WVCDL WEST VIRGINIA CITIZENS DEFENSE LEAGUE

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Open Letter to Senators Shelley Moore Capito and Joe Manchin

Senators,

In a time when our nation is so bitterly divided that so many can only see through the lens of "their side," and everyone else is simply "the others," true character comes from seeing and rejecting the "us" or "them" identities thrust upon us by politicians and media. These partisan blinders generally serve a single purpose; obscuring truth.

Hidden below the raging culture war of us v. them lies a document. It is a decision in the court case commonly known as "Heller II" and it addresses fundamental civil liberty, and specifically, our right as human beings to defend ourselves. In the observation of various Second Amendment Rights groups' championing of the appointment of Judge Brett Kavanaugh to the Supreme Court of the United States, we can only conclude that none of them have bothered to read his dissent in that case. That is the benevolent explanation. The more sinister explanation is that they have indeed read it, and they do not care about its contents and what those contents say about the future of the Second Amendment should Judge Kavanaugh be confirmed.

The board and members of the WVCDL are not afflicted by partisan blindness. We can read. And what we have read is deeply disturbing.

An excerpt:

"First, just because gun regulations are assessed by reference to history and tradition does not mean that governments lack flexibility or power to enact gun regulations. Indeed, governments appear to have more flexibility and power to impose gun regulations under a test based on text, history, and tradition than they would under strict scrutiny. After all, history and tradition show that a variety of gun regulations have co-existed with the Second Amendment right and are consistent with that right, as the Court said in Heller."

Judge Kavanaugh argues for pages on end that Heller sets up a test for the abridgement of gun rights. He makes endless references to the "historic and traditional" bans, and indicates that the mere presence of a ban justifies the ban regardless of its true Second Amendment impact. He further opines that the "common use" language from the Heller (I) decision, tied with the "historic and traditional" bans, justifies the perpetuation of those bans.

Distilling his dissent into a single line could easily and reasonably be done as such: "If it has been banned, it will stay banned. The existence of a ban alone, proves that ban is constitutional."

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This sets up a condition where gun rights can never improve at the federal level. They may only degrade over time. Consider a real-world hypothetical, framed within Judge Kavanaugh's contorted logic:

NFA items were effectively banned in 1934. Therefore, they are not now in common use (because, obviously, they are banned). And because they are not in common use (because they've been banned for 84 years) and there's a historic and traditional ban, they stay banned. Judge Kavanaugh championed all the worst parts of Heller (I) in his dissent.

Another example of Judge Kavanaugh's circular logic in his Heller (II) dissent:

"With respect to the first step, Heller tells us 'longstanding' regulations are 'presumptively lawful,' 554 U.S. at 626–27 & n.26; that is, they are presumed not to burden conduct within the scope of the Second Amendment. See McDonald v. City of Chicago, 130 S. Ct. 3020, 3047 (2010) (Heller 'did not cast doubt on [certain types of] longstanding regulatory measures'); Chester, 628 F.3d at 679 (Heller 'acknowledged that the scope of the Second Amendment is subject to historical limitations'); Marzzarella, 614 F.3d at 91 (Heller indicates 'longstanding limitations are exceptions to the right to bear arms'); United States v. Rene E., 583 F.3d 8, 12 (1st Cir. 2009) (Heller 'identified limits' of the Second Amendment based upon 'various historical restrictions on possessing and carrying weapons'). This is a reasonable presumption because a regulation that is 'longstanding,' which necessarily means it has long been accepted by the public, is not likely to burden a constitutional right;"

Read that last line again: "This is a reasonable presumption because a regulation that is 'longstanding,' which necessarily means it has long been accepted by the public, is not likely to burden a constitutional right;"

I will interpret that to plain speak. "If it's been banned, it should stay banned, and is not a violation of your Second Amendment rights." This pays no respect to the reality that the Second Amendment has been eviscerated for 84 years.

Possibly the most chilling words from Judge Kavanaugh's pen are as follows:

"As a citizen, I certainly share the goal of Police Chief Cathy Lanier to reduce and hopefully eliminate the senseless violence that has persisted for too long and harmed so many. And I greatly respect the motivation behind the D.C. gun laws at issue in this case. So my view on how to analyze the constitutional question here under the relevant Supreme Court precedents is not to say that I think certain gun registration laws or laws regulating semi-automatic guns are necessarily a bad idea as a matter of policy. If our job were to decree what we think is the best policy, I would carefully consider the issues through that different lens and might well look favorably upon certain regulations of this kind."

Those are not the words of a man who understands or supports the Second Amendment.

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The West Virginia Citizen's Defense League is an aggressive organization that advances the rights of West Virginians. We have reviewed multiple opinions and dissents by Judge Kavanaugh. Given what is in black and white before us, we cannot conclude that he is a pro Second Amendment judge. Further, we are not in the business of merely "defending" gun rights. We are in the business of advancing them. And since we care nothing for the partisan culture war underway, we cannot support Judge Kavanaugh's appointment to the Supreme Court of the United States.

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