

ONLINE APPENDIX I. DATA COLLECTION

Amazon Mechanical Turk (“MTurk”) is an online task completion marketplace. For this project, respondents followed a link from MTurk’s website to a survey hosted by Qualtrics, an online survey platform. Any worker located in the United States who wanted to take the survey could do so. The MTurk marketplace has been used extensively to produce data for papers in economics,¹ law,² political science, and other social science disciplines.³

The drawback of the MTurk methodology is that the MTurk worker population, while restricted to the U.S., is not representative of Americans at large or Internet-using Americans. Prior research into this population shows that demographic characteristics are skewed.⁴ Our analysis corroborates these findings (see Online Appendix Table 1).

For this research, respondents were paid \$.50. Amazon charges a 40% commission based on respondent payment amounts. The data was collected on Thursday March 3, 2016.

¹ See e.g., Ilyana Kuziemko, Michael I. Norton, Emmanuel Saez and Stefanie Stantcheva. 2015. "How Elastic Are Preferences for Redistribution? Evidence from Randomized Survey Experiments." *American Economic Review*, 105(4):1478-1508.

² See e.g., Ian Ayres, Emad Atiq, Sheng Li, Michelle Lu, Christine Tsang, and Tom Maher. 2014. “A Randomized Experiment Assessing the Accuracy of Microsoft’s ‘Bing It On’ Challenge Claims,” 26 *Loyola Law Review* 1.

³ See e.g., Connor Huff and Dustin Tingley. 2015. “‘Who are these people?’ Evaluating the demographic characteristics and political preferences of MTurk survey respondents,” *Research and Politics*, 1.

⁴ Berinsky et. al. argue that MTurk workers are more representative than “convenience samples,” but less so than expensive representative samples like the Current Population Survey. Adam J. Berinsky, Gregory A. Huber, Gabriel S. Lenz. 2012. “Evaluating Online Labor Markets for Experimental Research: Amazon.com's Mechanical Turk,” *Political Analysis* 20 (3). Huff and Tingley (2015) extend this analysis.

ONLINE APPENDIX II. TABLES AND FIGURES

Online Appendix Table 1
Summary Statistics for Current Population Survey (July 2015) and MTurk Sample

Variable	U.S. Adults Over	
	Age 18 - CPS (July 2015)	MTurk Sample
Gender: Male	0.48	0.63
Gender: Female	0.52	0.37
Gender: Other	-	0.00
Region: West	0.23	0.24
Region: South	0.37	0.35
Region: Midwest	0.21	0.22
Region: Northeast	0.18	0.19
Race: Asian	0.06	0.08
Race: Black	0.12	0.05
Race: Hispanic	0.15	0.06
Race: White	0.65	0.79
Race: Mixed Race	0.01	0.02
Race: Other	0.01	0.00
Age: 18-24	0.11	0.16
Age: 25-34	0.18	0.49
Age: 35-44	0.17	0.21
Age: 45-54	0.18	0.08
Age: 55-64	0.17	0.05
Age: 65+	0.20	0.01
Sexual Orientation: Heterosexual	-	0.91
Sexual Orientation: Homosexual	-	0.05
Sexual Orientation: Bisexual	-	0.01
Sexual Orientation: Other	-	0.00
Income: \$25,000 or less	0.20	0.19
Income: \$25,000-\$49,999	0.25	0.31
Income: \$50,000-\$74,999	0.19	0.24
Income: \$75,000-\$99,999	0.13	0.13
Income: \$100,000-\$149,999	0.13	0.10
Income: \$150,000 or more	0.11	0.03
Marital Status: Single	0.27	0.58
Marital Status: Married	0.54	0.36
Marital Status: Divorced/Separated/Widowed	0.19	0.06
Education: Less Than High School	0.11	0.00
Education: High School	0.49	0.29
Education: Associates Degree	0.10	0.17
Education: Bachelors Degree	0.20	0.42
Education: Graduate Degree	0.11	0.11
Political Party: Democrat	-	0.45
Political Party: Republican	-	0.18
Political Party: Independent	-	0.32
Political Party: Not Registered	-	0.05
Voted in 2012: Obama	-	0.56
Voted in 2012: Romney	-	0.18
Voted in 2012: Other	-	0.07
Voted in 2012: None	-	0.18
Uses the Internet	0.76	-
N	-	1,050

Notes: Only those 18 and older were allowed to take the MTurk survey, though ages were self-reported. Current Population Survey (CPS) data from July 2015.

Online Appendix Table 2
Orthogonality Tests for MTurk Sample (N = 4,283)

	All	ACE	ACF	ADE	ADF	BCE	BCF	BDE	BDF	F-test from regression of var on treatment groups	p-value
Gender: Female	37.2%	45.0%	41.5%	29.3%	38.8%	36.6%	31.6%	36.4%	38.9%	1.457	0.179
Gender: Male	62.6%	55.0%	58.5%	70.7%	61.2%	63.4%	66.9%	63.6%	61.1%	1.331	0.232
Age: 24 or Less	16.3%	17.6%	18.5%	15.8%	17.1%	13.0%	20.3%	14.4%	13.7%	0.609	0.749
Age: 25-34	48.7%	36.6%	53.1%	44.4%	47.3%	52.7%	53.4%	48.5%	53.4%	1.852	0.074
Age: 35-44	20.8%	31.3%	16.9%	24.1%	21.7%	25.2%	11.3%	18.9%	16.8%	3.083	0.003
Age: 45-54	7.8%	10.7%	8.5%	8.3%	6.2%	3.1%	9.8%	6.8%	9.2%	1.060	0.387
Age: 55-64	5.3%	3.1%	2.3%	6.0%	7.8%	5.3%	4.5%	8.3%	5.3%	1.122	0.347
Age: 65+	1.1%	0.8%	0.8%	1.5%	0.0%	0.8%	0.8%	3.0%	1.5%	0.949	0.468
Race: Asian	7.9%	11.5%	6.2%	6.0%	9.3%	6.9%	9.0%	7.6%	6.9%	0.632	0.730
Race: Black	5.1%	5.3%	5.4%	4.5%	3.1%	3.8%	8.3%	6.8%	3.8%	0.799	0.588
Race: Hispanic	5.5%	3.1%	3.8%	6.0%	4.7%	6.9%	6.0%	6.8%	6.9%	0.552	0.795
Race: Mixed Race	2.3%	1.5%	4.6%	0.8%	0.0%	2.3%	3.8%	3.0%	2.3%	1.364	0.217
Race: Other	0.5%	1.5%	0.8%	0.8%	0.0%	0.0%	0.8%	0.0%	0.0%	0.886	0.517
Race: White	78.7%	77.1%	79.2%	82.0%	82.9%	80.2%	72.2%	75.8%	80.2%	0.974	0.449
Education: Less Than High School	0.5%	0.8%	0.0%	0.0%	0.8%	0.8%	0.8%	0.8%	0.0%	N/A	N/A
Education: High School	29.0%	25.2%	28.5%	31.6%	29.5%	31.3%	29.3%	29.5%	27.5%	0.268	0.966
Education: Associates Degree	16.8%	14.5%	19.2%	15.0%	17.1%	15.3%	16.5%	17.4%	19.1%	0.298	0.955
Education: Bachelors Degree	42.4%	45.8%	40.0%	42.1%	44.2%	40.5%	42.9%	40.9%	42.7%	0.205	0.984
Education: Graduate Degree	11.3%	13.7%	12.3%	11.3%	8.5%	12.2%	10.5%	11.4%	10.7%	0.303	0.953
Income: \$24,999 or Less	19.1%	15.3%	18.5%	19.5%	20.2%	21.4%	18.8%	23.5%	16.0%	0.608	0.750
Income: \$25,000-\$49,999	30.7%	26.7%	26.9%	31.6%	29.5%	29.0%	34.6%	32.6%	34.4%	0.591	0.764
Income: \$50,000-\$74,999	23.8%	28.2%	22.3%	25.6%	18.6%	28.2%	21.8%	21.2%	24.4%	0.851	0.545
Income: \$75,000-\$99,999	13.0%	19.1%	14.6%	8.3%	16.3%	9.2%	12.8%	9.1%	15.3%	1.793	0.085
Income: \$100,000-\$149,999	10.3%	6.9%	13.8%	12.0%	12.4%	9.2%	8.3%	11.4%	8.4%	0.848	0.548
Income: \$150,000 or More	3.0%	3.8%	3.8%	3.0%	3.1%	3.1%	3.8%	2.3%	1.5%	0.294	0.956
Marital Status: Single	57.7%	57.3%	61.5%	56.4%	59.7%	58.0%	60.9%	56.1%	51.9%	0.513	0.825
Marital Status: Married	35.9%	38.9%	32.3%	35.3%	37.2%	35.1%	34.6%	34.1%	39.7%	0.356	0.927
Marital Status: Divorced/Separated/Widowed	6.4%	3.8%	6.2%	8.3%	3.1%	6.9%	4.5%	9.8%	8.4%	1.280	0.257
Region: Midwest	21.9%	20.6%	27.7%	21.8%	21.7%	19.1%	26.3%	19.7%	18.3%	0.878	0.523
Region: Northeast	19.2%	16.8%	17.7%	20.3%	17.8%	22.1%	21.1%	15.9%	22.1%	0.513	0.825
Region: South	35.3%	33.6%	32.3%	36.8%	35.7%	38.2%	27.8%	41.7%	36.6%	0.999	0.430
Region: West	23.5%	29.0%	22.3%	21.1%	24.8%	20.6%	24.8%	22.7%	22.9%	0.524	0.817
Sexual Orientation: Bisexual	0.9%	0.0%	0.0%	2.3%	0.0%	0.8%	2.3%	0.8%	0.8%	1.364	0.217
Sexual Orientation: Heterosexual	90.9%	92.4%	90.8%	90.2%	93.8%	87.8%	88.0%	90.9%	93.1%	0.770	0.613
Sexual Orientation: Homosexual	4.6%	4.6%	4.6%	3.8%	3.1%	6.9%	6.0%	3.8%	3.8%	0.486	0.845
Sexual Orientation: Other	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	N/A	N/A
Political Party: Democrat	45.1%	48.1%	46.9%	46.6%	47.3%	43.5%	46.6%	40.2%	42.0%	0.440	0.877
Political Party: Republican	18.1%	15.3%	12.3%	23.3%	20.9%	16.8%	17.3%	17.4%	21.4%	1.140	0.335
Political Party: Independent	32.1%	35.1%	36.9%	24.1%	30.2%	35.9%	30.1%	37.1%	27.5%	1.432	0.189
Political Party: Not Registered	4.7%	1.5%	3.8%	6.0%	1.6%	3.8%	6.0%	5.3%	9.2%	1.907	0.065
Voted for in 2012: Obama	56.1%	61.8%	56.9%	57.1%	52.7%	58.0%	57.1%	51.5%	53.4%	0.598	0.758
Voted for in 2012: Romney	18.4%	16.8%	15.4%	18.8%	22.5%	18.3%	18.8%	18.2%	18.3%	0.352	0.930
Voted for in 2012: No Candidate	18.4%	15.3%	18.5%	20.3%	18.6%	16.0%	16.5%	22.0%	19.8%	0.467	0.859
Voted for in 2012: Other	7.1%	6.1%	9.2%	3.8%	6.2%	7.6%	7.5%	8.3%	8.4%	0.598	0.758
F-test statistic from regression of each treatment assignment on all above covariates (omitting one category in each group)		1.406	0.836	0.914	0.798	0.619	1.277	0.661	0.735		
p-value		0.063	0.735	0.611	0.790	0.958	0.134	0.933	0.867		
Number of Observations	1,050	131	130	133	129	131	133	132	131		

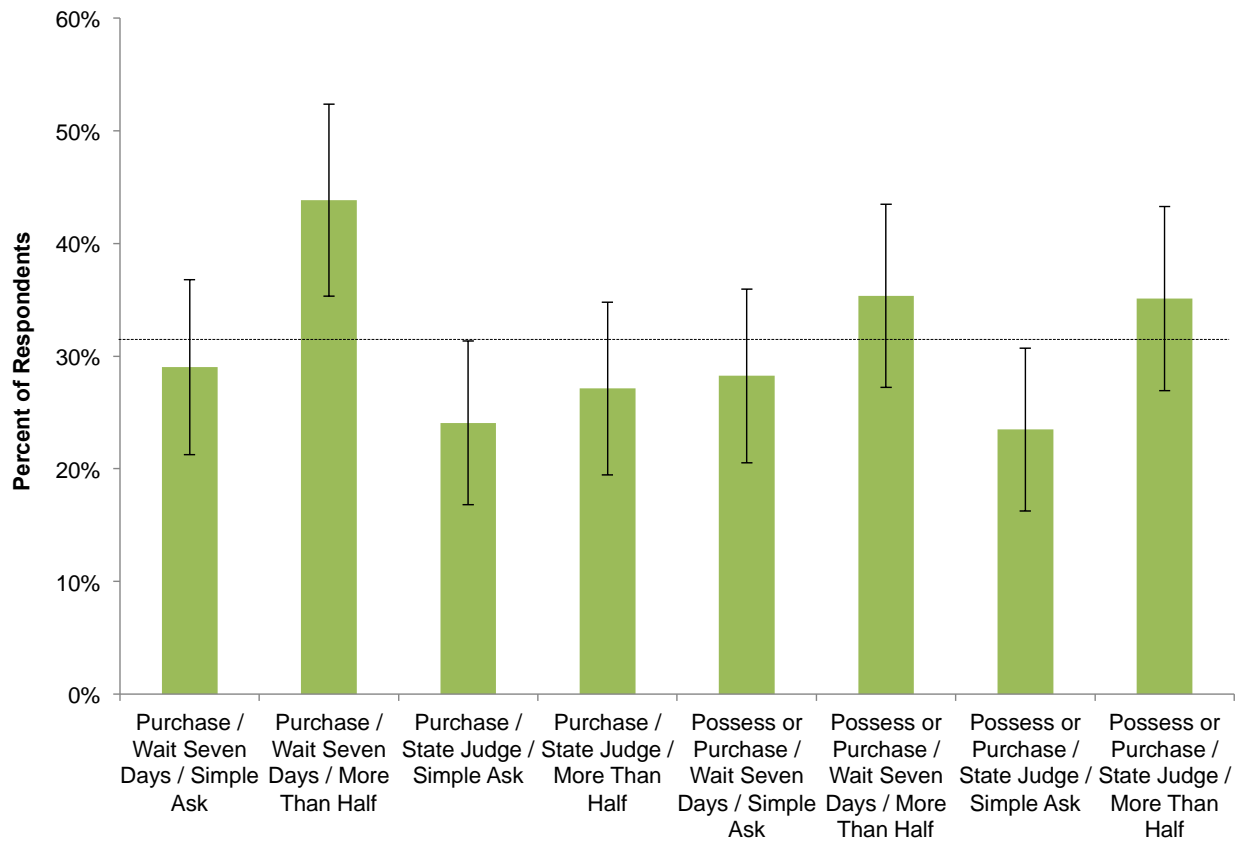
Notes: Table reports F-test values and p-values from OLS regressions of treatment assignment on the covariates (bottom rows) and covariates on treatment assignment (right-hand columns).

Online Appendix Table 3
Regression Results with Full Demographic Controls

	1	2	3	4	5	6	7
Possess or Purchase	-0.005 (0.028)	-0.004 (0.028)	-0.003 (0.028)	-0.016 (0.030)	-0.006 (0.028)	-0.005 (0.028)	0.001 (0.028)
State Judge	-0.066** (0.028)	-0.065** (0.028)	-0.066** (0.028)	-0.041 (0.030)	-0.065** (0.028)	-0.064** (0.028)	-0.057** (0.028)
More Than Half of Other Adults	0.092*** (0.028)	0.091*** (0.028)	0.087*** (0.028)	0.098*** (0.031)	0.086*** (0.028)	0.088*** (0.028)	0.085*** (0.028)
SBQ-R Score Greater Than or Equal to 7		0.054 (0.035)					
Diagnosed with a Mental Disorder			0.087** (0.042)	0.142* (0.079)	0.089* (0.047)	0.084** (0.041)	0.077* (0.041)
Diagnosed with a Mental Disorder X Possess or Purchase				0.103 (0.082)			
Diagnosed with a Mental Disorder X State Judge				-0.166** (0.083)			
Diagnosed with a Mental Disorder X More Than Half				-0.037 (0.084)			
Have Regular Access to Firearm					-0.154*** (0.031)	-0.165*** (0.030)	-0.109*** (0.032)
Diagnosed with a Mental Disorder X Regular Access to Firearm					-0.038 (0.093)		
Live with Children Under 18						0.058 (0.041)	0.057 (0.045)
Live with Children Under 5						-0.025 (0.050)	-0.027 (0.052)
Gender: Female							0.084*** (0.031)
Gender: Other							-0.133 (0.140)
Region: West							0.003 (0.043)
Region: South							-0.018 (0.040)
Region: Midwest							0.027 (0.045)
Race: Asian							0.119** (0.058)
Race: Black							0.159** (0.072)
Race: Hispanic							0.197*** (0.069)
Race: Mixed Race							0.099 (0.095)
Race: Other							-0.045 (0.208)
Age: 25-34							-0.066 (0.043)
Age: 35-44							-0.054 (0.051)
Age: 45-54							-0.064 (0.069)
Age: 55-64							-0.053 (0.080)
Age: 65+							-0.049 (0.140)
Sexual Orientation: Homosexual							-0.021 (0.073)
Sexual Orientation: Bisexual							-0.175 (0.132)
Income: \$25,000-\$49,999							-0.005 (0.042)
Income: \$50,000-\$74,999							0.011 (0.046)
Income: \$75,000-\$99,999							-0.034 (0.053)
Income: \$100,000-\$149,999							0.080 (0.060)
Income: \$150,000 or more							-0.093 (0.083)
Marital Status: Married							-0.023 (0.038)
Marital Status: Divorced/Separated/Widowed							0.022 (0.067)
Education: Less Than High School							-0.240*** (0.065)
Education: Associates Degree							0.041 (0.043)
Education: Bachelors Degree							0.039 (0.034)
Education: Graduate Degree							0.021 (0.051)
Political Party: Republican							-0.130*** (0.040)
Political Party: Independent							-0.118*** (0.034)
Political Party: Not Registered							-0.145** (0.061)
Constant	0.298*** (0.028)	0.285*** (0.029)	0.285*** (0.029)	0.274*** (0.031)	0.326*** (0.031)	0.312*** (0.032)	0.336*** (0.069)
Observations	1,050	1,050	1,050	1,050	1,050	1,050	1,050
R-squared	0.015	0.017	0.020	0.025	0.042	0.044	0.105

Notes: Robust standard errors in parentheses.

Online Appendix Figure 1
Eight Treatment Groups, by Group



Notes: The dashed line represents the average response across all subjects. N = 1,050.

ONLINE APPENDIX III. SCREENSHOTS OF SURVEY INSTRUMENT

Online Appendix Exhibit 1 Purchase – Wait Seven Days – Simple Ask

The National Instant Criminal Background Check System maintains a “No Guns” list which prevents certain individuals (for example, convicted felons) from purchasing firearms from gun dealers. Imagine that your state legislature has just enacted a new program that gives state residents the right to confidentially add their names to this “No Guns” list.


Proponents of the legislation have argued that restricting access to firearms reduces suicides, homicides, and accidental deaths.

If you add your name, you can later remove it for any reason by requesting removal and waiting seven days.

Would you be willing to add your name to your state’s “No Guns” list?

Yes

No



Online Appendix Exhibit 2 Purchase – Wait Seven Days – More Than Half

The National Instant Criminal Background Check System maintains a “No Guns” list which prevents certain individuals (for example, convicted felons) from purchasing firearms from gun dealers. Imagine that your state legislature has just enacted a new program that gives state residents the right to confidentially add their names to this “No Guns” list.


Proponents of the legislation have argued that restricting access to firearms reduces suicides, homicides, and accidental deaths.

If you add your name, you can later remove it for any reason by requesting removal and waiting seven days.

Would you be willing to add your name to your state’s “No Guns” list if more than half of other adults in your state also add their names?

Yes

No



Online Appendix Exhibit 3
Purchase – State Judge – Simple Ask

The National Instant Criminal Background Check System maintains a “No Guns” list which prevents certain individuals (for example, convicted felons) from purchasing firearms from gun dealers. Imagine that your state legislature has just enacted a new program that gives state residents the right to confidentially add their names to this “No Guns” list.

Proponents of the legislation have argued that restricting access to firearms reduces suicides, homicides, and accidental deaths.

If you add your name, you can later remove it if a state judge certifies that you are not a danger to yourself or others.

Would you be willing to add your name to your state’s “No Guns” list?

- Yes
- No



Online Appendix Exhibit 4
Purchase – State Judge – More Than Half

The National Instant Criminal Background Check System maintains a “No Guns” list which prevents certain individuals (for example, convicted felons) from purchasing firearms from gun dealers. Imagine that your state legislature has just enacted a new program that gives state residents the right to confidentially add their names to this “No Guns” list.

Proponents of the legislation have argued that restricting access to firearms reduces suicides, homicides, and accidental deaths.

If you add your name, you can later remove it if a state judge certifies that you are not a danger to yourself or others.

Would you be willing to add your name to your state’s “No Guns” list if more than half of other adults in your state also add their names?

- Yes
- No



Online Appendix Exhibit 5
Possess or Purchase – Wait Seven Days – Simple Ask

The National Instant Criminal Background Check System maintains a “No Guns” list which prevents certain individuals (for example, convicted felons) from possessing firearms and from purchasing firearms from gun dealers. Imagine that your state legislature has just enacted a new program that gives state residents the right to confidentially add their names to this “No Guns” list.

Proponents of the legislation argued that restricting access to firearms reduces suicides, homicides, and accidental deaths.

If you add your name, you can later remove it for any reason by requesting removal and waiting seven days.

Would you be willing to add your name to your state’s “No Guns” list?

- Yes
- No



Online Appendix Exhibit 6
Possess or Purchase – Wait Seven Days – More Than Half

The National Instant Criminal Background Check System maintains a “No Guns” list which prevents certain individuals (for example, convicted felons) from possessing firearms and from purchasing firearms from gun dealers. Imagine that your state legislature has just enacted a new program that gives state residents the right to confidentially add their names to this “No Guns” list.

Proponents of the legislation argued that restricting access to firearms reduces suicides, homicides, and accidental deaths.

If you add your name, you can later remove it for any reason by requesting removal and waiting seven days.

Would you be willing to add your name to your state’s “No Guns” list if more than half of other adults in your state also add their names?

- Yes
- No



Online Appendix Exhibit 7
Possess or Purchase – State Judge – Simple Ask

The National Instant Criminal Background Check System maintains a “No Guns” list which prevents certain individuals (for example, convicted felons) from possessing firearms and from purchasing firearms from gun dealers. Imagine that your state legislature has just enacted a new program that gives state residents the right to confidentially add their names to this “No Guns” list.

Proponents of the legislation argued that restricting access to firearms reduces suicides, homicides, and accidental deaths.

If you add your name, you can later remove it if a state judge certifies that you are not a danger to yourself or others.

Would you be willing to add your name to your state’s “No Guns” list?

- Yes
- No



Online Appendix Exhibit 8
Possess or Purchase – State Judge – More Than Half

The National Instant Criminal Background Check System maintains a “No Guns” list which prevents certain individuals (for example, convicted felons) from possessing firearms and from purchasing firearms from gun dealers. Imagine that your state legislature has just enacted a new program that gives state residents the right to confidentially add their names to this “No Guns” list.

Proponents of the legislation argued that restricting access to firearms reduces suicides, homicides, and accidental deaths.

If you add your name, you can later remove it if a state judge certifies that you are not a danger to yourself or others.

Would you be willing to add your name to your state’s “No Guns” list if more than half of other adults in your state also add their names?

- Yes
- No



Online Appendix Exhibit 9
MTurk Demographic Questions Screenshots

Which state do you live in?

What is your gender?

- Male
- Female
- Other

What is your race/ethnicity?

- Asian
- Black
- Hispanic
- White
- Mixed race
- Other

What is your age?

- Younger than 18
- 18-24
- 25-34
- 35-44
- 45-54
- 55-64
- 65 or older

What is your sexual orientation?

- Heterosexual
- Homosexual
- Bisexual
- Other

What is your household's yearly income?

- \$0-\$24,999
- \$25,000-\$49,999
- \$50,000-\$74,999
- \$75,000-\$99,999
- \$100,000-\$149,999
- \$150,000 or more

What is your marital status?

- Single (never married)
- Currently married
- Divorced, separated, or widowed

What is the highest level of education you have completed?

- Less than high school
- High school or GED
- Associates degree
- Bachelors degree
- Graduate degree

What is your registered political party?

- Democratic
- Republican
- Independent (no party or other party)
- Not registered to vote

Who did you support in the last presidential election?

- Obama (Democrat)
- Romney (Republican)
- Other candidate
- Did not support any candidate



I. “IN REM” WAIVER

This article is focused primarily on “in personam” self-restriction, but there are analogous “in rem” restrictions on real property.⁵ For example, a landowner can transform her property into a gun-free zone by posting “no firearms allowed” on her land – even with regard to citizens who are otherwise permitted by statute concealed or open carry of firearms.⁶ Many common-interest communities are already gun-free by covenant.⁷ Landlords can similarly restrict gun possession in leases except where this conflicts with state statute.⁸

⁵ The two types of restrictions can obviously overlap. In such instances, “in rem” restriction has the advantage of avoiding invidious discrimination. *See supra* note **Error! Bookmark not defined.**

⁶ 13 AAC 30.110 (b) (Alaska) (“Nothing in this chapter or in AS 18.65.700 - 18.65.790 precludes a person from posting, to the extent allowed by law, a notice regarding the carrying of a concealed handgun.”); Utah Code Ann. § 76-10-530; Ga. Code Ann., § 16-11-127(c) (“private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property”); 430 ILCS 66/65(a-10) (“The owner of private real property of any type may prohibit the carrying of concealed firearms on the property under his or her control.”); Mo. Stat. Ann. § 571.107; N.M. Admin. Code § 10.8.2.16(F); N.C.G.S.A. § 14-415.11(c)(8). In Louisiana and South Carolina, the default is that invitees may not carry concealed weapons onto a private residence – so no posting is necessary. LSA-R.S. 40:1379.3(O) (“No individual to whom a concealed handgun permit is issued may carry such concealed handgun into the private residence of another without first receiving the consent of that person.”); S.C. Code 1976 § 23-31-225. There is even an argument that the owner of a private residence retains the common law right to exclude firearms even in states that have adopted statutes allowing concealed carry except in specified locations not expressly including private residences. *See State v. Taylor*, 425 P.2d 1014, 1018 (Haw. 1967) (“Statutes in derogation of the common law are strictly construed, and a court should not, merely by application of the maxim *expressio unius exclusion alterius*, find that the common law has been superseded in the area not mentioned by a statute, where it does not appear that it was the legislative purpose to supersede the common law.”). *But cf.* Joseph Blocher & Darrell A.H. Miller, *What Is Gun Control? Direct Burdens, Incidental Burdens, and the Boundaries of the Second Amendment*, 83 U. CHI. L. REV. 295, 315 (2016) (suggesting that “no guns allowed” signs in store “might not automatically transform all concealed-gun-carrying shoppers into trespassers”).

⁷ Christopher J. Wahl, *Keeping Heller Out of the Home: Homeowners Associations and the Right To Keep and Bear Arms*, 15 U. PA. J. CONST. L. 1003, 1003 & n.5 (2013); Blocher & Miller, *supra* note 6, at 319.

⁸ *Compare* Tenn. Op. Atty. Gen. No. 09-170, 2009 WL 3666436 (Oct. 26, 2009) (“A landlord can prohibit tenants, including those who hold handgun carry permits, from possessing firearms within leased premises. Such a prohibition may be imposed through a clause in the lease.”), *with* Ohio Rev. Code R.C. § 2923.126(b) (“A landlord may not prohibit or restrict a tenant who is a licensee and who on or after September 9, 2008, enters into a rental agreement with the landlord for the use of residential premises, and the tenant's guest while the tenant is present, from lawfully carrying or possessing a handgun on those residential premises.”).

This should not be surprising. In one nationally representative survey, 50% of respondents reported that they would feel less safe if more people in their community owned guns, while only 14% said they would feel safer.⁹ As discussed above,¹⁰ a substantial majority of Americans live in gun-free homes, and it is natural for these citizens to prefer that their neighbors also to be unarmed. A large percentage of Democrats in particular want gun-free communities: in a recent poll, 41% said it would be harder to get along with a new neighbor who owned a gun.¹¹ One might reasonably believe that disputes between neighbors would less often be fatal if the neighborhood was gun free. Gun accidents could be virtually eliminated. In Alabama and the other 14 states with the most guns, 82 children aged 5 to 14 died from accidental gunshot wounds between 2003 and 2007, as compared with just 8 in the six states with the fewest guns (though there were virtually the same number of kids in that age range).¹²

This section focuses on how government could facilitate owners' ability to (i) durably waive their right and the right of their successors to allow firearms on particular property parcels and (ii) create sufficient notice to third-parties so that they would be liable of criminal trespass for entering property while knowingly in the possession of a firearm. As an initial matter, owners could agree to restrictive covenants that would bind them and future owners to exclude firearms from their land. For example, a 1910 California appeals court interpreted a deed with a habendum clause which expressly provided that "one of the conditions of this conveyance is that the use of firearms upon said premises is and shall be forever prohibited" to be an enforceable restrictive covenant in gross which runs with the servient tenement.¹³ Covenants appurtenant reciprocally agreed to by neighboring tracts and recorded in public land records are especially likely to be enforceable at common law.¹⁴

⁹ Matthew Miller, Deborah Azrael & David Hemenway, *Community Firearms, Community Fear*, 11 EPIDEMIOLOGY 709 (2000).

¹⁰ See *supra* text accompanying note **Error! Bookmark not defined.**

¹¹ Hannah Fingerhut, *Partisanship in the U.S. Isn't Just About Politics, But How People See Their Neighbors*, PEW RESEARCH FACT TANK (6/27/2016), <http://www.pewresearch.org/fact-tank/2016/06/27/partisanship-in-u-s-isnt-just-about-politics-but-how-people-see-their-neighbors>. [visited 7/4/2016] In contrast, the figure for Republicans is only 6%. *Id.*

¹² David Hemenway, *Risks and Benefits of a Gun in the Home*, 5 AM. J. LIFESTYLE MED. 502, 503 (2011).

¹³ *Guaranty Realty Co. v. Recreation Gun Club*, 12 Cal. App. 383, 390 (1910) (To have and to hold: "All and singular the said premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever; provided, that one of the conditions of this conveyance is that the use of firearms upon said premises is and shall be forever prohibited, and that the said grantees agree, for and on behalf of themselves, their heirs and assigns, and all persons claiming through or under them to observe and enforce this provision.").

¹⁴ THOMAS W. MERRILL & HENRY E. SMITH, *PROPERTY: PRINCIPLES AND POLICIES* 1051 (2d ed. 2012) ("A negative covenant in gross probably would not run with the land at common law. It could not be enforced as a real covenant, since the privity requirements would not be met. And courts generally refused to enforce covenants in gross as equitable servitudes, only appurtenant covenants were eligible for enforcement against successors with notice.").

Landowners wishing to make their land “gun free” might also be able to take advantage of conservation easement statutes that have been enacted in most jurisdictions.¹⁵ The Uniform Conservation Easement Act defines a conservation easement to be “a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property; assuring its availability for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.” In *Wooster v. Dept. of Fish and Game*,¹⁶ a state appellate court interpreted a conservation easement, finding that the grant of hunting rights to a state department (so the department could prohibit hunting on the property) was consistent with the statute’s easement purpose requirements:

The “natural” and “historical,” not to mention “scenic,” condition of land can easily be understood as land teeming with wildlife -- as it was before the advent of men, women, and firearms. Using a conservation easement to ban hunting most certainly does help retain land in this sort of unspoiled condition.¹⁷

A “conservation easement” that granted to state police the sole right to bear arms on a particular property (so the police might prohibit firearms on the property) might analogously qualify as having a “natural,” “historical” or “scenic” purpose. Just as governments provide various financial incentives to stimulate the use of conservation easements,¹⁸ one could imagine states incentivizing the use of conservation easements to expand the number of gun-free acres in a jurisdiction.¹⁹

Alternatively, a landowner who wants the prohibition on guns to bind subsequent owners could, when selling the property, only convey a defeasible fee. This, for example, might be accomplished by including a fee simple determinable condition in the deed: “to A so long as A does not knowingly possess or allow others to possess firearms on the premises.”²⁰ The original owner would retain a possibility of reverter (not limited by the rule against perpetuities) that would automatically revert to fee simple absolute ownership if the firearm condition occurs.²¹ Modern title

¹⁵ See RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 8.5 TD No.7 (1998) (reporting that all but three states had enacted statutes to eliminate questions about the enforceability of conservation servitudes or easements).

¹⁶ 211 Cal. App. 4th 1020 (2012).

¹⁷ *Id.* at 1034.

¹⁸ Christen Linke Young, *Conservation Easement Tax Credits in Environmental Federalism*, 117 YALE L.J. POCKET PART 218 (2008).

¹⁹ Conservation easements prohibiting firearms would not, however, qualify for favorable federal tax treatment as having one of the existing “conservation purposes” under the Internal Revenue Code § 170(h)(4)(A) except if the land dedicated was open to the public or was historically important or hosted ecologically significant flora or fauna.

²⁰ A fee simple subject to condition subsequent would also suffice. See generally *Mountain Brow Lodge No. 82, Independent Order of Odd Fellows v. Toscano*, 257 Cal. App.2d 22 (Cal. App. 1967).

²¹ The possibility of reverter interest is carved out of the original grantor’s estate and hence remains vested, thus avoiding the Rule Against Perpetuities concern with remote vesting. MERRILL & SMITH, *supra* note 14, at 510, 516, 574.

records provide ample notice to potential buyers of these restrictions – as covenants, conservation easements and defeasibility of fees would all be recorded and discovered in title searches.²²

The existing methods provide ample opportunity for existing owners to bind themselves and successors in interest, but to make the land truly “gun free” it is also necessary to constrain third parties from carrying firearms onto the land and to do so in a way that durably extends to periods of successor owners. Durably constraining third parties might be accomplished by including in the covenants, conservation easements or defeasible fee grants provisions that impose duties on current and successive owners to post the land with signs notifying third parties that firearms are not allowed on the property.²³ Sufficiently conspicuous signs have been found to provide adequate constructive notice to third parties such that their violation constitutes criminal trespass.²⁴ Alternatively, the state could facilitate third-party notice by changing the default terms of real property invitations. A “no guns” default would mean that third-party invitees could not lawfully enter with a gun unless the invitation explicitly said so. In Louisiana and South Carolina, the default rule is already that third-parties may not carry concealed handguns in another’s private residence.²⁵ With a no guns default, property owners and their successors would merely need to be bound not to “contract around” the default by inviting people carrying firearms onto their property.

These “in rem” gun restrictions on owners, successors in interest, and third-parties are likely constitutional. The Second Amendment generally restricts state action, not private arrangements like the ones described above.²⁶ The only two relevant exceptions to the state action doctrine are the *Shelley* limitation on racially restrictive covenants and the company towns limitation.²⁷ If private

²² However, the inclusion of restrictions such as defeasible fees may render the property effectively unmortgagable as lenders would realize that their security interest or lien was inferior to the defeasance condition and hence the mortgage or lien could be terminated by the some action (someone in the future bring a gun on site) over which the lender has no control.

²³ An analogous no-hunting provision was included in the conservation easement at issue in *Wooster v. Dept. of Fish and Game*, 211 Cal. App. 4th 1020 (Cal. Ct. App. 2012), which required state department to “post the property at all points of entry to inform the public that said property is a State wildlife area and that no trespassing or hunting is allowed.”

²⁴ CHARLES T. WILLIAMS, BALDWIN’S OH. PRAC. REAL EST. § 32A:21 (2016 update). As Judge Posner has emphasized, not all fraudulently induced invitations to enter private property constitute criminal trespass. *Desnick v. Am. Broadcasting Cos.*, 44 F.3d 1345 (7th Cir. 1995). However, Joseph Blocher and Darrell A. H. Miller persuasively argue: “The basic analysis from cases like *Desnick* suggests that the gun-carrier *is* a trespasser, because—unlike the secret critic—her fraud interferes with the interests that the right to exclude was meant to protect, especially that of security.” Blocher & Miller, *supra* note 6, at 315.

²⁵ See *supra* note 6. Georgia’s recent “Safe Carry Protection Act” deploys different defaults for different places: an “opt out” default for bars and a “opt in” defaults for houses of worship and schools. Safe Carry Protection Act, 2014 Ga. Laws 601, §§ 1-5, 1-6, codified at Ga. Code Ann. §§ 16-11-127 (b)(4), (c); 16-11-127.1(c) (Supp. 2014). See also Blocher & Miller, *supra* note 6, at 316-17.

²⁶ Wahl, *supra* note 7, at 1024-25.

²⁷ *Id.* Cf. Blocher & Miller, *supra* note 6, at 343 (outlining a third potential expansion of the state action doctrine derived from First Amendment case law). But see John-Patrick Fritz,

gun-free zones became so prevalent that gun-owners had difficulty finding places to lawfully possess and store their guns and the zones were deemed to be “quasi-governmental,” the geographic restrictions might conceivably qualify under the second exception.²⁸ The company town exception is thus well-suited to capture the concern that gun-free zones could burden individuals’ right to bear arms in their home by so restricting the set of available residences that there would be no market opportunity to buy or rent a home where guns could be lawfully possessed. But this company-town exception is limited to places where a single or small group of private owners constrain contracting options and effectively becomes the local government.²⁹ The company town doctrine implicitly facilitates an “in rem” associational marketplace, because aggregate contracting constraints created by the similar preferences of dispersed private owners do not trigger constitutional scrutiny. Another possible way to meet the state action requirement is criminal prosecution. The police simply removing a trespasser from a premises pursuant to a criminal trespass statute, without independent investigation, does not amount to state action.³⁰ Removal, and more so criminal prosecution, could presumably constitute state action if the trespass statute were not generally applicable but rather singled-out gun possession.³¹

State constitutions, unlike the federal constitution, may regulate purely private conduct.³² Case law on private gun regulation is sparse, but one Connecticut court concluded that the state’s broadly worded³³ constitutional right to bear arms “does not prevent a private landowner from prohibiting the otherwise lawful possession of firearms on his land.”³⁴ But even if the federal state action requirement were satisfied or if state constitutional law swept more broadly, place restrictions like these routinely survive constitutional challenge. For example, the Tenth Circuit upheld the United States Postal Service’s blanket ban on firearms on postal property.³⁵ Of particular relevance here is that the court, in rejecting the Second Amendment claim, relied on the fact that the postal service was acting in its proprietary rather than governmental capacity, and its regulation applied “only to discrete parcels of land” and was “directly relevant” to “providing a safe environment

Check Your Rights and Your Guns at the Door: Questioning the Validity of Restrictive Covenants against the Right To Bear Arms, 35 Sw. U. L. REV. 551 (2007) (arguing for expansion of *Shelley* because the right to bear arms is also fundamental).

²⁸ *But see* Yan Sui v. 2176 Pacific Homeowners Ass’n, No. SACV 11-1340 JAK (AJW), 2012 WL 6632758 (C.D. Cal. Aug. 30, 2012).

²⁹ *See* United Auto Workers, Local No. 5285 v. Gaston Festivals, Inc., 43 F.3d 902, 909 (4th Cir. 1995) (“A private actor must assume plenary control and complete governmental power over the property in question.”).

³⁰ *Rundus v. City of Dallas, Tex.*, 634 F.3d 309, 314-15 & n.6 (5th Cir. 2011).

³¹ *Parks v. Ford*, 68 F.R.D. 305 (E.D. Pa. 1975).

³² Helen Hershkoff, *State Constitutions: A National Perspective*, 3 WIDENER J. PUB. L. 7, 20 (1993) (“some state constitutional provisions, by their express terms, provide protection against private actors”).

³³ CONN. CONST. Art. 1, § 15 (“Every citizen has a right to bear arms in defense of himself and the state.”)

³⁴ *Winters v. Concentra Health Services, Inc.*, No. CV075012082S, 2008 WL 803134, at *4 (Conn. Super. Mar. 5, 2008).

³⁵ *Bonidy v. U.S. Postal Service*, 790 F.3d 1121 (10th Cir. 2015).

for its patrons and employees.”³⁶ The Supreme Court of Virginia similarly upheld against both state and federal constitutional challenge a firearm ban covering campus facilities and events.³⁷

Public policy, like constitutional law, is a trump card in property law.³⁸ The right to self-defense overlaps substantially with state and federal constitutional provisions on bearing arms. One court in a state without a constitutional right to bear arms rejected a policy-based challenge to a no-firearms covenant: “We think there is no merit in the contention that the restriction and covenant is void as being either unreasonable or as in violation of the inherent right of the citizen to bear arms.”³⁹ When weighed against the right to property – and specifically the right to exclude – as well as the right to *not* bear arms,⁴⁰ it is difficult to see a public policy argument against gun-free zones prevailing,⁴¹ except perhaps if the restrictions leave no genuine options for housing without firearm restrictions.

Possibilities of reverter, rights of entry, conservation easements, and covenants can last more or less indefinitely.⁴² An important question is whether the permanence of gun-free zones violates public policy because of standard “dead hand” concerns. One commentator argues that when covenants are stale, they should be enforceable only by compensatory damages, not specific performance.⁴³ Limiting parties to compensatory damages, however, would effectively convert gun-free zones to gun-tax zones, and the increased risks and psychological harm would be very difficult to quantify. The same critic of common-interest communities further contends that covenants restricting behavior without externalities are illegitimate.⁴⁴ But guns can readily be turned against neighbors, which may explain why so many more people fear more guns in their community than

³⁶ *Id.* at 1126-27. See Stephen Kiehl, *In Search of a Standard: Gun Regulations after Heller and McDonald*, 70 MD. L. REV. 1131, 1132-33 (2011) (stating that after *Heller* and *McDonald* “[l]ower courts have easily upheld . . . laws prohibiting the carrying of guns in sensitive places such as airplanes and parks.”).

³⁷ *DiGiacinto v. Rector and Visitors of George Mason University*, 704 S.E.2d 365 (Va. 2011). See also 79 AM. JUR. 2d *Weapons and Firearms* § 30. See generally *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1264 (11th Cir. 2012) (“An individual’s right to bear arms as enshrined in the Second Amendment, whatever its full scope, certainly must be limited by the equally fundamental right of a private property owner to exercise exclusive dominion and control over its land.”)

³⁸ *Nahrstedt v. Lakeside Village Condominium Assn.*, 878 P.2d 1275 (Cal. 1994); see also *State v. Shack*.

³⁹ *Guaranty Realty Co. v. Recreation Gun Club*, 12 Cal. App. 383, 390 (1910).

⁴⁰ Blocher, *supra* note **Error! Bookmark not defined.**

⁴¹ “The right to keep and bear arms is . . . subject to the right of a property owner” 94 C.J.S. WEAPONS § 18.

⁴² Andrea J. Boyack, *Common Interest Community Covenants and the Freedom of Contract Myth*, 22 J.L. & POL’Y 767 (2014).

⁴³ *Id.*

⁴⁴ *Id.*

welcome them.⁴⁵ It is not obvious to us why gun-free zones should be any less durable than other restrictions on land.

⁴⁵ Matthew Miller, Deborah Azrael & David Hemenway, *Community Firearms, Community Fear*, 11 EPIDEMIOLOGY 709 (2000).