* limited Congressional authority under Section 5 to "prohibited State laws and State acts" and overturned such provisions of the Civil Rights Act of 1875 that applied to private party discrimination.[16] State laws have been subject to the limitations of the Second Amendment through the Fourteenth Amendment as applied by *McDonald v. Chicago*. *Moore v. Madigan*, based on *McDonald*, so thoroughly emasculated Illinois' arguments against concealed weapon licensing that the Illinois legislature adopted a shall-issue concealed carry license law.[17] Such laws are certainly "prohibited State laws and State acts," and thus the existing precedents limiting Section 5 enforcement do not apply to a statute protecting concealed carry of arms.

B. Enforcement of the Privileges or Immunities Clause

While the *McDonald* majority opinion refused to incorporate the Bill of Rights through the "privileges or immunities" clause of Section 1,[18] incorporation through "privileges or immunities" is a perfectly plausible historical argument, advanced in Justice Thomas' partially concurring, partially dissenting opinion in *McDonald*.[19] Thomas called the Due Process Clause

13. McDonald v. City of Chicago, 561 U.S. 742, 791 (2010) ("We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in Heller.").

14. U.S. CONST. amend. XIV, § 5.

15. Sora Han, *Equal Protection's Dead End or the Slave's Undying Claim*, *in* CONTROVERSIES IN EQUAL PROTECTION CASES IN AMERICA: RACE, GENDER AND SEXUAL ORIENTATION 55 (Anne Richardson Oakes ed., 2015).

16. United States v. Stanley, 109 U.S. 3, 11 (1883) ("It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws.").

17. *See* Moore v. Madigan, 702 F.3d 933 (7th Cir. 2012); Caitlyn G. McEvoy, *Second Amendment: The New Illinois Concealed Carry Law*, 101 ILL. B.J. 620, 621 ("Last winter, the U.S. Court of Appeals for the Seventh Circuit struck down the Illinois law prohibiting concealed carry as unconstitutional under the Second Amendment. The court gave the legislature 180 days to craft a bill permitting individuals to carry firearms outside the home for self-defense.").

18. *See McDonald*, 561 U.S. at 757–58.

19. *Id.* at 805–58 (Thomas, J., concurring in part and dissenting in part).

theory a "fiction."[20] It is apparent that the sheer volume of precedents built up on this "fictional" use of the Due Process Clause (which protects "any person"), if replaced by the historically more correct Privileges or Immunities clause (which protects the narrower "citizens of the United States"), would undermine so much of current precedent as to create a nearly unlimited stream of challenges to existing laws, decisions, and convictions, many stretching back decades. While good for lawyers, it would create severe instability and congestion for the American legal system, which may be why the *McDonald* decision refused to adopt incorporation through Privileges or Immunities.

Nonetheless, Congress is free to take a side in this debate, agreeing with historians who have studied the history of the Privileges or Immunities clause, and found that the Fourteenth Amendment's principal author, John T. Bingham, believed that "the Bill of Rights represented privileges and immunities that belonged to all US citizens and that should be guarded against abridgement by both federal and state authorities."[21] Congress might and perhaps should argue that national concealed carry legislation is based on *both* the Due Process and the Privileges or Immunity Clauses of the Fourteenth Amendment.

C. Right to Travel

The Court has repeatedly recognized a right to travel starting with the *Passenger Cases*.[22] But this is not simply a right to travel from state to state, but to enjoy the benefits of living in the state of one's choosing. In *Shapiro v. Thompson*, the Court overruled a Connecticut statute that required one year of residence to collect welfare, and similar statutes in other states,[23] because these residency requirements impaired freedom to travel from state to state and enjoy equal benefits with existing residents.[24] *Shapiro* did not simply protect persons from criminal prosecution, but created a financial obligation of the states in support of this right to change one's state of residence.

---

20. *Id.* at 811 ("Using the latter approach, the Court has determined that the Due Process Clause applies rights against the States that are not mentioned in the Constitution at all, even without seriously arguing that the Clause was originally understood to protect such rights . . . All of this is a legal fiction. The notion that a constitutional provision that guarantees only 'process' before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity for even the most casual user of words. Moreover, this fiction is a particularly dangerous one. The one theme that links the Court's substantive due process precedents together is their lack of a guiding principle to distinguish 'fundamental' rights that warrant protection from nonfundamental rights that do not.").

21. KURT T. LASH, THE FOURTEENTH AMENDMENT AND THE PRIVILEGES AND IMMUNITIES OF AMERICAN CITIZENSHIP 82 (2014).

22. *See* Smith v. Turner, 48 U.S. 283, 493 (1849) (holding that Congressional authority to regulate commerce does not extend to travel between states: "It, of course, needs no argument to prove that such a power over the intercourse of persons passing from one State to another is not granted to the Federal government by the power to regulate commerce among the several States.").

23. Shapiro v. Thompson, 394 U.S. 618, 642 (1969).

24. *Id.* at 631–32 ("Thus, the purpose of deterring the in-migration of indigents cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible.").

Because many states will only issue concealed carry licenses to residents, with no provision for recognizing licenses issued by other states, a person moving from one state to another is prohibited from concealed carry in her new state of residence (and often prohibited from open carry[25]) until she has established residence and completed whatever often restrictive "may-issue" licensing process is required. While time required to meet these requirements is not specified, as with Connecticut's one year waiting period, this is clearly a limitation on a new resident's Second Amendment rights, even if they manage to acquire a concealed carry license in a "may-issue" state. This is also clearly a limitation on the right to move from state to state. Unlike collecting welfare, which is not a fundamental right (and was only protected in *Shapiro* because this was an equal protection violation), prohibiting enjoyment of Second Amendment rights *does* violate a fundamental right.

D. Interstate Commerce Regulation

The Court has long recognized that action dependent on interstate commerce is within the regulatory authority of Congress, including pre-emption of state laws. The Court in *Boynton v. Virginia* overturned a Virginia trespassing conviction for a black interstate bus passenger, who insisted on service in the white section of a bus terminal restaurant,[26] because the Interstate Commerce Act prohibited discrimination by interstate carriers.[27] While the Interstate Commerce Act only prohibited discrimination by a private entity, the actual action overturned was a criminal conviction under state law.

The Court has applied the interstate commerce basis for prohibiting discrimination not only to overruling state actions, but limiting the freedom of private businesses if their actions interfered with interstate commerce. In *Heart of Atlanta, Inc. v. United States*, the Court ruled that the Civil Rights Act of 1964 prohibited racial discrimination by a hotel whose business was largely interstate commerce.[28] The justification for this decision was, "[t]he Senate Commerce Committee made it quite clear that the fundamental object of Title II was to vindicate 'the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.'"[29] Without deprecating the insult to personal dignity that such racial discrimination caused, it should be apparent that the right to personal self-defense protected by the Second Amendment is at least as important; victims of murder, rape, and robbery experience even more severe insults to personal dignity than separate accommodations. Even the denial of

25. CAL. PENAL CODE § 26350(a) (Deering, LEXIS through 2017 Reg. Sess.).

26. Boynton v. Virginia, 364 U.S. 454, 461–64 (1960).

27. *Id.* at 458.

28. Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 243 (1964) ("Appellant solicits patronage from outside the State of Georgia through various national advertising media, including magazines of national circulation; it maintains over 50 billboards and highway signs within the State, soliciting patronage for the motel; it accepts convention trade from outside Georgia and approximately 75% of its registered guests are from out of State.").

29. *Id.* at 250.

the right to effective self-defense with its implication that one is trusted by most states enough to carry a gun, but not by some states, can certainly be regarded as an insult to personal dignity. While *Heart of Atlanta* might well be a sufficient precedent for Congressional action to prohibit private discrimination against concealed carry of arms, the bulk of the problem that national concealed carry reciprocity seeks to correct are state and local laws.

In either situation, state action or private discrimination, it is apparent that the minority of states that either generally do not issue concealed weapon licenses or refuse to recognize licenses issued by their sister states discourages travel from other states or through their states.

Other federal statutes also regulate or pre-empt firearms possession within the states under interstate commerce authority. The Firearms Owners Protection Act of 1986 contains a "safe transit" provision which allows persons not otherwise prohibited from firearms possession by federal law to transport unloaded firearms across states where possession is otherwise prohibited by state law.[30] As an example, the author recently traveled from Connecticut (for which he has a concealed weapon license) to New Hampshire, which recognizes his Idaho concealed weapon license.[31] While crossing Massachusetts, which makes unlicensed possession of an unloaded firearm a felony,[32] the author kept his handgun unloaded and locked in his trunk to conform to the "safe transit" provision until crossing into New Hampshire, the "Live Free or Die" state.

While there has been considerable case law associated with the "safe transit" provision, there seems to be none challenging this federal pre-emption of state laws. Some of these decisions involved "drug trafficking"[33] while others involve otherwise innocent violations of state laws caused by delayed airline flights or transit to airports through restrictive states.[34] As the *Torraco* decision observes, police officers attempting to determine applicability of the "safe transit" clause are in a difficult situation:

> Multiply the fluidity of that scenario by 50 jurisdictions (putting aside issues that might arise as a result of international travel with interim domestic stopovers), and nearly a billion passengers moving through U.S. airports per year, and it becomes apparent that providing a

30. 18 U.S.C.S. § 926A (LEXIS through PL 115-117).

31. *See Pistol and Revolver Licensing*, N.H. DEP'T SAFETY, https://www.nh.gov/safety/divisions/nhsp/ssb/permitslicensing/plupr.html [https://perma.cc/26SF-JYUQ] (listing the states New Hampshire has reciprocity with for gun permits).

32. MASS. ANN. LAWS ch. 140, § 129C (LexisNexis through Act 176 of the 2017 Leg. Sess.); *see also* MASS. ANN. LAWS ch. 269, § 10(h)(1) (LexisNexis through Act 176 of the 2017 Leg. Sess.) (specifying punishments for violating MASS. ANN. LAWS ch. 140, § 129C (LexisNexis through Act 176 of the 2017 Leg. Sess.)).

33. *See* Muscarello v. United States, 524 U.S. 125, 126, 134 (1998) (describing the unsuccessful challenge of 18 U.S.C. § 924(c)(1), which criminalizes the use of a firearm in a drug trafficking crime).

34. *See* Revell v. Port Auth. of N.Y. & N.J., 598 F.3d 128, 130 (3d Cir. 2010) (reviewing a 42 U.S.C. § 1983 claim against arresting police officers for violations of a gun owner's civil rights). *Revell* was a 42 USC § 1983 suit against the arresting police officers for violation of the gun owner's civil rights, which greatly lengthened and complicated these decisions. *Id.*

> damage remedy under § 1983 for a failure to adequately apply § 926A would be unworkable.[35]

The *Torraco* decision also points to one other weakness of the "safe transit" provision:

> No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.[36]

This text alone argues for a clearer federal law concerning "safe transit," which national concealed carry reciprocity would largely correct; persons with state licenses would immunize themselves against such charges, reducing congestion of the state courts and reducing federal court congestion from Sec. 1983 suits filed against state officers and agencies.

Another statute relevant to Congress' authority to regulate firearms possession through the interstate commerce clause is the Gun-Free School Zones Act of 1990, which criminalized "possess[ing] a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone."[37] In the *Lopez* decision, the 5th Circuit relied upon *U.S. v. Bass*, which held that Congressional authority to criminalize gun possession (in *Bass'* case by convicted felons) was limited "without a commerce nexus . . . it would intrude upon an area of traditional state authority and would push Congress' commerce power to its limit, if not beyond."[38] That Congress made no attempt to tie the Gun-Free School Zones Act of 1990 to interstate commerce appears to have sealed its fate.[39] *Lopez* also quoted *Wickard v. Filburn* to emphasize that local non-commercial activity was within Congress' authority to regulate "if it exerts *a substantial economic effect on interstate commerce* . . . ."[40]

In response to this lack of an explicit Congressional statement tying the Gun-Free School Zones Act to interstate commerce, Congress revised the Act to add the following statement of intent:

> (A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;
>
> (B) crime at the local level is exacerbated by the interstate movement of

---

35. Torraco v. Port Auth. of N.Y. & N.J., 615 F.3d 129, 138 (2d Cir. 2010) (quoting Torraco v. Port Auth. of N.Y. & N.J., 539 F. Supp. 2d 632, 646 (E.D.N.Y. 2008)).

36. *Id.* at 139 (citing 18 U.S.C. § 927 (2012)).

37. 18 U.S.C.S. § 921(a)(25) (LEXIS through PL 115-117); *see also* United States v. Lopez, 2 F.3d 1342, 1345–46 (5th Cir. 1993).

38. *Lopez*, 2 F.3d at 1347.

39. *Id.* at 1360 ("Although both the House and Senate sponsors of the Gun-Free School Zones Act made fairly lengthy floor statements about it, neither congressman had anything to say about commerce in their remarks . . . The failure of section 922(q) to honor the traditional division of functions between the Federal Government and the States was commented upon by President Bush when he signed the Crime Control Act of 1990 . . . .").

40. *Id.* at 1361 (citing Wickard v. Filburn, 317 U.S. 111 (1942)).

> drugs, guns, and criminal gangs; . . .
> (E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;. . .
> (I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.[41]

This language could be reworded to: "The failure of some states to recognize the right to self-defense with a gun certainly means 'ordinary citizens . . . may fear to travel to or through certain parts of the country due to concern about violent crime. . . .'" The enormous economic impact of travel within the United States (2.1 billion person-trips in 2014, with an average of $656 of expenditures per trip, or $1.377 trillion[42]) certainly allows Congress authority to intervene in what would otherwise be a purely local matter.

E. States' Rights Objections

States' rights objections to requiring recognition might have been persuasive in 1950, but a lot of sludge has flowed under that bridge in the meantime: racial segregation laws[43]; miscegenation bans[44]; contraceptive bans[45]; abortion bans[46]; sodomy bans[47]; same-sex marriage bans[48]; and doubtless hundreds of other state laws that do not immediately come to mind involve pre-emption of state and local laws. Opponents of national concealed carry reciprocity will either have to repudiate that substantial list of abrogations of states' rights, or come up with some very clever way to distinguish them from pre-emption of state laws concerning concealed carry.

F. Practical Concerns

Public safety would seem the hardest argument for opponents of national reciprocity to make; the number of out of state visitors carrying concealed weapons will be dwarfed by the number of residents lawfully carrying firearms in the "may-issue" states, and resident criminals carrying firearms contrary to state law. Even then, the evidence that widespread concealed carry represents a

---

41. Pub. L. No. 104–208, 110 Stat. 3009–370 (1996); 18 U.S.C.S. § 922(q) (LEXIS through PL 115-117).

42. *Domestic Travel Market Report 2015*, U.S. TRAVEL ASSOC. (June 29, 2016), https://www.ustravel.org/research/domestic-travel-market-report-2015 [https://perma.cc/QK2W-5BJT].

43. *See generally* Brown v. Board of Education, 347 U.S. 483 (1954).

44. *See generally* Loving v. Virginia, 388 U.S. 1 (1967).

45. *See generally* Griswold v. Connecticut, 381 U.S. 479 (1965).

46. *See generally* Roe v. Wade, 410 U.S. 113 (1973).

47. *See generally* Lawrence v. Texas, 539 U.S. 558 (2003).

48. *See generally* Obergefell v. Hodges, 135 S. Ct. 2071 (2015).

public safety threat is, at most, very thin.[49] Certainly there is more reason to fear interstate drivers who are driving several ton machines, at high speeds, in unfamiliar locations, with differing traffic laws. Motor vehicles cause slightly more deaths each year (33,736 for 2014)[50] than guns (33,594 for 2014).[51]

Differing state issuance standards might be a valid argument for opponents if the standards were really radically different. But every state disqualifies convicted felons, domestic violence misdemeanants, and those who have been involuntarily committed to mental hospitals; these are in conformance with federal law disabling firearms possession. Only the often corrupt issuance policies (because of bribery discussed in note 8) of "may-issue" states are really so different.

Most states have training requirements.[52] States that do not appear to have had no reason to add them. Fear of criminal prosecution for improper use seems to be an effective deterrent in the "shall-issue" states; it is hard to imagine that this deterrent would disappear when crossing the border from Nevada to California.

There are some slight differences in minimum age from state to state. Idaho allows, but does not require, sheriffs to issue concealed carry licenses to 18 to 20 year olds.[53] A national law might require states to recognize licenses only from those 21 years old and above.

Some states issue non-resident licenses; other states only recognize licenses issued to *residents* of other states. A national law could require that states were only required to recognize licenses issued by the licensee's state of residence. This would solve the objection that California residents might carry concealed on Florida non-resident licenses.[54]

---

49. *See* Clayton E. Cramer, *Violence Policy Center's Concealed Carry Killers: Less Than It Appears*, SOC. SCI. RES. NETWORK, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2095754 [https://perma.cc/DD93-94KB] (analyzing the Violence Policy Center's false representation of the risks).

50. Kenneth D. Kochanek et al., *Deaths: Final Data for 2014*, 65 NAT'L VITAL STAT. REP. 1, 12 (2016), https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_04.pdf [https://perma.cc/47RV-XWAE].

51. *Id.*

52. *See* 430 ILL. COMP. STAT. ANN. 66 / 25(6) (LexisNexis through P.A. 100-577 of the 2017 Reg. Legis. Sess.); OHIO REV. CODE ANN. § 2923.125(A)(3) (LexisNexis through Legislation passed by the 132nd Gen. Assembly and filed with the Secretary of State through file 42 (HB 44)); TEX. GOV'T CODE § 411.174(a)(7) (LexisNexis through the 2017 Reg. Sess. and 1st C.S., 85th Legis.); S.C. CODE ANN. § 23-31-210(4) (LexisNexis through all legislation signed and in effect as of the 2017 legislative session); ARIZ. REV. STAT § 13-3112(E)(6), (N) (LexisNexis through First Reg. Sess. of the Fifty-Third Legislature (2017), all legislation, and the First Special Sess. of the Fifty-Third Legis. (2018)); MINN. STAT. § 624.714(2a) (LexisNexis through the end of the 2017 Reg. Sess. and the 2017 1st Special Sess. of the Minnesota 90th Legis.).

53. IDAHO CODE § 18-3302(20) (LexisNexis through the 2017 Regular Session).

54. FLA. STAT. ANN. § 790.06(2)(a) (LexisNexis through all legislation signed and in effect as of the 2017 Reg. Sess. and 2017 Special Sess. A) ("The Department of Agriculture and Consumer Services shall issue a license if the applicant: (a) Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of

IV. SUMMARY

As much as opponents of national reciprocity would like to think otherwise, decades of progressive judicial decisions overriding state prerogatives using the Fourteenth Amendment provide ample authority to Congress to require all states to recognize concealed carry licenses from any state and even to prohibit businesses from refusing to allow licensees to carry on private property. Passage of such a law has the potential to expand interstate commerce and improve public safety across the nation.

---

a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country . . . ."). The author possesses non-resident concealed weapon licenses from Florida, Connecticut, and Oregon.