

# Ralph Northam's Losing Battle on Sanctuaries



Virginia Governor Ralph Northam speaks to gun control activists at a rally by Moms Demand Action and other family members of shooting victims outside of the Virginia State Capitol Building in Richmond, Va., July 9, 2019. *(Michael A. McCoy/Reuters)*

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His attempt to enforce unpopular and unconstitutional gun-control laws is doomed to failure.

Ralph Northam is about to make the biggest tactical mistake in Virginia since Cornwallis decided to park his army at Yorktown. With his attempt to force local commonwealth's attorneys and sheriffs in Second Amendment sanctuaries to enforce his unconstitutional gun laws, Governor Northam is setting himself up for a catastrophic failure. In fact, there's no way for Northam to win the fight he seems intent on picking with Virginia gun owners and Second Amendment sanctuaries.

The governor isn't being helped by fellow Democrats such as U.S. congressman

Donald McEachin, who said the governor should call out the National Guard to enforce the law, or Attorney General Mark Herring, who blithely says he expects that the laws will be followed once they're on the books.

There are also Democrats, such as Delegate David Toscano, who have been comparing the Second Amendment-sanctuary movement to the Massive Resistance movement that unfolded in Virginia in the wake of the *Brown v. Board of Education* decision in 1954. Massive Resistance came about after Democratic governor Thomas B. Stanley organized a state-level opposition movement to the integration of public schools in Virginia in the late 1950s. To compare it to today's Second Amendment-sanctuary movement is to compare apples and oranges on a couple of different levels.

First of all, the Second Amendment-sanctuary movement is morally just, unlike the Massive Resistance movement of the late '50s and early '60s. The Second Amendment-sanctuary movement isn't about curtailing rights, but rather about protecting their free exercise.

Practically speaking, Massive Resistance was a top-down movement, spearheaded by U.S. senator Harry Byrd and his fellow Democrats in the governor's mansion and Virginia's attorney general's office. The Second Amendment-sanctuary movement, on the other hand, is a hyper-local grassroots movement that has no leader, though state-level Second Amendment groups are doing a good job of informing folks where meetings are taking place and even providing curious supervisors with examples of Second Amendment-sanctuary resolutions that have been approved elsewhere. Thousands of people show up at these board-of-supervisors meetings, and not because Philip Van Cleave or Cam Edwards or Nick Freitas or anyone else told them to be there. They're showing up because their neighbor told them about the meeting, or they saw something on Facebook. They're showing up and speaking out because they care.

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Ultimately, it's the people in these Second Amendment-sanctuary communities who are the last line of defense against the infringement of their rights, but thankfully we have several other defensive options at our disposal. We can even thank today's Virginia Democrats for providing a blueprint to follow. Call it passive resistance, not Massive Resistance.

Anti-gun Democrats hoping to force compliance with the impending gun-control laws frequently argue that, because Virginia is a “Dillon’s Rule” state, county supervisors have no ability to decide which laws will be enforced or not. That’s true, but it doesn’t matter, because it’s not the county board of supervisors that enforces the law, any more than legislators in Richmond or Ralph Northam do. Law enforcement in these Second Amendment sanctuaries is largely the role of the county sheriff and the commonwealth’s attorney, and Democratic commonwealth’s attorneys have demonstrated in recent months that it’s possible to not enforce a state law, as long as you’ve got the judges to go along with you.

Norfolk and Portsmouth commonwealth’s attorneys Greg Underwood and Stephanie Morales, respectively, announced earlier this year that their offices will not prosecute low-level drug offenses. Morales has apparently persuaded judges in Portsmouth to go along, while in Norfolk, Underwood has had to deal with judges who have refused in some cases to dismiss the charges.

Meanwhile, although Governor Ralph Northam, Attorney General Mark Herring, and various and sundry Virginia Democrats have railed against the Second Amendment-sanctuary communities for turning the rule of law upside down, sowing chaos, and making mischief, they’ve not said a word when these fellow Democrats have decided that certain laws won’t be enforced. They seem to simply believe it’s different when Democrats do it.

It’s not. Democrats have taught us a thing or two about how to #Resist over the last three years, and Virginia’s Second Amendment supporters are going to put those lessons to work in the months ahead.

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Since Virginia Democrats have given commonwealth’s attorneys the green light to ignore portions of state law they don’t agree with, why shouldn’t sheriffs have that same authority? After all, they’re usually working with limited resources and already need to prioritize which crimes they will investigate. Why shouldn’t a sheriff say he’s not going to waste time and resources on investigations that solely involve non-violent possessory offenses against Northam’s new gun-control laws? Why shouldn’t commonwealth’s attorneys say the same? And why shouldn’t the Virginia GOP encourage sheriffs and commonwealth’s attorneys to do so? They would simply be taking a page from the Democrats’ playbook.

Even if no official or formal policy can be established, word gets around pretty fast in these rural counties, as we've seen with the turnouts for the Second Amendment-sanctuary meetings. Ralph Northam and Mark Herring can't police every decision by every officer to arrest or not, or by every prosecutor to bring a case or dismiss it, nor can they remove the discretion that must be a part of those jobs.

The simple truth is that the criminal justice system couldn't handle full enforcement of every law on the books, especially if the defendants demanded their right to a speedy trial by a jury of their peers. The vast majority of criminal cases in Virginia are plea-bargained down because if they all went to trial, the system would grind to a halt.

I believe that in many rural counties we will see passive resistance adopted in practice, officially or unofficially. But even in those Second Amendment sanctuaries where police chiefs, sheriffs, and commonwealth's attorneys decide that they're going to enforce the unconstitutional gun-control laws heading our way, there's no guarantee of conviction.

As I said earlier, the last line of defense in the tactic of passive resistance is the citizens. In order for Ralph Northam to secure a conviction for a violation of one of his proposed gun laws in a Second Amendment sanctuary, here's what would have to happen.

First, a law enforcement officer will have to decide to charge someone for a violation of one of Northam's proposed laws. Perhaps it's for allowing their 17-year-old daughter to have access to a firearm while she was alone in a rural farmhouse. Sure, she used the gun in self-defense when a couple of meth-heads tried to break in, but the parents broke the law and now they have to be charged. So, the officer arrests Mom and Dad.

Next, the commonwealth's attorney will have to prosecute Mom and Dad for allowing their daughter, who's been trained in responsible gun ownership and even competes in 4H Shooting Sports, to have access to the gun that she used in self-defense. Sure, it's a good thing she's alive, but the law's the law.

Mom and Dad were at the board-of-supervisors meeting along with a thousand of their neighbors when their local Second Amendment-sanctuary resolution was passed. They know how their neighbors feel. And they decide to fight. They don't

plead down to lesser charges. They take it to trial. And now a jury of their peers will have to decide if they should be punished for allowing the little girl they've watched grow up defend herself against two intruders.

What do you think the odds are that Mom and Dad are acquitted? Personally, I don't think that case would ever get prosecuted to begin with, but in most Second Amendment-sanctuary counties I would put the odds of conviction right around 0 percent. Governor Northam can threaten county officials with "consequences" for not enforcing his gun-control laws, but what's he going to do when juries in rural Virginia start returning not-guilty verdicts for any charges brought under those laws?

Before Ralph Northam goes too far down this dead-end road of gun control, he should look at what's happened in a few other states that have passed state-level gun-control laws in recent years. In New York, there's been massive noncompliance with the laws, and the vast majority of prosecutions under the state's SAFE Act, which restricts firearm rights, are taking place in just two of New York City's five boroughs: the Bronx and Brooklyn. A large majority of defendants are young black men without serious criminal histories, who are facing years in prison for non-violent possessory offenses. As *Slate's* Emily Jaffe wrote, the War on Drugs is being replaced by the War on Guns, but it's still young minority men who are disproportionately impacted.

That will absolutely be the case with any gun-control laws that Northam may sign. The vast majority of enforcement will be in the Richmond, Petersburg, Norfolk/Virginia Beach, and Roanoke areas, with northern Virginia coming up close behind. The vast majority of charges will be for non-violent possessory offenses, the vast majority of defendants will be young black and Hispanic men from Virginia's inner cities, and the vast majority of those defendants will not have any serious criminal history, though they may be heading down that road.

Instead of offering these individuals a way out, however, Ralph Northam wants to give them a crash course in criminality by putting them in prison.

This strategy of passive resistance can be put in place alongside the inevitable court challenges that will come for every new gun-control bill Northam signs into law, but it's not a perfect solution. Some counties will absolutely enforce these laws, while the Virginia State Police will do the same. Gun stores can't passively

resist any new gun laws, though many will certainly get creative in finding ways to stay within the law and still sell as robust an inventory as they can.

“Red flag” laws, which allow for the seizure of firearms from an individual deemed to be an “extreme risk” of using them for violence, are another issue. If, under such a law, a judge tells a county sheriff to seize someone’s firearms before that person gets his day in court, how many county sheriffs will refuse? More than a few, I would guess. But if, on the other hand, local law enforcement are the ones that bring an initial petition to the judge, many judges will refuse to issue an Extreme Risk Protection Order and will stick instead with the state’s civil-commitment laws when they have concerns that someone may be a danger to himself or others. The county sheriffs I’ve spoken to say they believe that civil commitment, under which a dangerous individual can be involuntarily confined in a mental health unit, is a better option than a “red flag” order, which may force the sheriff to seize any legally owned guns but leaves the supposedly dangerous individual to his own devices. Sheriffs can easily argue that they shouldn’t be forced to use a tool they don’t believe is as effective as another one at their disposal.

If, however, lawmakers expand the categories of people who can file a red-flag petition, the sheriff and commonwealth’s attorney may not have any input at all before a judge issues an order. If Governor Ralph Northam wants to avoid a fight with Second Amendment sanctuaries, he could also structure the red-flag bill in such a way as to make it the responsibility of the state attorney general’s office to handle the petitions, and of the Virginia State Police to conduct the seizure of the firearms. I suspect Northam wants this fight, unfortunately, because he naïvely believes he can win.

Ralph Northam can get his way, but there’s no way he can win this fight. He can put the laws on the books, but he can’t enforce them. He can threaten public officials with punishment, but he has already allowed commonwealth’s attorneys to not enforce laws they don’t agree with. In most Second Amendment sanctuaries, these unconstitutional gun laws will likely be largely ignored by law enforcement. In those cases where individuals are charged solely with non-violent possessory crimes, such as violating the state’s universal background check, a jury of their peers will likely choose to acquit them in order to send a message to Richmond. And in deep-blue Democrat-controlled parts of the state, the laws will be strictly enforced, largely against young minority males who aren’t violent

criminals.

After all that, he can't even be sure that the violent-crime rate will drop. It didn't happen in Colorado when the state passed a magazine ban and universal background checks back in 2013. In fact, violent crime has increased by 25 percent since then. It didn't happen in Maryland when the state passed the Firearms Safety Act in 2013. Beginning in 2014, Baltimore's homicide rate began skyrocketing, and the city has had more than 300 homicides every year since (as opposed to the low 200s in the years before the act's passage). In New York City, violent crime is down but shootings are up.

By focusing his efforts on Virginia's legal gun owners, Northam is only empowering violent criminals, and he will largely be punishing only young men who may not be making the best choices, but who won't be served by spending years behind bars for giving a gun to their friend to carry in self-defense on the streets of Petersburg.

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Gun control will be Ralph Northam's political Vietnam if he continues down this road, and calling in reinforcements in the form of the Virginia National Guard would only provoke another crisis, both within the Guard itself and in the Second Amendment-sanctuary communities where they would be dispatched. If Northam actually called out the Guard, he'd be the first governor to use military force to restrict the exercise of a constitutional right since Arkansas governor Orval Faubus called out the National Guard to block the steps of Little Rock Central High School rather than allow the school to be integrated in 1957.

Can you imagine Donald Trump calling out the 101st Airborne to protect the rights of Virginians, as Dwight Eisenhower did to protect the rights of Arkansans? Do Virginia Democrats really want to give that shameful episode of American history a reboot? Again, there is simply no way for the governor to win here, even if he signs every gun-control law that gets to his desk. Even if ultimately the U.S. Supreme Court were to uphold every law he signed, it would only be a Pyrrhic victory at best. He can make all the laws he wants, but he's going to have a heck of a time trying to enforce them.

There is another way, though I don't think Governor Northam is likely to take it. He should sit down with gun owners and Republican lawmakers for an honest

discussion about ways to effectively promote public safety without provoking a constitutional crisis or widespread civil disobedience. Republican delegate Todd Gilbert has already come up with an excellent plan to combat violent crime in the state's urban areas, and it doesn't involve any new gun-control laws. Instead, it empowers cities to work with the U.S. attorneys in the area to identify and target the most violent offenders with one simple message: "You're going to stop shooting. We'll help you if you let us. We'll make you if we have to." Targeted prosecutions in the federal system put individuals who won't change behind bars for as long as possible, while programs allow young men to actually break away from the cycle of violence and start to take control over their lives.

In fact, more and more academics are saying that the broad strokes of gun control are ineffective at addressing the small number of individuals who are driving violent crime in our cities. Professor Bindu Kalesan of Boston University, for example, has noted that gun-related violent crime among youths has been trending upwards in recent years, even in states such as Colorado and Maryland where gun-control laws have been put on the books. She says efforts to stem gun violence must focus on the individuals and groups who are actually committing these crimes, as well as addressing the issues that may drive the violence. What we don't need, she says, are more "broad and blunt" gun-control laws.

That's the better way to address drug-related and gang-related violence. What about suicide? Red-flag laws may take someone's firearms from them, but it leaves them with their pills, their belts, their car keys, knives, and anything else they might use to take their own life. Supporters of red-flag laws claim that gun-related suicides have declined in Connecticut and Indiana, where these laws have been on the books for the longest amount of time, but they never mention that the overall suicide rates in both states have continued to climb, even with red-flag laws on the books. Fewer people may be killing themselves with a gun, but more people are killing themselves overall. I don't know how anybody can call that a success story.

Instead of "free" community college for low-income Virginians, how about spending that \$145 million a year on mental-health services instead? You could do quite a bit with that much money, including expanding access in rural areas through telemedicine and mobile clinics, in urban areas through grants to counseling programs, in communities large and small by funding drug-treatment and rehabilitation programs, and in schools by hiring more counselors and



psychologists.

What about domestic violence? Instead of hoping that violent domestic abusers are going to be stopped by a piece of paper, why don't we empower their victims instead? Allow individuals who've had to take out an order of protection to carry a firearm on an emergency basis, and help with expedited training if need be through state grants given to county sheriff's offices to administer.

Also, put some teeth in the existing law. If someone violates an order of protection, don't let them be immediately released on bond after they've been arrested. Allow high bonds for domestic-violence offenders who have violated orders of protection or have been arrested for abusing the victim while an order of protection was in place. We know the state can't be present at every moment to protect these vulnerable individuals from harm, so the state has an obligation to let them protect themselves. The state also has an obligation, however, to ensure that those violating these orders should face real consequences. In addition, counseling needs to be a part of the consequences. It's not enough to lock them up for a bit and let them stew in their own anger. Rehabilitation has to be a key component of any effort to combat domestic violence.

If Ralph Northam would focus on these three areas, not only would he receive backing from gun owners for his proposals, but if he effectively implemented these plans, he could see dramatic reductions in Virginia's homicide and suicide rates, and fairly quickly. Instead of the political equivalent of Vietnam, Northam could produce the political equivalent of the first Gulf War; policies that work fast, are effective and end up enjoying a lot of popular support.

I have a feeling that the soundtrack to Virginia's politics over the next few months is going to be more Country Joe & The Fish's "I-Feel-Like-I'm-Fixin'-to-Die Rag" ("And it's 1, 2, 3, what are we fighting for?/Don't ask me, I don't give a damn, next stop is Vietnam") than Bette Midler's unofficial anthem of the Gulf War, "From a Distance," but I'd love to be proven wrong.

The choice is ultimately up to Ralph Northam and Virginia's Democrats. They can effectively address the state's growing number of suicides and its drug- and gang-related violence, as well as domestic violence, without provoking a constitutional crisis and widespread non-enforcement of the laws, or they can go full speed ahead towards an impending political disaster and morass that will be Northam's

legacy for decades to come and the No. 1 issue for Virginia voters in the federal elections in 2020 and the state elections in 2021.

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