

THE RIGHT TO BEAR ARMS AND THE ABOMINABLE SNOWMAN: HOW SIX
INCHES OF SNOW SWALLOWED A FUNDAMENTAL RIGHT*

INTRODUCTION

Hurricane Katrina brought unparalleled devastation to the Gulf Coast of the United States. In the wake of the storm, lawlessness descended upon the city of New Orleans. Looters ravaged the city, and innumerable reports of arsons, carjackings, rapes, and shootings overwhelmed local authorities.¹ Law enforcement officers were simply incapable of responding to many of the calls; indeed, some officers completely abandoned their posts.² In response to all these heinous crimes, local police and the National Guard worked together to disarm the entire civilian population of New Orleans, including law-abiding citizens who kept to themselves and took no part in the looting.³ The story of Patricia Konie demonstrates the indiscriminate nature of these confiscations.⁴ Ms. Konie was a petite, fifty-eight-year-old woman who kept a revolver for protection following the storm.⁵ Konie desired to weather the storm in her own home, which was unaffected by the floodwaters. Nevertheless, when she explained to officers that she wanted to stay and that she had a revolver for self-defense, the officers “slammed her to the ground, fracturing her shoulder, and took her into custody.”⁶ Unlike Konie, most of New Orleans’ residents were compelled to flee their homes because of rising floodwaters and increasing lawlessness. Like Konie, however, law enforcement officials and National Guard troops confiscated the firearms of individuals who were attempting to flee the city.⁷ Consequently, law-abiding citizens were rendered utterly defenseless

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1. See, e.g., Bryan Robinson, *The Psychology of Looting*, ABCNEWS (Sept. 2, 2005), <http://abcnews.go.com/Health/HurricaneKatrina/psychology-looting/story?id=1087898#.Tw5NwG-Xtd0>.

2. David B. Kopel, *Defenseless on the Bayou: New Orleans Gun Confiscation is Foolish and Illegal*, REASON.COM (Sept. 10, 2005), <http://reason.com/archives/2005/09/10/defenseless-on-the-bayou>. Presumably, many of these officers left their posts in order to protect and care for their families, but some actually “joined the looting spree.” *Id.*

3. Stephen P. Halbrook, “Only Law Enforcement Will Be Allowed to Have Guns”: *Hurricane Katrina and the New Orleans Firearm Confiscations*, 18 GEO. MASON U. C.R. L.J. 339, 339–41 (2008).

4. *Id.* at 340.

5. *Id.*

6. *Id.* For a video of this incident as well as stories from other individuals whose firearms were confiscated after Katrina, see NRAVideos, *NRA: The Untold Story of Gun Confiscation After Katrina*, YOUTUBE (Mar. 7, 2007), <http://www.youtube.com/watch?v=-taU9d26wT4>.

7. Timothy Dwyer & Ann Scott Tyson, *Troops Escalate Urgency of Evacuation*, WASH. POST, Sept. 9, 2005, at A1.

against the hosts of marauding bands who plundered the city in the aftermath of Hurricane Katrina.

The dilemma faced by residents of New Orleans following the landfall of Katrina is by no means anomalous; in fact, under current North Carolina law, whenever the governor declares a state of emergency for part or all of the state (or when local officials declare a state of emergency in their jurisdictions), this declaration automatically results in the suspension of the right of individuals to carry firearms outside one's home or business.⁸ Thus, if a catastrophe like Hurricane Katrina were to take place in North Carolina, what would become of a young mother who is forced to flee her home and needs to defend herself and her eighteen-month-old son against an attacker who is twice her size? Many might say she should call the police, but the ability of first responders to respond quickly is at its lowest ebb when an emergency is in effect. Hurricane Katrina provides a perfect example of how authorities are likely to become overwhelmed and entirely incapable of preserving order or protecting the peace in the midst of such disasters.⁹ This is why the right of individuals to protect themselves and their families must be preserved during a declared state of emergency. More specifically, North Carolina law must be amended to allow law-abiding citizens to maintain their right to bear arms when a state of emergency is declared.

On February 5, 2010, Mayor Jack Warren of the small town of King, North Carolina, declared a state of emergency in response to a winter snowstorm that brought six inches of snow to the town and the surrounding county.¹⁰ As a result, individuals who could otherwise lawfully carry or transport firearms and ammunition off their own premises—including hunters, sportsmen, and those with concealed carry permits¹¹—could be charged with a Class 1 misdemeanor and sentenced to up to 120 days in jail.¹² Hundreds of residents of King expressed outrage over the suspension

8. See N.C. GEN. STAT. ANN. § 14-288.7 (West 2011).

9. See *infra* Part IV.C.

10. *Residents Fumed Over Weekend Alcohol, Firearm Ban*, WXII12.COM (Feb. 9, 2010, 8:48 AM), <http://www.wxii12.com/weather/22487153/detail.html>.

11. As of June 30, 2011, more than 228,000 North Carolinians possessed valid concealed carry permits. See *North Carolina Concealed Handgun Permit Statistics by County: 12/1/1995 thru 6/30/2011*, N.C. DEP'T OF JUSTICE, <http://www.ncdoj.gov/CHPStats.aspx> (last visited Jan. 15, 2011). Similarly, for the 2006–2007 hunting season, more than 440,000 individuals possessed valid North Carolina hunting licenses. See *North Carolina Report of Hunting and Hunting Related Accidents and Fatalities, 2006–2007*, N.C. WILDLIFE RES. COMM'N, http://www.mountainx.com/files/NCHunting_Accident_Report.pdf (last visited Jan. 11, 2011).

12. § 14-288.7.

of their rights; correspondingly, several individuals filed suit to vindicate their right to bear arms.¹³

The impact of emergency declarations on the right to keep and bear arms hit a fever pitch with the impending landfall of Hurricane Earl in the fall of 2010. On September 1, Governor Perdue declared a state of emergency for the entire state, thereby restricting the right of anyone (except law enforcement) to carry firearms off their own premises.¹⁴ The restrictions imposed by the emergency declaration did not sit well with many North Carolina residents, especially hunters—the declaration came only three days before the opening day of dove season.¹⁵ In the aftermath of both of these declarations, and in light of the United States Supreme Court’s recent holdings that the right to keep and bear arms is fundamental,¹⁶ the constitutionality of prohibiting individuals from carrying firearms off their own premises during a declared emergency should be reconsidered. This Recent Development will explore the constitutionality of section 14-288.7 of the North Carolina General Statutes—the statute that restricts the firearm rights of individuals when a state of emergency has been declared.

This Recent Development will proceed in four parts. Part I recounts the legislative history of section 14-288.7 and examines the North Carolina judiciary’s opinions regarding the statute’s constitutionality. Part II surveys the changes wrought by the Supreme Court’s landmark decisions in *Heller* and *McDonald*; moreover, Part II explains the implications of North Carolina judicial decisions on the constitutionality of section 14-288.7. Part III then reviews recent attempts by the North Carolina legislature to remedy the statute’s defects. Building on the General Assembly’s recent proposals, Part IV sets forth several practical reasons why the statute must be amended.

13. See, e.g., Complaint at 1–2, *Bateman v. Perdue*, No. 5:10-cv-265-H (E.D.N.C. June 28, 2010).

14. See Exec. Order No. 62, 25 N.C. Reg. 753, 753–54 (Sept. 1, 2010), available at <http://www.governor.state.nc.us/NewsItems/UploadedFiles/9aaa0ab4-33f8-41ef-b527-087a46ecef7f.pdf>.

15. Paul Valone, *North Carolina Governor Suspends Gun Rights*, EXAMINER.COM (Sep. 2, 2010), <http://www.examiner.com/gun-rights-in-charlotte/north-carolina-governor-suspends-gun-rights>.

16. See *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3044 (2010) (stating that the “central holding in *Heller*” is that “the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home”); *District of Columbia v. Heller*, 554 U.S. 570, 593–94 (2008).

I. THE DEVELOPMENT AND PERSISTENCE OF SECTION 14-288.7

A. *Historical Context*

In order to apprehend the significance of section 14-288.7, one must understand the climate in which the statute was enacted. In response to the civil unrest that permeated the United States during the 1960s and escalated following the assassination of the Rev. Dr. Martin Luther King, Jr., on April 4, 1968,¹⁷ the North Carolina General Assembly introduced over twenty different bills during the 1969 legislative session that addressed numerous problems related to “riots and civil disorders and campus unrest.”¹⁸ On June 19, 1969, the General Assembly passed House Bill 321, “An Act to Revise and Clarify the Law Relating to Riots and Civil Disorders,”¹⁹ to provide “an adequate legal framework in North Carolina for dealing with riots and other disturbances.”²⁰ The bill created an entirely new article under chapter 14 of the North Carolina General Statutes; section 14-288.7 made up only a very small part of this sweeping legislation.²¹

The General Assembly’s rationale for including what is now section 14-288.7 in House Bill 321 is consistent with its primary legislative goal of preserving order and protecting the public during times of civil disorder.²² The original version of the statute, which remains virtually unchanged today,²³ made it “unlawful for any person to transport or possess off his own premises any dangerous weapon or substance in any area in which a declared state of emergency exists” or “[w]ithin the immediate vicinity of which a riot is occurring.”²⁴ The statute exempted government officials who were lawfully engaged in the performance of their duties,²⁵ but all other individuals (including those who are otherwise authorized by the state

17. See GOVERNOR’S COMM. ON LAW AND ORDER, PROPOSED LEGISLATION RELATING TO RIOTS AND CIVIL DISORDERS vi, 53 (1969) [hereinafter REPORT ON CIVIL DISORDERS]; see also *The 1968 Wilmington Riots*, OLD WILMINGTON.NET, <http://www.oldwilmington.net/oldwilmington/1968-riots.html> (last visited Jan. 11, 2011) (providing a brief history of the 1968 riots in Wilmington, Delaware).

18. Milton S. Heath, Jr., *The 1969 North Carolina General Assembly*, POPULAR GOV’T, Sept. 1969, at 5.

19. An Act to Revise and Clarify the Law Relating to Riots and Civil Disorders, ch. 869, 1969 N.C. Sess. Laws 962 (codified at N.C. GEN. STAT. ANN. § 14-288 (West 2011)).

20. REPORT ON CIVIL DISORDERS, *supra* note 17, at vi.

21. See *id.* at 1–3.

22. See *id.* at vi.

23. Compare § 14-288.7(c), and 1969 N.C. Sess. Laws at 966 (dictating that those who violate the statute are guilty of a misdemeanor), with § 14-288.7(c) (stating that those who violate the statute are guilty of a Class 1 misdemeanor).

24. 1969 N.C. Sess. Laws at 965–66 (codified at N.C. GEN. STAT. ANN. § 14-288.7(c) (West 2011)).

25. *Id.*

to carry weapons) would be guilty of a misdemeanor.²⁶ The Governor's Advisory Committee made clear that such a statute "that would automatically outlaw transportation or possession off premises of all dangerous items in the most affected areas is highly desirable."²⁷ Even so, the Advisory Committee qualified this assertion, noting that "the weapons-transport statute is very broad in its coverage of types of weapons and substances, but [it] will apply *only for a most limited time and only in a limited area*."²⁸

In addition to the Committee's desire to limit the duration and scope of section 14-288.7, the Committee also sought to ensure that individuals who were otherwise lawfully transporting weapons or other substances "through areas in which the persons did not know that a state of emergency existed"²⁹ would *not* be convicted under the statute unless individuals had adequate notice.³⁰ For this reason, the General Assembly limited the reach of section 14-288.7 "to areas in which either a riot is then occurring or in which there is a *declared* state of emergency."³¹ Thus, the historical context of section 14-288.7 makes clear that the General Assembly deliberated carefully over its response to the "current of disorder" that was sweeping the nation during the 1960s; indeed, the Advisory Committee's Report shows that the General Assembly did not give short shrift to the legislative choices that would necessarily restrict individual freedoms.³² It is difficult to imagine that the General Assembly would have ever contemplated that section 14-288.7 would be used to restrict a fundamental right because of an impending hurricane or snowstorm. This conclusion is buttressed by the fact that the General Assembly "rejected most of the harsher, more broad-gauged proposals that were not directly related to coping with actual or imminent riots or disorders."³³ What is more, it is highly unlikely that the General Assembly would even consider such legislation today in light of the Supreme Court's incorporation of the Second Amendment against the states.

26. *Id.*

27. REPORT ON CIVIL DISORDERS, *supra* note 17, at 30.

28. *Id.* at 29 (emphasis added).

29. *Id.*

30. *See id.* at 59.

31. *Id.* at 29. For the purposes of section 14-288.7, a state of emergency exists "whenever, during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, public safety authorities are unable to maintain public order or afford adequate protection for lives or property, or whenever the occurrence of any such condition is imminent." An Act to Revise and Clarify the Law Relating to Riots and Civil Disorders, 1969 N.C. Sess. Laws at 963 (codified at N.C. GEN. STAT. ANN. § 14-288.1 (West 2011)).

32. *See* Heath, Jr., *supra* note 18, at 5.

33. *Id.* at 6.

B. Judicial Treatment of Section 14-288.7

Before turning to a discussion of the Supreme Court's recent holdings establishing that Second Amendment rights are fundamental, it is useful to provide some background on the treatment of section 14-288.7 by North Carolina courts. Significantly, North Carolina courts have only briefly touched on the constitutionality of section 14-288.7; in fact, North Carolina courts have applied section 14-288.7 in exactly one case: *State v. Dobbins*.³⁴ On September 29, 1969—only two months after the enactment of House Bill 321—the Mayor of Asheville, N.C., issued an emergency declaration in response to “an imminent threat of widespread burning and other destruction of property, public and private.”³⁵ Preston Dobbins was driving through the streets of Asheville while the curfew was in effect and was subsequently stopped by police.³⁶ The police observed a gun on the back floorboard of the vehicle and charged Dobbins with transporting a firearm in an area where a declared state of emergency is in effect, in violation of section 14-288.7.³⁷

The primary issue in *Dobbins* was not the constitutionality of section 14-288.7 per se, but whether the City of Asheville had the constitutional authority to impose a mandatory curfew on the city's residents.³⁸ Noting the “[t]ragic experiences in other cities across the nation,” the *Dobbins* court explained that “if those who threatened the destruction of property began to carry out that threat, violence would probably erupt throughout the city, resulting in numerous personal injuries and much bloodshed. The danger was clear and present, the time remaining for preventive measures a matter of hours.”³⁹ The *Dobbins* court thus affirmed the right of the Mayor to issue the emergency declaration pursuant to the broad powers bestowed on local governments in section 14-288 and upheld the imposition of the curfew.⁴⁰ By extension, the court also upheld the defendant's conviction under section 14-288.7 without discussing the statute's validity in any depth. Hence, no North Carolina court has yet passed upon the constitutionality of section 14-288.7.

34. 277 N.C. 484, 178 S.E.2d 449 (1971).

35. *Id.* at 496, 178 S.E.2d at 456.

36. *Id.* at 501, 178 S.E.2d at 459.

37. *Id.* at 501-02, 178 S.E.2d at 459-60. Dobbins was also charged with violating the curfew. *Id.*

38. *Id.* at 496-500, 178 S.E.2d at 456-59.

39. *Id.* at 496, 178 S.E.2d at 456.

40. *Id.* at 505, 178 S.E.2d at 462.

II. REVISITING THE CONSTITUTIONALITY OF SECTION 14-288.7 AFTER *HELLER* AND *MCDONALD*

While the Supreme Court of North Carolina upheld section 14-288.7, two recent opinions by the United States Supreme Court suggest that the statute may violate the United States Constitution. Additionally, several decisions of the Supreme Court of North Carolina are instructive when evaluating the constitutionality of the statute.

A. *Explanation of Heller*

In *District of Columbia v. Heller*,⁴¹ the Supreme Court struck down a Washington, D.C. statute that banned the possession of usable handguns in the home, stating that the statute violated the Second Amendment.⁴² In making its determination, the Court held that individuals have a fundamental right to possess operable handguns in their homes for the purpose of immediate self-defense.⁴³ The Court's opinion discussed the nature of the rights guaranteed by the Second Amendment at great length. Justice Scalia, writing for the Court, concluded that documents from the founding period make clear that the right to "keep Arms" is "an individual right unconnected with militia service."⁴⁴ Indeed, "'keep arms' was simply a common way of referring to possessing arms, for militiamen *and everyone else*."⁴⁵ As for the right to "bear" arms, the Court held that "[a]t the time of the founding, as now, to 'bear' meant to 'carry.'"⁴⁶ Justice Scalia further stated that the "natural reading of 'bear arms'" was most clearly articulated by Justice Ginsburg in her dissent in *Muscarello v. United States*⁴⁷:

Surely a most familiar meaning is, as the Constitution's Second Amendment . . . indicate[s]: "wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person."⁴⁸

41. 554 U.S. 570 (2008).

42. *Id.* at 635.

43. *Id.*; see Joshua J. Styles, Recent Development, *What We Can Learn from Britt v. State: How Overcriminalization is Eroding a Fundamental Right*, 23 J. FIREARMS & PUB. POL'Y 130, 136 (2011) (citing *District of Columbia v. Heller*, 554 U.S. 570, 595, 634–35 (2008)).

44. *Heller*, 554 U.S. at 582.

45. *Id.* at 583.

46. *Id.* at 584.

47. 524 U.S. 125.

48. *Heller*, 554 U.S. at 584 (quoting *Muscarello v. United States*, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)).

Thus, the Second Amendment not only secures a right to “keep arms” but also grants to individuals the right to carry arms for the purpose of self-defense.⁴⁹

Having established that the Second Amendment guarantees a fundamental right to keep *and* bear arms,⁵⁰ the Court went on to discuss the limitations of and exceptions to this fundamental right. The Court reiterated that “the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right.”⁵¹ As with all individual liberties protected by the Constitution, however, the rights protected by the Second Amendment are not absolute.⁵² The *Heller* Court explained:

Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.⁵³

As follows, North Carolina may impose reasonable regulations on the rights of individuals to keep and bear arms; however, the Court’s intimation that “laws forbidding the carrying of firearms in sensitive places” are “presumptively” lawful necessarily implies that law-abiding citizens have the right to carry firearms in non-sensitive places for the purpose of self-defense.⁵⁴ The *Heller* Court’s contention that self-defense is “the core lawful purpose” of the Second Amendment further supports this conclusion.⁵⁵ Indeed, even Justice Stevens noted in his dissent that “[g]iven

49. See, e.g., Memorandum and Points and Authorities in Support of Plaintiffs’ Motion for Summary Judgment at 7–9, *Bateman v. Perdue*, No. 5:10-cv-265-H (E.D.N.C. Nov. 8, 2010) (citing decisions of several state courts that the Second Amendment guarantees the right to carry arms just as it protects the right of individuals to keep firearms in the home for self-defense).

50. The North Carolina Constitution independently guarantees the right to keep and bear arms. See N.C. CONST. art. 1, § 30 (“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.”). Even assuming, arguendo, that the right guaranteed by the North Carolina Constitution is not an individual right, North Carolina may never grant to its citizens fewer rights than those guaranteed by the federal constitution. See *State v. Carter*, 322 N.C. 709, 713, 370 S.E.2d 553, 555 (1988) (stating that North Carolina may construe state constitutional provisions however it chooses “as long as our citizens are thereby accorded no lesser rights than they are guaranteed by the parallel federal provision”); see also *State v. Jackson*, 348 N.C. 644, 648, 503 S.E.2d 101, 103 (1998) (“[B]ecause the United States Constitution is binding on the states, the rights *it* guarantees must be applied to every citizen by the courts of North Carolina.”).

51. *Heller*, 554 U.S. at 592.

52. *Id.* at 595.

53. *Id.* at 626–27.

54. See *id.* at 584, 626, 627 n.26.

55. *Id.* at 630.

the presumption that most citizens are law abiding, and the reality that the need to defend oneself may suddenly arise in a host of locations outside the home,” the majority’s holding in *Heller* could foreseeably invalidate a number of state statutes in which the government does not have a compelling interest for abrogating the right.⁵⁶ As will be shown, Justice Stevens’ prediction is correct. While the General Assembly may rightly regulate the carrying of weapons in “sensitive areas,” its determination that an entire geographic area (much less the entire state) becomes a “sensitive area” when a state of emergency is declared is an overly broad use of its legislative authority.

B. Explanation of McDonald

Before discussing state judicial opinions that have bearing on the constitutionality of section 14-288.7, this Recent Development will outline the opinion of the United States Supreme Court in *McDonald v. City of Chicago*.⁵⁷ In *McDonald*, the petitioners challenged a Chicago city ordinance that prohibited an individual from possessing “any firearm unless such person is the holder of a valid registration certificate for such firearm.”⁵⁸ The Chicago ordinance “prohibit[ed] registration of most handguns, thus effectively banning handgun possession by almost all private citizens who reside in the City.”⁵⁹ The Supreme Court struck down this ordinance, incorporating the fundamental right set forth in *Heller* against the states by way of the Due Process Clause of the Fourteenth Amendment.⁶⁰ The *McDonald* Court reiterated that the right to keep and bear arms was deemed “fundamental by those who drafted and ratified the Bill of Rights.”⁶¹ Moreover, the Court emphasized that “[a] clear majority of the States in 1868 . . . recognized the right to keep and bear arms as being among the foundational rights necessary to our system of Government” and that it is therefore “clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.”⁶² Additionally, the Court noted that since fifty-eight U.S. Senators and 251 Members of the House of Representatives submitted an *amicus* brief urging that the right was fundamental, thereby indicating that a significant

56. *Id.* at 679–80 (Stevens, J., dissenting).

57. 130 S. Ct. 3020 (2010).

58. *Id.* at 3026.

59. *Id.*

60. *See id.* at 3036.

61. *Id.* at 3037.

62. *Id.* at 3042.

majority of our nation's elected representatives hold the right to keep and bear arms in very high regard.⁶³

In addition to incorporating Second Amendment rights against the states, the *McDonald* Court further elaborated on the nature of these rights. Specifically, the Court explained that *Heller* was “unmistakably” clear that “individual self-defense is ‘the *central component*’ of the Second Amendment right.”⁶⁴ Moreover, the Court stated that Second Amendment rights are “deeply rooted in this Nation’s history and traditions.”⁶⁵ Thus, *McDonald* makes clear that the rights secured by the Second Amendment are fully applicable to the states; consequently, the General Assembly must have a compelling interest before it may restrict these fundamental rights.

C. *The Impact of North Carolina Case Law on the Constitutionality of Section 14-288.7*

The General Assembly of North Carolina certainly has a compelling interest in ensuring public safety when an emergency strikes, but the suspension of the rights of law-abiding citizens to carry firearms is at least constitutionally suspect in light of the Supreme Court’s determination that Second Amendment rights are fundamental. Decisions by North Carolina’s highest court also support the determination that Second Amendment rights are fundamental. For example, in *State v. Kerner*,⁶⁶ the Supreme Court of North Carolina defined “the extent to which the right of the people to bear arms can be restricted.”⁶⁷ In *Kerner*, the court explained:

[T]he Legislature can prohibit the carrying of concealed weapons but no further. This constitutional guaranty was construed in *State v. Speller*, 86 N.C. 697, in which it was held that the distinction was between the “right to keep and bear arms” and the “practice of carrying concealed weapons.” The former is a sacred right based upon the experience of the ages in order that the people may be accustomed to bear arms and ready to use them for the protection of their liberties or their country when occasion serves.⁶⁸

The *Kerner* court’s high regard for the right is by no means anomalous. In *State v. Boone*,⁶⁹ the court reversed a lower court’s conviction of a mail carrier who carried a concealed firearm while

63. *Id.* at 3049; see Styles, *supra* note 43, at 139 (citing *McDonald*, 130 S. Ct. at 3049).

64. *McDonald*, 130 S.Ct. at 3036 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008)).

65. *Id.* (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

66. 181 N.C. 574, 107 S.E. 222 (1921).

67. *Id.* at 575, 107 S.E. at 223.

68. *Id.*

69. 132 N.C. 1107, 44 S.E. 595 (1903).

delivering the mail.⁷⁰ In making this determination, however, the court made unequivocally clear that “[i]f the mail carrier thought that carrying a weapon was necessary for the protection of the mails, or of himself, or for any other reason, or chose to carry it for no reason at all, *he had a right to do so*, but he must carry it openly.”⁷¹ Thus, the court’s decision affirmed the General Assembly’s ability to restrict the *manner* in which individuals carry a firearm off their premises, but the North Carolina Constitution prevents the state from entirely abrogating the right.⁷² Several more early decisions confirm the Supreme Court of North Carolina’s recitation that the right to bear arms is fundamental.⁷³

Following these early decisions of North Carolina’s highest court, the fundamental nature of the right to bear arms has not been called into question. Even so, decisions since that time have clarified how the right may be regulated. In *State v. Dawson*,⁷⁴ the court articulated that “the right of individuals to bear arms is not absolute, but is subject to regulation.”⁷⁵ More specifically, the *Dawson* court held that while individuals maintain a right to bear arms, they do not have the right to “bear arms to the terror of the people.”⁷⁶ The court in *State v. Fennell*⁷⁷ upheld the constitutionality of section 14-288.8, which prohibits the possession of “any weapon of mass death and destruction.”⁷⁸ These weapons of mass destruction include “explosive or incendiary” devices, automatic weapons, and sawed-off shotguns.⁷⁹ Thus, the court’s holding in *Fennell* merely affirms the right of the General Assembly to proscribe the *types* of weapons that individuals may carry or possess; it in no way enables the legislature to ban the carrying or possession of all firearms.⁸⁰ This view is consistent with the holdings of the Supreme Court of the United States in *Heller* and *McDonald* discussed above. Similarly, the Supreme Court of North Carolina recently upheld the constitutionality of section 14-269.4, which prohibits individuals from carrying firearms in courthouses and other

70. *Id.* at 1109, 44 S.E. at 595.

71. *Id.* (emphasis added).

72. *Id.* at 1108, 44 S.E. at 595.

73. *See, e.g.*, *State v. Reams*, 121 N.C. 556, 557–58, 27 S.E. 1004, 1005–06 (1897) (upholding the right of the General Assembly to criminalize carrying concealed weapons but simultaneously affirming an individual’s right to openly carry a firearm); *State v. Speller*, 86 N.C. 697, 700–01 (1882) (explaining that while the legislature may rightly prohibit the carrying of concealed weapons outside of one’s home, individuals may still carry weapons openly for the purpose of self-defense).

74. 272 N.C. 535, 159 S.E.2d 1 (1968).

75. *Id.* at 546, 159 S.E.2d at 9.

76. *Id.* at 548, 159 S.E.2d at 11.

77. 95 N.C. App. 140, 382 S.E.2d 231 (1989).

78. N.C. GEN. STAT. ANN. § 14-288.8(a) (West 2011).

79. § 14-288.8(c).

80. *Fennell*, 95 N.C. App. at 144–45, 382 S.E.2d at 233–34.

enumerated places that are owned and operated by the state.⁸¹ In making its determination, the court explained that the General Assembly may restrict the right to bear arms “within proscribed limits,” thereby implying that the General Assembly could never impose an outright ban.⁸² Finally, in *Britt v. State*,⁸³ the Supreme Court of North Carolina analyzed the constitutionality of a statute that prevented all convicted felons from possessing firearms, even after they had completed their sentences and their other rights had been restored.⁸⁴ The court made much of the fact that the statute “functioned as a total and permanent prohibition on possession of any type of firearm in any location.”⁸⁵ Consequently, the court held this regulation to be unconstitutional *as applied* to the defendant, noting that he had only committed a nonviolent felony and that he had otherwise completed his sentence.⁸⁶

The analysis of the foregoing cases makes clear that the right to keep *and bear* arms is a fundamental right protected by the Second Amendment to the United States Constitution and article 1, section 30 of the North Carolina Constitution.⁸⁷ These cases also show that the right to bear arms is subject to reasonable regulation. The General Assembly may pass legislation that restricts the time, place, and manner in which an individual may carry a firearm, and it may even limit the types of firearms that an individual can carry.⁸⁸ Nevertheless, any attempt by the General Assembly to impose a statute such as section 14-288.7 that prohibits the carrying of all firearms in any place except one’s own premises—even if only for a limited time—is constitutionally suspect. Such a restriction is the functional equivalent of an outright ban that would deprive individuals of their ability to defend themselves—the “core lawful purpose” of the Second Amendment—at a time when self-defense may be the only defense that they have.⁸⁹

81. See § 14-269.4; *State v. Sullivan*, 202 N.C. App. 553, 556, 691 S.E.2d 417, 419–20 (2010).

82. *Sullivan*, 202 N.C. App. at 5, 691 S.E.2d at 419.

83. 363 N.C. 546, 681 S.E.2d 320 (2009).

84. See § 14-415.1(a).

85. *Britt*, 363 N.C. at 550, 681 S.E.2d at 323.

86. *Id.* For an argument that non-violent convicted felons should regain their right to keep and bear arms following the completion of their sentences, see Styles, *supra* note 43 (explaining that vast overcriminalization is steadily eroding the right to bear arms because an increasing number of non-violent and otherwise innocuous acts are being classified as felonies).

87. See N.C. CONST. art. I, § 30; *supra* note 50 and accompanying text.

88. See *supra* notes 66–67 and accompanying text.

89. See *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008); Memorandum and Points and Authorities in Support of Plaintiffs’ Motion for Summary Judgment at 14, *Bateman v. Perdue*, No. 5:10-cv-265-H (E.D.N.C. Nov. 8, 2010).

III. LEGISLATIVE ATTEMPTS AT AMENDING THE LAW

A. *House Bill 257*

In the wake of the United States Supreme Court's decisions in *Heller* and *McDonald*, members of the North Carolina General Assembly proposed several bills that would remedy the constitutional defects of section 14-288.7. The first of these bills, House Bill 257,⁹⁰ was introduced on February 23, 2009. The bill proposed the following limitation on section 14-288.1: "Nothing in this Article shall be construed to authorize, or to allow ordinances that authorize, the taking, confiscation, or seizure of lawfully possessed firearms, ammunition, or ammunition components."⁹¹ Perhaps more importantly, however, this bill would amend section 14-288.7(a)(1), which makes it unlawful for anyone (except emergency officials) to transport firearms or ammunition off one's own premises "in any area . . . [i]n which a declared state of emergency exists."⁹² Specifically, section 14-288.7(a)(1) would be amended to read: "in any area . . . in which a declared state of emergency exists, *unless the dangerous weapon transported or possessed is a lawfully possessed firearm, ammunition, or an ammunition component.*"⁹³ Notably, this bill would not amend section (a)(2), thus leaving the prohibition on carrying firearms into an area where a riot is occurring intact.⁹⁴ Nevertheless, this bill, which was sponsored by thirty-one representatives, effectively died after being referred to the judiciary committee.⁹⁵

B. *House Bill 1241*

Two months after the introduction of House Bill 257, members of the General Assembly proposed House Bill 1241.⁹⁶ This bill was broader than House Bill 257 in that it proposed to allow individuals with concealed carry permits to possess firearms in locations where they were currently forbidden to do so.⁹⁷ Most significant to the present analysis is the bill's

90. H.B. 257, 2009 Gen. Assemb., 2009–2010 Sess. (N.C. 2009), available at <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H257v1.pdf>.

91. *Id.*

92. N.C. GEN. STAT. § 14-288.7(a)(1) (2011).

93. *Id.* (emphasis added).

94. *Id.*

95. See *House Bill 257: No Seizure of Lawful Firearms in Emergency*, N.C. GEN. ASSEMB., <http://www.ncga.state.nc.us/gascripts/billlookup/billlookup.pl?Session=2009&BillID=H257> (last visited Jan. 11, 2011).

96. H.B. 1241, 2009 Gen. Assemb., 2009–2010 Sess. (N.C. 2009), <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H1241v1.pdf>.

97. *Id.* In particular, the bill sought to allow "concealed carry permit holders to have a concealed handgun locked in a motor vehicle on educational property, and to carry a concealed handgun into assemblies, establishments where alcoholic beverages are sold [so long as the

attempt to amend section 14-288.7(b). In addition to allowing public officials to carry firearms during emergencies and riots, House Bill 1241 recommended that individuals who had lawfully obtained “a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24” also be allowed to carry firearms when an emergency is in effect.⁹⁸ This bill also died in committee.⁹⁹

C. House Bill 2031

The General Assembly’s third attempt at amending section 14-288.7 came on May 26, 2010. House Bill 2031¹⁰⁰ restated and elaborated on the proposals set forth in House Bill 257. The bill’s thirty-five sponsors were unmistakably clear about the bill’s intentions; the title of House Bill 2031 says it all:

An Act to Clarify that the Laws Relating to Declared States of Emergency Do Not Authorize the Seizure of Lawfully Possessed Firearms, Ammunition, or Ammunition Components and Do Not Authorize Restrictions or Prohibitions on the Possession, Transportation, Sale, Purchase, Storage, or Use of Lawfully Possessed Firearms, Ammunition, or Ammunition Components; And to Appropriate Funds to the Community Colleges System Office for Training Law Enforcement Officers in the Proper Application of this Act.¹⁰¹

Much like House Bill 1241, this bill would make it lawful for individuals who otherwise lawfully possessed firearms to continue to carry firearms and ammunition during a declared state of emergency. More specifically, proposed section 14-288.7(b1) states, “This section does not

permit holder does not drink], at parades, and *during emergencies and riots.*” *Id.* (emphasis added).

98. *Id.* Significantly, in order to be granted a concealed carry permit, individuals must have “completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force.” N.C. GEN. STAT. ANN. § 14-415.12(a)(4) (West 2011). Additionally, an applicant must submit a full set of fingerprints to the sheriff of his respective county and must undergo an extensive background check. *See id.* § 14-415.1. Finally, individuals are automatically disqualified from obtaining a permit if they are an “unlawful user” of any controlled substance, have ever been convicted of a felony (excepting certain white collar crimes), have ever been adjudicated as “lacking mental capacity or mentally ill,” or are otherwise “ineligible to own, possess, or receive a firearm under the provisions of State or federal law.” *See id.* § 14-415.12(b).

99. *House Bill 1241: Allow Concealed Handgun Certain Locations*, N.C. GEN. ASSEMBLY, <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=h1241&submitButton=Go> (last visited Jan. 11, 2011).

100. H.B. 2031, 2010 Gen. Assemb., 2009–2010 Sess. (N.C. 2010), available at <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H2031v1.pdf>.

101. *Id.*

apply to the transport or possession of lawfully possessed firearms, ammunition, or ammunition components.”¹⁰² As of the date of this writing, this bill had also failed to make it out of committee.¹⁰³

IV. THE PRACTICAL IMPLICATIONS OF SUSPENDING THE RIGHT

Part I of this paper explained that section 14-288.7 was only one small part of sweeping legislation that the General Assembly enacted in response to the civil unrest of the 1960s. The General Assembly most certainly had a rational basis for passing this legislation. What is more, it is undeniable that North Carolina has a compelling interest in preserving order and protecting life and property when there is an imminent threat of disaster or civil disorder. Consequently, restrictions on the right to bear arms, despite being deemed a fundamental right, can nevertheless be imposed if the government’s interest is compelling, *so long as these restrictions are narrowly tailored to further that compelling government interest*.¹⁰⁴ This part contends that section 14-288.7 is unconstitutional due to its overly broad usurpation of the fundamental rights of all private citizens. Specifically, section 14-288.7 has been employed on numerous occasions in recent years to restrict the fundamental rights of North Carolina citizens during seemingly innocuous emergencies. It is hard to believe that the 1969 General Assembly that passed section 14-288.7—the legislative body that lived through some of the worst race riots in our nation’s history—would consider a winter storm to be an “emergency” that requires the suspension of the right to bear arms. In fact, it is likely that the legislators of that generation would find today’s “emergencies” laughable.¹⁰⁵

102. *Id.*

103. *See House Bill 2031: No Seizure of Firearms in Emergency/Funds*, N.C. GEN. ASSEMB., <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2009&BillID=h2031&submitButton=Go> (last visited Jan. 16, 2011).

104. *See, e.g.,* *Lawrence v. Texas*, 539 U.S. 558, 593 (2003) (Scalia, J., dissenting) (“[T]he Due Process clause prohibits states from infringing *fundamental* liberty interests, unless the infringement is narrowly tailored to serve a compelling state interest.” (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997))).

105. To be fair, the rationale most often given for declaring that a state of emergency exists is that a declaration is necessary to free up resources and personnel to respond to whatever situation the state may be facing. However, the fact that the formal declaration of an emergency is used primarily to free up resources and not to make the public aware of an actual, serious emergency cuts against the government’s argument that restricting the firearm rights of hunters and concealed-carry holders makes the state’s citizenry more secure.

A. *Overview of Declared States of Emergency in North Carolina During the Past Ten Years*

From August 30, 2002, through February 23, 2011, the governors of North Carolina declared more than thirty states of emergency.¹⁰⁶ During this time, *not one* of these declarations was issued in response to a riot or other civil disorder—the primary reason that the General Assembly enacted section 14-288.7 in 1969.¹⁰⁷ At least a dozen of these declarations were issued from September 1, 2004, to January 10, 2010, often affecting the entire state.¹⁰⁸

While many of these declarations were issued in response to hurricanes and winter storms, other incidents that led to emergency declarations include an interruption in the “supply of feed and supplies to our poultry industry”¹⁰⁹ and a gas shortage caused by a winter storm.¹¹⁰ Perhaps one of the best examples of how section 14-288.7 unnecessarily restricted the right of individuals to bear arms came in the summer of 2004. On June 1 of that year, Governor Michael F. Easley declared a state of emergency in response to an ice storm that occurred on January 26–27, *over five months* after the event leading to the emergency declaration had occurred.¹¹¹ Significantly, the purpose of this declaration was to make certain towns eligible for “small business disaster loans”; nevertheless, these towns were in an “area [i]n which a declared state of emergency exist[ed],” and the firearm rights of these towns’ residents were thereby

106. See *Executive Orders*, STATE OF NORTH CAROLINA, OFFICE OF GOVERNOR BEV PERDUE, <http://www.governor.state.nc.us/NewsItems/ExecutiveOrderList.aspx> (last visited Jan. 11, 2011); *Executive Order Archive 2001–2009*, STATE OF NORTH CAROLINA, OFFICE OF GOVERNOR BEV PERDUE, <http://www.governor.state.nc.us/NewsItems/execOrderArchive.aspx> (last visited Jan. 11, 2011).

107. See *supra* Part I.A.

108. See Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Summary Judgment at 2–3, *Bateman v. Perdue*, No. 5:10-cv-265-H (E.D.N.C. Nov. 8, 2010) (“Executive Order 65 (Hurricane Frances, Sept. 1, 2004); Executive Order 68 (Hurricane Ivan, Sept. 16, 2004); Executive Order 70 (Hurricane Jeanne, Sept. 27, 2004); Executive Order 71 (ice and snow, Wake County, Jan. 19, 2005); Executive Order 82 (Hurricane Katrina, Sept. 3, 2005); Executive Order 88 (Hurricane Ophelia, Sept. 10, 2005); Executive Order 94 (Hurricanes Katrina and Ophelia, Nov. 28, 2005); Executive Order 107 (Tropical Storm Ernesto, Aug. 31, 2006); Executive Order 113 (Dare County severe weather, Nov. 29, 2006); Executive Order 142 (Hyde, Tyrrell, Washington Counties, wildfire, June 6, 2008); Executive Order 144 (Tropical Storm Hanna, Hurricane Ike, Sept. 4, 2008); Executive Order 47 (winter storm, January 10, 2010)”).

109. Exec. Order No. 48, 24 N.C. Reg. 1585, 1585–86 (Mar. 15, 2010), by Beverly E. Perdue, Governor of North Carolina.

110. See Exec. Order No. 43, 24 N.C. Reg. 1225, 1225–26 (Feb. 1, 2010), by Beverly E. Perdue, Governor of North Carolina.

111. Exec. Order No. 59, 19 N.C. Reg. 1, 1 (July 1, 2004), by Michael F. Easley, Governor of North Carolina (emphasis added).

restricted.¹¹² What is more, these emergency declarations (like many others) may remain in effect for up to thirty days without being renewed and may be renewed several times, up to a period of 120 days.¹¹³ It is the tremendous impact that declarations such as these may have on individuals' fundamental rights that has prompted members of the General Assembly to seek to amend section 14-288.7. Accordingly, the following sections attempt to shed further light on the defects of section 14-288.7 in the hopes that the General Assembly will quickly pass remedial legislation.

B. Restricting Second Amendment Rights during an Emergency is Logically Flawed

If a state of emergency is declared while hunters are in the woods (and as a result have no way of knowing that a state of emergency exists), how are they supposed to return home without violating the restrictions imposed by the emergency declaration? If a concealed carry holder is at a local family restaurant when the declaration is issued, what happens if he is stopped by law enforcement for a broken taillight on his way home? To be sure, it is wholly impracticable for sportsmen and other law-abiding citizens to leave their lawfully possessed firearms and return home without them—this would be violative of laws that are meant to keep firearms out of the hands of minors,¹¹⁴ notwithstanding the fact that abandoning one's firearms could actually result in the deaths of innocent people. These hypotheticals demonstrate the legal contradictions that are often inherent in sweeping statutes such as section 14-288.7; to say that section 14-288.7 could result in many "catch-22s" is most certainly an understatement. Indeed, it would be impossible for many citizens to comply fully with the requirements of this statute, especially in light of the frequency, scope, and duration of emergency declarations that have been issued during the past ten years. As this Recent Development has shown, the General Assembly enacted section 14-288.7 in response to the race riots that were sweeping the country during the late 60s and early 70s, not for the purpose of freeing up government resources to respond to a snowstorm.¹¹⁵

In its report to the General Assembly on the constitutionality and efficacy of section 14-288.7, the Governor's Advisory Committee

112. See N.C. GEN. STAT. ANN. § 14-288.7(a)(1) (West 2011); Exec. Order No. 59, *supra* note 111. Other emergencies that were declared to free up these small business disaster loans include: Exec. Order No. 49, 17 N.C. Reg. 1829, 1829 (May 1, 2003) (severe drought, Eden, NC), by Michael F. Easley, Governor of North Carolina; Exec. Order No. 36, 17 N.C. Reg. 1030, 1030-31 (Dec. 16, 2002) (severe drought, City of Statesville, Iredell Co., NC), by Michael F. Easley, Governor of North Carolina.

113. Exec. Order No. 59, *supra* note 111.

114. § 14-315.1.

115. See *supra* Part I.A.

discussed the need for individuals to have notice in the event an emergency is declared: “If a defendant were charged with violating an obscure provision of a proclamation or one given little publicity, then he would surely have grounds for acquittal.”¹¹⁶ Moreover, one can surmise that the Committee (and by extension, the General Assembly) assumed that individuals’ common experiences would inform their understanding of when an emergency was likely to be declared. For example, if there are riots in the street or buildings on fire, citizens may reasonably conclude that a state of emergency may be declared. In contrast, a snowstorm in Western North Carolina is not an uncommon event, just as a tropical storm coming ashore on the coast is by no means surprising.¹¹⁷ Consequently, many citizens may never even realize that a state of emergency is in effect unless they happen to turn on the news or check their local news channel’s website. Not surprisingly, then, even Governor Perdue recognized that section 14-288.7 does not necessarily make the citizens of North Carolina more secure when she declared a state of emergency “due to the expected impact of an approaching winter storm” on January 10, 2011.¹¹⁸ Governor Perdue stated explicitly in this declaration that “[i]t does not trigger the limitations on weapons in G.S. § 14-288.7 or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages.”¹¹⁹

C. *Restricting Second Amendment Rights During an Emergency is Counterproductive*

Assuming that individuals are aware that a state of emergency has been declared and that it is therefore unlawful for them to possess firearms off their own premises so long as a state of emergency is in effect, the

116. REPORT ON CIVIL DISORDERS, *supra* note 17, at 59.

117. To be fair, individuals in today’s society may expect that an emergency will be declared in response to these events, as this is the means by which resources are now freed up to respond to disasters. However, the fact that many individuals view emergency declarations simply as a means to free up resources underlines the fact that emergency declarations are not perceived as a warning of imminent danger. It is therefore highly unlikely that these individuals would recognize that emergency declarations trigger an outright ban on the possession of firearms outside one’s home or business.

118. Exec. Order No. 78, 25 N.C. Reg. 1642, 1642–43 (Feb. 1, 2011), by Beverly E. Perdue, Governor of North Carolina. The limitations imposed by section 14-288.7 were explicitly disavowed in other emergency declarations as well. *See, e.g.*, Exec. Order No. 75, 25 N.C. Reg. 1527, 1527–28 (Jan. 18, 2011), by Beverly E. Perdue, Governor of North Carolina, (concerning the impact of a winter storm); Exec. Order No. 66, 25 N.C. Reg. 1057, 1057–58 (Nov. 1, 2010) (regarding Tropical Storm Nicole), by Beverly E. Perdue, Governor of North Carolina.

119. Exec. Order No. 78, *supra* note 118. It is worth noting the uncertainty regarding the legality of Governor Perdue’s ability to issue an emergency declaration that does not trigger § 14-288.7. The statute does not provide the Governor with any discretion as to which emergencies the statute applies; rather, the statute—as written—must apply to all declared emergencies, notwithstanding any disclaimers by the governor.

constitutionality of section 14-288.7 must still be reconsidered in light of the Supreme Court's determination that Second Amendment rights are fundamental and apply with equal force to the states.¹²⁰ This is especially true because of the Supreme Court's conclusion that self-defense is "the core lawful purpose" of the Second Amendment.¹²¹ In the event of a real emergency (i.e., not simply a declared one, but an actual emergency such as the 9/11 terror attacks or the destruction caused by Hurricane Katrina), it is highly likely that law enforcement and emergency responders will be overwhelmed. The state has a finite amount of resources with which to respond to any emergency; as such, law enforcement officers are not (and cannot be) omnipresent. Indeed, the "thin blue line" is stretched precariously thin even on the best of days. Consequently, the only protection that citizens may have from looters, muggers, rapists, and murderers will be the protection that they can afford themselves. This was the sentiment of many law-abiding citizens of New Orleans in the aftermath of Hurricane Katrina. In New Orleans, firearm rights were suspended at a time when individuals needed them most for self-defense.¹²²

In the days following the landfall of Hurricane Katrina, utter lawlessness gripped the region. In New Orleans, looters ravaged the city, often "in full view of police and National Guard troops."¹²³ To make matters worse, while "[m]any officers . . . stuck it out during those days [and] behaved selflessly, saving lives while working in the worst of conditions. However, . . . hundreds of officers abandoned their posts, and some were spotted stealing from stores."¹²⁴ Far worse are the questionable killings of several of the city's residents by law enforcement officials. Autopsies and investigations revealed the following:

A police officer shot Danny Brumfield Sr. in the back Two police officers shot Keenon McCann repeatedly for brandishing a handgun. But when officers approached McCann, they couldn't find a weapon. . . . An officer shot Matthew McDonald in the back with an AR-15 assault rifle, killing the man. McDonald's relatives, who

120. *See supra* Part II.

121. *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008).

122. *See* Kopel, *supra* note 2 ("After a car-jacking and an attack on a home by looters, the neighborhood recognized the need for a common defense; they shared firearms, took turns on patrol, and guarded the elderly. [Nevertheless, police and National Guard soldiers] beg[an] breaking into homes at gunpoint [and] confiscating [individuals'] lawfully-owned firearms.").

123. *Looters Take Advantage of New Orleans Mess*, MSNBC.COM (Aug. 30, 2005, 1:44 PM), http://www.msnbc.msn.com/id/9131493/ns/us_news-katrina_the_long_road_back/.

124. *New Orleans Police Department Shootings After Katrina Under Scrutiny*, NOLA.COM, http://www.nola.com/crime/law_and_disorder/index.ssf/2009/12/nopd_acts_under_fire.html (last updated Aug. 5, 2010, 2:42 PM).

live in Connecticut, said authorities told them he was murdered by another civilian.¹²⁵

In the midst of all the chaos, P. Edwin Compass, the superintendent of the New Orleans Police Department, announced that “[a]nyone with a weapon, even one legally registered, will have it confiscated . . . ‘No one will be able to be armed,’ Compass said. ‘Guns will be taken. Only law enforcement will be allowed to have guns.’”¹²⁶ Accordingly, police and National Guard troops moved from house to house, confiscating firearms and urging people to leave the city.¹²⁷ Interestingly, in one more-affluent neighborhood, “police took their weapons but let them stay in their homes.”¹²⁸ Before the confiscation began, law-abiding citizens were at least capable of protecting themselves and their homes; indeed, “[w]ith no way to call for help, and police unable to respond, honest citizens were able to defend themselves and their neighbors against looters, arsonists and other criminals.”¹²⁹ Following the confiscation, however, one writer remarked that the City of New Orleans “devolved . . . [into] an anarcho-tyranny that refuse[d] to protect the public from criminals while preventing people from protecting themselves.”¹³⁰

While it is true that taking firearms from individuals’ homes runs further afoul of the Second Amendment than a ban on carrying firearms outside the home, the outright prohibition of possession of firearms outside one’s home or business during an emergency still subverts the right of individuals to bear arms for the purpose of self-defense. As this Recent Development has shown, the Second Amendment not only protects the right to keep arms for the purpose of self-defense but also the right to *bear* arms for that same purpose.¹³¹ After Hurricane Katrina, the rising floodwaters forced many people from their homes and businesses. Were these people to lose their right to defend themselves because of tragic and unforeseen circumstances that were completely outside their control? What of the countless numbers of families and children who were compelled to flee? The United States Congress recognized the plight of these individuals, and the President signed into law an Act that prohibits the federal

125. *Id.*

126. Dwyer & Tyson, *supra* note 7.

127. *Hurricane Katrina Door to Door Firearms Confiscation* (ABC World News television broadcast, Sept. 8, 2005), available at <http://www.youtube.com/watch?v=kf8trl69kzo>.

128. *Id.*

129. *State “Emergency Powers” vs. The Right to Arms*, NRA-ILA.ORG (Oct. 15, 2007, 12:00 AM), <http://www.nra.org/issues/factsheets/read.aspx?id=191> (citations omitted).

130. Kopel, *supra* note 2.

131. *See supra* Part II.

government from confiscating firearms during an emergency.¹³² Specifically, the bill states:

No officer or employee of the United States (including any member of the uniformed services), or person operating pursuant to or under color of Federal law, or receiving Federal funds, or under control of any Federal official, or providing services to such an officer, employee, or other person, while acting in support of relief from a major disaster or emergency, may . . . prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by any person *where such possession is not otherwise prohibited by Federal, State, or local law*; or prohibit the *carrying* of firearms by any person otherwise authorized to carry firearms under Federal, State, or local law.¹³³

This statute makes clear that any individual who “receiv[es] federal funds” is forbidden from “prohibit[ing] the carrying of firearms by any person otherwise authorized to carry firearms under Federal, state, or local law.”¹³⁴ Virtually every state and local government receives some funding from the federal government.¹³⁵ Consequently, it conceivably follows that any attempt by the State of North Carolina or local governments to prohibit individuals from lawfully carrying firearms in accordance with state and federal laws would violate the provisions of this Act. At the very least, the passage of this Act demonstrates that an overwhelming majority of the United States Congress recognizes that the right to carry a firearm is a fundamental right that should not be suspended, *especially* during emergencies when individuals are most likely to need them for the “core lawful purpose” of self-defense.¹³⁶ Accordingly, the General Assembly should reevaluate the constitutionality and usefulness of section 14-288.7 because the “Due Process Clause prohibits States from infringing *fundamental* liberty interests, unless the infringement is narrowly tailored to serve a compelling state interest.”¹³⁷

132. See 2007 Department of Homeland Security Appropriations Act, Pub. L. No. 109-295, tit. V, § 706, 120 Stat. 1355, 1391–92 (2006) (codified at 42 U.S.C. § 5207 (2006)). This Act passed by a vote of 322–99 in the House and 84–16 in the Senate. *Congress Passes NRA-backed Disaster Recovery Personal Protection Act of 2006*, NRA-ILA.ORG (Oct. 2, 2006), <http://www.nraila.org/News/Read/NewsReleases.aspx?ID=8259>.

133. § 706, 120 Stat. 1355, 1391–92 (emphasis added).

134. *Id.*

135. According to a report by the Congressional Budget Office, four percent of the revenues that local governments receive is “direct aid from the federal government.” CONG. BUDGET OFFICE, FISCAL STRESS FACED BY LOCAL GOVERNMENTS 1 (2010), *available at* http://www.cbo.gov/ftpdocs/120xx/doc12005/12-09-Municipalities_Brief.pdf.

136. See *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008).

137. See *Lawrence v. Texas*, 539 U.S. 558, 593 (2003) (Scalia J., dissenting) (citations omitted).

CONCLUSION

Presumably, the government's purpose in preventing the citizens of North Carolina from carrying firearms off their premises during a declared emergency is to protect life and property. While the state is warranted in using its police powers to protect its citizenry, prohibiting individuals who may otherwise lawfully carry firearms off their own premises from carrying them or transporting them during an emergency does not make people's lives or property any safer. Even on the best of days, it is highly unlikely that police would arrive in time to prevent a crime from occurring. It is for this reason that "when something bad happens, instant responders are better than 'first responders.'" ¹³⁸

North Carolina's lawmakers have recognized the rights of law-abiding citizens to hunt, shoot for sport, and otherwise carry firearms for the purpose of self-defense. The Governor of North Carolina has also recognized the value of these rights by refusing to impose the restrictions set forth in section 14-288.7 in multiple emergency declarations.¹³⁹ Furthermore, the high regard in which early North Carolina courts held the Second Amendment and article I, section 30 of the North Carolina Constitution, coupled with the United States Supreme Court's determination that Second Amendment rights are fundamental, casts serious doubt on the constitutionality of section 14-288.7.

Indeed, the revocation of these rights during a declared state of emergency effectively nullifies these legal rights. Section 14-288.7 undoubtedly serves a compelling government interest, but it is by no means narrowly tailored to achieve the government's goals. As a result, the General Assembly of North Carolina must pass remedial legislation as soon as possible in order to vindicate the fundamental rights of North Carolina's law-abiding citizens.

JOSHUA J. STYLES**

138. Ben Neary, *Wyoming Governor Signs Concealed Gun Bill*, REALCLEARPOLITICS.COM (Mar. 4, 2011), http://www.realclearpolitics.com/news/ap/politics/2011/Mar/04/wyoming_governor_signs_concealed_gun_bill.html.

139. See *supra* notes 118–119 and accompanying text.

** The author would like to thank John Holton of the North Carolina Law Review for his insightful comments throughout the editing process and Charlotte and Cara Noelle for their constant love and support.