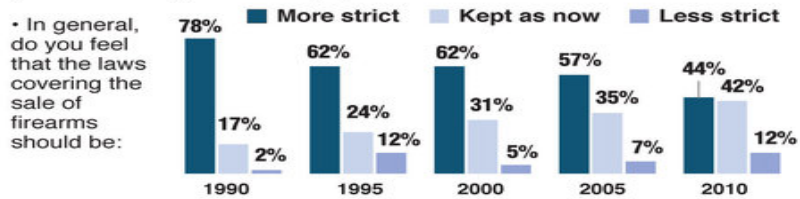


The Politics of Gun Control in the United States

The Arizona assassinations and the assassination attempt on Representative Gabrielle Giffords have again focused attention on U.S. gun control laws, which are among the most permissive in the developed world. With 4 in 10 Americans reporting to own a gun, and polls showing that Americans are roughly equally divided between those who want stricter gun laws and those who want to keep gun laws as they are, the public opinion itself seems split on how best to address gun control policies.

U.S. guns: Opinion and laws

How public opinion on stricter gun laws has dropped over the past 20 years and how gun laws vary by state:



Background checks Federal and state laws in 49 states* and the District of Columbia require them for firearm buyers

Firearm rights

States with provisions in their constitutions to give citizens right to keep, bear arms



Mental health

Requires reporting of buyer's mental health to FBI criminal background check system



Waiting period

Required on gun purchases; includes D.C.



Ban assault weapons

Prohibits ownership of assault weapons; includes D.C.



*Vt. has no state law requiring background checks of gun purchasers

Source: Legal Community Against Violence, Brady Center to Prevent Gun Violence. Gallup polls of 1,025 adults, 1990-2010; Margin of error: +/-4 percentage points
 Graphic: Melina Yingling, Judy Treible

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Federal Efforts

As the debate on further gun control regulations continues, it is important to note that current gun control policies stem from several parts of U.S. Federal law, starting with the U.S.

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constitution (Second Amendment): "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." In 2008, the most significant gun-policy decision was handed down by the Supreme Court in the case of District of Columbia v. Heller, which determined that the Second Amendment protects an individual's right to possess a firearm, and McDonald v. Chicago, which applied the ruling to the states. It was the first Supreme Court case in United States history to decide whether the Second Amendment protects an individual right to keep and bear arms for self defense. Gun owners, represented by the powerful National Rifle Association (NRA), have jealously guarded this right and opposed any proposed law they see as diluting it. A large surge of court cases was seen in lower federal courts in the aftermath of the 2008 ruling. Over 80 cases have been filed seeking to overturn existing gun laws. With remarkable consistency, the existing gun laws have been repeatedly upheld as being constitutional with the net effect that very little has changed as result of the Supreme Court ruling.

Two other important Federal gun control policies are the Brady Law and the Assault Weapons Ban. The Brady Law went into effect in 1994 requiring a criminal background check before a handgun could be sold to a buyer. Named after Jim Brady, the press secretary to then-President Ronald Reagan, who was seriously wounded in the assassination attempt on the president in 1981, it established a national instant criminal background check system. The system keeps records on criminals and the mentally unfit so they can be denied guns. In 2008, after the Virginia Tech massacre by a disturbed student who should have been barred from purchasing a gun, a new law was passed offering funding to states to improve the records in the criminal background system, though many states including Arizona are still not up to date.

In 1994, the Assault Weapons Ban became Federal law. For a decade until 2004, the U.S. banned civilians from owning certain types of assault weapons. This ban was allowed to expire during the administration of President George W. Bush. Police said the young man arrested in the Arizona shooting, Jared Lee Loughner, purchased a semi-automatic Glock pistol from a Tucson gun dealer in November. This has prompted some in Congress to call for the ban on assault weapons to be reinstated. Like most states, Arizona does not regulate the use of large-capacity ammunition magazines, like the one used in the Tucson shooting. The Assault Weapons Ban that expired in 2004 regulated large-capacity ammunition and only a handful of states now limit magazines to a maximum of 10 rounds, in most cases.

Large-capacity ammunition



Gun owners have also focused on the right to carry guns in some previously banned places. Last year, a new federal law went into effect that allows visitors to U.S. national parks to carry concealed, loaded guns. After the Virginia Tech massacre some student groups began

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pushing for university students to have the explicit right in law to carry concealed weapons on college campuses for self defense. Legislation to that effect has been introduced in several states including Arizona, Texas and Georgia.

State Rights

While additional Federal gun control proposals may accelerate following the Tucson, Arizona massacre, many politicians and pundits believe that the real battle over the future of gun control policy will not take place in the halls of Congress, but largely away from the national spotlight in a patchwork of legal cases and state-level decisions and precedents throughout the country. With Republicans controlling the House of Representatives and a Supreme Court embracing Second Amendment rights, significant new congressional action appears unlikely. In response to a lack of will by Congress, state level gun related policy developments have already occurred.

For example, in late December 2010, the Ohio State Supreme Court handed gun rights advocates a victory when they ruled that Cleveland and other cities could not pass laws that were stricter on assault weapons restrictions and handgun registration requirements than those of the state.

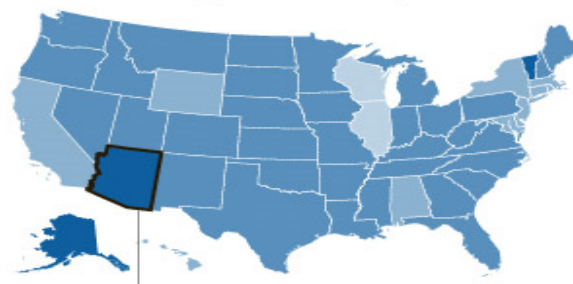
In Montana, a law was passed declaring that any firearms manufactured and sold within state boundaries were exempt from Federal reach. The Federal district court in Montana ruled against the state, concluding that weapons were still subject to the U.S. Constitution's Commerce Clause. But 19 states are considering a similar measure and an additional eight — including Arizona — have passed one.

In Texas, the state legislature has pledged to take up several bills — or perhaps one package — that would allow firearms at colleges and exempt guns and ammunition from sales taxes, among other proposed changes.

In recent years the NRA and gun owners have also focused much of their attention on states. They have been so successful that only two states, Illinois and Wisconsin plus the District of Columbia, flatly prohibit citizens from carrying so-called concealed weapons in public places. Ten of the states which have concealed carry laws require that the citizen demonstrate a need to carry the weapon, but 38 states do not require an explanation for carrying the weapon. Arizona is one of three states (including Vermont and Alaska) that do not require any kind of permit to carry a concealed weapon.

Permit to carry a concealed weapon

- No permit required
- Issued if the individual meets minimum criteria established by the state
- Issued on discretion of the local law enforcement officer granting the permit
- Cannot carry a concealed weapon



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Any future Federal gun control effort will have to go through the NRA, which has nearly 4 million members and a famously muscular approach toward influencing policy. One example of such clout occurred in the last Congress, when House Democrats explicitly exempted the NRA from provisions in a campaign finance overhaul package. The NRA loophole was the only way House leaders could win support from enough rural Democrats.

Additionally, the NRA reported spending \$2.5 million on Federal lobbying in 2009, the most recent year for which records are available. The organization's political action committee reported spending an additional \$9.9 million on midterm election campaigns last year, Federal Election Commission records show.

On Capitol Hill, gun rights advocates hold key positions. The NRA last year gave its highest-possible "A-Plus" legislative rating to Representative Lamar Smith, a Texas Republican who is now chairman of the House Judiciary Committee. After the wake of the Arizona shooting, Representative Smith hinted his skepticism about the passage of additional gun control measures in Congress. "It is disappointing that some lawmakers and special interest groups are using this shooting as a vehicle to push for their own personal political agendas."

Additionally, the NRA's response to the Arizona shooting speaks largely of their „fear“ of increased gun control measures: they have no fear. The NRA hasn't bothered to mount a major lobbying push to make sure lawmakers have their 'guns-don't-kill-people' talking points. Instead, Congressional office staffers have said there has been no contact from the group on the topic. The only statement from the NRA regarding the shootings was: "At this time, anything other than prayers for the victims and their families would be inappropriate."

Lawmakers seemed to echo the NRA's sentiment that not only is access to guns irrelevant to this discussion, bringing it up would be downright insensitive. The only real piece of legislation that has a shot at becoming law is a bill that would ban the manufacture and sale of high-capacity magazines such as the one used by the Arizona shooter, attached to his pistol allowing him to fire off 33 bullets without reloading, rather than the 10 or so in a typical clip. Only when he reloaded after these 33 bullets was he overpowered by people present at the scene.

Supreme Court

Any gun control legislation that does make it through Congress, or through a state legislature, also will have to survive potential judicial scrutiny that's been emboldened by recent Supreme Court rulings. In particular, the court in 2009 ruled that the Second Amendment broadly protects an individual's right to own firearms, regardless of any membership in a state militia. The ruling in *McDonald v. Chicago* doesn't prohibit gun control laws, but it does make it much easier to challenge them as unconstitutional.

"Self-defense is a basic right, recognized by many legal systems from ancient times to the present day," wrote Justice Samuel Alito for the majority, adding that "citizens must be permitted to use handguns for the core lawful purpose of self-defense."

"Those cases have opened up a flood of litigation in the lower federal courts and the state courts, and there is certainly going to be a whole lot more litigation until the parameters are more clear." said Don Kates, a professor of constitutional and criminal law associated with the Pacific Research Institute. "Democrats are scared about the issue of gun control. Bill Clinton produced a situation where he strong armed various legislators into voting for these laws and most of those legislators lost their jobs. Democrats remember that. And if Obama

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were foolish enough to make gun control a major plank of his domestic policy and try to twist people's arms to vote for gun bans, which he has shown no inclination to do, there would be a whole lot of people saying, 'yeah, Bill did the same thing 20 years ago, and both House and Senate turned Republican.'"

Conclusion

Even with a legislative window cracked in the wake of the horrible shooting in Arizona, the likelihood of congressional action is remote. Years of intense legal battles and local initiatives have forced groups to reshuffle their priorities. For the majority of gun control policy advocates, the focus will continue to remain on the patch-work of gun policy being made in the courts and states, instead of trying to convince lawmakers to take tough votes. Gun control advocates hope that, because one of its own has become a victim, Congress will see things differently. But they also understand that the new, solidly pro-gun Republican majority in the House and a Senate stocked with red-state (Republican leaning) Democrats up for reelection in 2012 will have no appetite for a conversation on the issue.