

THE RIGHT TO ARMED SELF-DEFENSE IN THE LIGHT OF LAW  
ENFORCEMENT ABDICATION

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INTRODUCTION

The individual right to keep and bear arms has two primary rationales. The first is to provide citizens with a means to oppose tyrannical government. The second is to provide citizens with a means to defend themselves, their loved ones, and their property from criminal aggression.

In *District of Columbia v. Heller*,<sup>1</sup> the Supreme Court held for the first time that the Second Amendment protects an individual right to possess a handgun. *Heller* invalidated a D.C. law that in practice amounted to an “absolute prohibition of handguns held ... for self-defense in the home.” The Court proclaimed that self-defense is “the central component of the right” to keep and bear arms.<sup>2</sup> Four Justices dissented.

The majority and dissent clashed over whether the right to self-defense with firearms is anachronistic in modern times, when police forces are expected to enforce law and order. The majority observed that although some “[u]ndoubtedly some think that the Second Amendment is outmoded in a society ... where well-trained police forces provide personal security,” it was “not the role of th[e] Court to pronounce the ... Amendment extinct.”<sup>3</sup> The dissenting Justices, by contrast, asserted that the mid-nineteenth-century “development of modern urban police departments, by diminishing the need to keep loaded guns nearby in case of intruders, ... ha[s] moved any ... right” to armed home defense “even further away from the heart of the Amendment’s more basic protective ends.”<sup>4</sup>

Two years later, the Supreme Court applied the right to keep and bear arms to the states via the Fourteenth Amendment’s Due Process Clause.

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<sup>1</sup> 554 U.S. 570 (2008).

<sup>2</sup> *Id.* at 599.

<sup>3</sup> *Id.* at 636.

<sup>4</sup> 554 U.S. at 715 (Breyer, J., joined by Stevens, Souter, & Ginsburg, JJ., dissenting).

The Court's opinion in *McDonald v. City of Chicago*<sup>5</sup> referenced "self-defense" eighty-three times.

This article defends the position that the right to have the means of self-defense is still important today, in particular in light of the civil unrest of the Summer of 2020. The unwillingness or inability of local authorities to stop looting, rioting, and other lawless and violent behavior is powerful evidence that, contrary to the *Heller* dissenter's position, Americans still need firearms to defend themselves.

Accepting that the Second Amendment protects the basic right of law-abiding citizens to possess firearms for self-defense does not even begin to settle the issue of what sorts of police-power regulations of individual possession of firearms the Constitution permits. Such a discussion is beyond the scope of this Article. But with the individual right to own a firearm still hanging by a 5-4 thread on the Supreme Court, in grave danger from potential changes in Court personnel, it is important to establish that self-defense is not an anachronistic rationale for that right.

Moreover, while *Heller* and *McDonald* only directly addressed self-defense within the home, a constitutional right to self-defense implies that the government may not ban or otherwise unduly limit carrying firearms outside the home. Justice Thomas, speaking for himself and Justice Gorsuch, has written, "I find it extremely improbable that the Framers understood the Second Amendment to protect little more than carrying a gun from the bedroom to the kitchen."<sup>6</sup> Some regulation of public carry is permissible, according to Thomas, but "an effective ban on all forms of public carry is not."<sup>7</sup>

Some lower courts agree,<sup>8</sup> while other courts have held that any right to possess a firearm for self-defense outside the home is outside the core of the Second Amendment. The latter courts apply a very weak version of intermediate scrutiny, with a strong presumption favoring government regulation.<sup>9</sup> In practice, this means that these courts uphold "may carry"

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<sup>5</sup> 561 U.S. 742 (2010),

<sup>6</sup> *Peruta v. California*, 137 S. Ct. 1995, 1998 (2017) (Thomas, J., dissenting from denial of certiorari).

<sup>7</sup> *Id.*

<sup>8</sup> See *Young v. Hawaii*, 896 F.3d 1044, 1074 (9th Cir. 2018) ("for better or for worse, the Second Amendment does protect a right to carry a firearm in public for self-defense"), vacated pending rehearing en banc, 915 F.3d 681, 682 (9th Cir. 2019); *Wrenn v. District of Columbia*, 864 F.3d 650, 661, 668 (D.C. Cir. 2017); *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012) (invalidating such a ban, and noting that "self-defense ... is as important outside the home as inside").

<sup>9</sup> E.g., *N.Y. State Rifle & Pistol Ass'n v. City of New York*, 883 F.3d 45, 59 (2d Cir. 2018), vacated and remanded, 140 S.Ct. 1525 (2020); *Drake v. Filko*, 724 F.3d 426, 430 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013); *Kachalsky v. County of Westchester*, 701 F.3d 81, 96 (2d Cir. 2012).

laws that are applied so stringently that only a tiny fraction of the relevant population is eligible to obtain a license to carry a firearm. Yet the looting, rioting, and general mayhem on display in the Summer of 2020 in cities throughout the United States, often unimpeded by law enforcement, buttresses the argument that a proper right to armed self-defense must include provision for law-abiding Americans to protect themselves outside their homes.

The article will proceed in three parts. The first part will summarize arguments from various prominent commentators that the right to self-defense with firearms is anachronistic in the contemporary United States. These critics argue that Americans can and should rely solely on their local professional police force to protect them.

The second part of the article will focus on how this argument has been undermined by recent events. First, in reaction to looting, rioting, and other forms of illegal behavior that threatened the well-being of the public, many police departments received implicit or explicit orders from their political supervisors to “stand down.” The most famous example is the mayor of Seattle allowing, even encouraging, an anarchist zone to take root in Seattle, but there are many others. To a significant extent, the refusal to deploy the police to quash rioting has been an ideological/partisan decision by big-city mayors seeking to show their solidarity with protesters (even though the vast majority of protesters did not engage in rioting).<sup>10</sup> If police are going to be prohibited from enforcing any semblance of law and order for political reasons, the argument against the individual right to bear arms for self-defense purposes significantly weakens.

Part II also addresses examples from the Summer 2020 unrest of the police being unwilling or unable to combat lawless behavior. In some cases, police chiefs decided that the best strategy to combat rioters and looters was to give them wide berth. They feared that confronting rioters would spark even more violence, given that hostility to the police sparked the unrest in the first place. In other cases, police officers have reacted to perceived hostility and lack of support from local politicians and citizens by essentially refusing to do their jobs, either by not responding to calls or by engaging in sickouts, the so-called “blue flu.” In yet other cases the police were simply overwhelmed and unable to competently respond to many emergency calls.

Finally, the last part of the article will discuss examples of individuals and groups of citizens using firearms in self-defense during the recent unrest in the absence of effective law enforcement. Some of these episodes

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<sup>10</sup> Meanwhile, the general refusal to ask for federal assistance even when such solidarity has worn thin has been motivated by distaste for President Trump sufficient to lead to unwillingness to cooperate with federal authorities.

are open to criticism, whether on the grounds that one believes that it's never worth using or even threatening to use deadly force to defend property, or because the line between justified self-defense and unjustified vigilantism is not always a clear one. Nevertheless, if law enforcement is unwilling or unable to preserve basic law and order, it's both inevitable that citizens will try to fill the breach, and desirable that law-abiding individuals should be given the means to do so.

#### I. ARGUMENTS THAT THE INDIVIDUAL RIGHT TO BEAR ARMS IS OBSOLETE BECAUSE OF THE EXISTENCE OF MODERN POLICE DEPARTMENTS

In *Heller*, Justice Scalia, writing for the majority, found that the right to bear arms in self-defense has a long pedigree. He argued that the Second Amendment codified an Anglo-American right to keep and bear arms that preexisting the formation of the United States, and that this right included the right to keep firearms for self-defense purposes. The dissenters strongly disagreed with this reading of history. Other scholars have argued that regardless of what the Second Amendment itself accomplished with regard to a right to bear arms that could limit federal regulations, the right to keep and bear arms as applied against the states under the Fourteenth Amendment includes an individual right grounded in self-defense.<sup>11</sup>

Regardless of whether the Second, Fourteenth, or both amendments were intended to protect an individual right to bear arms in, the *Heller* dissenters, as we have seen, argued that the right to self-defense is obsolete in modern society. The *Heller* dissenters are far from unique. Critics of the right to armed self-defense have long pronounced the Second Amendment anachronistic because Americans can purportedly rely on modern police departments to deter criminal activity and protect them from violence.<sup>12</sup>

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<sup>11</sup>See, e.g., AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 258-68 (1998) (arguing that while the Second Amendment right to keep and bear arms was focused on organized militia, the framers of the Fourteenth Amendment believed the right to be incorporated via the Privileges or Immunities Clause to create a private right of the freedmen and their supporters to defend themselves with firearms against Southern white terrorist organizations); Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEO. L.J. 309 (1991) (stressing the impact of Reconstruction on the meaning of the right to bear arms).

<sup>12</sup> *The Constitutional Right To Bear Arms Has Outlived Its Usefulness*, Intelligence Squared Debates (Nov. 14, 2013), <https://www.intelligencesquaredus.org/debates/constitutional-right-bear-arms-has-outlived-its-usefulness> (listing as a "Main Point" of those arguing against the Second Amendment the claim that "While armed citizens ensured the security of a free state in 1789, personal guns are no longer a civilian's main protection .... Today, the U.S. has a standing army and a well-trained police force that provide

Indeed, for decades “you-don’t-need-a-gun-because-you-can-call-the-police,” has been a favorite trope of opponents of private ownership of firearms.<sup>13</sup>

Two years after *Heller*, ten major American cities—as well as Cook County, Illinois and two municipal police chiefs—filed on amicus brief in *McDonald v. City of Chicago* unsuccessfully urging the Supreme Court to allow local and state governments to disarm citizens. The brief explained, “In more urban areas that have the benefit of a concentrated and highly trained police force . . . , the need for individuals to arm themselves for self-defense is less compelling.”<sup>14</sup> More recently, during this summer’s wave of violent riots across the nation, Chicago Mayor Lori Lightfoot told citizens, “Do not pick up arms and try to be police. If there’s a problem, call 911,”<sup>15</sup> even as parts of her city plunged into chaos.<sup>16</sup>

Legal scholars have also frequently invoked the development of modern police departments in arguing against an individual right of armed self-defense. William Eskridge, for example, has argued that this right is an “anachronism” because America is now “an urban society where . . . the community protects itself through armed police forces.”<sup>17</sup> Lawrence

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for our security and protection.”); *Debate Introduction: Is The Right To Bear Arms Outdated?*, RobertRosenkranz.com (Jan. 14, 2015), <http://robertrosenkranz.com/debate-introduction-second-amendment/> (summarizing the views of “those who see the [Second] amendment as rooted in an historic anachronism,” explaining that “the world was very, very different when this amendment was passed . . . . It was a world in which there were no professional police forces so that the only kind of defense against violence was self-defense”).

<sup>13</sup> See, e.g., *Abolish Police, and the Second Amendment Becomes a First Resort*, Washington Examiner (July 31, 2020), <https://www.washingtonexaminer.com/opinion/editorials/abolish-police-and-the-second-amendment-becomes-a-first-resort> (quoting law professor Randy Barnett’s observation that “My whole adult life, opponents of private gun ownership have insisted that an individual right to keep and bear arms was outmoded because it is better to rely on the police.”).

<sup>14</sup> Brief of *Amici Curiae* American Cities, Cook County, Illinois and Police Chiefs in Support of Respondents at 18, *McDonald v. City of Chicago*, 561 U.S. 742 (2010) (No. 08–1521), 2010 WL 265635, at \*18.

<sup>15</sup> Fran Spielman, *Lightfoot: ‘We did not Stand by to Watch the South and West Sides Burn’*, Chicago Sun-Times (June 1, 2020), <https://chicago.suntimes.com/city-hall/2020/6/1/21276893/chicago-protests-looting-aldermen-national-guard-troops-protect-neighborhoods>.

<sup>16</sup> See *infra* (discussion of violence in Chicago).

<sup>17</sup> William N. Eskridge, Jr., *Sodomy and Guns: Tradition As Democratic Deliberation and Constitutional Interpretation*, 32 Harv. J.L. & Pub. Pol’y 193, 206–07 (2009).

Friedman contends that “the Second Amendment is ... essentially an anachronism... More than 200 years later, the utility of such a right [to armed self-defense] has been supplanted by the development of modern and effective public police forces responsible for keeping the peace.”<sup>18</sup> Daniel Farber argues that “the development of professional police departments, which limit the need for individuals and groups to engage in self-help” has “undermined the asserted original purpose of the Second Amendment” and made “its application today ... problematic.”<sup>19</sup>

Michael Waldman, president of the Brennan Center for Justice at NYU Law School, insisted in a 2014 book that courts should refrain from enforcing constitutional protections for private gun ownership because, in Waldman’s view, “twenty-first-century America differs profoundly from the time of the Framers Today, we rely on professionalized police departments to protect us from crime and unrest,” an “institution[] unknown to the Founders”; under such conditions, “The idea that we should arm the population ... seems absurd.”<sup>20</sup> Gregory P. Magarian bluntly concludes that the Second Amendment’s purpose of protecting “private possession of guns” so as to “enable[] the people to enforce the law” is obsolete, since “we have police forces to fight crime now.”<sup>21</sup> Kenneth Lasson adds that prior to the mid-Nineteenth Century, “The right to bear arms was largely the duty of a responsible citizenry to participate in the collective self-defense of the community,” but “[t]oday that duty is performed by the government in its maintenance of a professional police force.”<sup>22</sup> Many other law professors have made similar arguments.<sup>23</sup>

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<sup>18</sup> Lawrence Friedman, *The Supreme Court and its Big Second Amendment Problem*, The Hill (Mar. 1, 2018), <https://thehill.com/opinion/judiciary/376284-the-supreme-court-and-its-big-second-amendment-problem>.

<sup>19</sup> Daniel A. Farber, *Disarmed by Time: The Second Amendment and the Failure of Originalism*, 76 Chi.-Kent L. Rev. 167, 190 (2000).

<sup>20</sup> Michael Waldman, *The Second Amendment: A Biography* 172 (2014).

<sup>21</sup> Gregory P. Magarian, *Speaking Truth to Firepower: How the First Amendment Destabilizes the Second*, 91 Tex. L. Rev. 49, 87 (2012).

<sup>22</sup> *Blunderbuss Scholarship: Perverting the Original Intent and Plain Meaning of the Second Amendment*, 32 U. Balt. L. Rev. 127, 129, 156 (2003).

<sup>23</sup> E.g., Sanford Levinson, *The Embarrassing Second Amendment*, 99 Yale L.J. 637, 655–56 (1989) (stating that the author is not unsympathetic to the “argument ... that the rise of a professional police force to enforce the law has made irrelevant, and perhaps even counterproductive, the continuation of a strong notion of self-help as the remedy for crime.”); Darrell A.H. Miller, *Guns as Smut: Defending the Home-Bound Second Amendment*, 109 Colum L. Rev. 1278, 1308–09 (2009) (arguing that individual rights to armed self-defense must be “tempered” because they “frustrate[] ... maintenance of the social compact and democratic norms” ... “a gun .... is a sign that the bearer perceives ... that the social compact

Numerous commentators from outside the legal academy have also argued that the right to armed self-defense is obsolete today due to the advent of modern policing. For example, a professor of journalism at Southern Illinois University, in a 2019 op-ed, advocated repealing the Second Amendment, calling the provision an “anachronism”; because “we now have the National Guard, state police, sheriffs’ departments and local police for our protection.”<sup>24</sup> In 2012, the opinion staff at Iowa’s *The Gazette* collectively endorsed the propositions that “[t]he Second Amendment is outdated” and accordingly that private ownership of virtually all handguns and rifles should be outlawed. The authors reasoned that our society “now ha[s] a huge and well-equipped military, national guard, state troopers, local police.”<sup>25</sup> The opinion staff at the *Harvard Crimson* suggested the Second Amendment is obsolete because Americans are guarded by “by the dedicated men and women of local law enforcement.”<sup>26</sup> An opinion columnist at the left-leaning *Daily Kos* wrote that “there is simply no need for individual Americans to ‘keep and bear arms’ for the purposes of Community and National security in the modern era .... Today, ... local and state police, the National Guard and the FBI are as close as a telephone call for assistance.”<sup>27</sup>

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is unable” or “unwilling to protect him.” Meg Penrose, *A Return to the States’ Rights Model: Amending the Constitution’s Most Controversial and Misunderstood Provision*, 46 Conn. L. Rev. 1463, 1483 (2014) (“The twenty-first-century prism of individual rights ... does not ... accurately portray custom and legislation that governed a society [that] lacked a professional police force.”); cf. Michael C. Dorf, *The Second Amendment and Gun Control Legislation*, CNN (Nov. 1, 2001), <https://www.cnn.com/2001/LAW/11/columns/fl.dorf.2nd.amendment.11.01/> (“If private firearm ownership served as a means of collective self-defense, does the assumption of that function by professionals render the Second Amendment obsolete?”).

<sup>24</sup> William A. Babcock, *Time to Target the Second Amendment*, *The Southern Illinoisan* (Nov. 20, 2019), [https://thesouthern.com/opinion/columnists/opinion-william-a-babcock-time-to-target-the-second-amendment/article\\_910c2a34-ca13-553a-b957-59ba5ec0db20.html](https://thesouthern.com/opinion/columnists/opinion-william-a-babcock-time-to-target-the-second-amendment/article_910c2a34-ca13-553a-b957-59ba5ec0db20.html).

<sup>25</sup> *The Second Amendment is Outdated*, *The Gazette* (Dec. 26, 2012), <https://www.thegazette.com/2012/12/26/the-second-amendment-is-outdated>.

<sup>26</sup> *Repeal Second Amendment*, *Harvard Crimson* (May 15, 2002), <https://www.thecrimson.com/article/2002/5/15/repeal-second-amendment-when-two-thirds-of/#>.

<sup>27</sup> Angela Marx, *The 2nd Amendment: An #anachronism which is killing our children in their Schools*, *Daily Kos* (Feb. 16, 2018), <https://www.dailykos.com/stories/2018/2/16/1741756/-The-2nd-Amendment-an-anachronism-which-is-killing-our-children-in-their-schools>.

Another *Daily Kos* op-ed, this one by a former police officer, likewise argued that the “right to Bear Arms ... became outdated and irrelevant once the country actually had a well-regulated militia,” which today is the National Guard; “Not only does the United States have a ‘well organized militia’ but every inch of the United States is protected by a police or sheriffs department.”<sup>28</sup> One finds the claim that an individual right to keep and bear arms is obsolete given the existence modern law enforcement, especially local police departments, articulated repeatedly in both op-eds<sup>29</sup> and letters to the editor.<sup>30</sup>

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<sup>28</sup> Hal Brown, *I Carried a Concealed Handgun and I Think the Second Amendment Should be Scrapped*, *Daily Kos* (Sept. 14, 2019), <https://www.dailykos.com/stories/2019/9/14/1885362/-I-carried-a-concealed-handgun-and-I-think-the-Second-Amendment-should-be-scraped>.

<sup>29</sup> See also, e.g., Don Rosselet, *Times Change, so Should the Second Amendment*, *Daytona Beach News-Journal* (Jul. 10, 2016), <https://www.news-journalonline.com/opinion/20160710/rosselet-times-change-so-should-second-amendment> (arguing that the Second Amendment should be repealed, explaining that the provision’s “language [was] written in a wholly different era—well before there was a finely organized military as well as hundreds of law enforcement agencies to take care of the ‘common defense.’ ... I’m content to have law enforcement provide for the safety of the citizens.”); M. Beckford, *Gun Violence Perpetuates Stigma Regarding Mental Illness*, 1 *Ann. Nurs. Res. Pract.* 2016, <https://austinpublishinggroup.com/nursing-research-practice/fulltext/anrp-v1-id1007.php> (““As a nation, we need a better trust and reliance on law enforcement for defense and protection rather than fueling the idea that if everyone has a gun everyone will be safe. More guns do not mean more safety or more self-protection”); cf. Jonathan Backer, *The Second Amendment does not Protect Militia Activity*, *WisPolitics* (Aug. 31, 2020), <https://www.wispolitics.com/2020/jonathan-backer-the-second-amendment-does-not-protect-militia-activity/> (“Protecting the community from violence is the job of local law enforcement, not untrained and unregulated private groups.”); Opinion, *Second Amendment Outdated, NRA Wrong*, *The Oswegonian* (Feb. 7, 2013), <https://www.oswegonian.com/2013/02/07/second-amendment-outdated-nra-wrong/> (“There are many ... who believe that guns are necessary to protect the innocent from harm” and that “people ... need weapons to defend themselves. But isn’t that what we have police officers and security guards for? ... America would be a lot safer if civilians did not own weapons.”).

<sup>30</sup> See, e.g., Jeffrey Fiske, *Letter to the Editor, There are Two Reasons for 2nd Amendment*, *Virginia Gazette* (April 5, 2019), <https://www.dailypress.com/viriniagazette/opinion/va-vg-edit-letters-fiske-0406-story.html> (one “reason for the Second Amendment was personal protection, particularly for citizens who lived in remote areas. There were no police forces .... With the advent of professional law enforcement, a professional military and well-stocked markets, the original reasons for the Second Amendment no longer exists



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except in some remote areas of Alaska, the Rockies, the Southwest and Appalachia.”); Andrew J. O’Connor, Opinion, *Second Amendment is not Sacred*, Daily Camera (Jan. 11, 2013), <https://www.dailycamera.com/2013/01/11/andrew-j-oconnor-second-amendment-is-not-sacred/#> (“Congress must repeal the Second Amendment because it is a lethal and dangerous anachronism that was adopted in 1791 .... Congress must ... disarm all gun owners because, after all, taxpayers pay for an armed police officers who are professionals. Amateur day is over for the gun nuts.”); Jim Cassidy, Letter to the Editor, *2nd Amendment is Outdated*, Las Vegas Sun (Dec. 22, 2018), <https://lasvegassun.com/news/2018/dec/22/2nd-amendment-is-outdated> (the Second “amendment was written when groups of families organized for their mutual protection because they lived in places where there was no police or army to defend them.”); Alexander Schriener Jr., Reader Submission, *Escalating Gun Violence Shows it’s Time we Rethink the Second Amendment*, Desert Sun (Dec. 11, 2018), <https://www.desertsun.com/story/opinion/readers/2018/12/11/escalating-gun-violence-shows-its-time-we-change-second-amendment-desert-sun-letters/2277684002/> (“In 1789, when [the Second Amendment] was written, there was no standing national military, state and county law enforcement and virtually no local law enforcement. The nation depended on local militias to defend it .... This is clearly not the case today, so basically the original intent of the Second Amendment is obsolete.”); Brian E. Little, Opinion, *Right to Bear Arms is an Outdated Idea*, Sun Sentinel (April 1, 2011), <https://www.sun-sentinel.com/opinion/fl-xpm-2011-04-01-fl-forum-second-amendment-0401-20110401-story.html> (“The second amendment poses an unmistakable threat to the Republic” and must be repealed; “the right to bear arms” for “self protection” is obsolete because “police ... are the entity democratically determined to protect the populace.”); Trish Gaurino, Letter to the Editor, *Second Amendment is Outdated*, Oakland Press (April 10, 2013), [https://www.theoaklandpress.com/news/second-amendment-is-outdated---letter-to-the-editor-april-10/article\\_67e561f1-ed8f-5a24-af5d-4a8aa5b83678.html](https://www.theoaklandpress.com/news/second-amendment-is-outdated---letter-to-the-editor-april-10/article_67e561f1-ed8f-5a24-af5d-4a8aa5b83678.html) (“What was on [the Founding Fathers’] mind was that the country relied on citizen soldiers in the form of militias to protect and defend and they had to supply their own weapons to do so .... Today we have city police, county sheriffs, state police, National Guard, the Army, Navy, Marines, Air Force and Coast Guard. I doubt that everyone has to have a weapon on hand at all times to protect and defend.”); Andy Rouse, Letter to the Editor, *Second Amendment Needs a Second Look*, Andover Townsman (July 28, 2016), [https://www.andovertownsman.com/opinion/letters\\_to\\_the\\_editor/\\_second-amendment-needs-a-second-look/article\\_fa6abe10-71b0-5281-87f7-9490aa6ecf09.html](https://www.andovertownsman.com/opinion/letters_to_the_editor/_second-amendment-needs-a-second-look/article_fa6abe10-71b0-5281-87f7-9490aa6ecf09.html) (“as the U.S. grew during the 19th century, the old colonial militias largely disappeared and .... [p]rofessional police forces were created to enforce the law .... As militias became obsolete, so did the rationale for the Second Amendment.”); Albion M. Urdank, Letter to the Editor, *Anachronism of Americans’ Right to Bear Arms*, Financial Times (April 30, 2012), <https://www.ft.com/content/d930e232-8fb4-11e1-98b1-00144feab49a> (“Since the 18th century ..., the state has come to provide both the personnel and the means to

## II. LOCAL GOVERNMENT'S FAILURE TO ENFORCE LAW AND ORDER IN SUMMER 2020

In a particularly ill-timed op-ed, on May 11, 2020, former U.S. attorney Harry Litman dismissed “an individual right to possess firearms and use them for .... self-defense” as unimportant. He argued that “there have been no roving bands of looters, no breakdown of traditional law enforcement that might make self-defense especially crucial right now.”<sup>31</sup> Once civil unrest began in late May 2020, many local officials abdicated their responsibility to enforce the law, leaving citizens to fend for themselves against rioters, looters, and other criminals.

One vastly underreported statistic is especially telling. Looters, rioters, and others connected with the unrest that followed George Floyd's death killed approximately<sup>32</sup> thirteen people during the Summer 2020 unrest: Javar Harrell,<sup>33</sup> Chris Beaty<sup>34</sup> Mqwan Blanchard,<sup>35</sup> Marquis M. Tousant,<sup>36</sup> Jose Gutierrez,<sup>37</sup> Victor Cazares Jr.<sup>38</sup> David Dorn<sup>39</sup>, Horace Lorenzo Anderson<sup>40</sup> Tyler Gerth,<sup>41</sup> Antonio Mays Jr.,<sup>42</sup> Secoria Turner,<sup>43</sup> Jessica

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protect the community at large, rendering the need for armed individual self-protection anachronistic.”);

<sup>31</sup> Harry Litman, *Trump's Latest 'Very Glood People' are Second Amendment Thugs*, Hartford Courant (May 11, 2020), <https://www.courant.com/opinion/op-ed/hc-op-litman-second-amendment-thugs-0511-20200511-phdl4tavbrd7herhcekhpgucfu-story.html>.

<sup>32</sup> I say “approximately” because the circumstances of certain deaths, both included in and excluded from this list, are not 100% clear. I did my best to include those whose deaths seem clearly connected to the unrest, including one individual murdered in the Seattle Autonomous Zone under unclear circumstances.

<sup>33</sup> *Deadly Unrest: Here are the People who have Died Amid George Floyd Protests Across US*, FOX6 (June 8, 2020), <https://www.fox6now.com/news/deadly-unrest-here-are-the-people-who-have-died-amid-george-floyd-protests-across-us>.

<sup>34</sup> *Id.*

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<sup>36</sup> *Deadly Unrest: Here are the People who have Died Amid George Floyd Protests Across US*, FOX6 (June 8, 2020), <https://www.fox6now.com/news/deadly-unrest-here-are-the-people-who-have-died-amid-george-floyd-protests-across-us>.

<sup>37</sup> *Deadly Unrest: Here are the People who have Died Amid George Floyd Protests Across US*, FOX6 (June 8, 2020), <https://www.fox6now.com/news/deadly-unrest-here-are-the-people-who-have-died-amid-george-floyd-protests-across-us>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Michael Ruiz, *Seattle CHOP Shooting Suspect Identified, Charged in Death of Horace Lorenzo Anderson*, 19, FOX NEWS (Aug. 6, 2020),

Doty Whitaker,<sup>44</sup> and Aaron Danielson.<sup>45</sup> Dorn, for example, was a retired seventy-seven year-old police captain who was shot and killed on June 2 by looters who broke into a pawn shop. Secoriea Turner, an eight year old girl, was killed during a shooting incident involving armed rioters in Atlanta. Aaron Danielson, a conservative counter-demonstrator, was shot dead by a leftist rioter who reportedly hid in an alcove waiting for Danielson, whom he pursued before fatally shooting.

These incidents, however, were merely the tip of the iceberg of the mayhem that overtook many American cities starting in late May 2020, with the police unable, unwilling, or under orders not to help. Examples from various cities follow.

**Minneapolis-St. Paul.** In Minneapolis, George Floyd's death on May 26, 2020 sparked unrest and lawlessness that resulted in at least \$500 million in damage to about 1,500 properties<sup>46</sup> and two deaths,<sup>47</sup> making them the most destructive riots since those in Los Angeles in 1992.<sup>48</sup> The riots devastated

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<https://www.foxnews.com/us/seattle-chop-shooting-murder-charge-horace-lorenzo-anderson>.

<sup>41</sup> Sarah Ladd & Lucas Aulbach, *Jefferson Square Park Shooting Victim Remembered as a Photographer with a 'Sense of Justice'*, LOUISVILLE COURIER JOURNAL (June 28, 2020), <https://www.courier-journal.com/story/news/local/2020/06/28/breonna-taylor-jefferson-square-park-shooting-victim-identified/3274412001/>.

<sup>42</sup> Rebecca Rosenberg, *Police Identify Antonio Mays Jr. as 16-Year-Old Killed in CHOP Shooting*, N.Y. POST (July 1, 2020), <https://nypost.com/2020/07/01/police-identify-16-year-old-boy-killed-during-chop-shooting/>.

<sup>43</sup> Joshua Sharpe, *One Month Later, Suspects Still at Large in Secoriea Turner's Death*, ATLANTA JOURNAL-CONSTITUTION (Aug. 4, 2020), <https://www.ajc.com/news/crime/one-month-later-suspects-still-at-large-in-secoriea-turners-death/WNAI577XUFCIVDOYX5SABU6HAA/>.

<sup>44</sup> Theresa Braine, *Indiana Woman Shot Dead After Saying 'All Lives Matter': Family*, N.Y. DAILY NEWS (July 13, 2020), <https://www.nydailynews.com/news/crime/ny-jessica-doty-whitaker-shot-dead-indianapolis-all-lives-matter-20200713-jcm5oyjca5fz5kge4qtlhh7dnu-story.html>.

<sup>45</sup> Nigel Jaquiss, *Portland Police Arrest Warrant Includes New Details About Fatal Shooting of Aaron Danielson*, WILLAMETTE WEEK (Sept. 4, 2020), <https://www.wweek.com/news/2020/09/04/portland-police-search-warrant-includes-new-details-about-fatal-shooting-of-aaron-danielson/>.

<sup>46</sup> Josh Penrod et al., *Buildings Damaged in Minneapolis, St. Paul After Riots*, Star Tribune (July 13, 2020), <https://www.startribune.com/minneapolis-st-paul-buildings-are-damaged-looted-after-george-floyd-protests-riots/569930671/>.

<sup>47</sup> Libor Jany, *Body Found in Wreckage of Pawnshop Burned During George Floyd Unrest*, Star Tribune (July 21, 2020), <https://www.startribune.com/body-found-in-wreckage-of-mpls-pawn-shop-burned-during-george-floyd-unrest/571838681/>.

<sup>48</sup> Jeffrey Meitrodt, *For Riot-Damaged Twin Cities Businesses, Rebuilding Begins with Donations, Pressure on Government*, Star Tribune (June 6, 2020), <https://www.startribune.com/twin-cities-rebuilding-begins-with-donations->

numerous small, often minority-owned enterprises, particularly in the Lake Street corridor, a largely Latino and East African business district, where small businesses collectively suffered an estimated \$200 million in damage not covered by insurance.<sup>49</sup> The chaos also touched off a surge in crime that Minneapolis officials call “unprecedented”<sup>50</sup>; during the month following Floyd’s death, over 1,500 shots-fired 911 calls were made—twice the number made during same period last year.<sup>51</sup> As of July 20th, 269 people (82% of whom were Black) had been shot in Minneapolis in 2020, 60% higher than the five-year average for the same period, and the same number as were shot in *all* of 2019.<sup>52</sup> Homicides, too, are up by a shocking 114% from last year.<sup>53</sup>

During this breakdown of order, local law enforcement were often AWOL. For the first few days of riots, Minneapolis police focused on defending their embattled 3rd Precinct building located at the center of the unrest, a decision “critics say left the rest of the neighborhood largely unprotected against ... looters and arsonists.”<sup>54</sup> On May 28th, Mayor Jacob

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pressure-on-government/571075592/.

<sup>49</sup> Nellie Bowles, *Abolish the Police? Those Who Survived the Chaos in Seattle Aren’t So Sure*, N.Y. Times (Aug. 7, 2020), <https://www.nytimes.com/2020/08/07/us/defund-police-seattle-protests.html?searchResultPosition=2>; Maya Rao, *Riots, Arson Leave Minnesota Communities of Color Devastated*, Star Tribune (June 2, 2020), <https://www.startribune.com/riots-arson-leave-minnesota-communities-of-color-devastated/570921492/>; Tammy Webber & Steve Karnowski, *As Minneapolis Burns, Mayor Takes Heat for the Response*, Associated Press (May 30, 2020), <https://apnews.com/f3fe953dcc4c3c4a447f94c68b9ad0c5>.

<sup>50</sup> Holly Bailey, *Minneapolis Police Officers Say They are Suffering From PTSD After George Floyd Protests*, Chron (July 10, 2020), <https://www.chron.com/news/article/Minneapolis-police-officers-say-they-are-15400747.php>.

<sup>51</sup> *Id.*; Libor Jany & Liz Sawyer, *Gun Violence Soars Amid Crises of Health, Public Trust, Officer Reluctance*, Star Tribune (June 27, 2020), <https://www.startribune.com/surge-in-gun-violence-tests-minneapolis-leaders/571524202/>.

<sup>52</sup> Libor Jany, *Minneapolis Continues to Contend with Unprecedented Gun Violence Amid Policing Debate*, Star Tribune (July 25, 2020), <https://m.startribune.com/record-mpls-gun-violence-comes-amid-policing-debate/571900122/>.

<sup>53</sup> Stephanie Pagones, *Minneapolis, Milwaukee See Major Surge in Homicides, New Data Shows*, Fox News (Aug. 13, 2020), <https://www.foxnews.com/us/minneapolis-milwaukee-police-murder-surge>

<sup>54</sup> Angela Caputo et al., *What Happened at Minneapolis’ 3rd Precinct — and What it Means*, APM Reports (June 30, 2020), <https://www.apmreports.org/story/2020/06/30/what-happened-at-minneapolis-3rd->

Frey ordered officers to stand down and abandon the building to the angry crowd that had surrounded it. The police withdrawal caused the situation to “spin[] out of control in the neighborhood around the precinct house”; the Precinct was burned to the ground, and “nearly every building around it [was] vandalized, looted or set on fire. Neighbors banded together to protect their own property, since 911 dispatchers were overwhelmed.”<sup>55</sup> “We could’ve defended that precinct, we could’ve defended that part of Lake Street if we had the resources,” said Sgt. Anna Hedberg, of the Minneapolis Police Federation.<sup>56</sup>

Officers’ efforts to restore order were reportedly hamstrung by orders from superiors not to wear their riot gear for fear of inflaming tensions with demonstrators, which, according to the union, caused injuries to police hit with projectiles from rioters.<sup>57</sup> A state senator whose district was overwhelmed by the chaos called Governor Tim Walz to request aid from state law enforcement, describing her district as “on fire, no police, no firefighters, no social control, constituents locked in houses wondering what they were going to do.”<sup>58</sup> Walz agreed, and deployed the National Guard to Minneapolis that night. It took the Guard three days to restore order.

The day after Walz ordered deployment, he lamented municipal officials’ incompetence in handling the unrest, as well as their failure to brief him on the situation; even when the Guard was deployed, Walz said, he didn’t “know what the plan [was]” but wasn’t “going to wait for the city to tell [him],” adding that the city officials “ha[d] lost control”<sup>59</sup> and that their response was “an abject failure.”<sup>60</sup> Mayor Frey responded by defending the

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precinct.

<sup>55</sup> Farah Stockman, *‘They Have Lost Control’: Why Minneapolis Burned*, N.Y. Times (July 3, 2020), <https://www.nytimes.com/2020/07/03/us/minneapolis-government-george-floyd.html>.

<sup>56</sup> Dana Ferguson, *Police Union Leaders Tell MN Senate: City Leaders ‘Failed Minneapolis’*, Twin Cities (July 15, 2020), <https://www.twincities.com/2020/07/15/minneapolis-police-union-leaders-tell-senate-city-leaders-failed-minneapolis/>.

<sup>57</sup> *Id.*

<sup>58</sup> *Minnesota Governor Acknowledges ‘Abject Failure’ in Protest Response*, Dallas Morning News (May 29, 2020), <https://www.dallasnews.com/news/2020/05/29/protesters-torch-minneapolis-police-station-cnn-crew-arrested-during-third-day-of-protests/>.

<sup>59</sup> Farah Stockman, *‘They Have Lost Control’: Why Minneapolis Burned*, N.Y. Times (July 3, 2020), <https://www.nytimes.com/2020/07/03/us/minneapolis-government-george-floyd.html>.

<sup>60</sup> Tammy Webber & Steve Karnowski, *As Minneapolis Burns, Mayor Takes Heat for the Response*, Associated Press (May 30, 2020), <https://apnews.com/f3fe953dcc4c3c4a447f94c68b9ad0c5>.

city's refusal to try to stop rioting, including that police made "only a handful" of arrests across the first two nights of violence.<sup>61</sup>

The *New York Times* concluded that "[a] close examination of the events, including interviews with more than two dozen elected officials, activists, business owners and residents suggests at least some of the destruction [in Minneapolis] resulted from a breakdown in governance."<sup>62</sup> Mayor Frey was "slammed by business owners for not doing enough to protect their property."<sup>63</sup> Kelly Drummer, director of a local nonprofit serving Native American youth, whose headquarters was burned by rioters, told the press, "We're policing ourselves," since city authorities, who "didn't care until after the building burned," failed to do so.<sup>64</sup>

Meanwhile, the accompanying surge in crime led to a July demonstration against the violence by residents of hard-hit neighborhoods, who chanted "Guns down, love up!" as they marched.<sup>65</sup> Some participants "complained about a lack of police presence on the streets in recent weeks, arguing it has fueled a sense of lawlessness."<sup>66</sup> Such complaints seem well-founded. As of early August, data showed that the city's 911 response times remained abnormally long, and the number of police on the street was declining.<sup>67</sup> Officials reported that 111 officers were on leave out of a total force of 888.<sup>68</sup>

**Seattle.** Perhaps the most outrageous example of local officials' dereliction of their law enforcement duties comes from Seattle. For twenty-three days in June, armed leftists occupied six blocks of the city's Capitol Hill neighborhood, declaring the area a "police-free" zone they called the

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<sup>61</sup> *Minnesota Governor Acknowledges 'Abject Failure' in Protest Response*, Dallas Morning News (May 29, 2020), <https://www.dallasnews.com/news/2020/05/29/protesters-torch-minneapolis-police-station-cnn-crew-arrested-during-third-day-of-protests/>.

<sup>62</sup> Stockman, *supra* note   .

<sup>63</sup> *Id.*

<sup>64</sup> Maya Rao, *Riots, Arson Leave Minnesota Communities of Color Devastated*, Star Tribune (June 2, 2020), <https://www.startribune.com/riots-arson-leave-minnesota-communities-of-color-devastated/570921492/>.

<sup>65</sup> Holly Bailey, *Minneapolis Police Officers Say They are Suffering From PTSD After George Floyd Protests*, Chron (July 10, 2020), <https://www.chron.com/news/article/Minneapolis-police-officers-say-they-are-15400747.php>.

<sup>66</sup> *Id.*

<sup>67</sup> Brandt Williams, *Minneapolis Crime Continues to Spike as Crucial Decisions on Police Near*, MPR News (Aug. 4, 2020), <https://www.mprnews.org/story/2020/08/04/minneapolis-crime-continues-to-spike-as-crucial-decisions-on-police-near>

<sup>68</sup> *Id.*

“Capitol Hill Autonomous Zone” (“CHAZ”), later changed to “Capitol Hill Occupied Protest” (“CHOP”).<sup>69</sup> Bands of self-appointed, gun-toting “guards” set up encampments and patrolled the area, looted stores, smashed windows, and prevented residents from leaving or visitors from entering—in the process devastating businesses located in the occupied blocks.<sup>70</sup>

City officials responded with appalling negligence. In early June, as rioters began to overwhelm the affected neighborhood, Mayor Jenny Durkan, over the objection of Police Chief Carmen Best, ordered the Seattle police to abandon its precinct in the area, allowing rioters to trash the building.<sup>71</sup> After the occupation began, Durkan defended it as a mere “block party”—“a peaceful expression of our community’s collective grief and their desire to build a better world.”

City officials “not only permitted the establishment of a police-free zone, but provided infrastructure like concrete barriers and portable toilets to sustain it.”<sup>72</sup> Emergency services did not respond to calls from the occupied region’s residents,<sup>73</sup> and police response times to calls in surrounding parts of the city tripled with the precinct’s closure.<sup>74</sup> On June 30th, after four shootings in CHOP, Durkan finally allowed police to end the chaos.<sup>75</sup> She acknowledged that the occupation resulted in not only untold destruction and economic loss, but also a 525% increase “in person-related crime,”

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<sup>69</sup> Nellie Bowles, *Abolish the Police? Those Who Survived the Chaos in Seattle Aren’t So Sure*, N.Y. Times (Aug. 7, 2020), <https://www.nytimes.com/2020/08/07/us/defund-police-seattle-protests.html?searchResultPosition=2>.

<sup>70</sup> *Id.*

<sup>71</sup> *Seattle Mayor Jenny Durkan Made the Call to Remove Barriers Around East Precinct in Capitol Hill*, King5 (June 11, 2020), <https://www.king5.com/article/news/local/protests/seattle-police-chief-reacts-to-shuttering-of-east-precinct-in-capitol-hill/281-ef204fb3-dc17-4a67-ae66-d4d00dc15222>.

<sup>72</sup> Nellie Bowles, *Abolish the Police? Those Who Survived the Chaos in Seattle Aren’t So Sure*, N.Y. Times (Aug. 7, 2020), <https://www.nytimes.com/2020/08/07/us/defund-police-seattle-protests.html?searchResultPosition=2>.

<sup>73</sup> *Id.*

<sup>74</sup> Michael Ruiz, *Seattle Officers Face ‘Autonomous Zone’ Crowd, Say 911 Response Times Have Tripled*, Fox News (June 11, 2020), <https://www.foxnews.com/us/seattle-officers-autonomous-zone-911-response-times-tripled>

<sup>75</sup> Lia Eustachewich, *Seattle Sees 525 Percent Spike in Crime Thanks to CHOP: Mayor Durkan*, N.Y. Post (July 2, 2020), <https://nypost.com/2020/07/02/seattle-sees-525-percent-spike-in-crime-thanks-to-chop-mayor-durkan/>.

including “rape, robbery, assault, and ... gang activity.”<sup>76</sup> The next day, Seattle Police moved in, bringing a swift end to CHOP.<sup>77</sup>

In response to the city’s initial twenty-three-day period of toleration (and even encouragement) of the unlawful occupation, a group of Capitol Hill businesses, employees, and residents have sued Seattle in federal court, alleging that the city’s “unprecedented decision to abandon ... an entire city neighborhood, leaving it unchecked by the police, unserved by fire and emergency health services, and inaccessible to the public at large” subjected the plaintiffs and others in the “neighborhood to extensive property damage, public safety dangers, and an inability to use ... their properties.”<sup>78</sup> The suit is currently pending.

In July, over the strenuous objections of Police Chief Best, the city council passed an ordinance prohibiting police use of “crowd control weapons,” defined as “kinetic impact projectiles, chemical irritants, acoustic weapons, direct energy weapons, water cannons, disorientation devices, ultrasonic cannons, or any other device ... designed to cause pain or discomfort.”<sup>79</sup> Shortly thereafter, Chief Best denounced the measure in a mass mailing to city business owners, warning them that the “ordinance bans ... less lethal tools, including pepper spray that is commonly used to disperse crowds that have turned violent. Simply put, the legislation gives officers NO ability to safely intercede to preserve property in the midst of a large, violent crowd.”<sup>80</sup> The ordinance’s implementation has been temporarily enjoined by a federal district court, which ruled in late July that the prohibition on nonlethal crowd control techniques violated a prior settlement agreement between the city and the federal government.<sup>81</sup>

Seattle’s leadership, however, persisted in its hostility to law enforcement. In August, the city council endorsed a plan to cut the police department’s budget by 50% and its staff by 100 officers.<sup>82</sup> This was the

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<sup>76</sup> *Id.*

<sup>77</sup> Nellie Bowles, *Abolish the Police? Those Who Survived the Chaos in Seattle Aren’t So Sure*, N.Y. Times (Aug. 7, 2020), <https://www.nytimes.com/2020/08/07/us/defund-police-seattle-protests.html?searchResultPosition=2>.

<sup>78</sup> Class Action Complaint at 2, *Hunters Capital LLC et al v. City of Seattle*, No. 2:20-CV-00983 (W.D. Wash. June 24, 2020), 2020 WL 3483483.

<sup>79</sup> Seattle, Wash., Ordinance 119805 (June 26, 2020).

<sup>80</sup> *SW Precinct Boarded up as a Precaution Against Protestors; Chief Best Sends Letter Detailing Loss of Non Lethal Tools*, Westside Seattle (July 24, 2020), <https://www.westsideseattle.com/robinson-papers/2020/07/24/sw-precinct-boarded-precaution-against-protestors-chief-best-sends>

<sup>81</sup> *United States v. City of Seattle*, No. C12-1282JLR, 2020 WL 4275515 (W.D. Wash. July 25, 2020).

<sup>82</sup> Mike Baker, *‘Can’t Do It’: Chief Resigns Amid Seattle’s Divide Over*



final straw for Chief Best, who abruptly resigned on August 10 in response to the council's decision.<sup>83</sup>

Seattle is a bastion of left-wing politics, but the Washington state police also indulged lawbreakers during the unrest. Beginning in June, demonstrators took over a stretch of Interstate 5, blocking traffic for nineteen consecutive nights. Although walking on I-5 is illegal, "the Washington State Patrol looked the other way, even setting up barriers" to facilitate demonstrators' blocking of the freeway,<sup>84</sup> and refused to arrest those who obstructed traffic.<sup>85</sup> A State Patrol spokesman told the press that "he doesn't believe WSP surrendered I-5, but reacted appropriately to a unique situation."<sup>86</sup>

The state police's "hands-off" approach toward highway demonstrators continued until July 5th, when a marcher was fatally struck by a vehicle. Washington troopers resumed (at least officially) their usual policy of arresting anyone attempting to block I-5.<sup>87</sup> Even then, however, state police appeased demonstrators by occasionally blocking off sections of interstate where marches are occurring; as one State Patrol official explained in a July 5<sup>th</sup> tweet, "Our goal is to keep I-5 open ..., but we will not hesitate to close it for the safety of motorists, protestors, and WSP personnel."<sup>88</sup>

**Portland.** As of this writing in early September 2020, Portland has had three months of nightly riots. By June 24, only a few weeks into the riots, they had caused over \$4 million in property damage and \$18 million in lost

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*Policing*, N.Y. Times (Aug. 11, 2020), <https://www.nytimes.com/2020/08/11/us/seattle-police-chief-budget-cut.html?searchResultPosition=1>.

<sup>83</sup> *Id.*

<sup>84</sup> Deborah Horne, *Death of I-5 Protester Sparks End of Nighttime Freeway Protests*, KIRO7 (July 5, 2020), <https://www.kiro7.com/news/local/wsp-protesters-will-not-be-allowed-enter-i-5/WDU7TV7W4FHJPOBFGU7QRVCODI/>.

<sup>85</sup> Kara Kostanich, *Washington State Patrol Says Protesters on I-5 will Face Arrest*, KOMO News (July 6, 2020), <https://komonews.com/news/local/washington-state-patrol-says-protesters-on-i-5-will-face-arrest>.

<sup>86</sup> Stephanie Klein, *Washington State Patrol will no Longer Allow I-5 Protests*, MyNorthwest (July 6, 2020), <https://mynorthwest.com/2000015/washington-state-patrol-i-5-protests/>.

<sup>87</sup> Deborah Horne, *Death of I-5 Protester Sparks End of Nighttime Freeway Protests*, KIRO7 (July 5, 2020), <https://www.kiro7.com/news/local/wsp-protesters-will-not-be-allowed-enter-i-5/WDU7TV7W4FHJPOBFGU7QRVCODI/>.

<sup>88</sup> Stephanie Klein, *Washington State Patrol will no Longer Allow I-5 Protests*, MyNorthwest (July 6, 2020), <https://mynorthwest.com/2000015/washington-state-patrol-i-5-protests/>.

revenues for Portland businesses.<sup>89</sup> The city police's efforts to defend ordinary people against the lawlessness were underwhelming at best. On August 16, for example, which marked the eightieth night of demonstrations, municipal authorities reported that over sixty 911 calls (reporting theft, vandalism, suspicious activity, hit and runs, and burglary, among other things) went unanswered.<sup>90</sup>

Daryl Turner, head of the Portland Police Association, alleged that Portland Mayor Ted Wheeler and Multnomah County District Attorney Mike Schmidt limited the city's response to riots in order to appease lawbreakers: "If it is acceptable for rioters to commit acts of violence against community members and to try and burn down occupied buildings, and if this conduct is allowed to continue," Turner said, "then Portland is lost."<sup>91</sup>

Oregon State Police, about one hundred of whom had been in Portland for two recent weeks to assist local authorities with quelling violence, announced in mid-August that they were withdrawing from the city in frustration. "We're in a county that's not going to prosecute this criminal behavior," said a State Police spokesman,<sup>92</sup> referring to DA Schmidt's recent announcement that his office would not prosecute many charges against demonstrators—including disorderly conduct, interfering with police, or even rioting, unless those charges are accompanied by more serious charges involving property damage or injury to another person.<sup>93</sup> Schmidt's office applied this new policy retroactively to everyone arrested

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<sup>89</sup> Bryant Clerkley, *Downtown Portland has Lost \$23 Million in Recent Riots, Says Portland Business Alliance*, KGW8 (June 24, 2020), <https://www.kgw.com/article/news/local/protests/portland-business-alliance-puts-out-report-on-damages-during-riots/283-927c8812-0010-4561-921a-f0556a5b1a2b>.

<sup>90</sup> Daniel Wallace, *Over 60 Portland 911 calls go unheeded overnight as police respond to riot*, Fox News (Aug. 16, 2020), <https://www.foxnews.com/us/portland-riots-911-calls>.

<sup>91</sup> Jim Redden, *Police Union Blasts Portland Mayor, New District Attorney, Over Riot Responses*, Portland Tribune (Aug. 7, 2020), <https://pamplinmedia.com/pt/9-news/476333-384865-police-union-blasts-wheeler-schmidt-over-riot-responses>.

<sup>92</sup> Maxine Bernstein, *State Police Pull Troopers out of Portland Protest Coverage, Return Them to Regular Assignments*, OregonLive (Aug. 13, 2020), <https://www.oregonlive.com/crime/2020/08/state-police-pull-troopers-out-of-portland-return-troopers-to-regular-assignments.html>.

<sup>93</sup> Katie Shepherd & Mark Guarino, *Liberal Prosecutors Face Backlash Over Lenient Charges Following Civil Unrest and Looting*, Wash. Post (Aug. 12, 2020), <https://www.washingtonpost.com/nation/2020/08/12/chicago-portland-protester-charges/>.

since the unrest began. Of 550 cases presented by the police to Schmidt, about 410 of them are violations of the sort that will likely go uncharged under the new policy.<sup>94</sup>

Aside from rioting and looting, like many other cities Portland has experienced a dramatic surge in violent crime after anti-police demonstrations erupted in May. According to the city's police department, "July saw the highest number of deadly crimes in the city since the 1980s."<sup>95</sup> Over twice as many shootings were reported to police in June and July of 2020 than during those months last year.<sup>96</sup> In recent months, police have also taken longer to respond to residents' calls for assistance; this July, the department's average response time to shots-fired calls was more than double what it was in July 2019.<sup>97</sup> Senior police officials say that the department's recent reduction in law-enforcement activity was in part due to a "diminished patrol," explaining that the ongoing demonstrations strained police resources and diverted attention away from ordinary crime-fighting.<sup>98</sup> Department officials also attribute the underwhelming police response to rising crime on the city council's decision in June to abolish the police's gun violence reduction team, which activists criticized for disproportionately stopping Black residents. Senior police staff say that the gun violence team's elimination made it harder for officers to combat violent crime. And indeed, violent crime surged in July 2020, the first full month without the gun violence team in over a decade.<sup>99</sup>

**Chicago.** In Chicago, where rioting and looting sporadically recurred starting in late May, "some local officials have blamed ... the shattered windows and raided shelves" on "liberal policy changes" by Cook County State's Attorney Kim Foxx.<sup>100</sup> Elected in 2016 on criminal-justice-reform platform, Foxx has lowered penalties for theft and shoplifting, among other policy changes.<sup>101</sup> Indeed, a recent study found that Foxx's office drops felony charges in cases of murder and other serious crimes at a higher rate

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<sup>94</sup> *Id.*

<sup>95</sup> Wright Gazaway, *Violent Crime Trends up as Portland Grapples with Police Reform*, KATU2 (July 31, 2020), <https://katu.com/news/local/violent-crime-trends-up-as-portland-grapples-with-police-reform>.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Katie Shepherd & Mark Guarino, *Liberal Prosecutors Face Backlash Over Lenient Charges Following Civil Unrest and Looting*, Wash. Post (Aug. 12, 2020), <https://www.washingtonpost.com/nation/2020/08/12/chicago-portland-protester-charges/>.

<sup>101</sup> *Id.*

than her predecessor; during her first three years in office, Foxx dropped all charges against 29.9% of felony defendants, much more than the 19.4% of felony charges dropped during the last three years of her predecessor's tenure.<sup>102</sup>

Even other Chicago officials who generally support criminal justice reform have criticized Foxx's reluctance to pursue felony charges against those arrested for rioting or looting. Foxx's fellow Democrat Alderman Brendan Reilly condemned her approach to non-prosecution: "Our Cook County Prosecutor's Office" is "failing us like never before .... When there are no consequences for these criminal acts ... it only serves as further incentive for these criminals to repeat these crimes over and over."<sup>103</sup> Another Democratic alderman similarly opposes Foxx's reelection, saying, "She's clearly not doing her job."<sup>104</sup> Chicago Police Superintendent David Brown has also criticized Foxx, complaining that repeat offenders are too often re-released due to reduced charges, low bail, and an inadequate electronic monitoring system.<sup>105</sup> Foxx has defended her policies, recently pointing out that although between 400 and 500 of those arrested for non-felony offenses connected with the George-Floyd demonstrations were not charged by her office, charges are pending in 90% of the 300 felony cases brought to her thus far by Chicago police.<sup>106</sup> Chicago's Democratic Mayor Lori Lightfoot, who has more subtly criticized Foxx's lax prosecutorial approach, has stated that she met with Foxx and urged the State's Attorney to charge more rioters and looters with felonies.<sup>107</sup>

That said, the strength of Mayor Lightfoot's own commitment to addressing the lawlessness is dubious. On a particularly violent weekend in

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<sup>102</sup> David Jackson et al., *Kim Foxx Drops More Felony Cases as Cook County State's Attorney than her Predecessor, Tribune Analysis Shows*, Chicago Tribune (Aug. 10, 2020), <https://www.chicagotribune.com/investigations/ct-kim-foxx-felony-charges-cook-county-20200810-ldvrmqv6bd3hpsuqha4duehmu-story.html>.

<sup>103</sup> Katie Shepherd & Mark Guarino, *Liberal Prosecutors Face Backlash Over Lenient Charges Following Civil Unrest and Looting*, Wash. Post (Aug. 12, 2020), <https://www.washingtonpost.com/nation/2020/08/12/chicago-portland-protester-charges/>.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Heather Cherone, *Foxx Pushes Back on Criticism From Lightfoot, Brown After Looting*, WTTW (Aug. 10, 2020), <https://news.wttw.com/2020/08/10/foxx-pushes-back-criticism-lightfoot-brown-after-looting>.

<sup>107</sup> Katie Shepherd & Mark Guarino, *Liberal Prosecutors Face Backlash Over Lenient Charges Following Civil Unrest and Looting*, Wash. Post (Aug. 12, 2020), <https://www.washingtonpost.com/nation/2020/08/12/chicago-portland-protester-charges/>.

early June, Lightfoot refused to deploy the National Guard beyond Chicago's central business district, drawing condemnations from officials representing districts on the south and west side of the city, which were left unprotected during Chicago's deadliest weekend in sixty years.<sup>108</sup> Over that weekend, twenty-four people were killed and at least sixty-one injured by gun violence, and the city's 911 dispatchers received 65,000 calls in a single day—50,000 more than normal.<sup>109</sup> As chaos unfolded, one Democratic city councilwoman told the mayor on the phone, "My ward is a shit show .... [Rioters] are shooting at the police. I have never seen the likes of this. I'm scared."<sup>110</sup>

The Chicago police's capacity to cope with widespread demonstrations and accompanying rises in crime has also fallen in recent months as officers resign from the force in record numbers. Chicago police have been retiring at double the usual rate in recent months, an exodus "unheard of" in the department's history.<sup>111</sup> Many have blamed elected officials' hostility towards law enforcement for the mass resignations: "Who wants to stay in this environment?" said the head of city's police union; "The mayor doesn't back us."<sup>112</sup> The increasingly shorthanded police force has raised serious public concern given the simultaneous rise in crime. According to one alderman, "the mayor has lost ... control of this city .... We're way short of officers now, and I'm afraid, as people go to retire, we're going to be even further short of officers on the street."<sup>113</sup>

Chicago residents, especially in high-crime areas, are likewise concerned about a shortage of law enforcement resources. For example, in 2020, Englewood—a low-income, predominantly Black neighborhood long afflicted with violence—has seen two hundred shootings, an 80% increase from the same period last year.<sup>114</sup> Englewood residents and community leaders have been increasingly vocal in opposing the trend of calls to

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<sup>108</sup> Tobias Hoonhout, *Chicago Aldermen Grill Mayor Lightfoot Over Refusal to Deploy National Guard Widely*, National Review (June 9, 2020), <https://www.nationalreview.com/news/chicago-aldermen-grill-mayor-lightfoot-over-refusal-to-deploy-national-guard-widely/>.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> David Aaro, *Chicago Police are Retiring at Twice the Normal Rate: Report*, Fox News (Aug. 18, 2020), <https://www.foxnews.com/us/chicago-police-retiring-twice-normal-rate-report>.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Julie Wernau & Erin Ailworth, *Push to Defund the Police Faces Headwinds in Some Poor, Black Neighborhoods*, Wall Street Journal (Aug. 22, 2020), <https://www.wsj.com/articles/push-to-defund-the-police-faces-headwinds-in-some-poor-black-neighborhoods-11598010936>.

“defund the police.” Indeed, business owners in the neighborhood are now calling for *more* support from police.<sup>115</sup> According to the proprietor of one Englewood business, “The only problem with the police is that they don’t show up.”<sup>116</sup> According to interviews with locals conducted by the *Wall Street Journal*, the neighborhood wish list includes ... police officers who are on the scene quickly when there is trouble.”<sup>117</sup> One Englewood resident, whose son was fatally shot earlier this August, said he would like to see police better engage with residents rather than be defunded, explaining, “If there’s no police at all, what’s the backup?”<sup>118</sup>

**Louisville.** Louisville, Kentucky, also saw destructive riots following George Floyd’s death that left the city’s downtown “look[ing] like a war zone,” according to a local paper.<sup>119</sup> Louisville Police accused Mayor Greg Fischer of issuing “stand-down” orders to officers during riots, allowing lawlessness to run rampant.<sup>120</sup> Several hundred officers accordingly walked out on Fischer in protest when he appeared before them to speak in early June, with police leadership calling for the Mayor’s resignation.<sup>121</sup>

On August 11, a downtown Louisville business sued the city on behalf of all Louisville businesses that “suffered property damage through the actions of the rioters/the mob ... from May 29, 2020 through June 2, 2020.”<sup>122</sup> The suit alleges that Fischer directed police not to “protect[] businesses or property from the impending mob and rioters,” and further claims that officers themselves confirmed to some business owners that police had received the stand-down order.<sup>123</sup> Fischer denied issuing such an order, but

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<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Mandy McLaren, ‘A Traumatized Generation’: Louisville’s Youth Demand Racial Justice During Mass Protests, *Louisville Courier Journal* (May 30, 2020), <https://www.courier-journal.com/story/news/2020/05/30/breonna-taylor-protest-louisvilles-youth-demand-racial-justice/5291030002/>.

<sup>120</sup> *Mayor Fischer Backs LMPD During News Conference, Says he did not Issue ‘Stand Down Orders*, *WLKY* (June 16, 2020), <https://www.wlky.com/article/mayor-fischer-backs-lmpd-during-news-conference-says-he-did-not-issue-stand-down-orders/32885369>.

<sup>121</sup> Natalia Martinez, *Officers Walk out on Louisville Mayor Greg Fischer in Protest*, *Wave3 News* (June 3, 2020), <https://www.wave3.com/2020/06/03/officers-walk-out-louisville-mayor-greg-fischer-protest/>.

<sup>122</sup> *Downtown Louisville Business Sues City over \$85,000 in Riot Damages*, *Whas11* (Aug. 11, 2020), <https://www.whas11.com/article/news/local/jjs-wig-sues-city-for-damages/417-ad50e6e6-4a16-43a9-be6c-d5a39e7486c8>.

<sup>123</sup> *Id.*

seemed to admit that another city official might have done so, “saying it was LMPD’s acting chief Robert Schroeder and the command staff issuing those orders.”<sup>124</sup> As a result of these events, morale grew low among the city’s cops. In June the department announced that the force of 1,100 was already down about 150 officers, and that as many as 200 resignations might occur by the end of summer.<sup>125</sup>

At subsequent hearings in September 2020, commanders stated they were subject to stand-down orders from higher up. For example, when rioters, some of whom were throwing bricks and surrounding traffic, blocked the entrance to Interstate 64 on Ninth Street in the afternoon rush hour, a standown order prevented police from intervening. Chief of Public Safety Amy Hess explained that she, along with Mayor Fischer, “prioritize de-escalation tactics and restraint when dealing with hostile crowds,” and she believed that “the mere presence of the police escalates the situation.”<sup>126</sup>

**New York City.** When violence in New York City erupted in May, Mayor Bill de Blasio announced that NYPD officers would use “a light touch” with demonstrators.<sup>127</sup> Days later, de Blasio’s “light touch” policy was blasted by a fellow Democrat, Governor Andrew Cuomo, who strongly condemned the city’s failure to quell rampant rioting, looting, and violence. Calling the city’s response “a disgrace,” Cuomo explained, “The police must stop the looting and the criminal activity. That is the essence of the police force. They are supposed to protect the community, protect the property .... They did not do that in New York City last night. And I am disappointed and outraged.”<sup>128</sup> The head of a local police union echoed

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<sup>124</sup> *Mayor Fischer Backs LMPD During News Conference, Says he did not Issue ‘Stand Down Orders*, WLKY (June 16, 2020), <https://www.wlky.com/article/mayor-fischer-backs-lmpd-during-news-conference-says-he-did-not-issue-stand-down-orders/32885369>.

<sup>125</sup> Kristen Shanahan, *Police Union Says LMPD is at Risk of Losing 200+ Officers*, WRDB (June 18, 2020), [https://www.wdrb.com/news/police-union-says-lmpd-is-at-risk-of-losing-200-officers/article\\_099921c8-b0e0-11ea-bc6f-bf25dd0ed190.html](https://www.wdrb.com/news/police-union-says-lmpd-is-at-risk-of-losing-200-officers/article_099921c8-b0e0-11ea-bc6f-bf25dd0ed190.html).

<sup>126</sup> [https://www.wdrb.com/news/testimony-reveals-louisville-metro-police-mayors-administration-didnt-always-agree-on-protest-response/article\\_264b9c18-f863-11ea-99c7-cf27ae585498.html](https://www.wdrb.com/news/testimony-reveals-louisville-metro-police-mayors-administration-didnt-always-agree-on-protest-response/article_264b9c18-f863-11ea-99c7-cf27ae585498.html).

<sup>127</sup> Alejandra O’Connell-Domenech, *Mayor Wants NYPD to use ‘Light Touch’ with George Floyd Protesters*, AMNY (May 29, 2020), <https://www.amny.com/news/police-fire-news/mayor-wants-to-see-nypd-use-light-touch-with-george-floyd-protesters/>.

<sup>128</sup> Joseph Spector, *Gov. Andrew Cuomo Rips Police, Mayor After Rioting in New York City: ‘It was a Disgrace’*, Lohud (June 2, 2020), <https://www.lohud.com/story/news/politics/2020/06/02/cuomo-rips-police-mayor-de-blasio-after-rioting-nyc-new-york-city/3123904001/>.

Cuomo's criticisms, saying that although the NYPD was "more than capable" of handling the situation, their "hands [we]re being tied .... We ha[d] no leadership coming from City Hall. We [we]re being told to stand down."<sup>129</sup>

Like other U.S. cities, New York has also seen a dramatic spike in violent crime since nationwide demonstrations began in May. According to an August 7th report, shootings in the city over the preceding 28 days were up 201% over the same period last year.<sup>130</sup> Yet the NYPD's crime-fighting activity over the Summer was surprisingly scant, with arrests between mid-June and mid-July down by 62% compared to 2019 figures.<sup>131</sup> Some local leaders, such as Brooklyn Borough President Eric Adams, have accused police of staging a de facto slowdown to express their ire at recent city policy changes and public anti-police sentiment.<sup>132</sup> Adams cited numerous complaints from constituents that officers were brazenly refusing to respond to residents' calls for help.<sup>133</sup> Police officials denied such allegations.<sup>134</sup>

Senior NYPD staff have explained the Department's underwhelming response to increased violence in part by pointing to NYPD Commissioner Dermot Shea's recent dissolution of plainclothes "anti-crime" units, which had been used to combat illegal firearm possession, in response to the recent wave of protests.<sup>135</sup> Police also attribute the Department's feeble crime-fighting efforts to personnel problems. Earlier in the summer, the police presence required for mass demonstrations meant fewer officers were

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<sup>129</sup> Victor Garcia, *Police Union Boss Says 'NYPD is Losing the City of New York,' Begs Cuomo, Trump to Send Reinforcements*, Fox News (June 3, 2020), <https://www.foxnews.com/media/ed-mullins-nypd-losing-new-york-city>.

<sup>130</sup> Wright Gazaway, *Violent Crime Increase is 'Pretty Dramatic,' Criminologist Says*, KATU2 (Aug. 7, 2020), <https://katu.com/news/on-your-side/violent-crime-increase-is-pretty-dramatic-criminologist-randy-blazak-says>.

<sup>131</sup> Ashley Southall, *Shootings Have Soared. Is the N.Y.P.D. Pulling Back?*, N.Y. Times (July 16, 2020), <https://www.nytimes.com/2020/07/16/nyregion/nyc-shootings-nypd.html>.

<sup>132</sup> *Id.*

<sup>133</sup> Tina Moore & Jorge Fitz-Gibbon, *Brooklyn BP Eric Adams Wants NYPD to Prove There's no 'Unofficial Slowdown'*, N.Y. Post (July 19, 2020), <https://nypost.com/2020/07/19/brooklyn-bp-eric-adams-wants-nypd-to-prove-theres-no-slowdown/>.

<sup>134</sup> Ben Chapman, *As New York City Police Make Fewer Arrests, Violent Crime Rises*, Wall Street Journal (August 17, 2020), <https://www.wsj.com/articles/as-new-york-city-police-make-fewer-arrests-violent-crime-rises-11597600800>.

<sup>135</sup> Ashley Southall, *Shootings Have Soared. Is the N.Y.P.D. Pulling Back?*, N.Y. Times (July 16, 2020), <https://www.nytimes.com/2020/07/16/nyregion/nyc-shootings-nypd.html>.



available for other tasks;<sup>136</sup> more recently, widespread anti-police sentiment and low morale has prompted more officers than usual to quit the force, leaving the Department understaffed in the face of rising crime.<sup>137</sup> And the officers that stuck around, according to senior NYPD officials, are abnormally “reluctant to carry out arrests” in what they see as a “hostile political climate” that will subject them to “unfair scrutiny of their conduct.”<sup>138</sup>

**Columbus, Ohio.** In Columbus, Ohio, as riots gripped the city, police often failed when citizens called for aid, leading to widespread accusations that municipal leaders had ordered police to stand down. Although several high-ranking city officials denied this, multiple 911 operators informed callers reporting attacks by rioters that police were indeed under orders to retreat: “We were told by our mayor to stand down, so the mayor has given [demonstrators] full range of the street,” said one operator.<sup>139</sup> A police union official confirmed the dispatchers’ account, saying that officers were told to do nothing when they saw rioters in the street attacking cars.<sup>140</sup>

**“Blue Flu” & Other Police-Led Abdication.**

In Atlanta, after prosecutors announced charges against six Atlanta police officers who tased and forcefully arrested two college students for violating a municipal curfew imposed in connection with rioting,<sup>141</sup> multiple police agencies began pulling out withdrawing their assistance to the Atlanta Police Department’s efforts to keep peace during riots. These agencies’

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<sup>136</sup> Ben Chapman, *As New York City Police Make Fewer Arrests, Violent Crime Rises*, Wall Street Journal (August 17, 2020), <https://www.wsj.com/articles/as-new-york-city-police-make-fewer-arrests-violent-crime-rises-11597600800>; Ashley Southall, *Shootings Have Soared. Is the N.Y.P.D. Pulling Back?*, N.Y. Times (July 16, 2020), <https://www.nytimes.com/2020/07/16/nyregion/nyc-shootings-nypd.html>.

<sup>137</sup> Ashley Southall, *Shootings Have Soared. Is the N.Y.P.D. Pulling Back?*, N.Y. Times (July 16, 2020), <https://www.nytimes.com/2020/07/16/nyregion/nyc-shootings-nypd.html>.

<sup>138</sup> *Id.*

<sup>139</sup> Kalea Gunderson, *911 Dispatcher Disputes City’s Claim of no ‘Stand Down’ Policy*, ABC6 (June 18, 2020), <https://abc6onyourside.com/news/local/911-dispatcher-disputes-citys-claim-of-officers-told-to-stand-down>.

<sup>140</sup> Bethany Bruner, *FOP Says Tear Gas Policy Endangers Columbus Officers, Asks for Meeting with Mayor Ginther*, Columbus Dispatch (June 19, 2020), <https://www.dispatch.com/news/20200619/fop-says-tear-gas-policy-endangers-columbus-officers-asks-for-meeting-with-mayor-ginther>.

<sup>141</sup> Makenzie Alspaw, *Messiah Young & Taniyah Pilgrim: Atlanta Students Arrested & Tased on Live TV*, Heavy (May 31, 2020), <https://www.newsbreak.com/georgia/atlanta/news/1575804177483/messiah-young-taniyah-pilgrim-atlanta-students-arrested-tased-on-live-tv>.

reason for pulling out, APD Chief Erika Shields said in an internal department memo obtained by the press, was that “agencies don’t want to risk their officers potentially being charged for criminal offences.”<sup>142</sup> Police fears of prosecution were exacerbated in mid-June, when the Fulton County District Attorney announced controversial murder charges against the officer who fatally shot Rayshard Brooks. (During a confrontation with police, Brooks stole an officer’s taser, punched him, and was firing the taser at the officer when he was shot.<sup>143</sup>) The perceived hostility towards law enforcement from local politicians and the public “has plummeted morale” among Atlanta police “to unprecedented depths” in recent months, resulting in a surge of resignations<sup>144</sup> and even an apparent walkout by officers.<sup>145</sup> In the days following the June 17th announcement of murder charges against the officer in the Brooks case, about 170 Atlanta police called in sick simultaneously, presumably in order to protest the city’s decision to charge the officer, in what has been dubbed the “Blue Flu.”<sup>146</sup> In three of the APD’s six zones, officers refused to respond to calls, and many would not leave their stations except to provide backup to other officers.<sup>147</sup>

Atlanta police’s recent reluctance to step in when lawlessness flares up has had horrific results. Even compared to other major cities, Atlanta saw “a particularly dramatic rise in violent crime” following the nationwide outbreak of riots: for instance, as of July 11, 106 people had been shot in

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<sup>142</sup> *Local Agencies Pull Officers from Protest Security*, CBS 46 (June 2, 2020), [https://www.cbs46.com/news/local-agencies-pull-officers-from-protest-security/article\\_b118cbd8-a2b2-11ea-8c1a-dfc8dd8ee924.html](https://www.cbs46.com/news/local-agencies-pull-officers-from-protest-security/article_b118cbd8-a2b2-11ea-8c1a-dfc8dd8ee924.html).

<sup>143</sup> Chas Danner, *Everything We Know About the Killing of Rayshard Brooks by Atlanta Police*, *Intelligencer* (June 18, 2020), <https://nymag.com/intelligencer/2020/06/what-we-know-about-the-killing-of-rayshard-brooks.html>.

<sup>144</sup> Christian Boone, *APD Morale at All-Time Low Following Tumultuous Two Weeks*, *Atlanta Journal Constitution* (June 19, 2020), <https://www.ajc.com/news/crime--law/apd-morale-all-time-low-following-tumultuous-two-weeks/7MHgPuuCPbkhUXYnuQyZ8O/>.

<sup>145</sup> Sabrina Siddiqui, *Violent Crime Surges in Atlanta Amid Rising Unemployment, Tensions Over Policing*, *Wall Street Journal* (July 20, 2020), <https://www.wsj.com/articles/violent-crime-surges-in-atlanta-amid-rising-unemployment-tensions-over-policing-11595237400>.

<sup>146</sup> Zachary Hansen, *170 Atlanta Police Officers Called out Sick During ‘Blue Flu’ Protests, Records Show*, *Atlanta Journal Constitution* (June 26, 2020), <https://www.ajc.com/news/crime--law/170-atlanta-police-officers-called-out-sick-during-blue-flu-protests-records-show/RIDIMWuApAM0YtmdiwX01H/>.

<sup>147</sup> Erin Corbett, *Police Are Going On Strike. Should Anyone Care?*, *Refinery29* (June 23, 2020), <https://www.refinery29.com/en-us/2020/06/9874441/police-going-on-strike-walkout-reason>.

Atlanta in the preceding twenty-eight days, compared to just forty people during the same period in 2019.<sup>148</sup> Burglary and aggravated assault have also increased, with June 2020 figures showing increases of 14% and 22%, respectively, over June 2019 numbers.<sup>149</sup> At the same time, city police have been backing down (a trend local union leadership attributes to officers' perception of anti-police sentiment among local officials)<sup>150</sup>, with arrests during this summer's most turbulent months down about 75% compared to the same months last year.<sup>151</sup>

During the three weeks following Brooks' death, the blocks surrounding the site of the shooting "witnessed a dramatic uptick in violence" as "city officials and police ceded the area to armed men with guns," resulting in a spate of "threats on journalists, assaults and shootings—one of which resulted in the death of an 8-year-old Black girl."<sup>152</sup> Some Atlanta residents have understandably complained of feeling abandoned by the police. According to one Black Atlantan interviewed by the press, "The police just don't seem to care anymore" about surging crime; "All this craziness is causing people to arm themselves."<sup>153</sup> Another of the city's residents

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<sup>148</sup> Sabrina Siddiqui, *Violent Crime Surges in Atlanta Amid Rising Unemployment, Tensions Over Policing*, Wall Street Journal (July 20, 2020), <https://www.wsj.com/articles/violent-crime-surges-in-atlanta-amid-rising-unemployment-tensions-over-policing-11595237400>.

<sup>149</sup> Michael Seiden, *City of Atlanta sees massive spike in crime over last month*, WSB-TV2 (July 1, 2020), <https://www.wsbtv.com/news/local/atlanta/city-atlanta-sees-massive-spike-crime-over-last-month-we-dig-into-whats-going/7V4LQ4K2PJB73EPPXNN2JCNMSU/>.

<sup>150</sup> Sabrina Siddiqui, *Violent Crime Surges in Atlanta Amid Rising Unemployment, Tensions Over Policing*, Wall Street Journal (July 20, 2020), <https://www.wsj.com/articles/violent-crime-surges-in-atlanta-amid-rising-unemployment-tensions-over-policing-11595237400>.

<sup>151</sup> Patrik Jonsson et al., *Amid Spike in Crime, a Question of who Owns the Streets*, Christian Science Monitor (July 15, 2020), <https://www.csmonitor.com/USA/Justice/2020/0715/Amid-spike-in-crime-a-question-of-who-owns-the-streets>.

<sup>152</sup> Jenny Jarvie, *'You're not Welcome Here.' The Painful Racial Reckoning Playing out in a Wendy's Parking Lot*, L.A. Times (July 15, 2020) <https://www.latimes.com/world-nation/story/2020-07-15/around-the-ruins-of-a-burnt-wendys-an-atlanta-community-struggles-to-create-peace>.

<sup>153</sup> Patrik Jonsson et al., *Amid Spike in Crime, a Question of who Owns the Streets*, Christian Science Monitor (July 15, 2020), <https://www.csmonitor.com/USA/Justice/2020/0715/Amid-spike-in-crime-a-question-of-who-owns-the-streets>.

agreed: “If the police back off, there’s really only two things left to do: defend yourself or be a victim.”<sup>154</sup>

Although “Blue-Flu”-style walkouts and sickouts constitute police strikes, which are illegal in every state,<sup>155</sup> Atlanta was not the only city to experience Blue Flu in Summer 2020. Over the July Fourth weekend, around three hundred LAPD officers, perhaps inspired by their Atlanta counterparts, all called in sick at once—leaving some of the department’s anti-gang units without any officers at all.<sup>156</sup> The walkout was likely prompted by an unsigned letter that circulated among LAPD rank-and-file the week prior, which condemned local politicians’ efforts to undercut law enforcement and urged police to report illness en masse in protest: “They succeeded in defunding the police; what do you think is next? Our pay? Our benefits?,” the letter said, referring to the L.A. City Council’s recent vote to cut its police budget by \$150 million; “We have to send the city a clear message that we are not expendable” and will not “take this crap anymore.” LAPD officers’ apparent walkout unfortunately occurred on a weekend with an unusually high number of homicides, shootings, and complaints of illegal fireworks exploding across the city connected with protests.<sup>157</sup> Police in New York City and Philadelphia are also rumored to have engaged in concerted slowdown tactics this summer in order to protest their local politicians’ hostility to law enforcement, though it is the degree to which such slowdowns actually occurred is unclear.<sup>158</sup>

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<sup>154</sup> *Id.*

<sup>155</sup> Andrew Grim, *What is the ‘Blue Flu,’ and How has it Increased Police Power?*, SFGate (July 1, 2020), <https://www.sfgate.com/news/article/What-is-the-blue-flu-and-how-has-it-increased-15379656.php>.

<sup>156</sup> Kevin Rector et al., *LAPD Investigates ‘Blue Flu’ Claims After Officers Call in Sick Over July 4 Holiday*, L.A. Times (July 7, 2020), <https://www.latimes.com/california/story/2020-07-07/lapd-investigates-blue-flu-claims-after-officers-call-in-sick-over-july-4-holiday>.

<sup>157</sup> *Id.*

<sup>158</sup> William Bender & Jeremy Roebuck, *Philadelphia Police Inspector Joseph Bologna will Face Assault Charges in the Beating of a Temple Student at a Protest*, Philadelphia Inquirer (June 5, 2020), <https://www.inquirer.com/news/philadelphia-police-beating-temple-student-joseph-bologna-protest-20200605.html>; Erin Corbett, *Police Are Going On Strike. Should Anyone Care?*, Refinery29 (June 23, 2020), <https://www.refinery29.com/en-us/2020/06/9874441/police-going-on-strike-walkout-reason>; Kelly Weill, *Is America in for a Summer of Police Slowdowns and Strikes?*, Daily Beast (June 12, 2020), <https://www.thedailybeast.com/is-america-in-for-a-summer-of-police-slowdowns-and-strikes>; Andrew Grim, *What is the ‘Blue Flu,’ and How has it Increased Police Power?*, SFGate (July 1, 2020), <https://www.sfgate.com/news/article/What-is-the-blue-flu-and-how-has-it->

In Long Beach, California, rioters and looters ravaged stores on live TV, producing “footage show[ing] officers appearing to stand down” as lawlessness unfolded, leading affected business owners “to believe officers had been told not to confront looters.”<sup>159</sup> According to a local paper, clips show “thieves busting their way out of a boarded-up store ... with armloads of clothes as officers watch from a few dozen feet away,” as well as “looters bolting past a cluster of officers in riot gear, who are unable to grab a single one of them.”<sup>160</sup> City officials, while denying accusations of a stand-down order, admitted that the police response was lackluster; Long Beach Police Chief Robert Luna said the department expected only a few hundred peaceful demonstrators, and mistakenly thought that officers should preemptively “back off” in the hope “that people will protest peacefully” and “that there is voluntary compliance.”<sup>161</sup>

In Indianapolis, Mayor Joe Hogsett denied allegations of a stand-down order, but the city’s police chief admitted, “We did allow the protesters”—who, the Chief claimed, were initially peaceful—“to have a little more space in the circle”; although officers remained in the vicinity, he said, “We simply backed off in an effort to give them space and to oblige their requests.”<sup>162</sup> But according to local news, “[m]any business owners in downtown ... are angry because they believe it is the choice to back off which gave instigators enough room to cause destruction, and by that time, officers were no longer in a position to handle it.”<sup>163</sup>

In Charleston, South Carolina, business owners in a part of downtown hard hit by rioting have “accuse[d] the Charleston Police Department of ignoring their pleas for help ... as vandals smashed windows and menaced guests with guns. They claim police officers weren’t visible” in the area during the chaos, “despite [business owners’] repeated 911 calls.”<sup>164</sup> Charleston’s police chief defended his department’s response, but admitted

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increased-15379656.php.

<sup>159</sup> Jeremiah Dobruck, *Why Were Thieves Able to Loot Long Beach on Live TV?*, Long Beach Post (June 1, 2020), <https://lbpost.com/news/crime/why-were-thieves-able-to-loot-long-beach-on-live-tv>.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Mayor Hogsett Responds to Accusations of IMPD ‘Stand Down’ Order for May Riots*, Fox59 (July 2, 2020), <https://fox59.com/news/mayor-hogsett-responds-to-accusations-of-impd-stand-down-order-for-may-riots/>.

<sup>163</sup> *Id.*

<sup>164</sup> Hanna Raskin & Mikaela Porter, *Downtown Charleston Restaurant Owners Claim City Allowed Saturday Night Chaos to Flourish*, Post and Courier (June 1, 2020), [https://www.postandcourier.com/news/downtown-charleston-restaurant-owners-claim-city-allowed-saturday-night-chaos-to-flourish/article\\_2c4700e8-a422-11ea-8751-6f7b62fcee50.html](https://www.postandcourier.com/news/downtown-charleston-restaurant-owners-claim-city-allowed-saturday-night-chaos-to-flourish/article_2c4700e8-a422-11ea-8751-6f7b62fcee50.html).

that officers “were not able to get to every one of those calls. We had a lot of other things and we had to prioritize.”<sup>165</sup>

In Raleigh, North Carolina, like many cities, experienced demonstrations following George Floyd’s death in May, which were characterized by “violence,” the city’s mayor said, including rioters’ “throwing rocks and bricks and pavers at police officers and through windows.”<sup>166</sup> But the weak law enforcement response led many downtown Raleigh observers to “question[] why police at times were nowhere to be found as protesters damaged property.”<sup>167</sup> Officers’ absence was partly explained by the city police chief’s self-described refusal to put “an officer in harm’s way to protect the property inside a building because insurance is most likely going to cover that.”<sup>168</sup>

Police leadership in Denver was accused by Nick Rogers, head of the local police union, of ordering officers withdraw from a July pro-police rally and effectively permit demonstrators to be attacked by counter-protestors—though, according to Rogers, one SWAT lieutenant on the scene disregarded the order and refused to retreat.<sup>169</sup> A Denver police spokesman declined to comment on the incident, which he said was still under investigation.<sup>170</sup>

In Richmond, Virginia, demonstrators opposed to the city’s continued display of a Robert E. Lee statue in the center of a large traffic circle set up permanent encampments in the green space around the statue.<sup>171</sup> With these tent cities came regular reports of gunfire, property destruction, loud noise at all hours, as well as public urination and defecation, according to residents of the surrounding neighborhood—one of whom told protestors

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<sup>165</sup> *Id.*

<sup>166</sup> Dan Kane & Virginia Bridges, *From Protest to Unrest: Where the Violence in Downtown Raleigh Started*, News & Observer (May 31, 2020), <https://www.newsobserver.com/news/local/article243141921.html>.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> Shelly Bradbury, *Denver Police Union President Says SWAT Lieutenant Ignored Commander’s Retreat Order During Sunday’s Dueling Rallies*, Denver Post (July 22, 2020), <https://www.denverpost.com/2020/07/22/denver-police-union-apology-protest-retreat-order/>.

<sup>170</sup> *Id.*

<sup>171</sup> Gregory S. Schneider & Laura Vozzella, *Protests Erupt in Violence in Richmond, Where Residents say the Ongoing Turmoil has Eroded Their Support for Demonstrations*, Wash. Post (Aug. 12, 2020), [https://www.washingtonpost.com/local/virginia-politics/protests-erupt-in-violence-in-richmond-where-residents-say-the-ongoing-turmoil-has-eroded-their-support-for-demonstrations/2020/08/12/b58dcf78-dca6-11ea-b205-ff838e15a9a6\\_story.html](https://www.washingtonpost.com/local/virginia-politics/protests-erupt-in-violence-in-richmond-where-residents-say-the-ongoing-turmoil-has-eroded-their-support-for-demonstrations/2020/08/12/b58dcf78-dca6-11ea-b205-ff838e15a9a6_story.html).

chanting nearby late at night, “we’re trying to sleep,” only to be ignored.<sup>172</sup> “Regular citizens [feel] caught in the middle,” another resident explained, adding “what does it benefit society to have the right to have your voice heard if your next move is to break a window of [a] Hotel” or the “court building?”<sup>173</sup> For months, city authorities adopted a “look-the-other-way response to encampments near the Lee statue,” which Richmond police only finally removed in early August.<sup>174</sup> Many locals accordingly felt that “city and state officials have not done enough” to address the lawlessness connected with this summer’s demonstrations.<sup>175</sup> Another resident reported motorcycles roaring through the neighborhood at midnight and again after 3 a.m., vandals spray-painting her garage, and demonstrators with guns trespassing in her yard in order to urinate.<sup>176</sup> A couple renting a room on her property, fed up with the lawlessness, moved out. “I live and work in this house and I no longer have the quiet enjoyment of my home,” she said. “The protesters have no sympathy for me. They say, ‘You’ve had 100 years here. Your time is now over.’”<sup>177</sup>

### III. SELF-HELP IN THE WAKE OF OFFICIAL ABDICATION

Because the police and other law enforcement officers have been so derelict in stemming the violence that occurred in cities across the United States in the Summer of 2020, armed citizens throughout the country have taken matters into their own hands. It’s impossible to know how often armed citizens repelled attacks from looters and rioters in the Summer of 2020. Not all incidents are reported to police or are covered by the media, and some citizens undoubtedly would rather the public not know that they drew a weapon on protestors, for fear that this would lead to them being targeted for excessive force or racism, given the association in the public mind between the looters and rioters on the one hand, and Black Lives Matters protests on the other hand. (This is true even though it appears that the vast majority of BLM protestors were peaceful, and many of the looters and rioters were doing so opportunistically, not because they believed it furthered “the cause.”)

That said, below are examples of citizens using firearms to defend themselves from mayhem. These examples were culled primarily from local media outlets, as the national media persisted throughout most of the

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<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

Summer in ignoring or downplaying rioting and looting.<sup>178</sup>

- In late-May in Scottsdale, Arizona, as a horde of rioters moved down 5th Avenue (the heart of the city's shopping district), looting and damaging stores as they went, they came upon a local jewelry store, where they were greeted by a group of people defending the premises armed with rifles and handguns.<sup>179</sup> One of these armed citizens, the storeowner's son, told the press, "We weren't here to harm anybody .... I understand what happened in Minnesota [to George Floyd] is horrific," but "this is crime."<sup>180</sup> Deterred, the rioters moved on and spared the jewelry store the damage they inflicted on other nearby businesses.<sup>181</sup>

- Also in Scottsdale around the same time, rioters descended upon the vibrant Scottsdale Fashion Square and surrounding areas, causing millions of dollars in damage in a single night.<sup>182</sup> The police response was widely decried as inadequate, and groups of armed citizens organized to protect businesses.<sup>183</sup> One such citizen, a local gym owner, reported, "Last night, one of my neighbors and I stood in front of our property with firearms and protected our boundaries until 4, 4:30 this morning .... If we hadn't done that, there's a possibility that complex would have been burned to the ground. There's others that had to ... stand in front of their businesses with firearms ... so they wouldn't get destroyed."<sup>184</sup> Similarly, a local property owner who leases space to businesses along Fifth Avenue praised the armed citizens who were protecting business that area as well, saying that their efforts "saved Fifth Avenue last night, I truly believe that .... They made a stand and scared them off. They had to. I mean, you have to protect your property."<sup>185</sup>

- In response to the looting that erupted May 30<sup>th</sup> at nearby Scottsdale Fashion Square, David Ventura, owner of Alien Donuts in Old Town

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<sup>178</sup> See Cathy Young, *The Politics of Riots*, <https://arcdigital.media/the-politics-of-riots-4658b7e88245>.

<sup>179</sup> *Business Owner Defends Store with Rifles, Handguns During Scottsdale Looting*, 12 News (May 31, 2020), <https://www.12news.com/article/news/local/valley/business-owner-defends-store-during-scottsdale-looting/75-785f1952-bf9f-4899-84e3-6b66f7f51643>.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> Melissa Rosequist, *A Night of Scottsdale Destruction, Looting Follows Phoenix Police Protests*, Daily Independent (June 1, 2020), <https://www.yourvalley.net/stories/a-night-of-scottsdale-destruction-looting-follows-phoenix-police-protests,162396>.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*



Scottsdale, enlisted some friends with military or police experience, as well as several local militia members, to serve as armed security for his bakery.<sup>186</sup> “We landed here in Scottsdale to bring joy and donuts, and the hell if we’re gonna let rioters or anybody destroy that for us and for this community,” said Ventura, who also gave out ice cream to other armed civilians who patrolled the area during the unrest.<sup>187</sup> The owner of a pizzeria next store to Alien Donuts likewise attested to the fact a number of local shopkeepers were patrolling the neighborhood with “the means to deter” rioters (firearms).<sup>188</sup>

- As rioters and looters ravaged Santa Monica, California on May 31st, a liquor store owner and several of his friends, all armed, stood guard in front of his shop, which was located in a neighborhood particularly hard-hit by the lawlessness.<sup>189</sup> The storeowner told the press that “as looters neared the store, they instead decided to keep walking once they saw his AR-15 and the other guns. ‘It was a good thing I had my customers and friends by my side, because it was pretty scary,’” he remarked, adding that he and his fellow arms-bearers also helped protect other nearby businesses.<sup>190</sup>

- During riots in Bellevue, Washington on May 31<sup>st</sup>, an armed man (presumably the storeowner) drove off a group of masked looters from a cigar store, the windows of which had already been smashed during the unrest.<sup>191</sup>

- After an investigation, prosecutors in Omaha announced no charges would be brought against Jacob Gardner, a bar owner who fatally shot James Scurlock, a demonstrator, during rioting on May 30<sup>th</sup>.<sup>192</sup> Video of the

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<sup>186</sup> Priscilla Totiyapungprasert, *He Defended his Arizona Bakery with Armed Militia. Here’s Why He Says He Won’t Again*, AZCentral (June 6, 2020), <https://www.azcentral.com/story/news/local/scottsdale/2020/06/06/scottsdales-alien-donuts-owner-defends-militia-presence-amid-protests/3125802001/>.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Santa Monica Owner Protects His Store With Guns Amid Looting*, CBS Los Angeles (June 1, 2020), <https://losangeles.cbslocal.com/2020/06/01/santa-monica-owner-defends-his-store-with-guns-amid-looting/>.

<sup>190</sup> *Id.*

<sup>191</sup> ‘*Get the F\*\*k Out’: Man Orders Masked Group to Leave Damaged Cigar Shop in Washington*, Yahoo News (June 2, 2020), <https://uk.news.yahoo.com/f-k-man-orders-masked-031437364.html>.

<sup>192</sup> *No Charges for Business Owner who Claimed Self-Defense in Fatal Shooting of Protester*, Fox 10 (June 2, 2020), [https://www.fox10tv.com/news/us\\_world\\_news/no-charges-for-business-owner-who-claimed-self-defense-in-fatal-shooting-of-protester/article\\_29655372-8fd6-5787-a9b1-952908945c66.html](https://www.fox10tv.com/news/us_world_news/no-charges-for-business-owner-who-claimed-self-defense-in-fatal-shooting-of-protester/article_29655372-8fd6-5787-a9b1-952908945c66.html).

incident shows a demonstrator shoving Gardner's 68-year-old father to the ground and Gardner attempting to identify the culprit.<sup>193</sup> Then, two demonstrators jump on Gardner's back and a struggle ensues, during which Gardner fires two rounds (which he later claimed were warning shots).<sup>194</sup> Scurlock then jumps on Gardner's back, and the two can be seen struggling on the ground before Gardner fatally shoots Scurlock, who (according to Gardner) was attempting a chokehold on Gardner at the time he was shot.<sup>195</sup> Authorities, in declining to charge Gardner, apparently agreed with this account. However, under public pressure the prosecutor asked a grand jury to review his decision not to bring charges, and the grand jury issued an indictment for manslaughter and other offenses.<sup>196</sup>

- During riots in Cleveland, Ohio in May, a father and his sons successfully guarded their family-owned bakery with firearms as violent demonstrators overtook the surrounding area.<sup>197</sup> Rioters and looters initially descended upon the bakery and broke windows, but retreated quickly when they were greeted by the gun-wielding proprietors.<sup>198</sup>

- During riots in Lynchburg, Virginia on the night of May 31<sup>st</sup>, a group of armed citizens, determined to compensate for a thin police presence, volunteered as security for a restaurant located at the center of the unrest.<sup>199</sup> Initially, there were a dozen or so armed citizens protecting the restaurant from the angry crowd surrounding it; once the additional volunteers arrived, there were reportedly around 40 total arms-bearers holding back the mob.<sup>200</sup> When police finally arrived, officers said demonstrators had surrounded the restaurant and became violent, throwing

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<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> <https://www.cnn.com/2020/09/16/us/omaha-shooting-james-scurlock-jake-gardner-indictment/index.html>

<sup>197</sup> Sia Nyorkor, '*Standing strong*': *Corbo's Bakery Owners, Armed with Shotguns, Protect Their Business from Protesters*, 19 News (May 31, 2020), <https://www.cleveland19.com/2020/05/31/standing-strong-corbos-bakery-owners-armed-with-shotguns-protect-their-business-protesters/>.

<sup>198</sup> Paula Bolyard, '*We Weren't Goin' to Sit Back and Let It Happen*': *Italian Bakery Owners Welcome Cleveland Looters with an Impressive Arsenal*, PJ Media (May 31, 2020), <https://pjmedia.com/news-and-politics/paula-bolyard/2020/05/31/we-werent-goin-to-sit-back-and-let-it-happen-italian-bakery-owners-welcome-looters-with-an-impressive-arsenal-n473024>.

<sup>199</sup> Samantha Smith & Shayne Dwyer, *Armed Citizens Volunteer as Security to Protect Lynchburg Restaurant*, WLSL 10 News (June 1, 2020), <https://www.wsls.com/news/local/2020/06/01/armed-citizens-volunteer-as-security-to-protect-lynchburg-restaurant/>.

<sup>200</sup> *Id.*

rocks and assaulting officers.<sup>201</sup> After the crown refused to disperse, officers “deployed a chemical agent” to drive the rioters away.<sup>202</sup> One of the armed volunteers told the press, that if he and other gun-wielding citizens had not been there, “protesters would have broken in and destroyed the restaurant.”<sup>203</sup>

- During rioting in San Diego in late May and early June, a restaurant owner and several friends, all armed, guarded the restaurant and a neighboring liquor store against riots and looting that erupted in the area.<sup>204</sup> Among other confrontations, the armed citizens repelled attempted attacks by a “young man [who] tried to bust through the windows of a neighboring business with a hammer” and by another who “tried to force his way through [the restaurant’s] front door, then ... threw [rocks] at the windows.”<sup>205</sup>

- When riots erupted in St. Paul in May, citizens also armed themselves and guarded their property from the mobs. Notably, groups of African-American St. Paul residents could be seen protecting local businesses with guns; various videos taken during the riots show “armed black men standing in front of a store” said to be a Black-owned business, as well as a “black gunman” and other “civilians protecting a store.”<sup>206</sup>

- In the early morning hours of June 2nd, an armed, 67-year-old South Philadelphia gun store owner confronted a group of four looters who had broken into his shop intending to burglarize it.<sup>207</sup> The storeowner, who was spending the night on the premises after a break-in several nights prior, fatally shot one armed would-be burglar and wounded another, causing the other two thieves to flee.<sup>208</sup> After an investigation, the local district attorney

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<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> Brittany Meiling, *Armed with Shotguns, a Dozen Men are Guarding Russian Restaurant Against Looters in Downtown San Diego*, San Diego Union-Tribune (June 4, 2020), <https://www.sandiegouniontribune.com/business/story/2020-06-04/pushkin-restaurant-riots-looting-san-diego>.

<sup>205</sup> *Id.*

<sup>206</sup> Zuri Davis, *Black Civilians Arm Themselves To Protest Racial Violence and Protect Black-Owned Businesses*, Reason (May 29, 2020), <https://reason.com/2020/05/29/black-civilians-arm-themselves-to-protest-racial-violence-and-protect-black-owned-businesses/>.

<sup>207</sup> Miguel Martinez-Valle & Dan Stamm, *South Philly Gun Shop Owner Shoots, Kills Looter, Police Say*, NBC Philadelphia (June 2, 2020), <https://www.nbcphiladelphia.com/news/local/south-philly-gun-shop-owner-shoots-kills-looter-police-say/2416373/>.

<sup>208</sup> *Id.*

announced charges against one of the four burglars, as well as his office's decision not to charge the storeowner: "The facts we know and the law are clear that the business owner's use of force while inside his own property against a burglar accompanied by others who was entering with a gun in his hand was justified," said the D.A., adding, "It is fortunate ... that this large cache of guns and ammunitions were not taken and sold on the street."<sup>209</sup>

- Amid riots in Los Angeles in early June, armed liquor store owners, with support from community members, successfully repelled an attempted attack on their business by a group of rioters and looters.<sup>210</sup>

- In Minneapolis, a city especially hard hit by recent rioting, groups of armed residents protecting property and life from lawbreakers proliferated this summer, particularly given Minneapolis police's inadequate response to the unrest.<sup>211</sup> In the city's Lake Street neighborhood, which was at the heart of recent riots, restaurateur Cesia Baires formed Security Latinos De La Lake, a group of gun-toting locals dedicated to protecting the area's Latino community—one of many armed neighborhood watch groups that sprung up in the Twin Cities.<sup>212</sup> "It's not something that I would want," Baires told *MPR*, "but ... we were left alone .... There were no cops that would come

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<sup>209</sup> *DA: South Philly Gun Shop Owner 'Justified' in Shooting of 2 Burglars, Killing 1*, FOX 29 Philadelphia (June 5, 2020), <https://www.fox29.com/news/da-south-philly-gun-shop-owner-justified-in-shooting-of-2-burglars-killing-1>.

<sup>210</sup> Stephen Sorace, *Los Angeles Community Members Protecting Business from Looters Detained Amid Riot Confusion on Live TV*, Fox News (June 2, 2020), <https://www.foxnews.com/us/los-angeles-community-members-protecting-business-from-looters-detained-amid-riot-confusion-on-live-tv>.

<sup>211</sup> See, e.g., Riham Feshir, *For Some Minneapolis Residents, Dismantling the Police Isn't Far-Fetched*, *MPR News* (June 17, 2020), <https://www.mprnews.org/story/2020/06/17/for-some-minneapolis-residents-dismantling-the-police-isnt-farfetched>; Leila Fadel, *Armed Neighborhood Groups Form In The Absence Of Police Protection*, *NPR* (June 3, 2020), <https://www.npr.org/2020/06/03/868464167/armed-neighborhood-groups-form-in-the-absence-of-police-protection>; Michael Ruiz, *Minneapolis Small Business Owner Formed Armed Group to Defend Against Rioters when Police Stepped Back: Report*, Fox News (June 10, 2020), <https://www.foxnews.com/us/minneapolis-business-owner-armed-group-rioters-police>; Jared Goyette, *Citizen Patrols Organize Across Minneapolis as Confidence in the Police Force Plummet*, *Wash. Post* (June 7, 2020), [https://www.washingtonpost.com/national/citizen-patrols-make-statement-in-minneapolis/2020/06/06/cc1844d4-a78c-11ea-b473-04905b1af82b\\_story.html](https://www.washingtonpost.com/national/citizen-patrols-make-statement-in-minneapolis/2020/06/06/cc1844d4-a78c-11ea-b473-04905b1af82b_story.html).

<sup>212</sup> Leila Fadel, *Armed Neighborhood Groups Form In The Absence Of Police Protection*, *NPR* (June 3, 2020), <https://www.npr.org/2020/06/03/868464167/armed-neighborhood-groups-form-in-the-absence-of-police-protection>.

around. So what are we to do? Just stand there and do nothing?”<sup>213</sup> The local NAACP chapter likewise organized groups of armed residents to guard local businesses during this summer’s wave of rioting.<sup>214</sup> In the city’s predominantly-Black Folwell neighborhood, “it became ... apparent ... that the police weren’t available to help .... [w]hen protests and ransacking of businesses erupted” in May, so residents “banded together to protect themselves,” sitting “outside businesses with guns to make sure outside groups didn’t attack.”<sup>215</sup> City Councilman Jeremiah Ellison (son of Minnesota Attorney General Keith Ellison) organized his own group of mostly-Black armed citizens, mainly to protect businesses in a neighborhood “considered the heart of the city’s black community,” after several Black-owned businesses were destroyed during recent demonstrations.<sup>216</sup> In one incident of armed self-defense during the rioting in Minneapolis, video footage shows armed volunteers standing outside a tobacco shop to help the storeowners defend the premises against rioters and looters; one gun-toting volunteer explained that while “we do agree with the cause for protests,” “we definitely don’t agree with the looting.”<sup>217</sup>

- One controversial incident involves the August 25<sup>th</sup> shooting of three rioters (two of whom died, while the other suffered a non-life-threatening elbow injury) in Kenosha, Wisconsin by Kyle Rittenhouse, an armed teenager who apparently came to the city to assist others who were guarding businesses.<sup>218</sup> Kenosha County prosecutors have charged Rittenhouse, who is currently in custody, with first-degree intentional homicide.<sup>219</sup> Rittenhouse, however, seems to have a plausible self-defense defense, given that several videos (bolstered by witness accounts) of the

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<sup>213</sup> *Id.*

<sup>214</sup> Riham Feshir, *For Some Minneapolis Residents, Dismantling the Police Isn’t Far-Fetched*, MPR News (June 17, 2020), <https://www.mprnews.org/story/2020/06/17/for-some-minneapolis-residents-dismantling-the-police-isnt-farfetched>.

<sup>215</sup> *Id.*

<sup>216</sup> Jared Goyette, *Citizen Patrols Organize Across Minneapolis as Confidence in the Police Force Plummet*, Wash. Post (June 7, 2020), [https://www.washingtonpost.com/national/citizen-patrols-make-statement-in-minneapolis/2020/06/06/cc1844d4-a78c-11ea-b473-04905b1af82b\\_story.html](https://www.washingtonpost.com/national/citizen-patrols-make-statement-in-minneapolis/2020/06/06/cc1844d4-a78c-11ea-b473-04905b1af82b_story.html).

<sup>217</sup> Matthew Impelli, *Video Shows Armed Residents Protecting Local Businesses From Rioters in Kenosha, WI*, Newsweek (Aug. 25, 2020), <https://www.newsweek.com/video-shows-armed-residents-protecting-local-businesses-rioters-kenosha-wi-1527496>.

<sup>218</sup> <https://www.jsonline.com/story/news/2020/08/26/kenosha-shooting-details-video-show-scenes-wisconsin-protest/3442031001/>.

<sup>219</sup> <https://www.cbsnews.com/news/kyle-rittenhouse-shooting-kenosha-protest-suspect-arrested/>.

incident suggest that he was about to be attacked when he first fired his weapon, and was about to be set upon by vigilantes when he used his firearm a second time.<sup>220</sup> One YouTube user has helpfully compiled all known footage of the incident.<sup>221</sup>

- As a new wave of riots gripped Kenosha, Wisconsin in late-August, videos have surfaced showing armed Kenosha residents protecting local businesses from rioters and looters.<sup>222</sup> In one such video, an armed man explains, “we’re trying to protect the innocent people and ... the[ir] businesses,” while another says, “I’m on your side, ... but you can’t burn down your local businesses.”<sup>223</sup> Another video shows armed residents protecting a Kenosha car dealership, one of whom tells rioters, “get the fuck away from these businesses. These people rely on this shit to live.”<sup>224</sup> In a third video, an armed citizen tells a journalist, “We’re trying to stop [rioters] from hurting their own community.”<sup>225</sup>

- Throughout the Summer of 2020, there were many stories reported in local media of armed citizens guarding property from rioters and looters that did not result in *direct* confrontation between arms-bearers and lawbreakers. In Dallas, Texas, for instance, in response to riots in late May that resulted in looting, attacks on police, and arson, groups of armed citizens began patrolling the streets nightly during the period of unrest, protecting local businesses from lawless mobs.<sup>226</sup> One of these gun-wielding men explained, “We’re here using our Second Amendment right to enforce and let everybody use their First Amendment right as long as they’re peaceful .... If you have a problem with the police, take it up with the police, leave private businesses out of it.”<sup>227</sup> Other notable examples of bands of armed citizens guarding property during the riots this summer

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<sup>220</sup> <https://www.jsonline.com/story/news/2020/08/26/kenosha-shooting-details-videos-show-scenes-wisconsin-protest/3442031001/>.

<sup>221</sup> [https://youtu.be/n\\_7QHRNFOKE](https://youtu.be/n_7QHRNFOKE).

<sup>222</sup> Matthew Impelli, *Video Shows Armed Residents Protecting Local Businesses From Rioters in Kenosha, WI*, Newsweek (Aug. 25, 2020), <https://www.newsweek.com/video-shows-armed-residents-protecting-local-businesses-rioters-kenosha-wi-1527496>.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> Paul Sacca, *Armed Citizens in Dallas Protect Businesses During Riots: ‘We Want People to Protest, Leave Private Businesses out of it’*, The Blaze (May 31, 2020), <https://www.theblaze.com/news/armed-men-dallas-riots-floyd-protest>.

<sup>227</sup> *Id.*

come from Kennewick, Washington<sup>228</sup>; Snohomish, Washington<sup>229</sup>; and San Antonio, Texas.<sup>230</sup>

### CONCLUSION

Proponents of the right to private gun possession have long noted that the police are not always available to be of assistance, certainly not in sufficient time to prevent criminal action. A commonly-heard refrain is “when seconds count, the police are minutes away.”<sup>231</sup> During recent protests in the wake of George Floyd’s death, calls have arisen to “defund the police,” which can mean anything from small cuts in funding to something close to abolishing the police altogether. Already, as of this writing in early September 2020, some cities have substantially cut police funding.<sup>232</sup>

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<sup>228</sup> David Mann, *Armed Citizens Stand Outside Kennewick Businesses to Defend Them from Vandalism*, YakTriNews (June 2, 2020), <https://www.yaktrinews.com/armed-citizens-stand-outside-kennewick-businesses-to-defend-them-from-vandalism/>.

<sup>229</sup> Eric Wilkinson, *Snohomish Navigates Divide as Armed Citizens Defend Their Actions During George Floyd Protests*, King5 (June 3, 2020), <https://www.king5.com/article/news/local/protests/snohomish-george-floyd-protests-armed-citizens-protesters/281-97220e36-dd3a-426c-9d82-1b6ad729b1f0>.

<sup>230</sup> Joe Galli, *Armed Citizens Patrol Downtown Area Where Police Clashed with Protesters Tuesday Night*, News 4 San Antonio (June 3, 2020), <https://news4sanantonio.com/news/local/armed-citizens-patrol-downtown-area-where-police-clashed-with-protesters-tuesday-night>.

<sup>231</sup> E.g., Ryan Cleckner, *10 Common Arguments For Gun Control, Debunked*, The Federalist, March 21, 2018 (“When seconds count, law enforcement is often minutes away”).

<sup>232</sup> Meena Venkataramanan, *Austin City Council Cuts Police Department Budget by One-Third, Mainly Through Reorganizing Some Duties Out from Law Enforcement Oversight*, Texas Tribune (Aug. 13, 2020), <https://www.texastribune.org/2020/08/13/austin-city-council-cut-police-budget-defund/> (Austin police budget cut by one-third, or \$150 billion); *LA City Council Slashes LAPD Funding By \$150M*, CBS Los Angeles (July 1, 2020), [https://losangeles.cbslocal.com/2020/07/01/la-city-council-could-slash-lapd-funding-by-150m-as-it-finalizes-new-budget-wednesday/#:~:text=The%20proposed%20operating%20budget%20of,L.A.%20is%20about%20%2410.5%20billion.](https://losangeles.cbslocal.com/2020/07/01/la-city-council-could-slash-lapd-funding-by-150m-as-it-finalizes-new-budget-wednesday/#:~:text=The%20proposed%20operating%20budget%20of,L.A.%20is%20about%20%2410.5%20billion.;); Kristina Sgueglia & Scottie Andrew, *New York Police Department’s Budget has been Slashed by \$1 Billion*, CNN (July 1, 2020), <https://www.cnn.com/2020/07/01/us/new-york-budget-nypd-1-billion-cut-trnd/index.html> (NYPD budget of nearly \$6 billion for 2020 slashed by \$1 billion); Jemima McEvoy, *At Least 13 Cities Are Defunding Their Police Departments*, Forbes (Aug. 12, 2020), <https://www.forbes.com/sites/jemimamcevoy/2020/08/13/at-least-13-cities-are->

Mainstream liberals, who had previously been strongly on the “rely exclusively on police and not on a personal firearm for protection” bandwagon, seem unwilling or unable to defend the importance, competence, and efficacy of the police in the face of allegations of institutional racism against American law enforcement. In short, the argument that Americans should trust the police to protect them, already greeted with skepticism if not derision in gun-rights circles, has been undermined further by the anti-police movement.

In short, conservative and libertarian guns rights proponents have long asserted that the existence of professional police forces is an inadequate substitute for a right to armed self-defense, and progressive advocates of gun control and even confiscation have, to a significant extent, now joined the anti-police bandwagon. Given that reality, there does not seem to be much of a constituency left for the argument that the right to armed self-defense has been rendered anachronistic by the development of professional law enforcement.

Perhaps even more significant, the events of Summer 2020 demonstrate that putting aside how one feels about the police from a theoretical or philosophical approach, law enforcement in fact often cannot be relied up to “do their jobs” in the face of significant disorder. As this article has shown, in cities around the country police forces failed to preserve law and order. In some cases they were ordered to stand down by elected officials who sympathized with the law breakers; in some cases because in an environment dominated by anti-police agitators, police supervisors thought it unwise to ratchet up police presence and activity; and in some cases, grassroots police officers, frustrated with the hostility shown by the public, quit, either permanently, or, as with the “Blue flu,” temporarily refused to do their jobs.

In the absence of police protection, some Americans, such as those living in the CHOP zone in Seattle, were subject to a reign of terror by armed anarchists who destroyed businesses, restricted exit and entry, and used illegal force against residents. Others, either by themselves or in groups, banded together to defend their safety and their businesses via force of arms. In some lawless precincts, only businesses that were guarded by

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defunding-their-police-departments/#1e5d7f2c29e3 (D.C. enacted “\$15 million police budget cut .... Baltimore eliminated roughly \$22 million from its police budget; Portland, Oregon, cut nearly \$16 million; Philadelphia reduced police funding by \$33 million; Hartford, Conn. cut \$1 million from its \$40 million budget; Norman, Oklahoma slashed \$865,000”); Felicia Martinez, *Salt Lake City Council Withholds \$5M From Police Budget*, KSL TV (June 17, 2020), <https://ksltv.com/439580/police-budget/> (“proposed \$84 million Salt Lake City Police Department budget was pared down by approximately \$5.3 million”).



armed civilians are still standing.

The fact that armed self-defense may seem inferior in many circumstances to having the professionalized police handle disorder is besides the point; in the absence of a viable, effective police presence, in practice the primary mechanism citizens have to protect themselves, their businesses, their employees, and their property from violence is armed resistance to criminals who would prey upon them.

Some might argue that protecting an individual right to bear arms would only make matters worse, as it would increase the number of firearms in circulation, including for rioters and other criminals. In fact, however, researchers estimate that Americans already own almost four hundred million personal firearms.<sup>233</sup> Allowing law-abiding citizens in prohibitory jurisdictions to acquire a license to keep and carry a gun with appropriate regulatory standards would have only a negligible effect on the number of guns in circulation, while substantially increasing the ability of citizens to defend themselves when law enforcement is unable or unwilling to do so.

In constitutional law terms, all this supports the notion that the right to keep and bear arms for self-defense purposes should be extended beyond the home. During this past Summer's unrest, many Americans have either made the choice to defend themselves, or had that choice forced upon them when attacked with no viable retreat possible. Try telling them that the right to bear arms in self-defense is obsolete thanks to the police.

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<sup>233</sup> <http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>.