

# Controlling a Constitutionally Protected Right



By Paul Engel

December 27, 2021

- Does anyone in government have the legal authority to regulate a constitutionally protected right?
- Can Congress pass a law that violates the Constitution as long as the Supreme Court says it's OK?
- How can We the People restore our rights in the face a tyrannical government that is violating its primary purpose, to protect your rights.

The Declaration of Independence lists some of our inalienable rights. It also says "That to secure these rights, Governments are instituted among Men". If governments are created to secure our rights, does that mean they have the legitimate power to regulate them? In many situations, governments at all levels claim that power. So what happens when We the People allow governments to control our rights? Or, more importantly, what can we do to regain control of our rights?

During the ratification debates, one of the reasons the Federalists were opposed to a Bill of Rights was the fear that if we put a list of rights in the Constitution, someone would think they had the right to regulate them. History has shown there was merit to the Federalists' concern.

## **United States Capitol**

Enter Title 40, United States Code §5104

*(e) Capitol Grounds and Buildings Security.-*

*(1) Firearms, dangerous weapons, explosives, or incendiary devices.-An individual or group of individuals-*

*(A) except as authorized by regulations prescribed by the Capitol Police Board-*

*(i) may not carry on or have readily accessible to any individual on the Grounds or in any of the Capitol Buildings a firearm, a dangerous weapon, explosives, or an incendiary device;*

*(ii) may not discharge a firearm or explosives, use a dangerous weapon, or ignite an incendiary device, on the Grounds or in any of the Capitol Buildings; or*

*(iii) may not transport on the Grounds or in any of the Capitol Buildings explosives or an incendiary device; or*

### **[40 U.S.C. §5104](#)**

This law places sole discretion over who is allowed to bear arms on the Capitol Grounds in the hands of the Capitol Police Board. This is in direct violation of the 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.*

### **[U.S. Constitution, Amendment II](#)**

However, there's an interesting twist to this law: Members of Congress are not subject to it.

*[The Senators and Representatives] shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from*

*Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.*

### **U.S. Constitution, Article I, Section 6, Clause 1**

While it may be against the law (unconstitutional and void as that law may be), members of Congress are exempt from arrest, since this is not a felony. No one seemed to care very much, or at least not until Lauren Boebert won her seat in Congress. Rep. Boebert stated that she would carry her firearm on capitol grounds. While that is a violation of 40 U.S.C. 5104(e), as a member of the House of Representatives, she is privileged from arrest while in attendance at the capitol. Which quickly led to the introduction of H.R. 545, the "No Congressional Gun Loophole Act".

*"(B) EXCEPTION.—Notwithstanding subparagraph (A), the Capitol Police Board may not authorize or permit a Member of Congress or an employee of such Member of Congress to carry on or have readily accessible to such Member or employee a firearm, except a Member or employee may store a firearm in a car owned by such Member or employee that is parked in a garage in the Capitol complex if the Member or employee is in compliance with the firearms laws of the District of Columbia for the lawful possession of such firearm and such firearm is locked with a gun lock while on the Capitol complex."*

### **H.R. 545 – The No Congressional Gun Loophole Act**

There are a couple of things I noticed in this legislation. First, all it really does is tell the Capitol Police Board that they may not authorize a member of Congress or employee to carry a firearm at the Capitol. To my knowledge, the Capitol Police have not authorized Rep Boebert to carry her firearm, so nothing has changed there. Which leads to the second point. When it comes to Congressmen, it means

absolutely nothing, since it would be a violation of the Constitution for the Capitol Police to arrest a Senator or Representative while attending or traveling to or from a session of their respective house. What are the Capitol Police going to do? And just imagine Rep. Boebert or another member of Congress filing a complaint with the Capitol Police, or with the F.B.I. for that matter, of a violation of [18 U.S.C. §242](#) for denying them a right protected under the Constitution? Unfortunately, I bet this legislation makes someone feel better.

## **State of Illinois**

There are a few states that still require someone possess a Firearm Owner Identification (FOID) card to own or possess a firearm. In other words, these states claim that their citizens must get their permission before exercising their right to keep and bear arms. This is a blatant violation of the Second Amendment, but the courts have routinely upheld the criminal idea that states can infringe your rights if they have a good enough reason. Then, to add insult to injury, the State of Illinois makes things worse.

*There's also a [management audit](#) of [Illinois State Police]'s handling of the Firearm Owner Identification Card and Concealed Carry License programs.*

*Auditors say of their sample, 87% of FOID cards weren't processed in time with up to a year delay and 60% of renewals weren't processed in time with up to 214 days delay...*

*Of the applications auditors sampled, 43% of CCL applications weren't processed within the constraints of the law.*

[\*\*Audit commission to review delays in FOID cards, concealed carry licenses, other findings with state police – The Center Square\*\*](#)

If it wasn't bad enough that residents of Illinois need state

approval to own a gun, the state cannot even follow their own laws regarding the issuing of that permission. And if a right delayed is a right denied, this is even more evidence of the State if Illinois denying the rights of their citizens.

## **State of California**

Not to be outdone, California Governor Newsom, in what appears to be a fit of pique, decided to abuse the rights of his citizens because he doesn't like how the Supreme Court is handling a case from another state.

*"I am outraged by yesterday's U.S. Supreme Court decision allowing Texas's ban on most abortion services to remain in place, and largely endorsing Texas's scheme to insulate its law from the fundamental protections of Roe v. Wade. But if states can now shield their laws from review by the federal courts that compare assault weapons to Swiss Army knives, then California will use that authority to protect people's lives, where Texas used it to put women in harm's way.*

## **[Governor Newsom Statement on Supreme Court Decision](#)**

Look at the reasoning Governor Newsom is using. He doesn't like the fact that the Supreme Court of the United States has not issued an injunction against a Texas law currently being reviewed by the federal judiciary. Forget the fact that the court noted that the request for an injunction was not legitimate, since it attempted to enjoin someone who could not use the Texas law. Ignoring the fact that the potential harm of issuing an injunction would be quite permanent (the baby is dead), while the harm of waiting until the courts have issued their opinions is generally not. After all, unless the pregnancy is approaching term, there will still be time to kill the baby should the Texas law be found unconstitutional. The Supreme Court's decision not to issue an injunction that would not stop the law, does not prevent another court from deciding that a case brought against someone performing or

receiving an abortion can be found unconstitutional as well. Nope, Governor Newsom isn't happy, and someone is going to pay. So to whom does Governor Newsom focus his ire? On gun owners, of course.

The most unique aspect of the Texas Pro Life law is that it authorizes private parties to sue, rather than making abortion a criminal offense. Now I have my issues with this part of the Texas law, mostly on its vagary in who is allowed to sue. So I guess Governor Newsom is planning to allow private parties to sue California citizens for owning a legal firearm? That doesn't really surprise me, as it complies with so many of the irrational attempts of the anti-gun movement to get around the law and the Second Amendment to get their way. I also find the language Governor Newsom used to be quite interesting. Yes, AR-15s have been described as the "Swiss Army knives of firearms". Not because of their innocuous nature, but because of their versatility and ability to be customized. Just look at the comparison he's making though; Governor Newsom claims that restricting "assault weapons" save people's lives just after the Kyle Rittenhouse case where he used one to save his own life. He also claims that the Texas Pro Life abortion law puts women in harm's way while ignoring the fact that very little girls and boys are killed every day in elective abortions.

Governor Newsom's announcement is a double-whammy when it comes to infringing on people's rights. Yes, he wants to deny people in California the right to keep and bear arms. He also wants to deny people their right to not be deprived of their life without due process of law. Not bad for a single announcement.

## **Conclusion**

While all three of the examples I've used in this article relate to firearms, there is much more at stake. We've already seen governments claim the authority to control what you can

say, how you run your business, even what you put into your body. All of these are infringements of the people's rights protected by the Constitution of the United States. Perhaps it's time We the People remind our employees in government of the consequences of failing to protect our rights.

*That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.*

## [Declaration of Independence](#)

© 2021 Paul Engel – All Rights Reserved

E-Mail Paul Engel: [paul@constitutionstudy.com](mailto:paul@constitutionstudy.com)

[**BIO:** Paul Engel founded The Constitution Study in 2014 to help everyday Americans read and study the Constitution. Author and speaker, Paul has spent more than 20 years studying and teaching about both the Bible and the U.S. Constitution. Freely admitting that he “learned more about our Constitution from School House Rock than in 12 years of public school” he proves that anyone can be a constitutional scholar. You can find his books on Amazon and Apple Books. You can also find his books, classes and other products at the Constitution Study website (<https://constitutionstudy.com>).]