Is gun violence a public health or a law enforcement issue? Regulating gun violence is currently a shared power between the state and federal government. States have police power (Police Power Doctrine), pursuant to the Tenth Amendment, to 1). Promote the public health, morals, or safety, and the general well-being of the community; 2). Enact and enforce laws for the promotion of general welfare; and 3.) Extend measures to all great public needs (Galva, Atchison, & Levey, 2005, para. 2). States possess the primary authority for enacting and enforcing criminal laws pursuant to the Police Power Doctrine; gun violence is viewed as a criminal matter, so state regulation is preferred over federal regulation (Harwood, 2002, p. 66). This is our current, national model illustrating the separation of federal and state power.

In contrast to the state's role in creation and enforcement of criminal law, public health is generally viewed as a matter for the federal government to regulate. The federal government has determined that state residency should not determine the quality or quantity of health care; this is why the Food and Drug Administration regulates introduction of new drugs and why Medicare and Medicaid are federal programs. "Accordingly, if one views gun violence as a matter of public health, one is more likely to favor federal regulation" (Harwood, 2002, p. 66). Federal regulation of gun violence laws would be binding on all states, thus creating a national legal standard instead of (the current model) states each passing said laws under the Police Power Doctrine. What efforts have been made, by the medical community, to usurp the Police Power Doctrine by removing the jurisdiction to pass gun violence laws from the states to the federal government?

The American College of Physicians ("ACP) labeled gun violence an 'epidemic' in 1995 (Bukus, Doherty, and Daniel, 2014, para. 1). It is primarily medical communities that support the designation of gun violence as a public health issue. The opposing position, those that

believe that gun violence should remain a state law enforcement issue, are primarily those in the law enforcement community. Andrew Arulanandam, spokesman for the National Rifle Association ("NRA"), stated the following:

> "Given that they are neither gun safety nor firearm storage experts, doctors ought to focus the limited time they spend with their patients focusing on their health and well-being instead of nosing around on private matters that do not concern them or engaging in political debate of a fundamental constitutional right" (Leonard, 2015, para. 17).

"The CDC and the World Health Organization already consider violence a public health threat, whether a firearm is involved or not" (Leonard, 2015, para. 5). How is the designation of gun violence, as a public health issue, projected to reduce the number of gun violence incidences? How could a doctor's constitutional rights, under the First Amendment, be violated if such a designation were made into law?

Gun violence has been at the forefront of United States politics for decades now, yet the issue was first brought to the attention to the public (on a national level) when crack epidemics ravaged major cities, such as Los Angeles and New York, in the 1980's and early 1990's (Foundation for a Drug-Free World, 2015). This naturally resulted in law enforcement taking measures to curb the gun violence epidemic. This, in turn, created fear in citizens; it was merited because annual homicide rates reached their first historical high in 1980 with 23,040 murders (*compare* to the 14,249 of 2014)…to then reach the historical high of 24,530 in 1993 ("United States Crime", 2014, para. 1).

In 1995, the medical community (through a report published by the ACP) believed that it could assist in reducing gun violence, by designating it as a public health issue, and recommended the following measures (in summary):

1. “Physicians should counsel patients on the risk of having firearms in the home, particularly when children, adolescents, people with dementia, people with mental illnesses, people with substance use disorders, or others who are at increased risk of harming themselves or others are present” (“ACP Physician Statements”, 2014, para. 9).

2. “State and federal authorities should avoid enactment of mandates that interfere with physician free speech and the patient–physician relationship” (“ACP Physician Statements”, 2014, para. 10).

3. The ACP supports universal background checks, proof of satisfactory completion of an appropriate educational program on firearms safety course, increased waiting periods between purchase and receipt of a firearm, individual identifying markings for every bullet and firearm produced, laws that require physicians (and other health professionals) to report those who they believe pose an imminent threat to themselves or others, a ban on ‘assault weapons’ and ‘semiautomatic weapons’, and built-in safety device on all firearms (“ACP Physician Statements”, 2014).

In summary, a physician could ask the patient about possession of firearms, their storage disposition, and could counsel patients on firearms safety…**and** report the patient to the authorities if the physician believes that the patient poses an imminent danger to themselves or others. Do these proposed measures violate the doctor’s First Amendment speech rights because they would compel a physician to speak…even when the physician’s personal beliefs are different than the required spoken content?

The ACP’s recommendations could be evaluated through a law that is struck-down upon constitutional challenge, under the Overbreadth Doctrine, because the law prohibits or regulates more activity than is necessary to achieve a compelling government interest (in regards to

regulation of speech content receiving a strict scrutiny review); the Overbreadth Doctrine can be used to evaluate constitutional challenges to state and federal laws that regulate content-based speech.

A federal law requiring physicians to notify the authorities, if they believe that the patient poses an imminent threat to themselves or others, *compels* the doctor to speak on behalf of the government. This is regardless of the views held by the physician; thus, a doctor who does **not** believe that he or she should be required to notify authorities, if such a situation arose, could have standing to challenge the law under the First Amendment only if **1.** The doctor did not report the patient to the authorities; and **2.** The doctor is damaged somehow for his or her omission in the form of employment or other financial compensation.

Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston, 515 U.S. 557 (1995) is the authority for this type of challenge. The Court held that a state may not require private parade organizers to include in their parade groups messages with which the organizers disagree. This is analogous to a doctor being required to speak because a private doctor (private parade organizers) cannot be required to 'include' (or speak) messages (the requirement to speak) with which the doctor disagrees.

The Centers for Disease Control ("CDC") has been banned, for nineteen years now, from conducting studies on determining whether particular measures, such as improving background checks and collecting more data on the prevalence of gun violence, could result in a reduction in the incidents of gun violence. After the CDC's last such study was conducted in 1996, wording was inserted into the agency's appropriations bill stating that none of the funds made available could be used to advocate or promote gun control (Leonard, 2015, para. 6). This was an obvious

reaction to the ACP's recommendations the previous year, in 1995, when the ACP recommended that gun violence be designated as a public health issue by labeling it as an 'epidemic'.

The ACP's recommendations have not been adopted by Congress despite yet another 'call to action' in February of 2015, by the ACP, asking Congress to develop policies that would reduce the incidences of gun violence (Weinberger et. al., 2015). The ACP believes that, if their recommendations were adopted in full by the federal government, the overall incidences of gun violence would be reduced as positively correlated to physician intervention with patients.

I do not believe that gun violence should be designated as a public health issue. This is because I view this debate as a political one that is to be settled in the ballot box, not by government regulation. Further, I do not like the broad discretion that the ACP's recommendations provide physicians. Determining whether a patient is an imminent danger to themselves, or others, is more of an art form (subjective interpretation) than something that can be regulated by a government law. This is because a physician is provided the discretion to have a 'professional opinion'. I fear that such over-broad discretion, provided to an actor that has the power to initiate a government investigation, could result in a high-enough rate of misdiagnosis, of the 'imminent threat', to merit revision of the law because it harms those that are judged not to be an imminent threat upon review.

In conclusion, I believe that gun violence will eventually be designated as a public health issue (and removed from its current jurisdiction under the Police Power Doctrine) because the incidences of gun violence, as positively correlated to mental illness, will increase over time. This will maintain the debate in the public realm until there is a groundswell of public support calling for gun violence to be designated as a public health issue…and politicians will respond, in kind, when election season comes around.

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