

Jeopardizing “Their Communities, Their Safety, and Their Lives”: Forced Concealed Carry Reciprocity’s Threat to Federalism

by HANNAH E. SHEARER*

Introduction

In December 2017, the U.S. House of Representatives passed the Concealed Carry Reciprocity Act (H.R. 38),¹ a National Rifle Association-backed bill that would require each state to recognize and enforce the concealed carry laws of every other state. The carrying of concealed firearms in public is governed almost entirely by state law, and the laws of the fifty states and the District of Columbia vary widely. Some states allow their residents to carry concealed weapons on public streets only after police conduct a background check and the applicant completes a safety training course. Other states’ laws are far weaker, including twelve states that do not require any type of permit or background check before someone may freely carry a hidden, loaded gun in public. H.R. 38 would force states with strong laws to allow visitors from states with weak or nonexistent standards to carry concealed firearms within their borders—potentially allowing many more irresponsible, violent, or untrained people to do so. Worse still, under H.R. 38, individuals in states with strong laws could obtain permits from other states with weaker standards, and then use those permits to carry in their home states—even if they were ineligible to get a permit under their home states’ laws.

As Part I of this Essay explains, H.R. 38 lays out an exceedingly dangerous policy. But aside from its substance, the bill is troubling because of its implications for our federalist system of government. H.R. 38 will

* Staff Attorney and Second Amendment Litigation Director, Giffords Law Center to Prevent Gun Violence. J.D., Stanford Law School, 2012; B.A., *magna cum laude*, Yale University, 2009. The author is grateful to Adam Skaggs for his comments and suggestions, and to Hae-in Lim for editing assistance.

1. Concealed Carry Reciprocity Act of 2017, H.R. 38, 115th Cong. (2017) (passed by recorded House vote of 231 to 198).

require states to expend substantial resources enforcing other states' laws, including by training law enforcement officers on all fifty states' concealed carry regulations, and developing new procedures to verify the validity of out-of-state permits. By forcing states to bear the costs of enforcing laws other than their own, H.R. 38 scrambles the division of federal and state authority established in the Constitution. Part II of this Essay argues that H.R. 38 violates core principles of federalism—and therefore exceeds Congress's Commerce Clause power—because it conscripts state officers into enforcing other states' laws at the command of the federal government and diminishes the accountability of elected officials to voters.

While the bill's text claims the Commerce Clause as its source of Congressional authority, H.R. 38's supporters have justified the measure rhetorically under the Second Amendment.² In Part III, this Essay explains that the Second Amendment neither requires nor supports forced concealed carry reciprocity. As nearly all courts to have considered this issue recognize, the Second Amendment does not bestow an unfettered right to carry concealed firearms in public, so it does not require states to enforce other states' more permissive concealed carry laws in place of their own. In fact, *McDonald v. City of Chicago* established that the Second Amendment does not foreclose “[s]tate and local experimentation with reasonable firearms regulations,” like the state laws requiring training and background checks which H.R. 38 would override.³ This Essay concludes that forced reciprocity is a dangerous policy not only because it puts the public at greater risk of gun violence, but also because it unacceptably undermines political accountability and state autonomy.

I. Primer on the Concealed Carry Reciprocity Act

On December 6, 2017, the House of Representatives passed the Concealed Carry Reciprocity Act (H.R. 38). The bill would require each state to recognize and enforce the laws of every other state governing the concealed carry of firearms.⁴ The National Rifle Association and other

2. *E.g.*, Press Release, House Judiciary Committee Chairman Bob Goodlatte, Goodlatte Statement at Markup of the Concealed Carry Reciprocity Act (Nov. 29, 2017), <https://judiciary.house.gov/press-release/goodlatte-statement-markup-concealed-carry-reciprocity-act/> (chairman's remarks on H.R. 38 opened with text from the Second Amendment).

3. *McDonald v. City of Chicago*, 561 U.S. 742, 784–85 (2010).

4. The bill provides: “Notwithstanding any provision of the law of any State or political subdivision thereof . . . and subject only to the requirements of this section, a person who is not prohibited by Federal law from possessing, transporting, shipping, or receiving a firearm, who is carrying a valid identification document containing a photograph of the person, and who is carrying a valid license or permit which is issued pursuant to the law of a State and which permits the person to carry a concealed firearm or is entitled to carry a concealed firearm in the State in which the

supporters claim that reciprocity is necessary to establish an “interstate carry regime” and ensure that people can travel with firearms.⁵ Actually, H.R. 38 creates no substantive regime for carrying or traveling with guns. The proposal instead requires all states to enforce other states’ laws authorizing people to carry concealed firearms, regardless of the substance of the other states’ laws.⁶ Since weaker state laws let more people carry with fewer background checks or other restrictions, the proposal effectively extends the geographic scope of the weakest concealed carry laws in the nation. But the bill does so without establishing *any* national criteria or standards for carrying concealed firearms, and without paying for the enforcement of a national concealed carry law.

State concealed carry laws vary widely in how effectively they screen out untrained, reckless, or violent gun carriers. Some states, like California, require training and a thorough evaluation by local police before one can get a permit to carry concealed firearms within the state.⁷ As a result, fewer people carry loaded, hidden guns on California’s streets,⁸ and violent crime rates have declined to a greater extent than in states with weaker laws.⁹

person resides, may possess or carry a concealed handgun (other than a machinegun or destructive device) that has been shipped or transported in interstate or foreign commerce, in any State that— (1) has a statute under which residents of the State may apply for a license or permit to carry a concealed firearm; or (2) does not prohibit the carrying of concealed firearms by residents of the State for lawful purposes.” Concealed Carry Reciprocity Act of 2017, H.R. 38, 115th Cong. § 926D(a) (2017).

5. E.g., Nat’l Rifle Ass’n Inst. For Legis. Action, *Cornyn Introduces the “Constitutional Concealed Carry Reciprocity Act of 2017” in the Senate* (Mar. 3, 2017), <https://www.nra.org/articles/20170303/cornyn-introduces-the-constitutional-concealed-carry-reciprocity-act-of-2017-in-the-senate> (discussing reciprocity bill similar to H.R. 38).

6. H.R. 38 applies to states if they either issue concealed carry permits or authorize residents to carry concealed firearms without a permit. See H.R. 38 § 926D(a). Since all fifty states and the District of Columbia fall into one or the other category, the legislation applies to all states and the District. See Giffords Law Ctr. to Prevent Gun Violence, *Concealed Carry*, <http://lawcenter.giffords.org/gun-laws/policy-areas/guns-in-public/concealed-carry/#state> [hereafter *Concealed Carry*] (last visited Dec. 22, 2017).

7. Giffords Law Ctr. to Prevent Gun Violence, *Concealed Weapons Permitting in California*, <http://lawcenter.giffords.org/concealed-weapons-permitting-in-california/> (last visited Jan. 2, 2018).

8. California has issued about 80,000 concealed carry permits for its 39.2 million residents. Hudson Sangree & Phillip Reese, *Concealed Gun Permits Soar in Sacramento County*, SAC. BEE, Apr. 23, 2016, <http://www.sacbee.com/news/local/article73538112.html>. By way of comparison, Florida (a state with just over half of California’s population) has issued over 1.8 million concealed carry permits. Fla. Dep’t of Agric. and Consumer Servs., *Number of Licensees by Type as of November 30, 2017*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited Jan. 3, 2018) (1,824,127 concealed weapon licenses have been issued in Florida).

9. California’s gun death rate decreased by 56% between 1993 and 2015—more than double the national decline. CTRS. FOR DISEASE CONTROL AND PREVENTION, FATAL INJURY DATA, from

Strong laws like California's, which give local law enforcement the discretion to deny concealed carry permit applications, have also been shown to reduce illegal gun trafficking between states.¹⁰

Other states have much lower standards: They do not give police any discretion to deny permits once minimum criteria are met, and they issue concealed carry permits to nonresidents, people who have never trained at a gun range, and even people with criminal records. Investigations of some of these states' permitting laws have uncovered serious flaws, including thousands of permits that were intentionally or accidentally issued to violent criminal offenders, or people who are dangerously mentally unstable. In just the first six months of 2006, an investigation revealed that Florida authorities issued more than 1,400 concealed carry permits to people with criminal records.¹¹ That investigation uncovered a case in which a man received a Florida concealed carry permit after he pled guilty to shooting his girlfriend in the head.¹² The state of Indiana has issued hundreds of permits to people convicted of domestic abuse, weapons crimes, and other offenses, and some later used the gun they were licensed to carry to commit additional crimes.¹³ Investigations revealed hundreds of similarly questionable decisions to issue or fail to revoke permits in North Carolina, Tennessee, and Texas.¹⁴ Twelve

WEB-BASED INJURY STATISTICS QUERY AND REPORTING SYSTEM (WISQARS), <https://www.cdc.gov/injury/wisqars> (last visited Sept. 12, 2017); see also NAT'L CTR. FOR HEALTH STATS., STATS OF THE STATE OF CALIFORNIA, <https://www.cdc.gov/nchs/pressroom/states/california.htm> (last visited Sept. 12, 2017) (California's gun death rate is 7.4 per 100,000, compared to the national average of 10.2). Two recent studies have found a compelling link between lax concealed carry laws and increased violent crime and homicide rates. John J. Donohue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Controls Analysis 2–3* (Nat'l Bureau of Econ. Research, Working Paper No. 23510, 2017) (states with weaker concealed carry laws experienced a 13 percent to 15 percent increase in violent crime after ten years, beyond what would have been expected without such laws); Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 AM. J. PUB. HEALTH 1923, 1923–24 (2017) (weaker concealed carry laws are associated with higher rates of homicide).

10. MAYORS AGAINST ILLEGAL GUNS, TRACE THE GUNS: THE LINK BETWEEN GUN LAWS AND INTERSTATE GUN TRAFFICKING 18–19 (2010), <http://www.tracetheguns.org/report.pdf>.

11. See Megan O'Matz, *In Florida, It's Easy to Get a License to Carry a Gun*, S. FLA. SUN-SENTINEL, Jan. 28, 2007, http://articles.orlandosentinel.com/2007-01-28/news/MGUNS28_1_carry-a-gun-license-to-carry-concealed (the 1,400 included people convicted of "assaults, burglaries, sexual battery, drug possession, child molestation—even homicide").

12. *Id.*

13. Mark Alesia et al., *Should These Hoosiers Have Been Allowed to Carry a Gun in Public?*, INDIANAPOLIS STAR, Oct. 11, 2009 (Indiana investigation found hundreds of permits issued to people with criminal records; "many of those people committed subsequent crimes, some with the guns they were legally permitted to carry").

14. Michael Luo, *Guns in Public and Out of Sight*, N.Y. TIMES, Dec. 26, 2011, <http://www.nytimes.com/2011/12/27/us/more-concealed-guns-and-some-are-in-the-wrong-hands.html> (North

so-called “permitless carry” states do even less to screen out dangerous gun carriers, because they do not require any permit whatsoever to carry concealed guns in public.¹⁵

Under H.R. 38, states with strong laws, like California, would be forced to allow residents of permitless carry states to carry their concealed guns in California with no training requirements or background checks.¹⁶ They would also be required to recognize all valid concealed carry permits issued by another state, including those that do little or nothing to restrict concealed carry by untrained people or people who cannot pass a background check.¹⁷ In some cases, this means states would have to recognize permits issued to *their own residents* by another state that offers permits to nonresidents.¹⁸ Under H.R. 38, a resident of state X could obtain a permit from state Y and then use it to carry in state X—even if the resident failed to qualify for a permit under the laws of their home state X. Worst of all, states would have to allow people to carry concealed guns under any of the above circumstances even if the state’s own laws would normally preclude that person from carrying—or even *possessing*—firearms.¹⁹

Though it purports to establish “reciprocity,” the above examples show that H.R. 38 does not have the same impact on all states: it disproportionately burdens states with strong laws. Under the proposal, states that comprehensively regulate the concealed carry of firearms will be forced to

Carolina investigation found that about 200 concealed carry permittees were later convicted of weapons offenses and 200 were convicted of felonies, including 10 who committed murder or manslaughter; in about half of the convictions, authorities failed to revoke or suspend the permit, even in cases of murder, rape, and kidnapping); Marc Perrusquia, *Armed and Dangerous: Dozen with Violent Histories Received Handgun Carry Permits*, MEMPHIS COMM. APPEAL, Mar. 12, 2009 (similar findings in Tennessee); William C. Rempel & Richard A. Serrano, *Felons Get Concealed Gun Licenses Under Bush’s ‘Tough’ Gun Law*, L.A. TIMES, Oct. 3, 2000, <http://articles.latimes.com/2000/oct/03/news/mn-30319> (similar findings in Texas).

15. These states are Alaska, Arizona, Idaho, Kansas, Maine, Mississippi, Missouri, New Hampshire, North Dakota, Vermont, West Virginia, and Wyoming. *Concealed Carry*, *supra* note 6.

16. H.R. 38 § 926D(a).

17. *Id.*

18. See H.R. 38 § 926D(a) (allowing people to possess or carry concealed firearms in any state if they are (1) “carrying a valid license or permit which is issued pursuant to the law of a State and which permits the person to carry a concealed firearm” or if they are (2) “entitled to carry a concealed firearm in the State in which the person resides” (as in a permitless carry state)). Since, with respect to option (1), the bill does not specify that the valid permit must allow the person to carry a concealed firearm in the state in which a person *resides*, this means a resident of one state could get a permit from a second state and then use the second state’s permit to carry in the first state.

19. See H.R. 38 § 926D(a), (b) (reciprocity provisions apply to anyone “not prohibited by Federal law from possessing, transporting, shipping, or receiving a firearm,” and “shall not be construed to supersede or limit” state laws restricting the carry of firearms in certain locations; there is no analogous exception allowing states to still enforce *state* laws restricting who may carry or possess firearms).

allow carrying by many more out-of-state visitors and even some of their own residents who would otherwise be disqualified from carrying concealed weapons. Such states must allow someone to carry guns in accordance with H.R. 38 even if they know that the carrier has exhibited signs of a dangerous mental illness or engaged in a pattern of criminal behavior (but the person was able to get a permit from a state that ignores such red flags). The consequences are nowhere near as severe for states with weaker laws, or for permitless carry states, which generally already allow anyone who may possess a gun to carry it, even if they have a criminal record or other risk factors for firearm misuse. Since these states have already accepted any consequences of lax concealed carry laws, H.R. 38 would pose little additional burden.²⁰

In addition to undermining strong state concealed carry laws, H.R. 38 will impose considerable financial burdens on states. The bill requires states to recognize all “valid” permits issued by other states, and bars police from arresting or detaining anyone for carrying a firearm unless there is probable cause that the person is violating H.R. 38.²¹ Taken together, these provisions mean that whenever a police officer encounters a suspect with a gun who claims a right to carry it under another state’s laws, the officer must: (1) determine whether the state the suspect claims to be from is a permitless carry state, or (2) have some way of recognizing whether another state’s permit is “valid.” All of this under the threat of a personal-capacity lawsuit if the officer makes a mistake.²² The task of verifying the validity of a concealed carry permit will be nowhere near as simple as checking a driver’s license during a traffic stop. Officers verifying a driver’s license are able to consult national databases, but no such database exists for concealed carry permits, and H.R. 38 would not create one.²³ Verifying the validity of permits—as the text of H.R. 38 requires—is thus likely to be difficult and resource-intensive, and could fundamentally change policing in communities with high rates of gun carrying and violence.

In sum, H.R. 38 mandates a costly national “race to the bottom,” in which the weakest concealed carry laws supersede stronger state laws with

20. For Congress to single out states with strong carry laws for differential treatment in this manner would violate principles of equal state sovereignty, *see* *Shelby County v. Holder*, 570 U.S. 2 (2013), in addition to running afoul of the other core principles of federalism discussed *infra* Part II.

21. H.R. 38 § 926D(a), (c).

22. H.R. 38 § 926D(d) (creating a cause of action against any person, state, or political subdivision for anyone deprived of rights secured by H.R. 38).

23. Alex Yablon, *The NRA Says Gun Permits Should Be Like Driver’s Licenses. Here’s Where the Comparison Falls Apart.*, TRACE, Dec. 7, 2017, <https://www.thetrace.org/rounds/nra-concealed-carry-reciprocity-drivers-license/>.

respect to anyone who hails from or has a permit from a state with weaker laws. Law enforcement groups and public health experts agree that H.R. 38 will put Americans at an even greater risk for gun violence.²⁴ The bill could empower irresponsible or dangerous people to subvert strong state laws by shopping around for concealed carry permits from states with lax or nonexistent standards. As domestic violence prevention advocates have observed, the bill would make it easier for abusers to cross state lines with a firearm in order to locate and intimidate former intimate partners.²⁵ And because states do not share records showing whether a concealed carry permit is valid or has been revoked, the bill will make it far more difficult for police to determine if a suspect visiting from another state is authorized to carry a concealed weapon.²⁶

II. Forced Reciprocity Violates Core Principles of Federalism

As discussed above, each of the fifty states and the District of Columbia currently regulates the carrying of concealed firearms within their borders. This is both because there are no generally applicable federal concealed carry laws, and because gun regulation is within the traditional scope of states' police powers. States have "great latitude" to use "police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all

24. See, e.g., Giffords, *Concealed Carry Reciprocity*, <https://giffords.org/issue/concealed-carry-reciprocity/> (last visited Jan. 2, 2018) (collecting official law enforcement statements opposing concealed carry reciprocity, including from the Major Cities Chiefs, International Association of Chiefs of Police, state Attorneys General, and the National Law Enforcement Partnership to Prevent Gun Violence); DANIEL W. WEBSTER ET AL., *CONCEALED CARRY OF FIREARMS: FACTS VS. FICTION* 4 (2017), <https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/concealed-carry-of-firearms.pdf>.

25. Letter from National Task Force to End Sexual and Domestic Violence to House Judiciary Committee (Nov. 28, 2017), <https://giffords.org/wp-content/uploads/2017/11/NTF-CCR-Letter-11-28-2017.pdf>.

26. See Yablon, *supra* note 23 (explaining that police would be unable to verify concealed carry permits as they do drivers' licenses); see also Letter from 17 Attorneys General to Congressional Leaders (Oct. 22, 2017) (on file with author) (forced reciprocity would endanger police because "requiring officers to conduct traffic stops and other police activity with no ability to authenticate every other State's carry laws would pose an extraordinary and unnecessary risk"); Press Release, Major Cities Chiefs, Major Cities Chiefs Denounce Combining Concealed Carry Reciprocity with the Fix NICS Act (Dec. 4, 2017) (on file with author) ("The thousands of local permit formats would make enforcement impossible, because police officers would not be able to determine the validity of a permit issued in another State or locality.").

persons.”²⁷ Accordingly, courts have long recognized that states may use their police powers to set standards for carrying firearms in public.²⁸

H.R. 38 proposes to supplant state concealed carry laws with respect to people with permits issued by another state and residents of permitless carry states. H.R. 38’s drafters and supporters have positioned it as an exercise of Congress’s power to regulate interstate commerce.²⁹ But whether the Commerce Clause (or another enumerated power) authorizes H.R. 38 depends on whether the bill comports with the Tenth Amendment, which imposes structural limits on the way Congress exercises its powers.³⁰ This Essay argues that H.R. 38 violates these structural limitations—and so exceeds Congress’s legislative authority—in two major ways.

A. Forced Reciprocity Violates the Anti-Commandeering Doctrine

The Supreme Court’s “anti-commandeering” cases have established one structural limit on the manner in which Congress may exercise legislative powers. These cases recognize that the Tenth Amendment bars the federal government from compelling states to enact a law, or requiring state officers to enforce a federal regulatory program.³¹ The Court’s anti-commandeering decisions have struck down federal laws that compelled state officers to take certain actions to enforce federal policy, or that required states to pass specified regulations.

27. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (internal quotations and citation omitted); *see also* *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) (“promotion of safety of persons and property is unquestionably at the core of the State’s police power”).

28. *E.g.*, *People v. Seale*, 274 Cal. App. 2d 107, 113 (Cal. Ct. App. 1969) (“It is a well-recognized function of the legislature in the exercise of the police power to restrain dangerous practices and to regulate the carrying and use of firearms and other weapons in the interest of the public safety.”).

29. *See* H.R. 38 § 926D(a) (bill allows people to carry “a concealed handgun (other than a machinegun or destructive device) that has been shipped or transported in interstate or foreign commerce”); *see also* David Kopel & Joseph Greenlee, *Congress Should Use Constitutional Power to Force States to Honor Gun Rights*, THE HILL, Dec. 31, 2017, <http://thehill.com/opinion/national-security/366896-congress-should-use-constitutional-power-to-force-states-to-honor> (“the Reciprocity Act is also supported by the same jurisdictional predicate as many other federal gun control laws: namely, that the firearm in question was once sold or transported in interstate commerce”).

30. *New York v. United States*, 505 U.S. 144, 159–60 (1992); U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

31. *New York*, 505 U.S. at 161 (“Congress may not simply ‘commandeer[] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.”); *Printz v. United States*, 521 U.S. 898 (1997) (“Congress cannot circumvent” the anti-commandeering doctrine established in *New York v. United States* by “conscripting the State’s officers” to enforce a federal program without requiring states to enact legislation).

H.R. 38 violates the anti-commandeering doctrine in two respects. First, by directing states not to enforce their own concealed carry laws against anyone with a “valid” concealed carry permit from another state, H.R. 38 necessitates that state officials determine the validity of those permits under other states’ laws. Compelling states to enforce other states’ laws in this manner contradicts the Supreme Court’s leading anti-commandeering cases, *New York v. United States* and *Printz v. United States*. Second, H.R. 38 will require states to expend resources overhauling their law enforcement regulations, policies, and training procedures, an independent example of unconstitutional commandeering.

I. *New York and Printz*

In *New York v. United States*, the Supreme Court invalidated a law that required states either to accept ownership of radioactive waste generated by private entities, or regulate the disposal of that waste.³² The Court explained that the law’s flaw was not its substance; regulating the waste disposal market is “well within Congress’ authority under the Commerce Clause.”³³ Rather, the constitutional flaw was the law’s method of forcing states to act in “service of federal regulatory purposes.”³⁴ The Court explained that if “a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents” and force them to regulate.³⁵ This remains true even if a federal law lets states choose between different options for regulations they must adopt. Such a law still improperly commandeers if it does not provide an option for states to “decline to administer the federal program.”³⁶

The Court fleshed out this anti-commandeering principle in *Printz v. United States*, a case challenging a provision of the Brady Handgun Violence Prevention Act. The provision mandated that state law enforcement officers help administer federal laws governing background checks on gun purchases. State officers were required to “make a reasonable effort to ascertain within 5 business days” whether a buyer could legally purchase a handgun, including by researching and reviewing state and local records, and taking other specified actions.³⁷ The Court explained that in addition to directly instructing state officials to take certain actions, the challenged

32. *New York*, 505 U.S. at 161.

33. *Id.* at 160.

34. *Id.* at 175.

35. *Id.* at 178; *see also id.* at 188.

36. *Id.* at 176–77.

37. *Printz*, 521 U.S. at 903.

provision necessarily required states to craft discretionary policies, such as “whether to devote maximum ‘reasonable efforts’ or minimum ‘reasonable efforts’” to the background check research.³⁸ The Court struck down the challenged provision under the Tenth Amendment, holding that Congress cannot “conscript[] the State’s officers” to enforce a federal background checks program.³⁹

2. *H.R. 38 Conscripts State Officers into Enforcing a Federal Program that Depends on Other States’ Laws*

Like the laws invalidated in *New York* and *Printz*, H.R. 38 would directly conscript state officers into enforcing a federal regime—in this case, a regime that incorporates other states’ concealed carry laws. Currently, each state decides whether to recognize permitless carry laws or concealed carry permits from other states, and so decides if state officials must enforce other states’ laws. But under H.R. 38, whenever a police officer in one state encounters somebody carrying a gun who claims to be authorized by a different state, the officer must ignore the laws of his or her own state, and instead apply the concealed carry laws of a different state. The officer would be required to take these compelled actions, which are contrary to state law, at the direction of federal legislation. And the officer would be doing so not to comply with any substantive federal law, but to enforce a federal regulatory program, the substantive content of which is established by legislation passed in other states.

Forced reciprocity defenders might argue that, unlike in *New York* and *Printz*, H.R. 38 does not actually force states or state officials to take action. Instead, it empowers *weapon carriers* who are authorized to carry concealed firearms by one state to carry concealed firearms everywhere in the country. In other words, the argument goes, all states must do is passively recognize or not interfere with a new substantive right enjoyed by gun carriers, not take any action on their own.

This argument fails to account for H.R. 38’s text, which is framed not just in terms of noninterference, but enforcement. It is certainly true that H.R. 38’s forced reciprocity provisions avoid obvious language of compulsion that might make this an even easier case under *Printz* and *New York*—it does not say, for example, “state officers must enforce other states’ concealed carry laws with respect to any person who is permitted to carry firearms by another state.” Nonetheless, H.R. 38 uses indirect language to compel precisely the same outcome.

38. *Printz*, 521 U.S. at 928.

39. *Id.* at 935.

Specifically, H.R. 38 authorizes people to carry concealed firearms in any state if they have a “valid license or permit which is issued pursuant to the law of a State and which permits the person to carry a concealed firearm.”⁴⁰ The bill also provides that presentation of “facially valid” documentation must be treated (such as by state police officers) as “prima facie evidence that the individual has a license or permit as required by this section.”⁴¹ But H.R. 38 sets up no federal process or infrastructure for validating permits issued by other states—it does not even define the term “valid.” By specifying that “valid” or “facially valid” permits allow gun carriers to carry in any state, but providing no further guidance and establishing no federal mechanism to determine validity, the bill necessitates that *states* implement systems for their officers to determine the validity of concealed carry permits. Indeed, because compliance with the terms of H.R. 38 depends on law enforcement’s ability to distinguish a valid permit from an invalid one, states cannot enforce the terms of the legislation without expending the resources to create systems or mechanisms for permit validation.

Requiring this state action to enforce other states’ concealed carry laws under a mandate imposed by federal legislation violates basic anti-commandeering principles. H.R. 38 may phrase its directive passively, and avoid overt language of compulsion, but it does not matter: The outcome is exactly the same.

3. *H.R. 38 Conscripts States into Adopting Costly Regulations*

H.R. 38 also commandeers in a second, separate respect. As in *Printz*, the legislation forces states to craft discretionary new policies and incur hefty costs training state officers to enforce laws other than their own.⁴² The legislation would impose myriad regulatory costs on states, including the substantial expense of retraining police officers and establishing and updating permit databases. Accordingly, the bill improperly “forc[es] state governments to absorb the financial burden of implementing a federal regulatory program.”⁴³

As detailed above, to comply with H.R. 38, states will need to educate and train law enforcement officers on all fifty states’ concealed carry laws, as well as probable cause standards that would justify detaining someone for

40. H.R. 38 § 926D(a).

41. *Id.* § 926D(c).

42. *See Printz*, 521 U.S. at 928–30.

43. *Id.* at 930.

unlawfully carrying a concealed weapon in violation of other states' laws.⁴⁴ States would also need to develop new procedures and systems to verify the validity of out-of-state permits. Think of a state police officer who encounters a suspect who claims he or she is authorized to carry a firearm by another state. H.R. 38 would require that officer to determine whether the state the suspect claims to be from is a permitless carry state, or whether a proffered out-of-state permit is "valid" (or "facially valid").⁴⁵ Since concealed carry permit records are not currently shared among the states,⁴⁶ investigating a permit's validity will require new state laws and processes, such as interstate record-sharing agreements. The costs of training police officers, sharing records, and creating electronic verification systems could be staggering, and would fundamentally alter the way police departments treat armed suspects.

It makes no difference that the text of H.R. 38 does not specify the specific regulations states or state officials must adopt to meet their obligations under the legislation. As the Court explained in *New York*, "latitude given to the States to implement Congress' plan" does not save a law that unconstitutionally conscripts state officers.⁴⁷ Here, states will have the latitude to decide how they will comply with H.R. 38 by ensuring that police do not arrest a visitor (or even in some cases, a resident) who is carrying a gun in accordance with the laws of another state. But whatever method they choose, states must implement Congress's regulatory plan by enforcing a different set of gun laws against visitors from permitless carry states or people with out-of-state permits. And under no circumstance may states *decline* to apply the laws of other states and, instead, enforce only their own laws and policies.⁴⁸

It should also make no difference that some (though not all) of states' regulatory costs might be avoidable because they have some latitude over whether to incur them. In fact, this counterargument only highlights the problematic way in which the legislation commandeers state action. This is because states seeking to minimize the financial costs of enforcing H.R. 38 will be saddled with other burdens as a result of their compelled choice to mitigate costs. For instance, a state that does not wish to expend resources

44. See H.R. 38 § 926D(c) (the bill prohibits arresting or detaining anyone who possesses a concealed firearm "unless there is probable cause to believe that the person is doing so" in violation of the legislation).

45. H.R. 38 § 926D(a), (c).

46. Yablon, *supra* note 23.

47. *New York*, 505 U.S. at 176–77.

48. *Id.* (fact that a "State may not decline to administer the federal program" suggests it is compulsory).

establishing and maintaining a national database of concealed carry permits might be able to set up a less comprehensive database more cheaply; a state could even decide to abandon meaningful verification efforts by treating all permits from other states as valid. But a state's choice to abandon enforcement will be dangerous: It runs the serious risk that more people will unlawfully carry firearms within the state, that violent crime will increase, and that gun deaths and injuries will rise. It could also open states up to the allegation that they are violating H.R. 38 and their obligation under the law to assess permit validity. In other words, under H.R. 38, a state cannot reduce enforcement expenses without incurring, at the very least, significant reputational and public safety costs. The fact that states would be required to choose between one type of cost or the other further demonstrates that the bill unconstitutionally compels state action.

For all of the above reasons, H.R. 38 impermissibly commandeers states into enforcing a federal program of reciprocity. The bill requires state officers to enforce other states' laws by determining the validity of out-of-state concealed carry permits. It also forces states to craft new law enforcement policies, develop systems to verify permits, and bear other enforcement costs—precisely the features characterizing the unconstitutional legislation in *New York* and *Printz*.

B. Forced Reciprocity Diminishes the Accountability of Elected Officials

The anti-commandeering doctrine is rooted in the Tenth Amendment's structural limitations on Congressional power. It also arises in defense of a core tenet of federalism: governments should be accountable to voters for legislation they enact. The structure of H.R. 38 poses an unprecedented threat to political accountability, putting some voters in a position where they have *no* avenue to hold elected officials responsible for the concealed carry laws applied in their states. The novel manner in which H.R. 38 would damage political accountability poses a federalism problem of its own, and also underscores that the legislation violates the anti-commandeering doctrine.

In *New York*, the Court observed that when Congress forces states to regulate in a particular manner, accountability is undermined because "it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision."⁴⁹ In *Printz*, the Court reiterated that when states are forced to administer a federal program, Congress "can take credit for 'solving' problems without having to ask their

49. *New York*, 505 U.S. at 169.

constituents to pay for the solutions with higher federal taxes.”⁵⁰ In both instances, accountability is diluted because commandeering can confuse voters. While voters can theoretically hold at least *their* federal representatives (though not other members of Congress) responsible for a compelled state policy, they may not realize that federal policy is ultimately to blame.⁵¹

Forced reciprocity’s novel structure would create an even more serious political accountability problem. As things currently stand, each state legislature must answer to its voters for the concealed carry standards it adopts. H.R. 38 strikes an unprecedented blow to accountability by allowing not only the federal government, but also the *legislatures of other states* to determine the concealed carry standards a given state must enforce. Under H.R. 38, if one state’s legislature amends its concealed carry laws, it will directly affect law enforcement practices in the forty-nine other states. But the other states’ residents will be powerless to hold the first state’s legislature accountable for regulatory burdens or public safety threats arising from the change. Suppose, for example, that Nevada enacts permitless carry while forced reciprocity is in effect, and many more Nevadans start visiting California with concealed weapons they previously could not have brought. California voters will have no way to hold Nevada’s legislature responsible for enabling permitless carry, even though the decision directly harms California in terms of increased policing costs and the possibility of increased firearm violence.⁵²

H.R. 38 does not simply diminish accountability in the manner described in *Printz* and *New York*; it could eradicate it entirely. Once forced reciprocity is in place, voters of one state will be completely unable to hold another state’s legislature accountable for legislation that directly affects them because it is applied within their borders. Thus, even if voters correctly understand which political entity is responsible for a policy outcome they dislike, they cannot use their votes to hold another state’s legislature accountable. The unprecedented way in which H.R. 38 diminishes accountability is a structural federalism violation of its own, and further evidences that the bill improperly commandeers state action.

50. *Printz v. United States*, 521 U.S. 898, 930 (1997).

51. *See id.* (observing that “even when the States are not forced to absorb the costs of implementing a federal program, they are still put in the position of taking the blame for its burdensomeness and for its defects”).

52. Nevada’s weaker gun laws have been shown to drive gun violence in California. *See* Ellicott C. Matthay et al., *In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries*, 167 *ANNALS OF INTERNAL MED.* 837, 837 (2017), <http://annals.org/aim/fullarticle/2659346/state-interstate-associations-between-gun-shows-firearm-deaths-injuries-quasi> (finding that unregulated gun shows in Nevada are associated with increased firearm injuries in California).

III. The Second Amendment and Federalism

Supporters of H.R. 38 have defended the above consequences as necessary to ensure that Americans enjoy Second Amendment rights while traveling. Some have suggested that forced reciprocity is an appropriate use of Congress's "Enforcement Power" under the Fourteenth Amendment to correct supposed Second Amendment violations by states.⁵³ This argument misapprehends both Second Amendment law and the effect of H.R. 38.

A. The Second Amendment Does Not Compel Reciprocity

In *District of Columbia v. Heller*, the Supreme Court ruled for the first time that law-abiding, responsible people have a Second Amendment right to keep an operable handgun in the home for self-defense.⁵⁴ The Court's narrow ruling did not address whether Americans have a similar right to carry guns on public streets. *Heller* also held that the Second Amendment is "not unlimited," and illustrated this point by observing that "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues."⁵⁵

State concealed carry laws are now much more permissive than the "prohibitions on carrying concealed weapons" these early courts upheld. Today, all states allow public concealed carry to some extent, either with or without a permit.⁵⁶ Unsurprisingly, most courts to consider Second Amendment challenges to these comparatively modest restrictions have upheld them. Citing the fact that early American courts upheld total bans on public concealed carry, two federal circuit courts have determined that the Second Amendment does not protect public concealed carry, and that states may regulate it however they choose.⁵⁷ Four circuits have determined that even assuming that the Second Amendment protects public concealed carry to some degree, states have broad leeway to regulate it, including by requiring that carriers get a permit or prove a heightened need for self-

53. U.S. CONST. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."); U.S. CONST. amend. XIV, § 5 ("The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.").

54. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

55. *Id.* at 626.

56. *Concealed Carry*, *supra* note 6.

57. *Peruta v. Cty. of San Diego*, 824 F.3d 919, 939 (9th Cir. 2016) (en banc), *cert. denied*, 137 S. Ct. 1995 (2017); *Peterson v. Martinez*, 707 F.3d 1197, 1211 (10th Cir. 2013).

protection.⁵⁸ One circuit struck down a total ban on public concealed carry, but later upheld strong concealed carry permitting laws that restrict permit applications from nonresidents.⁵⁹ The D.C. Circuit, an outlier, diverged from all of these rulings and held that Washington, D.C. could not restrict concealed carry permits to people with a “special need for self-defense.”⁶⁰ But even the D.C. Circuit did not suggest there is a constitutional right to carry concealed weapons nationwide without a permit, training, or background check, as would be compelled by H.R. 38’s provisions regarding permitless carry states.⁶¹

These decisions suggest a near-consensus: The Second Amendment allows states to comprehensively regulate concealed carry, including with strong laws requiring that carriers obtain a permit and demonstrate their qualifications to carry loaded, hidden firearms in public. If these decisions are correct, the Second Amendment provides no constitutional basis for Congress to override state concealed carry permitting laws. Even if the above decisions are later overruled or courts depart from them, it remains unlikely that H.R. 38 could be construed as “enforcing” the Second Amendment. That is because the bill requires *reciprocity*, but does not set any substantive concealed carry standards tied to the Second Amendment. Instead, the bill requires recognition of other states’ concealed carry laws regardless of what the laws substantively require, and compels this outcome regardless of the substance of the state law being superseded. This structure means that H.R. 38 cannot be said to enforce the Second Amendment at all, because it is neutral as to the substance of laws being applied. Absent an actual Second Amendment standard being enforced, it appears that the bill’s ultimate aim is to make armed travel between states more convenient, rather than to correct Second Amendment violations.

58. *Woollard v. Gallagher*, 712 F.3d 865, 882 (4th Cir. 2013); *Drake v. Filko*, 724 F.3d 426, 431–35 (3d Cir. 2013); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 94–96 (2d Cir. 2012); *Hightower v. Boston*, 693 F.3d 61, 73–74 (1st Cir. 2012).

59. *Moore v. Madigan*, 702 F.3d 933, 940, 942 (7th Cir. 2012) (striking down public carry prohibition); *Culp v. Madigan*, 840 F.3d 400, 401 (7th Cir. 2016) (affirming denial of preliminary injunction in challenge to Illinois concealed carry permitting law that bars most out-of-state residents from applying for a permit); *Berron v. Ill. Concealed Carry Licensing Rev. Bd.*, 825 F.3d 843, 847–49 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 843 (2017) (upholding challenged aspects of Illinois’ concealed carry permitting law and observing that there are “different degrees of danger posed by possessing a weapon at home . . . and carrying a loaded weapon in public”).

60. *See Wrenn v. District of Columbia*, 864 F.3d 650, 667 (D.C. Cir. 2017).

61. The *Wrenn* court acknowledged that the Second Amendment right to concealed carry of firearms belongs only to “responsible, law-abiding citizens.” *Id.* at 663. This implies that states may use background checks and permits to verify that someone is responsible and law-abiding.

B. The Second Amendment Supports State Gun Regulation

Far from justifying H.R. 38, Second Amendment jurisprudence supports the principles of federalism which forced reciprocity threatens. In *Heller*, the Supreme Court held that the Constitution permits legislatures “a variety of tools for combating [the] problem” of gun violence.⁶² In *McDonald*, the Court recognized that while the Second Amendment forbids certain state actions, like the handgun ban *Heller* invalidated, “[s]tate and local experimentation with reasonable firearms regulations” will continue.⁶³ The Second Amendment places “limits” on the states, Justice Alito wrote, but “by no means eliminates” states’ “ability to devise solutions to social problems that suit local needs and values.”⁶⁴

Since *Heller* and *McDonald*, federal courts have repeatedly recognized the authority of state governments to adopt legislation mitigating the local impact of gun violence. For instance, most federal circuit courts have determined that reasonable gun regulations challenged under the Second Amendment should be reviewed under intermediate constitutional scrutiny, rather than the more exacting standard of strict scrutiny. This consensus is nearly unanimous with respect to laws that do not prevent law-abiding, responsible people from keeping an operable handgun in the home—the core Second Amendment right recognized in *Heller*—or burden other closely-related or “core” rights.⁶⁵ This includes four federal circuits that have applied intermediate scrutiny to laws regulating the carrying of guns for self-defense in public.⁶⁶

The application of intermediate scrutiny reflects courts’ recognition that governments retain significant authority to regulate the dangerous effects of firearms while observing constitutional limits. For example, the Tenth Circuit explained its selection of intermediate scrutiny as follows:

62. *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008).

63. *McDonald v. City of Chicago*, 561 U.S. 742, 784–85 (2010).

64. *Id.* (emphasis in original).

65. *See, e.g., Kachalsky*, 701 F.3d at 96; *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010); *United States v. Masciandaro*, 638 F.3d 458, 471 (4th Cir. 2011); *Nat’l Rifle Ass’n v. McCraw*, 719 F.3d 338, 348 (5th Cir. 2013); *Tyler v. Hillsdale Cty. Sheriff’s Dep’t*, 837 F.3d 678, 692 (6th Cir. 2016) (en banc); *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013); *United States v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010); *Heller v. District of Columbia*, 670 F.3d 1244, 1252–53 (D.C. Cir. 2011); *see also United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011) (avoiding term “intermediate scrutiny,” but requiring “a substantial relationship between the restriction and an important governmental objective”); *United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010) (en banc) (avoiding ‘levels of scrutiny’ quagmire” but upholding law since “[b]oth logic and data establish a substantial relation” between law and important government objective).

66. *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015); *Kachalsky*, 701 F.3d at 96–97; *Woollard*, 712 F.3d at 882; *Drake*, 724 F.3d at 443.

The risk inherent in firearms and other weapons distinguishes the Second Amendment right from other fundamental rights that have been held to be evaluated under a strict scrutiny test, such as the right to marry and the right to be free from viewpoint discrimination, which can be exercised without creating a direct risk to others. Intermediate scrutiny appropriately places the burden on the government to justify its restrictions, while also giving governments considerable flexibility to regulate gun safety.⁶⁷

Intermediate scrutiny also appropriately accounts for the fact that there may be multiple valid legislative responses to gun violence. Under intermediate scrutiny, governments have leeway to select the gun policy that suits their constituent communities and substantially furthers public safety, even if opponents of that policy can point to other evidence supporting a different type of regulation.⁶⁸

Consistent with the embrace of intermediate scrutiny and the leeway it affords different cities and states to adopt laws appropriate to their circumstances, several federal appellate courts and individual judges have relied more substantively on principles of federalism in Second Amendment challenges. These courts and judges used federalism principles as a basis, in part, to reject Second Amendment challenges to state and local gun regulations that are stricter than other jurisdictions' laws, or which challengers frame as a departure from national norms.

In *Friedman v. City of Highland Park*, a Seventh Circuit panel rejected a Second Amendment challenge to a local ordinance prohibiting the possession of assault weapons and large-capacity magazines.⁶⁹ The challengers argued that the city cannot prohibit these powerful weapons and accessories since they are “commonly owned for lawful purposes” by a significant percentage of American gun owners.⁷⁰ In Judge Easterbrook's majority opinion, the panel declined to rely inflexibly on a “common use”

67. *Bonidy*, 790 F.3d at 1126.

68. *See Kachalsky*, 701 F.3d at 99 (upholding New York law restricting the concealed carry of firearms under intermediate scrutiny and noting that “[i]t is the legislature’s job, not ours, to weigh conflicting evidence and make policy judgments”); *Wiese v. Becerra*, No. 2:17-903-WBS, 2017 U.S. Dist. LEXIS 101522, at *10 (E.D. Cal. Jun. 29, 2017) (upholding law under intermediate scrutiny and crediting state’s interpretation of evidence, recognizing that “[r]easonable minds will always differ” on how to “reduce the incidence and harm of mass shootings”); *see also, e.g., Heller v. District of Columbia*, 801 F.3d 264, 272–73 (D.C. Cir. 2015) (under intermediate scrutiny, District of Columbia need only show that it has “drawn reasonable inferences based on substantial evidence”; if so, summary judgment for the District is appropriate even if there is conflicting evidence on the record).

69. *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 447 (2015).

70. *See id.* at 408–09.

test, and suggested that because the Second Amendment authorizes “at least some categorical limits on the kinds of weapons that can be possessed,”⁷¹ local governments may regulate even weaponry that many jurisdictions allow.⁷² The panel concluded that “[w]ithin the limits established by the Justices in *Heller* and *McDonald*, federalism and diversity still have a claim”; the “Constitution establishes a federal republic where local differences are cherished as elements of liberty, rather than eliminated in a search for national uniformity.”⁷³

Two Fourth Circuit judges cited a similar idea when the court, sitting *en banc*, upheld a Maryland law restricting the possession of assault weapons and large-capacity magazines. In his concurrence in *Kolbe v. Hogan*, Judge Wilkinson (joined by Judge Wynn) explained that *Heller* did not change the fact that “[p]roviding for the safety of citizens within their borders has long been state government’s most basic task.”⁷⁴ In fact, “*Heller* was a cautiously written opinion, which reserved specific subjects upon which legislatures could still act.”⁷⁵ Judge Wilkinson noted that while it is “fair” for opponents to argue that an assault weapon ban is overly restrictive or will be ineffective, such questions are quintessentially legislative judgments not for the courts but “for the people of Maryland (and the Virginias and the Carolinas) to decide.”⁷⁶ The judges concluded that Maryland’s challenged laws were justified in light of the leeway *Heller* preserved for state legislatures, and because: “It is their community, not ours. It is their safety, not ours. It is their lives, not ours.”⁷⁷

Finally, in *Hamilton v. Pallozzi*, a unanimous Fourth Circuit panel relied on principles of federalism to reject a Second Amendment challenge to the application of disparate state firearm laws.⁷⁸ The plaintiff in *Hamilton* was a nonviolent felon who brought an as-applied Second Amendment challenge in an attempt to restore his right to possess a firearm in the state of Maryland. The plaintiff’s felony convictions occurred in Virginia, and Virginia’s courts later restored his gun possession rights. But under the laws of Maryland, where the plaintiff now lives, he is barred from possessing firearms without a full pardon from Virginia’s governor.⁷⁹ The Fourth Circuit

71. See *Friedman*, 784 F.3d at 410.

72. See *id.* at 408–09.

73. *Id.* at 412.

74. *Kolbe v. Hogan*, 849 F.3d 114, 150 (2017) (Wilkinson, J., concurring).

75. *Id.*

76. *Id.* at 151.

77. *Id.*

78. *Hamilton v. Pallozzi*, 848 F.3d 614 (4th Cir. 2017), *cert. denied*, 199 L. Ed. 2d 384 (U.S. 2017).

79. *Hamilton*, 848 F.3d at 617–18.

affirmed the dismissal of the plaintiff's Second Amendment challenge and upheld the Maryland felon-possession laws as applied to him. In doing so, the court rejected the plaintiff's argument that it would be "absurd" to allow Maryland to bar him from gun possession based on a Virginia conviction when Virginia had fully restored his gun rights.⁸⁰ The court observed that the plaintiff's "absurdity" argument failed to consider "the impact of federalism":

In our federal system, each state is permitted to create its own laws so long as they do not run afoul of the Constitution, federal laws, and treaties, *see* U.S. Const. art. VI, cl. 2., specifically as relevant here, the Second Amendment. Virginia may have opted to restore [plaintiff's] gun ownership rights within its borders, but Maryland need not do so within its own borders.⁸¹

The court noted that states may have "different reasons" "to permit a person to be armed in certain contexts, and possibly not in others," and that the differences are of no constitutional import unless one state is violating "the strictures of the Second Amendment."⁸² Different states may therefore regulate firearms differently without creating an independent Second Amendment problem—and indeed, such differences are an essential feature of our federal system of government.

The principles identified in the above decisions bear directly on the wisdom and constitutionality of H.R. 38. Absent any federal law setting substantive standards for carrying concealed firearms, each of the fifty states has provided for the safety of its residents with different firearm laws tailored to their unique needs. To paraphrase Judge Wilkinson's concurrence in *Kolbe*, the different states have acted to protect their communities, their safety, and the lives of their people. Congress should not lightly attempt to replace the reasoned determinations of individual states with a system in which distant states can render all other states powerless to meaningfully oversee who can carry loaded, concealed weapons on public streets.

Conclusion

Forced concealed carry reciprocity will place the public at risk of increased violence and hinder efforts by police officers to identify and stop unlawful gun carriers. But forced reciprocity is also a dangerous policy because it threatens core tenets of federalism. Rather than directly regulating states by setting substantive standards for concealed carry, H.R. 38 would

80. *Id.* at 628.

81. *Id.*

82. *Id.*

override states' reasoned decisions about what gun laws to enforce against visitors from other states and even their own residents. By depriving states of the choice whether or not to recognize a concealed carry permit or a permitless carry law, the bill denies states the ability to ensure that people carrying hidden, loaded guns within their borders meet the standards they have found necessary to maintain public safety in light of their state's culture, circumstances, and needs. In doing so, H.R. 38 threatens the structural principles of federalism that protect states from being commandeered by the federal government, and also improperly diminishes the political accountability of elected officials.

The Second Amendment provides no support for forced reciprocity. In fact, recent decisions have underscored the importance of protecting gun policies that reflect varied community needs and preferences. When it comes to firearms, the laws of the fifty states are diverse, mirroring regional differences in culture, geography, and perceptions about public safety. It poses no Second Amendment problem to let states adopt and enforce the concealed carry policies they reasonably determine will mitigate the risks of gun violence—and protect their communities, their safety, and their lives. It is the forced invalidation of such policies that is a more serious constitutional concern.
