

Opinion

Here's how states can empower citizens to help combat gun violence

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July 28, 2022 at 7:00 a.m. EDT

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California has copied Texas in deputizing its residents to enforce controversial laws. Texas passed a law allowing private citizens to sue anyone who [aids or abets an abortion](#), and now California has done [the same for guns](#), permitting private lawsuits against those who deal in certain kinds of illegal firearms.

Both laws are misguided because they [insulate](#) potentially unconstitutional restrictions from judicial review. But California is correct in saying that ordinary citizens can and should play a bigger role in reducing gun deaths. Here's how we think that might work. Instead of allowing private citizens to sue other private citizens, we propose that California and other states should authorize “unlawful possession petitions” and incentivize private citizens to file them before state trial judges. This would give the courts the ability to order the removal of firearms if there is probable cause to believe that someone possesses them illegally.

[We've estimated](#) that more than a quarter of the U.S. population cannot legally purchase or own firearms. Common disqualifiers include current drug use (including marijuana, even in states that have legalized it for medical or recreational purposes), involuntary commitment for mental illness and a felony conviction. And there are hundreds of thousands of Americans who illegally possess firearms. California, the state that does the best job at tracking this problem, has identified more than [24,000 prohibited persons](#) who have failed to surrender their guns.

Most states are lackadaisical about disarming people who have been convicted of felonies. The majority use a kind of honor system, expecting illegal gun owners to identify themselves and voluntarily relinquish their weapons. When a resident is convicted of a felony, most states do not even ask whether they own firearms. And even when the state can identify prohibited persons, officials rarely seek to remove the guns.

Take the case of Courtney and Joseph Irby. On June 14, 2019, Joseph was arrested and jailed on domestic violence charges for allegedly trying to hit Courtney, his estranged wife, with a car. Though Courtney obtained a restraining order against her husband, she reported to police that she was still [“in fear for her life”](#) because Joseph owned two guns and she believed [“he wasn't going to turn them in.”](#)

Even though the protective order against him meant that Joseph could no longer legally own firearms, Courtney's report did not prompt the police to remove his guns. When Courtney retrieved the guns and brought them to the police herself, the department caused a national stir by arresting her for stealing her husband's property.

Unlawful possession petitions would give people such as Courtney Irby another way to protect themselves, on top of the right to petition for temporary restraining orders in cases of domestic violence that many states grant their residents. Many states have also passed red-flag statutes that likewise give citizens the right to petition for court-ordered disarmament of people who meet various statutory standards of dangerousness. An authorizing statute for unlawful possession petitions could allow the petitioner to choose to remain anonymous and give the subject of the petition the option to turn in their weapons and avoid criminal prosecution.

Beyond unlawful possession petitions, states should give individuals more incentive to come forward with information about illegal possession. Private individuals are sometimes better informed than the state. The state might know that someone is a felon, but not that they possess a gun. Or the state might know that someone owns a weapon, but not that they are a drug user.

The new California law, which awards individuals \$10,000 for information about illegal gun sales — including sales to underage buyers — is on the right track. Gun bounties are more effective than gun buy-back programs. A number of [Florida cities](#) pay cash rewards for anonymous tips about illegal weapons, and many of these programs have been successful at more than just removing unlawful guns.

The problem with the California law is that it doesn't sufficiently involve state actors. Including courts and police provides two crucial benefits. First, it avoids the shenanigans that Texas began by making the law judicially reviewable. Under the Texas abortion law, federal courts have no state official they can enjoin to block the private suits from continuing — even if the underlying abortion prohibition is unconstitutional. It's the same with the California law.

Second, including state actors helps guard against private overreach. Gun-seizure orders would be issued only if a judge determined that there is probable cause to believe that an individual is in unlawful possession of a firearm. The respondent would be given an opportunity after the seizure to contest its validity in court and potentially have their firearms returned to them. And our proposal would subject petitioners to sanctions if a court determined that they intentionally provided false information.

Unlawful firearm possession is a substantial cause of gun violence in this country. Harnessing information from private individuals to take guns away from illegal owners should be a public policy that a broad spectrum of Americans can support.