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S. HRG. 113–870

PROPOSALS TO REDUCE GUN VIOLENCE: PROTECTING OUR COMMUNITIES WHILE RESPECTING THE SECOND AMENDMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

FEBRUARY 12, 2013

Serial No. J–113–3

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[Note: At the time of printing, after several attempts to obtain responses to the written questions, the Committee had not received any communication from Suzanna Hupp.]

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PROPOSALS TO REDUCE GUN VIOLENCE: PROTECTING OUR COMMUNITIES WHILE RESPECTING THE SECOND AMENDMENT

TUESDAY, FEBRUARY 12, 2013

UNITED STATES SENATE,
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10 a.m., in Room SH–216, Hart Senate Office Building, Hon. Dick Durbin, Chairman of the Subcommittee, presiding.

Present: Senators Durbin, Franken, Blumenthal, Hirono, Cruz, Graham, Cornyn, and Hatch.

Also present: Senators Feinstein, Schumer, Klobuchar, and Grassley.

OPENING STATEMENT OF HON. DICK DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chairman DURBIN. This hearing of the Subcommittee on the Constitution, Civil Rights and Human Rights will come to order. Today's hearing is entitled, "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment." This is the first hearing of the Constitution Subcommittee of the 113th Congress, and I want to welcome my Ranking Republican Member, Senator Ted Cruz of Texas. Thank you for joining us at this Committee hearing, as well as my other colleagues who will be here.

I also want to thank Senator Pat Leahy, Chairman of the full Committee, for giving this opportunity to us to have this hearing today. The Chairman held a hearing on January 30th to begin this conversation on gun violence, and we continue it today.

We are pleased to have such a large audience for our hearing. It demonstrates the importance of this issue, and at the outset I want to note that the rules of the Senate prohibit outbursts, clapping, or demonstrations of any kind at these hearings. There was so much interest in today's hearing that we have had to expand the opportunity for the audience to an adjoining room. The overflow room is 226 in the Dirksen Building.

I will make a few opening remarks, give my Ranking Member, Senator Cruz, the same opportunity, and then welcome our first witness.

We are here today to discuss a critically important issue, maybe even a very basic question. We venerate in this country our commitment to the life, liberty, and pursuit of happiness of those who live in America. We also guarantee under our Bill of Rights the right to bear arms. Can we make these two consistent? Can they work together? Can we protect a person's right to own a firearm and still say to the rest of America, "We also need to protect your right to life, to peace, to freedom from violence from those same firearms"?

According to the Centers for Disease Control, over 11,000 Americans—11,000—are murdered with guns every year. That is more each year than all the American lives that were lost in the tragedy of 9/11 and the wars in Iraq and Afghanistan combined. Each year.

Every day more than 30 men, women, and children are killed in violent shootings; 200 are shot but survive. These are sobering statistics. But numbers do not really capture the deeply personal impact of gun violence.

There are too many families who now face an empty seat at a dinner table, too many parents who walk past an empty bedroom, too many husbands and wives who have lost the love of their lives because of gunfire. It is heartbreaking and, sadly, it has become almost routine in this great Nation—in a park in Chicago, at a nightclub in East St. Louis, Illinois, at a movie theater in Aurora, Colorado, at a shopping center in Tucson, Arizona, in a Sikh temple in Oak Creek, Wisconsin, at a military base in Texas, in college lecture halls in DeKalb, Illinois, and Blacksburg, Virginia, and in first grade classrooms in Newtown, Connecticut. Americans all across the country are saying, "Enough." We have reached a tipping point. We need to act. We need to better protect our kids, our families, our schools, our loved ones from the epidemic of gun violence.

Some say we should just enforce the laws that are on the books, but that is not enough. There are so many gaps in those laws that we know they have created the situation we face today.

The Senate will take up many proposals that will close those gaps and help prevent and reduce gun violence. We will consider universal background checks for gun sales, tougher gun laws against illegal straw purchasing and gun trafficking, stopping the flood of new military-style assault weapons onto our streets, limiting the capacity of new gun magazines to a level that allows for reasonable self-defense but reduces the scope of carnage that a mass shooter can cause.

All of these proposals are based on common sense; all of them have strong support among the American public; and all of them, I believe, are clearly consistent with our Constitution and the Second Amendment in the Bill of Rights.

In the landmark Supreme Court decision in *Heller* in 2008, the Court held that Americans have an individual right to possess firearms for lawful purposes such as self-defense. But Justice Scalia—no liberal, Justice Scalia—writing for the Court's conservative majority, made clear that the Second Amendment right is "not unlimited," and that like other rights, it is subject to reasonable regulation. In fact, the *Heller* decision takes pains not to cast any doubt on common-sense gun laws. Over and over, the *Heller* Court de-

scribed gun regulation as "permissible," supported by historical tradition and "presumptively lawful."

When given the opportunity to retreat from those statements in the 2010 *McDonald* case, the Court instead reinforced the same statements and described them as "assurances." And in hundreds of cases following *Heller*, lower courts have upheld common-sense gun laws as consistent with the Second Amendment.

There are some who continue to challenge the constitutionality of reasonable gun regulation, even though history, precedent, and the Supreme Court statements in *Heller* and *McDonald* weigh heavily against them. They do so hoping that judicial activism will advance their no-compromise ideology when it comes to guns. But I think we need to be careful. This is not some abstract, legal debate. Guns have forever changed the lives of so many people. Let me mention just a few of them.

Hadiya Pendleton, an honor student and inspiration to her friends. "A walking angel," her cousin called her. She was taken from us 2 weeks ago. Hadiya's family is here today.

Ryanne Mace, a student at Northern Illinois University, with a warm heart, a bright future, murdered in her classroom by a man with a history of mental illness. Ryanne's mother, Mary Kay, is here today.

Blair Holt, 16 years old and full of promise, killed while shielding his female friend from a gang member spraying bullets on a Chicago city bus. Blair's mother, Annette, is here today.

Marcus Norris, who was hit in the face by a bullet that came through the wall of his house when he was 9 years old. Thank God Marcus survived, and we are blessed to have him here today.

Chicago police officer Thomas Wortham IV, a true American hero who dedicated his life to serving his country and his community, killed by gang members with a straw-purchased gun. I attended his funeral service. Officer Wortham's family is here, and his sister, Sandra, will testify today.

There are many more here in this room today whose lives and whose families have been changed by gun violence. I would like to ask those friends and family of the victims of gun violence to please stand.

Look about this room. Understand that the debate we have before us has affected so many lives, and thank you all for being here today. As we conduct this debate and we honor your loved ones who are no longer with us, we know that we have to act. Thank you so much for joining us at this hearing.

Senator Cruz.

OPENING STATEMENT OF HON. TED CRUZ, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CRUZ. Thank you, Mr. Chairman. Let me say it is a particular honor to serve as Ranking Member on this Committee with you, and it is also a particularly high honor to serve on the Committee with two former Ranking Members and Chairmen of this Committee, Senator Cornyn and Senator Hatch, as well as the Ranking Member of the entire Committee, Senator Grassley.

All of us were rightly horrified by the tragedy in Newtown, Connecticut. To see young children senselessly murdered takes your

breath away. Let me say to each of you who has come here today that are the victims of crimes of violence, my heart goes out to you. Thank you for coming. Thank you for standing for your lost loved ones.

I will tell you, I have spent personally much of my professional career working in law enforcement to, number one, prevent these horrible crimes of violence; and, number two, to ensure that anyone that carries them out is subject to the very strictest punishments. And I am hopeful that the fervor that we see in this Judiciary Committee hearing for standing up for victims of crimes of violence will carry over to issues other than gun control. I am hopeful that that same fervor will be present with judicial nominees are here who have a record and history of allowing those who have committed violent crimes to walk free. I hope that same fervor on a bipartisan basis will be present when we are talking about how to ensure that the laws and resources are there to prevent violent criminals from carrying out their horrific crimes and to ensure that every one of them receives a fair and just punishment.

In my view, the divide on this issue is fairly straightforward. The focus of law enforcement should be on criminals, and we should be unstinting in protecting communities. Many of the communities that each of you has suffered losses in are communities that, sadly, law enforcement has been failing. And we should be working to fix that problem.

At the same time, I think we should continue to respect and protect the constitutional rights of law-abiding citizens. It is often lost in the debate over guns that the Second Amendment is part of our Constitution. It is part of the Bill of Rights. It is indeed, as Justice Joseph Story put it, the "palladium of liberty," a fundamental protection of every American. And in my view, stripping the constitutional rights of law-abiding citizens does nothing to prevent criminals from carrying out violent crime. And, indeed, the overwhelming weight of the empirical evidence demonstrates that when the rights of law-abiding citizens to protect themselves, to protect their homes, to protect their families are taken away, that violent crime increases; that citizens defenseless are more vulnerable to violent criminals.

For that reason, the two cities with the strictest gun control policies in the country—Washington, DC, and Chicago—both of which for years had effectively total bans on firearms ownership, so it could not be possible to have a stricter policy, both have, sadly, suffered from some of the highest crime rates and highest murder rates notwithstanding those laws and, I would suggest, in significant part because of those laws.

If you look in contrast to jurisdictions that have protected the constitutional right to bear arms, you have consistently seen lower crime rates, lower murder rates, as individual citizens are able to protect their family.

The Supreme Court's decisions in *Heller* and *McDonald* were landmark decisions. They concern the question whether each of us is protected by the Bill of Rights, because the position of the cities of DC and Chicago in that litigation was that no individual has any right whatsoever under the Second Amendment. The position of the litigants in those cases, I would suggest, was quite extreme. Today

we are discussing what are the limits on that right because the Supreme Court made absolutely clear that the Second Amendment is a constitutional right of every American. And I would point out that constitutional rights are designed to be protected not just when they are popular, but especially when passions are seeking to restrict and limit those rights.

And so I look forward to this hearing underscoring the vital protections of the Second Amendment to every American.

Chairman DURBIN. Thank you, Senator Cruz.

In keeping with the practice of the Committee, the witness will please stand and raise his right hand to be sworn. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HEAPHY. I do.

Chairman DURBIN. Thank you.

Let the record indicate that the witness answered in the affirmative.

We are pleased to be joined by a witness from the Department of Justice, U.S. Attorney Timothy Heaphy. I would note that at our last hearing on gun violence on January 30th, there was a specific request from the Republican side for the Justice Department to send a witness to our next hearing to discuss the enforcement of current gun law. The Department has responded to this request.

Timothy Heaphy was confirmed by the Senate in 2009 to serve as the U.S. Attorney for the Western District of Virginia. Prior to his appointment, he served for 12 years as Assistant U.S. Attorney in Virginia and the District of Columbia. He has also worked in private practice and taught at the University of Virginia School of Law. He received his undergraduate and law degrees from the University of Virginia as well.

Mr. Heaphy, thanks for joining us today. We will give you 5 minutes for an opening statement. Your complete statement will be part of the record, and then we will ask some questions. Please proceed.

STATEMENT OF TIMOTHY J. HEAPHY, UNITED STATES ATTORNEY, WESTERN DISTRICT OF VIRGINIA, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. HEAPHY. Thank you very much, Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee. I serve as the United States Attorney for the Western District of Virginia, and in that capacity, I am pleased and honored, really, to speak with you about the continuing work of the United States Attorney community and the Department of Justice to address gun-related violence.

This is a very personal issue to me, Chairman Durbin. I have prosecuted literally hundreds of gun cases in my 15 years as a Federal prosecutor, including a year-long trial of a violent drug gang right here in Washington, DC. I currently serve as United States Attorney in a district that has felt the pain of a mass shooting on the campus of Virginia Tech. I have spent my career talking to the victims of these awful crimes, folks much like those in the audience today, and working with the men and women who investigate them on the street.

Attorney General Eric Holder has consistently emphasized that combating violent crime and fostering safe communities is a top priority of the Department of Justice. To that end, he has tasked the Nation's 93 United States Attorneys with the responsibility to develop localized strategies to apprehend and prosecute individuals, street gangs, and other criminal organizations that engage in gun-related violence.

These local strategies require us to work smarter by gathering intelligence and targeting our enforcement efforts on the most dangerous and complicated threats in our communities. We use that intelligence to vigorously prosecute gun crime, relying on close coordination with agents from the Bureau of Alcohol, Tobacco, and Firearms and our other State, Federal, and local partners.

But we do more than arrest and prosecute. In communities where violence persists, we are forging partnerships with prevention organizations and supporting their important work. Our Violence Prevention Strategy relies upon a nationwide effort to keep guns out of the hands of prohibited persons. When licensed gun dealers run a background check on every potential gun buyer, they ensure that they are not selling firearms to felons, domestic abusers, drug users, people with recognized mental health issues, or others who by law cannot possess a firearm. But the background check system is only effective if it contains all relevant information from every source.

The Department of Justice is working to create incentives and provide assistance to State governments, the prime contributors to that background check system, to ensure that they put all relevant criminal and mental health records into the National Instant Criminal Background Check System, or NICS.

Even if we find a way to get every record into NICS, our effort to prevent criminals from getting guns is hampered by current holes in the background check system. Our experience shows that violent criminals often seek out sellers, whether at gun shows, on the Internet, or in the Yellow Pages, who are not licensed dealers and are not required to run the background check. Extending the background check requirement to all commercial transactions, absent some limited exceptions, is our best opportunity to keep firearms out of dangerous hands and help keep our children and communities safe.

Strategies for enforcement of firearms offenses will vary, depending on the nature of the problem in particular communities. We work closely with State prosecutors and local law enforcement officials to determine if a particular gun case or gun offender should be charged in Federal or State court. When cases come to us, we use Federal firearms statutes to prosecute prohibited persons who obtain and possess firearms, people who were prevented from obtaining a firearm due to an interception of the background check. We prosecute individuals engaged in the business of dealing firearms without a license or who ignore or disregard the law, preventing gun sales to prohibited persons. We charge violent criminals with using guns to commit a range of other crimes, from drug dealing to robbery to homicide, using statutes which often carry lengthy mandatory sentences.

Additionally, we do all we can to pursue cases involving gun trafficking and straw purchases of firearms, despite the enormous challenges that such cases present. There is currently no single Federal statute specifically devoted to punishing firearms trafficking or straw purchasing. This gap in current law requires prosecutors to try to find other gun-related criminal statutes, generally paperwork violations, that can be applied to the facts of a particular trafficking scheme. Without a stand-alone statute and more meaningful penalties for those who traffic in firearms, we will continue to find it difficult to dismantle the criminal networks that exploit these statutory gaps.

I want to end by reassuring this Committee and the American people that the Department's commitment to vigorous pursuit of impactful gun prosecutions is as strong as ever. While the number of gun defendants charged by United States Attorneys has declined slightly since 2005, our numbers are significantly higher than they were back in fiscal years 2000 to 2002. During the same period of time, the number of murders and other violent crime has declined nationwide at an even greater rate. In short, our commitment to gun prosecutions has never wavered and has helped lead to an overall decrease in violent crime.

Thank you again for the opportunity to appear before you today. I look forward to answering your specific questions.

[The prepared statement of Mr. Heaphy appears as a submission for the record.]

Chairman DURBIN. Thanks, Mr. Heaphy. Let me say a word about Chicago. It is a great city, but it is not an island. Just outside Chicago in a suburb is one gun store that we can hold responsible for 20 percent of the crime guns that we confiscate in the city of Chicago. So despite the laws in Chicago, the fact that you can cross outside the city into the suburbs, go downstate, to neighboring States—we have even found in the last 20 years 9 percent of the crime guns in the city of Chicago could be traced to the State of Mississippi. We cannot deal with this in isolation community by community.

I want to address the issue of straw purchasing. Straw purchasing is a dangerous act that supplies many criminals in the city of Chicago and across the United States and other prohibited purchasers with guns. Under the current Federal law, the primary statute used for charging penalizes a person who "knowingly makes a false statement about a fact material to the lawfulness of a gun sale." This statute is essentially about document fraud. The crime is tied to lying on sale paperwork when the straw purchaser checks "yes" on the ATF form that asks, "Are you the actual buyer of the firearm listed on this form?"

Can you talk about the challenge in prosecuting cases that appear to be paperwork prosecutions?

Mr. HEAPHY. Yes, Senator. I appreciate the question, and you are exactly right, that when someone goes into a gun store, buys a gun on behalf of someone else, our hands are tied. We can prosecute that as a paperwork violation but not as what it is, which is an illegal straw purchase of a gun.

Section 922(a)(6) is the statute which punishes a false statement on a firearm form. That requires evidence that the person knew

that he was making the false statement, and that oftentimes just on the misrepresentation is a difficult threshold for us to meet. Prosecutions under that law carry a very minimal recommended Sentencing Guideline range. I think CRS did a study years ago in which they found that fully a third of the 922(a)(6) charges resulted in a not guilty verdict largely because of this intent standard; and then another 37 percent resulted in a sentence of less than a year in prison. So the statute itself, even if we have the evidence of a specific intent to conduct a straw purchase, does not give us very much teeth, sir, on the back end in order to get actionable intelligence about that straw purchase.

Chairman DURBIN. So, Mr. Heaphy, those who argue that we already have laws on the books, we just need to enforce them, you are telling us that this law is essentially a weak law; it is a paperwork prosecution which is not taken as seriously as the ultimate crime or death that might result from this straw purchase.

Mr. HEAPHY. In our business, Senator Durbin, we are constantly focused on gathering intelligence about more and more serious patterns of crime. Gun trafficking is no exception. It is essential for us, when we arrest someone who is a straw purchaser, to get actionable intelligence about where that gun was going, who hired him to conduct that straw purchase. The leverage that we have to gain that intelligence comes from a significant penalty, and if the penalty essentially is a paperwork violation that is not intimidating, it is difficult for us to get that intelligence to work up the chain of those straw purchasing networks.

Chairman DURBIN. I have joined with Chairman Leahy in cosponsoring legislation relating to straw purchasers. There are several other bills. Senator Kirk, my colleague from Illinois, Senator Gillibrand, they have one.

Do you believe that creating a separate Federal offense for straw purchasing would put a significant dent in the criminal gun market?

Mr. HEAPHY. Yes, Senator, I do. The Department strongly supports a stand-alone straw purchasing statute. It will give us those more serious penalties that we need in order to gain intelligence and buildup the chain of these networks of individuals that conduct straw purchases.

Chairman DURBIN. I have found in my State and we have heard in other States that there is a cooperation between State and local prosecutors and Federal prosecutors in allocating these prosecutions. And many times what could be an offense under either law is passed along to the local or State prosecutors.

Can you tell me how this affects the statistics on Federal prosecution of gun laws?

Mr. HEAPHY. Yes, Senator. We have to work very closely with our State and local partners in a collaborative approach to gun violence. We do that in every single district in the country. In my district, in Charlottesville, Virginia, when someone is arrested with a gun, there is a conversation between myself and my elected Commonwealth's attorney in that jurisdiction. We talk about whether or not it makes sense for that offender to be charged federally or under State law. Since the Virginia Tech shooting in Virginia, there are increased penalties for being a felon in possession. It is

a concurrent jurisdiction where the State can prosecute the same act as we can. And if the State penalty is as significant, that case often goes to State court, and that has contributed to that slight decline in our overall number of gun defendants.

Chairman DURBIN. The last point I will make is that March 1st, unless something else is done, there is going to be a sequester and a cutback in the Department of Justice in the resources available for the prosecution of crime. About a thousand Federal prosecutors may be terminated or at least reduced in service. I think the impact is obvious, but would you like to comment on that?

Mr. HEAPHY. We are trying our best to do all we can with the limited resources we have. As those resources diminish, whether they are prosecutors, whether they are agents, our job is made more difficult. Those sequester cuts would be very difficult for us to absorb.

Chairman DURBIN. Thank you.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman. Mr. Heaphy, I want to thank you for being here. I want to thank you for your service on the front lines of law enforcement. What you are focusing on doing, which is bringing the criminal laws to bear, stopping and punishing violent criminals, is critically important, and I commend you for that service.

Mr. HEAPHY. Thank you, sir.

Senator CRUZ. I would like to address two issues that came up in your testimony. The first is the efficacy of gun control laws and, second, the question of straw purchases. Let us start on gun control laws and do they work.

Are you aware of any serious empirical basis for the proposition that significantly restricting the rights of law-abiding citizens to keep and bear arms actually results in reducing violent crime?

Mr. HEAPHY. Sir, violent crime is down substantially from where it was. I think that is due in part to vigorous enforcement, getting guns out of the hands of violent criminals. I do not know that we are ever going to stop violent crime. Unfortunately, the business in which I work will always be necessary.

What we are trying to do is increase the barriers to the commission of that violent crime, make it more difficult for offenders to get the firearms in the first place to——

Senator CRUZ. Mr. Heaphy, let me point out a couple of things. Number one, your statement that violent crime is down is a statement about national trends, and you are right, and I agree that vigorous enforcement of criminal laws targeting violent criminals, that works.

The question about stripping the rights of law-abiding citizens, however, the only way to ascertain that is to engage in a comparative analysis of those jurisdictions that have done so versus those jurisdictions that have not. For example, if you look at cities, of the top six cities with murder rates, Detroit, sadly, in 2001 topped the list with 48 murders per 100,000 people. Baltimore, Maryland, was second with 31 murders per 100,000 people; Philadelphia third with 21 murders per 100,000 people. Memphis, Tennessee, the only one of the top six without especially vigorous gun control laws, is fourth with 18 murders per 100,000 people. Washington, DC, is

fifth with 18 murders per 100,000 people, and Chicago, Illinois, is sixth with 16 murders per 100,000 people. Five of the six cities with the highest murder rates are among those cities with the strictest gun control.

If you contrast that to cities that do not have strict gun control, for example, my home town of Houston, where there are 9 murders per 100,000 people, that is less than quarter what Detroit suffers under. Or if you look at other cities in my home State of Texas, San Antonio has 7 murders per 100,000 people. Austin has 4 murders per 100,000 people. El Paso has 2 murders per 100,000 people. That means Detroit, the murder rate is 24 times higher than it is in El Paso.

And I would also point out the argument that you and the Chairman were discussing about cities such as Chicago not being isolated islands, that there are places elsewhere in the country where people can legally purchase firearms. None of those cities I discussed—Houston, Austin, San Antonio, El Paso—are isolated islands. Indeed, in the entire State you can purchase firearms, and what we see in terms of the murder rates is the murder rates are consistently lower.

So my question to you is not your subjective belief, but are you aware of any empirical data—every one of us wants to reduce murder rates. My question to you is: Is there any empirical basis for saying stripping the constitutional rights of law-abiding citizens would result in decreasing murder rates rather than increasing them, which, unfortunately, is the pattern that I think we have seen?

Mr. HEAPHY. Senator Cruz, let me start answering your question by thanking you and this Committee for expanding our discussion on guns beyond the mass shooting to urban violence. I have spent my career working on urban violence issues in relative obscurity, and the fact that we are having this discussion about urban violence is much appreciated by those of us who work on the line.

My career of working on this issue has shown me that there is no single factor that drives this. It is a complicated problem. It is a factor of educational opportunity, economic opportunity, health care. It is a comprehensive situation that breeds violence. So to tie gun ownership or restrictive or permissive gun laws to a murder rate I think isolates one factor——

Senator CRUZ. Mr. Heaphy, with respect, if I could stop you, because my time is running out, I will just point out for the record that twice given the opportunity to answer is there any empirical basis for the proposition that strict gun control would reduce violence, twice you have not been able to give an example of that.

Very briefly on the second point, on straw purchases, you focused on straw purchases. I think that may actually be an area of potential bipartisan cooperation. The Chairman brought it up, and I think all of us agree that if there are those that with criminal intent are transferring firearms to felons, that there should be strict punishment for that. So that may be a productive area of cooperation.

But I would point out that one of the largest straw purchasers we have seen in recent years was, sadly, the United States of America in the Fast and Furious program, which sent thousands

of firearms, deliberately allowed them to go into the hands of violent drug cartels, which in turn were used to murder hundreds of citizens, innocent citizens in Mexico and at least one Federal law enforcement officer. In your experience in law enforcement, has the idea of walking guns, allowing violent criminals to have illegal guns, is that you have ever condoned, and would you characterize that as typical law enforcement practice?

Mr. HEAPHY. Senator Cruz, the Fast and Furious Operation has been the subject of considerable inquiry. Our own Inspector General issued a very lengthy report and found that mistakes were made. It was a regrettable incident, and it is one from which we have learned. We have very carefully now evaluated our approach to undercover investigations and will continue to incorporate the lessons learned from that report.

But I want to go back, if I may, just briefly to your earlier question about empirical evidence. Prediction of violence or prevention of violent crime is not an exact science. It is very, very difficult to find data that any individual factor, be it gun membership, be it poverty, be it educational opportunity, is tied directly to the murder rate. So I think—I understand your question. It is a good question, and I appreciate the focus on these murder rates. But it is a bit of alchemy to try to come up with a single factor that is most determinant with respect to reducing levels of violent crime.

Senator CRUZ. Thank you, Mr. Heaphy, and my time has expired.

Chairman DURBIN. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman, for holding this hearing. I want to thank some folks who are here from Minnesota who have been courageous in sharing their own stories of gun violence: Mary Johnson, Angela Cradle, Maya and Sam Rahamim, and Police Sergeant Mike Dezann. I am looking forward to spending some time with you, with each of you tomorrow afternoon.

I also want to extend my condolences to the people in Oakdale, Minnesota, who experienced a horrific shooting last night.

I spent some time traveling around Minnesota in the aftermath of the shooting at Sandy Hook, and what I have learned is that we can honor Minnesota's culture of responsible gun ownership while taking some reasonable steps to make our communities safer. Gun control is a central part of this, so I support a ban on assault weapons and a limit on the size of magazines.

I also believe that we need to improve and expand our background check system. Millions of people because of our background check system have been denied guns. And it seems like there is a consensus being built around the idea that we should do a background check on all purchasers of guns.

Part of improving the background check system involves updating the mental health records in the national data base and, of course, improving access to mental health is an important part of this entire discussion, too.

What we cannot do is stigmatize mental illness. What we must do is improve the way our country helps people who live with it. If we are going to talk about mental health, let us make it more than just a talking point. Let us make it a true national priority.

I would really encourage all my colleagues to take a look at my Mental Health in Schools Act, which is one of the things I have

been working on in this area. The bill will improve access to mental health services for our children so that we can catch this early. I have talked to moms who have gotten professional help for their children. It has not only change their children's lives; it has changed their lives. And I would just encourage my colleagues to look at this piece of legislation.

Mr. Heaphy, I asked the Vice President's Gun Violence Task Force to move forward with implementing the Wellstone–Domenici Mental Health Parity Act, and I want to thank the administration for agreeing to do that. It is very important.

A vast majority of people with mental illness are not violent, but there is a very small percentage who can become violent if they do not get—if they are not diagnosed and they do not get treatment. And I know that you have put a special emphasis on community-based crime prevention projects since you have become U.S. Attorney.

Based on your experience, can you talk a bit about why it is so important for people to have access to mental health services in their communities?

Mr. HEAPHY. Yes, absolutely, Senator. I can talk about this issue from the Virginia Tech experience. As I said at the beginning, I serve just up the road from Blacksburg, and those wounds linger. They never really heal.

One of the things that we did in Virginia on a bipartisan basis was change the way in which we capture mental health adjudications in the National Instant Criminal Background Check System. Virginia now is really the gold standard for ensuring that it is respectful of privacy when folks are adjudicated by a judge or civilly committed with mental health issues. Those records are put into the National Instant Criminal Background Check System. The shooter at Virginia Tech had mental health issues but, unfortunately, those records were not. So we have focused on this issue, as you said, increasing access to treatment for those who need it, but ensuring that when people do, are flagged in the system as having issues, that those records are in NICS.

Many States, unfortunately, have not followed Virginia's lead and have not put those records in NICS, so that is one of the holes in the background check system. The Department has supported grants to States to help ensure full NICS compliance. Those records need to be comprehensive. But, Senator, as you said, it goes all the way back to making sure that the treatment is available. That is a crucial component of any public safety strategy.

Senator FRANKEN. Thank you, and my time has run out. Just let me emphasize this for everyone listening. The vast majority of people with mental illness are no more violent than the general population. In fact, they are more often the victim of violence than the general population. But there is a very, very small minority of people with mental illness who can become more violent if they are not diagnosed and if they are not treated, and we can catch those people earlier, we can identify them, and we can perhaps prevent some of the types of things that we have seen lately.

Thank you, Mr. Chairman.

Chairman DURBIN. Thanks, Senator Franken.

We have an early bird rule on this Committee, and the Republican side has informed us that the next in line is Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Heaphy, for coming. As a follow-up to Chairman Durbin's questions on straw purchasers, we have heard that all too often law enforcement presents cases of suspected straw purchasers to U.S. Attorneys and the cases are declined for prosecution for one reason or another. How many cases were presented to U.S. Attorneys for suspected straw purchasers last year that were declined prosecution?

Mr. HEAPHY. Senator, I do not know exactly. I can get that information for you, but I do not have a specific number. I know that we did only 44 cases of lie-and-try, so the cases where someone applied for a firearms—went through the background check and it bounced back.

Senator GRASSLEY. I will appreciate your answer in writing. Thank you.

[The information referred to appears as a submission for the record.]

Senator GRASSLEY. The title of today's hearing obviously has been known, "Proposals to Reduce Gun Violence: Protecting Communities while Respecting the Second Amendment." Now, your testimony makes no mention of the Second Amendment, so the question: Has the Department of Justice taken any position on the constitutionality under the Second Amendment of legislation pending before the Senate that would ban so-called assault weapons?

Mr. HEAPHY. Senator, the Department of Justice and the administration understand the impact of the *Heller* decision, which found that Americans have a fundamental Second Amendment right to self-defense. But I believe the *Heller* decision admits reasonable restriction on that right—time, place, and manner type restrictions. So without opining on a specific measure of one of the bills, whether it is or is not constitutional, I believe that there are ways to regulate guns respectful of the Second Amendment but provide those reasonable restrictions.

Senator GRASSLEY. So the Department has not taken any position on specific legislation. Do you know why they have not taken a position yet?

Mr. HEAPHY. The Department supports an assault weapons ban and will work hard to ensure that whatever comes out, if one comes out, is constitutional, Senator.

Senator GRASSLEY. The Supreme Court in the *Heller* decision applied a form of heightened scrutiny to laws seeking to impede the Second Amendment. What is your understanding of that portion of the ruling?

Mr. HEAPHY. My understanding of the ruling is that it allows, recognizes the Second Amendment right to defend oneself in his home, and the District of Columbia statute at issue in *Heller* impinged upon that because it was an absolute prohibition of firearms in the home. It does not go beyond that and create a general right to carry firearms anywhere. Again, I think that Justice Scalia, as the Chairman pointed out, in the *Heller* opinion did admit that there would be potential limitations on the right when time, place,

and manner restrictions are consistent with that overall right to fundamental self-defense.

Again, there is a sweet spot here, sir, between respecting the Second Amendment and everybody's right to defend himself and doing what we can to minimize the public safety threats that are presented by these dangerous weapons.

Senator GRASSLEY. Well, what level of scrutiny should be applied to address whether or not an assault weapons ban is constitutional or not?

Mr. HEAPHY. Sir, I am not familiar enough with the *Heller* opinion to really give you an opinion on that. I am sorry.

Senator GRASSLEY. Okay. We had Fast and Furious brought up. Since I started that investigation, I would like to ask you a question on it. But I want to also state that when you said that policies have been changed, I have an email here to U.S. Attorneys: "As I said on the call, to avoid any potential confusion, I want to reiterate Department policy. We should not design or conduct undercover operations which include guns crossing the border." And so the policy has not been changed about encouraging licensed gun dealers to sell—encouraged by the Federal Government for licensed gun dealers to sell guns. It is only that they are ordered not to do it if they know they are going to cross the border.

So it seems to me to kind of be just a conflict of policy for people in Government to say we ought to ban certain guns at the very same time you are having licensed gun dealers encouraged to sell guns to people illegally.

In regard to Fast and Furious, as U.S. Attorney would you ever support ATF to encourage Federal firearms licensees to sell firearms to those they suspect of being straw purchasers?

Mr. HEAPHY. Senator Grassley, we learned a lot from Fast and Furious, and the email that you are referring to encourages us to carefully monitor all undercover operations. There are times when those undercover operations involve criminal activity, and unfortunately, a dirty reality of our business is that we have to at times, working with our agents, work with people that are involved in criminal activity. We have to monitor that closely. Part of the problem with Fast and Furious was an insufficient level of scrutiny all up the chain. And we are hoping that since we have learned lessons from that, we will do a better job of protecting public safety as we work with undercover investigations.

Senator GRASSLEY. My time is up. Thank you, Mr. Chairman.

Chairman DURBIN. Thank you, Senator Grassley.

Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman.

I would like to thank the family and friends of victims of gun violence who are here with us today. This is a very critical issue for our country and for our communities.

To our testifier, you mentioned that the Department supports a stand-alone straw purchaser statute. Do you also support closing another loophole, which is the purchase of guns at gun shows where there is no background check? So my question is: Would you also support a strong closing of the loophole background check law?

Mr. HEAPHY. Yes, Senator Hirono. Currently it is too easy for prohibited persons—felons, drug users, domestic abusers, or folks

with mental health issues—to evade the background check requirement. Rather than go into a licensed Federal firearms dealer, they can walk down the street, go to a gun show, and with no background check, walk out with a gun. That is a gaping hole in the system.

So we strongly support increasing to effectively a universal background check system. It should admit for some limited exceptions—intra-family transfers or estate passage of firearms. But commercial transactions ought to be run through this background check system.

Senator HIRONO. And, of course, we need to improve the information that gets into the system.

We have had a discussion this morning regarding the correlation between tough gun control laws and violent crimes in places such as Washington, DC, and Chicago. And I am all for using facts in evidence to inform our decisions, but it is the cause-and-effect conclusions we draw from this kind of information that can be very problematic and questionable.

For example, Hawaii has pretty strict gun control laws, and yet we have, I would say, very low—knock on wood—gun violence crimes in Hawaii. So, you know, I do not know of any empirical evidence showing the cause and effect between weaker gun laws and fewer gun violence crimes unless you are aware of any such empirical cause-and-effect studies?

Mr. HEAPHY. Senator, I have worked on this issue for 20 years, again, spent time with victims, spent time with killers, with people who have been involved in these acts of violence and who are hoping for some leniency by cooperating with us. And I cannot say that I know what causes gun violence. I wish we did. There is no more pressing problem to me or my colleagues in the Department than this. But, unfortunately, it is a complicated, layered, contextual problem that has so many different factors.

So I agree with your question, Senator, that it is very, very difficult to isolate one cause and tie it very specifically to violent crime rates.

Senator HIRONO. Thank you.

Have you had any experience with bullying in our schools leading to violence? Because we had a police officer or a police captain, I believe, who testified before the full Committee saying that he considered bullying in our schools that could lead to violence, that could lead to the easy obtainment of guns, and that could lead to tragedy. And he acknowledged that as a concern.

Have you had experience in this area? And if so, what can we do to prevent bullying in our schools that could very well escalate?

Mr. HEAPHY. Yes, I appreciate that question because it gives me an opportunity to talk about a more comprehensive anti-violence approach. We cannot just arrest people and think that we are going to have a safer community. We have to do what we can on the front end to prevent potentially violent criminals from getting guns and from perpetrating those awful acts. And bullying is part of that, absolutely. We have to do what we can to help prevent and provide resources for people that are bullied.

Every U.S. Attorney is trying to implement a very localized place-based anti-violence strategy, and in some communities, our

prosecutors, particularly in the Civil Rights Division, have done a lot of work on anti-bullying programs and have helped young people appreciate the unfortunate consequences of school bullying. And, yes, I think there are stories, very difficult stories, where bullying has prompted someone to violence.

So our approach to this problem has to be 360 degrees. It cannot simply be "let us charge people who commit mass shootings after the fact." It has to also contemplate what we can do in advance, bullying and other prevention measures, to try to prevent those things from happening in the first place.

Senator HIRONO. Thank you very much.

Thank you, Mr. Chairman.

Chairman DURBIN. Thanks, Senator Hirono.

Senator Lindsey Graham.

Senator GRAHAM. Thank you, Mr. Heaphy, for your service to our country. Do you own a gun?

Mr. HEAPHY. I do not.

Senator GRAHAM. Okay. Do any of your close friends own guns?

Mr. HEAPHY. Yes. I live in a State in which guns are held in high esteem. But I do not. I have young children, Senator.

Senator GRAHAM. No, I understand.

Mr. HEAPHY. And I do not feel comfortable having a gun in our home given the fact that I have young children.

Senator GRAHAM. Well, that is certainly your right to make that decision.

Under the universal background proposal, if Senator Cornyn and I—if I wanted to buy a shotgun, could I do so without having to go through a background check?

Mr. HEAPHY. Yes.

Senator GRAHAM. Okay. Because he is a friend?

Mr. HEAPHY. I am sorry. If you were actually exchanging a gun with Senator Cornyn?

Senator GRAHAM. Yes. I would not have to go through a background check?

Mr. HEAPHY. Senator, I think there are a lot of proposals that would create exceptions between——

Senator GRAHAM. Would you agree with that exception? It would be a waste of money?

Mr. HEAPHY. I think there should be limited intra-family or intra-community transfers that would be excepted from the universal background check, yes.

Senator GRAHAM. So you have not answered my question. John and I went hunting a month or so ago. He has got a better shotgun than I have, and I actually talked to him about buying it. Under the regime being proposed, would I have to go through a background check if I bought Senator Cornyn's shotgun?

Mr. HEAPHY. I am just not specifically familiar, sir, with whether or not the current legislation would require a background check.

Senator GRAHAM. Size of magazines. Can you envision a situation where a law-abiding citizen may need more than a 10-round magazine to protect their family?

Mr. HEAPHY. Long and extended clip magazines make it much easier for people to commit more grievous acts of violence.

Senator GRAHAM. Well, I understand that. Do you agree that mentally ill individuals and felons should not have one bullet?

Mr. HEAPHY. Yes.

Senator GRAHAM. Do you agree there may be times where a mother protecting her two children may need more than six if there is more than one perpetrator or the six shots will not take the guy down?

Mr. HEAPHY. Senator, we need to be respectful of people's right to defend themselves, absolutely.

Senator GRAHAM. Well, the point is I can envision a situation where, like in Atlanta, the revolver—she had a six-shot revolver. Someone broke into her home. She shot the guy five of six times. He was still able to get up and go out the door. And they tell me that one-third of all assaults involve more than one perpetrator, so I would just make the point that I do not think criminals are going to be limited by any capacity magazine size law. And if you start restricting the amount of—a 10-shot limit, in some circumstances that may disadvantage the law-abiding citizens and do not much to the criminal.

Now, on the number of people who actually are prosecuted, how many people a year fail the background check?

Mr. HEAPHY. I believe in 2012 it was around 80,000.

Senator GRAHAM. Okay. And how many of those were false positives?

Mr. HEAPHY. A small percentage. I am not certain exactly.

Senator GRAHAM. Okay. Of those 80,000——

Mr. HEAPHY. I am sorry, Senator. When you say "false positive," what exactly do you mean?

Senator GRAHAM. That you actually were entitled to buy a gun, but the system kicked you out.

Mr. HEAPHY. Yes. I think there is an appeal process, and there have been a number of times where someone was bounced back but then appealed.

Senator GRAHAM. Right. Do you know the percentages?

Mr. HEAPHY. I think it is small, but I can get you a specific figure.

Senator GRAHAM. Sure.

[The information referred to appears as a submission for the record.]

Senator GRAHAM. Now, let us nail this down, if we can. Do you believe that the best way to deter somebody from misconduct is to make sure that prosecution is certain and swift?

Mr. HEAPHY. That is part of—needs to be part of a comprehensive solution. Whether it is best or not——

Senator GRAHAM. No, but in terms of the deterrent aspect of using criminal law. I agree with Senator Franken we should do something about mental health. I agree with that. But, you know, I have been a prosecutor for a while, too, in my older days—younger days, sorry. And I thought that if you knew you were going to get caught or likely to get caught and the punishment was going to be severe, that was a pretty—that was a good—do you agree with that general concept?

Mr. HEAPHY. I absolutely do, yes.

Senator GRAHAM. Okay. Of the 80,000 people who failed background checks, what percentage wind up getting prosecuted, those who were not false positives?

Mr. HEAPHY. A small percentage.

Senator GRAHAM. Well, let us put a number on it.

Mr. HEAPHY. Last year, out of the 80,000, I believe U.S. Attorneys brought about 44 cases.

Senator GRAHAM. Forty-four is what percentage of 80,000?

Mr. HEAPHY. A very small percentage. Lawyers do not do math very well.

[Laughter.]

Senator GRAHAM. And apparently Members of Congress do not either. That is why we are $16 trillion in debt. But I think there are people on my staff that can run the numbers, and I will present is to the Committee. The truth of the matter is we are talking about expanding a system where the current system is 0000-point-something. I think we have got our priorities wrong. I think we should take the current law and enforce it. Thank you for your time.

Chairman DURBIN. Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman, and thank you for allowing me to sit with this Subcommittee. As you know, I am not a Member, and I appreciate it very much. And thank you, sir, for being here and for your measured responses. It is very much appreciated.

Mr. Chairman, I would like to put in the record a letter written yesterday by Mayors Against Illegal Guns, signed by the mayor of Boston and the mayor of New York City and supported by 850 mayors of both political parties all around this country, supporting the assault weapons legislation and the ban on high-capacity ammunition clips.

[The letter appears as a submission for the record.]

Senator FEINSTEIN. I think there are some very good quotes in this letter. I will not take the time to read them now, but as a former mayor, mayors see what happens on the streets, and so I am very grateful for this endorsement and this support.

Mr. United States Attorney, to the best of my knowledge, the assault weapons legislation which existed from 1994 to 2004 was never struck down by any court in the land. Is that your information as well?

Mr. HEAPHY. Yes, exactly, Senator.

Senator FEINSTEIN. Do you believe it was constitutional?

Mr. HEAPHY. Yes.

Senator FEINSTEIN. Do you believe that it is possible to draft legislation which is reasonable, which exempts over 2,000 weapons but essentially concentrates on weapons that were designed for military use, generally high-velocity weapons?

Mr. HEAPHY. I believe it is possible to craft a law consistent with the Second Amendment and with the *Heller* decision that would be constitutional, yes.

Senator FEINSTEIN. Thank you very much.

Twenty cosponsors and myself have introduced this legislation. I would just like to ask—it is specific, it is drafted in bill language—

that you take a look at it, and if you have any problems with it, that you let us know.

Mr. HEAPHY. I will, Senator. Thank you.

Senator FEINSTEIN. Thank you very much, and thank you, Mr. Chairman.

Chairman DURBIN. Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman.

Mr. Heaphy, thank you for your service as U.S. Attorney and for being here today, and I want to join the other Members of the Committee in expressing my gratitude to the family members who are here today who have lost a loved one as a result of an act of violence. I believe that we owe it to you not to engage in tokenism or symbolic acts but, rather, to try the best we can to address the causes and to come up with solutions and at the same time respecting the rights of law-abiding citizens to keep and bear arms, as protected by the Second Amendment. And I think it is possible for us to do that.

But I also think it is important that we need to look at the laws that are already on the books, and I know there has been some discussion of this, Mr. Heaphy, and forgive me if I am repeating it, since I had to leave briefly to go down to speak on the floor. But you are aware of the fact that in 2008 Congress passed a provision that required that the States forward for inclusion in the background check data base people who were adjudicated mentally ill. You are familiar with that law, are you not, sir?

Mr. HEAPHY. Sir, I believe that is voluntary. I do not know that States are required to participate in the NICS system and make that information part of the system. We strongly encourage them to do so, but I believe, unfortunately, it is still voluntary.

Senator CORNYN. Why in the world would we make that optional?

Mr. HEAPHY. I do not know, Senator. As I said before, we really need to ensure that those relevant records are in the background check system.

Senator CORNYN. Well, my understanding is that it is not optional, but it is not being complied with. The General Accounting Office points out that while about 1.2 million records have been forwarded for inclusion in the NICS criminal background check system, that is largely a result of about 12 States' efforts. And I am glad to say Texas is one of those that has the highest—seventh highest rate of sharing of those records in the Nation.

But do you not agree that it would be important to have individuals who have been adjudicated mentally ill to have those records in the NICS background data base?

Mr. HEAPHY. Absolutely. I would strongly agree with that.

Senator CORNYN. And if that law is not mandatory now, do you believe it should be mandatory? And if it is mandatory and it is not being enforced, do you believe it should be enforced?

Mr. HEAPHY. I believe it should be enforced, Senator. I believe the way it is structured is that the Attorney General has the authority to withhold aid to State and local law enforcement in the form of the Byrne and JAG grants, percentages of that, if States are not complying and putting their mental health and criminal records into the system. And, again, there are incentives for States

to do that. But as you said, that is spotty, and not everyone has the Texas approach and puts those records in.

Senator CORNYN. And would you not think that would be more reasonably calculated to protect innocent victims of gun crime than other actions that may be more symbolic in nature?

Mr. HEAPHY. I am not sure what would be more or less reasonably calculated, but I am certain that if we do not have all relevant records in the background check system, it undercuts the effectiveness of the background check.

Senator CORNYN. And I know you have been asked about this before, but I cannot resist asking you about it again. People who lie on background checks, the record of prosecuting those individuals is pathetic. Would you not agree?

Mr. HEAPHY. Well, I am glad you asked because I did not get a chance to answer it when Senator Graham asked the question. As you know from your experience, Senator Cornyn, we need evidence to prove that a crime was committed. And because someone applied to get a gun and went through a background check and there was a misstatement on the form does not in and of itself constitute evidence that it was an intentional falsehood.

The common defense in those cases is, "I did not know that I was prohibited," "I did not know that I had a conviction which disqualified me or that I had something in my background." And that is sometimes credible because, again, they could go down the street to a gun show and get the same weapon without having had to submit a form. So it is difficult——

Senator CORNYN. So it is credible for them to say, "I did not know I had a conviction," but yet to say on the background check, "I have no conviction"?

Mr. HEAPHY. Again, Senator, we have to have evidence that it was an intentional falsehood. The fact that it was false is not enough. It is a difficult case to prove. Even if we prove it, Senator Cornyn, fully a third of those cases result, unfortunately, in no finding of guilt. Another 37 percent result in a sentence of a year or less. We are evaluating every case on a spectrum of danger, and the gun background check worked there. We focus our resources much more aggressively on people that actually obtained firearms and used them, not necessarily on the ones where the background check——

Senator CORNYN. I know the U.S. Attorney's Office and the Department of Justice have limited resources and you have to prioritize. My concern is that we not pass additional laws that will not be enforced and we pat ourselves on the back and say we have actually solved the problem or contributed to a solution.

And I see my time is about up. If I could just say for 10 seconds, Mr. Chairman, I appreciate Suzanna Hupp, one of my constituents here today. She has got a chilling story about her personal experience of losing her mom and dad in an episode of mass violence where 23 people lost their lives in 1991. I think she has got some very important testimony for the Committee, and I am glad she is here today to share that.

Thank you.

Chairman DURBIN. Thanks, Senator Cornyn.

I will recognize Senator Blumenthal, and correct the record: Newtown, Connecticut. I mentioned it earlier incorrectly.

Senator BLUMENTHAL. Thank you, Mr. Chairman, and I want to express my appreciation for your holding this hearing, Senator Durbin, and to my colleagues for being here today. And I want to thank you, United States Attorney Heaphy, for your extraordinary service in one of the busiest Federal districts in the country. I had your job in Connecticut some years ago, and I always regarded it as the best job I ever had.

Mr. HEAPHY. I have heard that before, Senator.

Senator BLUMENTHAL. So thank you for your excellent service.

Mr. HEAPHY. Thank you.

Senator BLUMENTHAL. I want to really begin by thanking the Newtown families who are here today. I know that some of them are. I may not know of all of them. Chris and Lynn McDonnell are here, and Po Murray and Miranda Pacchiana. And I want to express my regret at a statement that was made, I think within the last 24 or 48 hours, by a lobbyist for the National Rifle Association who said that his group was hoping that the "Connecticut effect" would pass so that his group could be more effective in its lobbying.

Their presence today, the families being here today, and tonight at the State of the Union I think is a statement and a picture worth a thousand words that the Connecticut effect will last and that it will be a call to action.

The NRA lobbyist's comment—it happened to be a lobbyist for the Wisconsin chapter of the NRA—is callous and offensive, and I call on the NRA, Wayne LaPierre, to repudiate and reject it. I think it is an insult to all of us in America, but most especially to the 26 families in Newtown who directly suffered this loss.

Your position, sir, is a nonpolitical position. You are a law enforcer. Is that correct?

Mr. HEAPHY. Yes, sir, and I have been a career prosecutor and served in multiple administrations, yes.

Senator BLUMENTHAL. And I appreciate your coming before us today in that capacity.

When folks talk about existing laws—and you have just made refinancing to it—I think many of us on this Committee are aware, but maybe not most Americans, that you often know that a crime has been committed, and you know who has committed it, but you need more than that knowledge on your part. You need evidence to go into court and prove it. Is that correct?

Mr. HEAPHY. Exactly right, yes.

Senator BLUMENTHAL. So when the NRA or any of our witnesses or Members of this Committee say that there have not been enough prosecutions, very often the reason is you do not have enough evidence to make those prosecutions.

Mr. HEAPHY. Unfortunately, that is sometimes correct, yes.

Senator BLUMENTHAL. And so my feeling is, my strong belief is that we ought to do everything possible to enable more effective prosecutions under existing laws and, as Senator Cornyn has very aptly just said, under any new laws, but focus on enforcement. And so let me ask you about the ban that currently exists on certain categories of people buying firearms—felons, fugitives, people who

are seriously mentally ill, people under court orders for domestic abuse.

Right now, with respect to a very large number of firearms purchases, about 40 percent when they are private sales or so-called gun show sales, you simply have no way of having the evidence to enforce that existing law. Am I correct in saying that?

Mr. HEAPHY. If there was no background check, sir, and they obtained the gun end-running that system, then you are exactly right. We have no evidence.

Senator BLUMENTHAL. And the current law also prohibits purchases of ammunition to those very same categories of people. Is that correct?

Mr. HEAPHY. Yes.

Senator BLUMENTHAL. Without a background check now, do you have any effective way of enforcing that law?

Mr. HEAPHY. No. Again, it is too easy for those dangerous persons that you have cited to get around the background check. That gets guns into their hands too readily, and those guns are used with dangerous regularity on our streets, making all of our jobs more difficult.

Senator BLUMENTHAL. And the same is true of ammunition, is it not? There are simply no checks, no criminal background checks whatsoever on ammunition purchases, correct?

Mr. HEAPHY. That is right.

Senator BLUMENTHAL. So that you have no practical way, with all due respect to the immense powers that you have as a Federal prosecutor to enforce that law?

Mr. HEAPHY. That is right.

Senator BLUMENTHAL. It is essentially dead letter.

Mr. HEAPHY. All too often that is right, yes.

Senator BLUMENTHAL. Let me ask you about the Second Amendment, and I think you have done a great job of describing that balance that applies to all constitutional rights. None of them is absolute. Is that correct?

Mr. HEAPHY. That is right, exactly.

Senator BLUMENTHAL. And, very often, constitutional rights butt against each other. There is a tension between those constitutional rights.

Mr. HEAPHY. That is life in a democracy, exactly.

Senator BLUMENTHAL. And it is one of the geniuses of our Constitution that it manages to reconcile fundamental rights that sometimes are in tension.

Mr. HEAPHY. That is right.

Senator BLUMENTHAL. So these proposals that have been made for reasonable regulations are perfectly consistent with everybody's right to have a gun, go hunting, use it for target shooting, because reasonable regulation—you used the word "restriction," but "regulation," "restriction"—are consistent and, in fact, the genius of our Constitution.

Mr. HEAPHY. Just exactly right, Senator. I just cannot reiterate strongly enough that the President and the Attorney General and all of us who work in law enforcement respect the Second Amendment, are not trying to remove the basic right to self-defense for people to own firearms. We are trying to, as you said, tinker with

the balance and provide reasonable restrictions that keep dangerous weapons out of the hands of people that use them, that do grievous things with them.

Senator BLUMENTHAL. And nobody has ever suggested that a criminal, a convicted felon or a fugitive or a drug addict or someone seriously mentally ill, dangerous to himself or others, or a domestic violence abuser has a fundamental Second Amendment right to have a firearm?

Mr. HEAPHY. Those acts from their past remove their Second Amendment right to possess a firearm.

Senator BLUMENTHAL. Or to buy ammunition.

Mr. HEAPHY. Exactly.

Senator BLUMENTHAL. Thank you very much.

Chairman DURBIN. Thanks, Senator Blumenthal.

Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman. I am happy to welcome all of you folks here today, and especially you, Mr. Heaphy, and especially my old friend and debating partner, Professor Larry Tribe, who I have a lot of respect for. Happy to have you here.

I just want to make an observation about the constitutionality of the so-called assault weapons ban. Under *Heller*, you said *Heller* allows what you called "time, place, and manner" restrictions, although you said you did not read the whole decision. But the assault weapons ban is not a time, place, or manner restriction. It is an absolute ban, and I just wanted to make that clear. Plus maybe I can make something else a little more clear, too. The distinguished Senator from California, a dear friend of mine, indicated that the assault weapons ban was never stricken down as unconstitutional. But the fact of the matter is that that ban expired before the *Heller* decision. So who knows what would have happened had it really been tested? And the distinguished Senator from California may be right on that.

Now, Mr. Heaphy, I want to congratulate you for your work here—you have been an excellent witness—and for the work that you have done, all your professional service and career. But you also indicate in your testimony that the Department of Justice focuses on prosecuting people who evade the background check system and acquire weapons illegally. They do not focus on those who attempted to purchase the firearm through the background check system but were unsuccessful.

Now, I think this shows what has been obvious to many people for a long time, that criminals do not walk into a gun shop to buy weapons and submit themselves to a background check. They get them on the street. You know it, I know it.

Mr. HEAPHY. That is exactly right, sir.

Senator HATCH. Okay. In other words, the people who we least want to have a weapon are the least likely to be caught by a background check. So, you know, some on our side wonder why then do we raise all this fuss about background checks when we have them in existence but they are not going to be abided by, anyway.

Let me ask you this question. I am sure you a familiar with Project Exile, which was launched by the Department of Justice in 1997 in Richmond, Virginia. It was a collaborative effort among

State, local, and Federal prosecutors and law enforcement officers to vigorously enforce existing Federal gun laws. Richmond residents were put on notice through billboards and bus advertisements that all violations of the Federal firearms laws would be prosecuted, and defendants faced 5-year mandatory minimum sentences. As a result of this collaborative effort, 372 persons were indicted on Federal gun violations and 440 guns were seized.

Now, Richmond realized a 36-percent decrease in homicides and I think a 41-percent decrease in firearm homicides. Are there any plans for any similar collaborative efforts to enforce existing Federal gun laws, to your knowledge?

Mr. HEAPHY. Yes, Senator Hatch, thank you for the question. Exile was very successful, and it is a great model for a working partnership between Federal authorities and State and local officials. It was a program in which the Commonwealth's attorney, the U.S. Attorney, the ATF, and Richmond Police came together to comprehensively focus on violent crime. At the time that Exile existed, there was a huge disparity between Federal law in terms of punishment and State law. That disparity has changed. So today in Richmond, more of those cases that would have come Federal are prosecuted at the State level. Mike Herring, the Commonwealth's attorney, will take those cases and get every bit as much of a sentence as we could get in Federal court. And there are Exile-type programs going on around the country.

East St. Louis, Illinois, Senator Durbin's home town, has seen a spike in gun prosecutions just since Steve Wigginton, the U.S. Attorney, has been there, because State and local authorities came together, decided we have got to do something about East St. Louis. There are burning fires of violence in that community, and we have to pool our resources and work collaboratively, and that has led to an increase. On the southwest border, in Senator Cornyn's district, a very similar effect. So we are still doing Exile-type programs, Senator.

Senator HATCH. Good. Let me ask one other question. In each of the mass killing tragedies in Newtown or Aurora or Columbine, the killers violated numerous, in some cases literally dozens of local, State, and Federal laws. They were able to obtain and use their weapons of choice and either avoided or actually passed background checks. Each time politicians say they will ensure that it never happens again, and, of course, they turn around and they call for passing more laws.

Now, don't these tragic experiences show that simply putting more laws on the books will not prevent individuals who are either ill or evil from harming others?

Mr. HEAPHY. Senator, I wish that I could reassure this Committee and the people sitting here that we could pass a law that would prevent——

Senator HATCH. I wish we could, too.

Mr. HEAPHY. But we cannot do that. There is no question that no matter what we do, unfortunately, there will be dangerous people that get access to weapons that continue to perpetrate acts of violence. We are trying to make that more difficult. We are trying to create more road blocks, make it harder for them to commit those acts of violence. It is not going to be perfect. I wish that it

was. We are just trying to make it more difficult to have to jump over additional hurdles in order to commit those grievous acts.

Senator HATCH. Well, you have been an excellent witness, and I want to thank you, Mr. Chairman.

Chairman DURBIN. Thanks, Senator Hatch.

Mr. Heaphy, thanks for your testimony. We appreciate it very much.

Mr. HEAPHY. Thank you, Senator.

Chairman DURBIN. We may have some follow-up questions sent to you. I hope you can respond in a prompt manner.

Mr. HEAPHY. We will.

Chairman DURBIN. Thank you.

Chairman DURBIN. I would like to ask the second panel to please come to the table, and while they are on the way, first, I ask to put in the record a letter from the Charlottesville, Virginia, police chief about the productive working relationship with our witness in the first panel, Mr. Heaphy. Without objection, it will be entered into the record.

[The letter appears as a submission for the record.]

Chairman DURBIN. For those who are wondering why Senators are moving back and forth here, some have other Subcommittee meetings that they are attending. In addition, on the floor of the Senate, starting at 11:30 we have votes on the Violence Against Women Act. There will be several amendments, and so we are going to do our best to get the testimony of this panel here. I hope we are not interrupted or stopped, but that would be the only reason. We just have floor business that has to be taken care of before we can proceed.

I am going to ask the witnesses at the table, now that they have all sat down, to stand up, if they will. It is the custom of the Committee to administer the following oath. Raise your right hand, please? Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Professor TRIBE. I do.

Ms. WORTHAM. I do.

Ms. HUPP. I do.

Mr. COOPER. I do.

Professor WEBSTER. I do.

Chairman DURBIN. Thank you.

Let the record indicate that the witnesses have answered in the affirmative.

Chairman DURBIN. I am going to read a brief background of each of the witnesses and then call on them.

Our first witness is going to be Professor Laurence Tribe, a well-known friend of this Committee. He is the Carl Loeb University Professor and Professor of Constitutional Law at Harvard Law School, where he has taught since 1968. He has argued 35 cases before the U.S. Supreme Court. He has written over 100 books and articles, including a treatise, "American Constitutional Law." He has received his undergraduate and law degrees from Harvard, clerked for the California Supreme Court Justice Matthew Tobriner and U.S. Supreme Court Justice Potter Stewart. And I am going

to give him the floor after I introduce the other witnesses so that each one of them is known before they speak.

Our next witness after Professor Tribe is Sandra Wortham. Mrs. Wortham is testifying in her personal capacity today. She works as deputy director of the Chicago Alternative Policing Strategy Office of the Chicago Police Department. She is responsible for the department's domestic violence-related training, outreach, and services. She worked as a court-appointed attorney with the Circuit Court of Cook County, representing indigent clients in contested adoption litigation. She received her undergraduate degree from Howard University and her J.D. from Chicago Kent College of Law. Thank you for being here.

Our next witness will be Suzanna Hupp. Suzanna is the associate commissioner for Veterans Services for the State of Texas. She previously served as a member of the Texas House of Representatives from 1997 to 2007. She is the author of "From Luby's to the Legislature: One Woman's Fight Against Gun Control." She attended the University of Texas at El Paso and Texas Chiropractic College, graduating with a degree in chiropractic medicine. Ms. Hupp, thank you for being here.

Our next witness will be Charles Cooper. He is the chairman of the Washington law firm of Cooper and Kirk, previously served as Assistant Attorney General for the Office of Legal Counsel under President Reagan, also worked in the Justice Department's Civil Rights Division and in private practice. He received his undergraduate and law degrees from the University of Alabama, clerked for Judge Paul Roney of the Fifth Circuit and Justice William Rehnquist of the U.S. Supreme Court.

And our final witness will be Professor Daniel Webster, certainly a suitable name for a Senate witness. He is professor of health policy and management at Johns Hopkins Bloomberg School of Public Health, serves as the director of the Center for Gun Violence Policy and Research. He has published over 70 articles in scientific journals, most of which focused on the prevention of gun violence, youth violence, or intimate partner violence. He earned his bachelor's degree from the University of Northern Colorado, his master's in public health from the University of Michigan, and his doctorate from the Johns Hopkins School of Public Health.

I see we are having a changing of the guard from the first panel audience here, and I hope that they can leave in a quiet manner, as they are, and we will proceed with the testimony.

Professor Tribe, I know that you have made a great personal sacrifice to be here with us today, and I appreciate it very, very much. The floor is yours.

STATEMENT OF LAURENCE H. TRIBE, CARL M. LOEB UNIVERSITY PROFESSOR, HARVARD LAW SCHOOL, CAMBRIDGE, MASSACHUSETTS

Professor TRIBE. Thank you, Mr. Chairman. Nothing like the sacrifice that many of the people that you have invited have made, the victims of violence.

Chairman Durbin and Members of the Committee, I am honored by your invitation that I testify on an issue of such vital national importance. And it is especially humbling to be here in the pres-

ence of so many victims of senseless gun violence, and many others who have lost loved ones in a hail of bullets that should never have been fired.

When we recall the horror that 20 first-grade children had been slaughtered in Sandy Hook Elementary School, we have to remember that every 4 days nearly 20 more children and more than 100 adults die in gun homicides around this country. We may not know their names or see their faces, but they were not anonymous or nameless or invisible to those who loved them and will never hold them in their arms again.

The question before this Subcommittee is whether sensible measures to reduce rampant gun violence, not necessarily to stop it—we will never do that—but to reduce it—the violence that cuts short all these lives—is beyond our reach because of the Second Amendment, and my answer to that is an emphatic no.

Until the 1990s, nearly every constitutional expert, including Chief Justice Warren Burger and Judge Robert Bork, treated the Second Amendment as irrelevant to any personal right to keep or bear arms on the theory that the amendment concerned only each State's well-regulated militia. But by the end of the last century, a different understanding had emerged, one focusing on individual self-defense independent of the militia. I supported the emergence of that new understanding, and the Supreme Court made it the law of the land in the *Heller* and *McDonald* decisions in 2008 and 2010.

That pair of decisions demolishes the slippery slope theory of those who oppose basically all firearms regulation on the view that once we permit any new firearms regulation at all, we will be inviting the Government step by step to come ever closer to disarming the people, leaving only the police and military with firearms.

With *Heller* and *McDonald* securely on the books, the Supreme Court, in its own words, took certain policy choices off the table and thereby cleared the path for reasonable regulations to be enacted without fear that those policy choices would either open the door to unlimited Government control or be imperiled by exaggerated interpretations of the Second Amendment. As Justice Alito put it in *McDonald*, "There is no longer any basis for such doomsday proclamations."

Justice Scalia, speaking for the Court in *Heller*, said it at the end of his opinion: "Under our interpretation, the Constitution leaves open a variety of regulatory tools for combating the problem of gun violence in this country."

Now, the Court was explicit in saying what some of those tools include. They include—and each time I am quoting from the Court—"conditions and qualifications on the transfer of firearms to keep them out of dangerous hands, including felons and the mentally ill." They include "longstanding regulatory measures to keep firearms out of particularly sensitive places." They include complete bans of firearms that are "not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns," and of firearms that are "especially dangerous or unusual, such as M–16 rifles and the like." That was a list that the Court explicitly said was not meant to be exhaustive.

They include other regulations designed to protect public safety without cutting into the core right that the Second Amendment

protects, the right of self-defense in the home. Those legitimate other regulations certainly encompass bans on illegal straw purchasers and gun trafficking, both of which can totally frustrate any system of background checks or gun registration. And the kinds of regulations that do not trigger close scrutiny under the Second Amendment obviously include universal background checks or registration systems for the simple reason that systems with loopholes and less than universal coverage are calculated to be evaded by the very people who have no right to bear arms under the Second Amendment, people we cannot safely entrust with lethal weapons.

Finally, those other obviously valid regulations, ones that do not trip the Second Amendment's trigger, have to include bans on high-capacity magazines and especially lethal weapons that someone can keep firing for ten rounds or even more without reloading. Banning those weapons gives people a chance to escape and gives the police a chance to interrupt the slaughter.

The category of valid regulations under *Heller*, in my view, also covers bans on weapons designed for assault or military use rather than for lawful civilian uses. And the Court did not merely say that such regulations would ultimately survive Second Amendment scrutiny. It said that *Heller* would not even "cast a shadow of doubt on such measures should they be considered in the future."

Now, we should have no illusions that adopting measures like these nationally will completely solve the epidemic of gun violence in America. More will be needed. We clearly need to address mental health issues as well as other potential contributors to gun violence, such as violent video games, films that glorify murder and mayhem and other aspects of our violent culture. But if we do nothing until we can do everything, we will all have the blood of innocent human beings on our hands and will besmirch the Constitution in the process.

Just in closing, let me say that our Constitution, as many have wisely observed, does not make the perfect the enemy of the good. And whatever else it is, it is not a suicide pact—a suicide pact that condemns us to paralysis in the face of a national crisis of domestic bloodshed.

Thank you very much, Mr. Chairman.

[The prepared statement of Professor Tribe appears as a submission for the record.]

Chairman DURBIN. Professor Tribe, thank you.

Sandra Wortham.

STATEMENT OF SANDRA J. WORTHAM, CHICAGO, ILLINOIS

Ms. WORTHAM. Good morning.

Chairman DURBIN. If you would push the button.

Ms. WORTHAM. There we go. Good morning, Chairman Durbin, Members of the Committee. Thank you for the opportunity to speak today. It is really an honor.

We have discussed a lot about law this morning, and I am an attorney. I love the law. I respect it. I think it is great. But I would like to talk a little bit about life and the human impact that this issue has on me, my family, and the families we have here today. So to do that, I would like to take us back to May 19, 2010.

On May 19th, I had a good day. I was having a good day. I went to line-dancing class with my mother. We did it every Wednesday that spring. As you can imagine, that was quite entertaining. When we got home, a friend asked me to go scout birthday party locations with her. It was the big 2–5, so I of course said yes. We went out and we had a good time.

On my way home, I got a call from my mother, which was not unusual because we speak a thousand times a day. We still do. But this call was different. She was crying this time, and she said, "Sandy, come home." And she continued to cry, and she said, "They tried to rob him." So the "him" she was speaking of was my older brother, Thomas E. Wortham IV.

Thomas and I were raised in a great family, full of character but great. Our parents taught us we could do everything, be everything, the world was ours. But they also taught us that we had a responsibility to our community and to people who did not have the opportunities that we had, and that is how Thomas lived his life. He dedicated his professional life to service. He served two tours of duty in Iraq with our National Guard, and he was also a Chicago police officer, protecting the South Side of Chicago, where we lived.

Earlier that week, Thomas had traveled here to Washington, DC, to participate in activities for National Police Week honoring our fallen law enforcement officers and then traveled to New York City to run in a race in honor of Alex Valadez, a Chicago police officer who had been killed in the line of duty the year before. So on that evening of May 19th, Thomas had gone to our parents house when I left to show them pictures of Police Week activities. So he finished, they ate dinner, and he went to leave. And as he went to leave, my father went with him to the door to watch him out.

Now, I was not there, obviously, but according to reports, this is what happened. Two men approached Thomas as he went to get on his motorcycle, pulled a gun on him, and tried to take his motorcycle. Now, Thomas was a police officer, so he was armed, told them he was a police officer. My dad, standing at the porch, saw this happening. My dad was also armed. He had a gun in the house. He went in the house to get the gun. He came back out. So there was an exchange of gunfire between the offenders, my brother, and my father.

Now, when I got the call from my mother, I had no idea how bad this was. No idea. I just knew she was crying, but she is a crier sometimes, so I just knew I needed to get home. But shortly after I got the call, I looked ahead of me, and traffic was stopped. The police had blocked off all the streets on the way to our house. So I got out and started to run. I just said, "Well, let me just run home and see what is going on." And as I ran, an ambulance passed me. And still, you know, in my mind, I had no idea this had anything to do with Thomas because I had no idea how bad it was. But I am running down the street, and in retrospect, it was like a movie, because it is like slow motion. So an ambulance passes me. But I know now that Thomas was in the ambulance because he had been shot, and that is why all the streets were blocked off.

So I go to the house. They rush us to the hospital. We get there. We waited. We prayed a lot. We waited. But Thomas died.

Strangely, the week before—or a couple weeks before Thomas died, he did an interview with the Chicago Tribune because there had been two shootings across the street from our house just in the couple of months before that, and he was the president of the Park Advisory Council. And in the interview—I will read the direct quote—he said, "When people think of the South Side of Chicago, they think violence." And he went on to say, "We are going to fix it so it does not happen again."

So Thomas is dead, obviously, but I am here today and my parents are here today, I think all of these families, we are here today because we still believe that we can fix it. So as I understand it, this hearing has been called to discuss the ways we can respect the Second Amendment and protect our communities. And I have to be very honest—and I am so sorry that some of the people left because I was very—I am just confused as to where we are having disagreement about this. Like I said, I understand the law, I respect our Constitution, but to me this is not about taking away the lawful right to own guns. We are not anti-gun people. My family is not an anti-gun family. My brother and father were Chicago police officers and carried guns most of the time. That is how I was raised. But they were trained, and they were law-abiding citizens. I value and respect the rights that are provided by our Constitution. However, I find it very hard to believe that our founders intended those rights to go so unreasonably unchecked.

It is not about the right to take away—it is not about the right to lawfully own guns. This is about trying our best to keep guns out of the hands of the people like people who killed my brother. They did not walk into a gun store and buy a handgun, because if all the reports are right, they would not have been able to do so. They got their gun the same way that many ill-intentioned people receive guns in this country—they bought it on the street.

It is also a reality that their gun did not arrive in Chicago on its own. Again, according to reports, it was trafficked from a pawn shop in Mississippi. And, Chairman, you spoke about this earlier. According to news reports, a gun trafficker went to Mississippi, used straw purchasers to buy multiple handguns from that shop, and then brought those guns to Chicago to sell to gang members. And you spoke very well about this earlier, and that is a huge problem that we are talking about. And for me, as someone who has been personally affected by this, I cannot accept that we cannot do better than that. I cannot accept that we cannot fix that problem. If we know, as everybody here does, that many, many criminals obtain their guns through street purchases easily, then I feel like we have a responsibility to address that problem, and we have an opportunity through this body to do that. The only people who should be disturbed by common-sense gun laws are people who should not have guns in the first place. Okay? Law-abiding citizens should not be disturbed by the proposals here today.

So when we speak about the Constitution and all the rights afforded by the Constitution, I think we would also be well served to remember the words of another important document in our country's history. So we talked earlier about life, liberty, and the pursuit of happiness. Well, those things were taken away from Thomas

when he was 30, and quite frankly, our rights to those things have been affected by this situation.

So we talk about lawful gun ownership.

My brother owned a gun. My father owned a gun. But the fact that they were armed that night did not prevent Thomas' murder. So we need to do more to keep guns out of the wrong hands in the first place. And I do not think that makes us anti-gun people. I think it makes us pro-law-abiding citizens who want to live life without the constant fear of this violence as a result of guns.

I am not here to say that any one law would have changed what happened to Thomas, but I am here to say I think we can do better.

This is not about me, Thomas, my family, or any one family in general. This is about our country, and we have a system to effect change, to do something about this, and I think it is time that we do that.

Thank you.

[The prepared statement of Ms. Wortham appears as a submission for the record.]

Chairman DURBIN. Ms. Wortham, thank you for your testimony, and I still remember your brother's service and the comments that were made by some of his friends in the National Guard and others in law enforcement. He was an amazing individual, and it is sad that we have lost him. But I am sure that he is looking down and smiling at his mom and dad and sister standing up for him today.

Ms. WORTHAM. Well, thank you.

Chairman DURBIN. Thank you so much.

Ms. Hupp.

STATEMENT OF SUZANNA HUPP, LAMPASAS, TEXAS

Ms. HUPP. Thank you, Mr. Chairman, Members. I am speaking for myself today and not in any official capacity.

I wanted to mention right off the bat that when you opened the proceedings here, you asked all of the victims of gun violence to stand, and I hesitated. But, honestly, I do not view myself as a victim of gun violence. I view myself as a victim of a maniac who happened to use a gun as a tool. And I view myself as a victim of the legislators that we had at the time that left me defenseless. So that is why I hesitated.

I did not grow up in a house with guns. I am not a hunter. But when I was 21 and I moved out on my own, I was given a gun by a friend and taught how to use it. And then I had a patient when I was in the city of Houston who was the district attorney—an assistant district attorney in Houston, and he actually convinced me to carry the gun, which at that time was illegal in the State of Texas. He said, "Suzie, you do not see this stuff. I do. You need to carry your weapon, and nobody is going to mess with you."

Several years later, in 1991, my parents and I went to have lunch at a local cafeteria with a friend of mine who was managing the cafeteria that day. We had finished eating when all of a sudden this guy drove up a pick-up truck through the floor-to-ceiling window and came crashing in and ended up maybe 15 feet from me. Of course, we thought it was an accident, and I rose up and began to go help the people that he had knocked over. But then we heard

gunshots. And my father and I immediately got down on the floor. We turned the table up in front of us. My mom got down behind us. And the shooting continued.

Now, at that time, in 1991, you know, we were not seeing these mass shootings that we are seeing now, so I was waiting for him to say something like, "All right. Everybody put your wallets up on the tables," or, you know, I thought maybe it was a hit. Maybe there was somebody important in there. But the shooting continued.

I am going to tell you, it took a good 45 seconds, which is an eternity, to realize that the guy was simply going to walk around, take aim, pull the trigger, go to the next person, take aim, pull the trigger. He was executing people.

When I did realize it, I thought, "I have got him. I have got this guy." I reached for my purse that was on the floor next to me, realized I had a perfect place to prop my arm. He was up, everybody else in the restaurant was down. And then I realized that a few months earlier I had made the stupidest decision of my life. I had begun leaving my gun out in my car because I did what most normal people would do. I wanted to be a law-abiding citizen. I did not want to get caught with a gun and maybe lose my license to practice. I remember looking around and thinking, "Well, great. What do I do now? Throw a salt shaker at him?"

At that point my dad took my attention, and he started to raise up. He said, "I have got to do something. I have got to do something. He is going to kill everybody in here." And I tried to hold him down by the shirt collar. But when he saw what he thought was a chance, he went at the guy. You have to understand, though, a man with a gun in a crowded room has complete control. My dad covered maybe half the distance, and the guy just turned and shot him in the chest. My dad went down in the aisle maybe 7 or 8 feet from me, and he was still alive and still conscious, but as dreadful as this may sound, I saw the wound and I basically wrote him off at that point.

The good news is that it made the gunman change directions slightly. Instead of coming directly toward me, he went off to my left. And at that point, somebody way at the back of the restaurant broke out another window. And I remember hearing that crash and thinking, "My God, here comes another one." But instead I saw people getting out that way. So I looked up over the top of the table. When the gunman had his back to me, I stood up, I grabbed my mother by the shirt collar, I said, "Come on, come on, we got to run. We got to get out of here." And my feet grew wings.

I made it out that back window, ran into my manager friend that was coming out a side door, and he said, "Thank God you are all right." And I said, "Yes, but dad has been hit and it is really bad." And I turned to say something to my mother and realized that she had not followed me out.

Now, to wrap the story up, the police officers—several of them were patients of mine—told me a few days later—they filled in the gaps. They said that they were actually one building away in a conference, and in an odd twist of gun control fate, the hotel where they were having their conference, the manager there did not want them to be wearing their guns and potentially offending any of her

clients or customers. So she had asked them to leave their guns in their cars. So precious minutes were lost while they retrieved their guns from their locked cars. They said that when they got over there and worked their way in through the broken window behind the pick-up truck, they did not know who the gunman was. There were bodies everywhere. But they said they did see a woman out in the aisle, on her knees, cradling a mortally wounded man. They said they watched as the 30-something-year-old man walked up to her. They said she looked up at him, he put a gun to her head, she looked down at her husband, and he pulled the trigger. That is how they knew who the gunman was. They said all they had to do was fire a shot into the ceiling, and this guy immediately rabbitted to a back bathroom alcove area. He exchanged a little gunfire with them and then put a bullet in his own head.

Twenty-three people were killed that day, including my parents. It did not occur to me at the time, but mom was not going anywhere without dad. They had just had their 47th wedding anniversary.

So you may think that I was angry at the guy that did it. But the truth is, that is like being mad at a rabid dog. You do not be mad at a rabid dog. You take it behind the barn and you kill it, but you do not be mad at it. But I have got to tell you, I was mad as heck at my legislators because I honestly believed that they had legislated me out of the right to protect myself and my family. And I would much rather be sitting in jail right now with a felony offense on my head and have my parents alive to know their grandchildren.

With that, I thank you.

[The prepared statement of Ms. Hupp appears as a submission for the record.]

Chairman DURBIN. Thank you very much.

We have 6 minutes left on this roll call, so, Mr. Cooper, I am going to recognize you. And I cannot believe a Senator is going to ask Daniel Webster to wait, but if you do not mind, Mr. Cooper, if you will testify, we will take a recess and then return soon. We have three votes, so it may be half an hour to 40 minutes. I am sorry. And maybe it is sooner.

Mr. Cooper.

Mr. COOPER. You would like for me to go ahead?

Chairman DURBIN. Please.

STATEMENT OF CHARLES J. COOPER, PARTNER, COOPER AND KIRK, PLLC, WASHINGTON, DC

Mr. COOPER. Thank you very much, Mr. Chairman and Members of the Subcommittee. I am very honored to be here today to discuss this important subject matter and to share my thoughts with you. I am especially humbled to hear the testimony, the emotional testimony that we have had from the victims of senseless violence, and it makes it difficult to return to dry legal subject matters, but that is my task.

The Supreme Court's recent decisions in *Heller* and *McDonald* provide authoritative guidance for interpreting and applying the Second Amendment. So it is important first to identify the pertinent principles established by those decisions.

First, the Second Amendment protects an individual right that belongs to all Americans. Indeed, the Court repeatedly emphasized in both *Heller* and *McDonald* that the inherent and pre-existing right to self-defense is the core and the central component of the Second Amendment right itself.

Second, the fundamental Second Amendment right to arms is entitled to no less respect than other fundamental rights protected by the Bill of Rights. As the Court emphasized in *McDonald*, it is not to be treated as a second-class right or singled out for special—and specially unfavorably—treatment.

Third, the Second Amendment is enshrined—and these are the Court's words—"enshrined with the scope [it was] understood to have when the people adopted [it], whether or not future legislatures or (yes) even future judges think that scope too broad."

Now, this passage from *Heller* is an express admonition that all government officials, including Members of this body, of course, are oath-bound to respect and obey the command of the Second Amendment as it was understood in 1791.

Fourth, and relatedly, the line between permissible and impermissible arms regulations is not to be established by balancing the core individual right protected by the Second Amendment against purportedly competing government interests. This balance has already been struck, for the Second Amendment, as the Court put it, "is the very product of an interest-balancing by the people."

With these principles in mind, let us recall the text of the Second Amendment. It provides that "the right of the people to keep and bear Arms, shall not be infringed." The amendment is thus one of the very few enumerated constitutional provisions that specifically protects the possession and use of a particular kind of personal property—"arms." It follows that there are certain arms that law-abiding, responsible adult citizens have an absolute, inviolable right to acquire, possess, and use. Indeed, the *Heller* Court made clear that the Second Amendment's "core protection" is no less absolute than the First Amendment's protection of the expression of unpopular opinions. This is what it said: "The Second Amendment is no different" from the First Amendment. "And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home."

Now, let me repeat that. The amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." The Government, in other words, may no more prevent a law-abiding, responsible citizen from keeping an operable firearm in his bedside table drawer than it may prevent him from keeping a copy of the collected works of Shakespeare or his Bible or his Koran in that drawer.

The key question, then, is what arms are protected by the Second Amendment. *Heller* and *McDonald* answer that question. Those weapons that are, in the Court's words, "of the kind in common use . . . for lawful purposes like self-defense. Conversely, "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes."

Now, applying that "common use" test, *Heller* flatly and categorically struck down the District of Columbia's handgun ban because

it amounted to a "prohibition of an entire class of 'arms'"—I am quoting—"that is overwhelmingly chosen by American society for [the] lawful purpose [of self-defense]." The constitutionality of the pending proposals to ban certain "arms" thus turns on whether the banned semiautomatic rifles, shotguns, and pistols are of the kind that are in common use for lawful purposes in this Nation. And even as Professor Tribe concedes, standard magazines holding more than ten rounds and the firearms outfitted for them are by any reasonable measure in quite common use in the United States. Because S. 150 outlaws firearms and standard magazines that are of the kind in common use for lawful purposes, it is unconstitutional. But even if one were to apply a balancing test, S. 150s ban on automatic assault firearms and standard magazines could not pass even intermediate scrutiny.

And, Mr. Chairman, my time is up, and hopefully I will be able to address these points further in the questions and answers.

Thank you.

[The prepared statement of Mr. Cooper appears as a submission for the record.]

Chairman DURBIN. Thanks, Mr. Cooper, and thanks for your patience and understanding, particularly Professor Webster.

We are going to stand in recess. I will return as quickly as I can.

[Whereupon, at 11:48 p.m., the Committee recessed.]

[Whereupon, at 12:27 p.m., the Committee reconvened.]

Chairman DURBIN. This hearing of the Constitution Subcommittee will reconvene. I thank you for your patience. We had several votes on the floor, now breaking for lunch, but we are going to keep working.

Professor Webster, thanks for your patience, and please proceed.

STATEMENT OF DANIEL W. WEBSTER, PROFESSOR AND DIRECTOR, JOHNS HOPKINS CENTER FOR GUN POLICY AND RESEARCH, BALTIMORE, MARYLAND

Professor WEBSTER. Thank you, Mr. Chairman. Thank you for the opportunity to testify before you today.

In 2010, guns were used in more than 31,000 deaths, 11,000 of which were homicides. Guns were also used in over 300,000 nonfatal crimes. The social cost of gun violence that year was estimated to be $174 billion, $12 billion of which was directly absorbed by taxpayers.

Last month, I and more than 20 other leading researchers and gun policy experts gathered at Johns Hopkins to share our research at a summit on reducing gun violence in America. I refer to the Committee the full findings from the summit that were just published in a book that I edited with Jon Vernick. This group developed consensus policy recommendations that we believe would reduce gun violence, including the following: establishment of a universal background check system, strengthening laws to reduce firearms trafficking, expanding incentives for States to provide information about disqualifying mental health conditions to the NICS system, banning the future sale and possession of assault weapons and large-capacity ammunition magazines. These policies enjoy broad public support and, according to Professor Tribe and con-

stitutional experts from across the ideological spectrum, would not violate constitutional rights.

I would like to summarize the evidence that refutes common arguments against these proposals.

The first is that our Nation's high rate of homicide has nothing to do with gun availability. Yet when we compare the United States with other high-income countries, our rate of homicide is 7 times higher because our rate of homicides with guns is 20 times higher. This gross disparity cannot be attributed to the U.S. being more violent or crime-ridden generally because our rates of nonfatal crime and adolescent fighting are average among high-income countries. Much of the difference is likely due to the weaknesses in our laws that allow dangerous people to have guns.

Another claim is that gun control laws do not work because criminals will not obey them and will always find a way to get a gun through theft or the illegal market. This faulty logic could be used to argue against the need for any type of law because lawbreakers do not obey laws. The truth is that laws such as background check requirements for all gun sales and other laws to combat gun trafficking help law enforcement to keep guns from prohibited individuals.

Opponents of gun control point to criminals' obtaining guns from the underground market as proof that regulations are pointless. But the weaknesses in current Federal firearms laws are the very reason that criminals are able to obtain firearms from those underground sources. Data from a national study of State prison inmates indicates that about 80 percent of gun offenders acquired their handguns in transactions with unlicensed private sellers, a category of transactions that current Federal law exempts from background checks. Only 10 percent of gun offenders report that they stole the guns that they used in crime.

This argument from opponents of stronger gun laws also implies that criminals have no difficulty in obtaining guns. This is also inconsistent with the facts. If guns are so easy for criminals to get, why is it that only 29 percent of robberies reported in the National Crime Victimization Survey did the robber use a gun?

Several studies which I have conducted have shown that laws that increase gun seller and purchaser accountability, including universal background checks, lead to fewer guns being diverted to criminals. Missouri's repeal of its permit licensing law for handgun sales in August 2007 provides an example of the value of such laws. Missouri's law had required prospective handgun purchasers, whether they were purchasing a handgun from a licensed gun dealer or a private seller, to pass a background check to obtain a permit. We found that the diversion of guns to criminals shortly after the retail sale abruptly doubled and the gun homicide rate increased by 25 percent after Missouri repealed its law. During this same time period, gun homicide rates nationally dropped 10 percent.

In our new book, researchers reported several examples in which State laws prohibiting perpetrators of domestic violence, violent misdemeanants, and the severely mentally ill from possessing firearms did indeed reduce violence. Such laws would be even more effective if gaps and weaknesses in Federal laws were addressed.

Opponents claim that we do not need to pass new gun laws. We just need to enforce the current ones. The problem, of course, with this argument is that Federal gun laws are currently written in ways that make it very difficult to hold firearm sellers accountable, as was described earlier in previous testimony. There is no statute defining or outlawing straw purchases or gun trafficking. Standards of evidence are high and penalties are weak relative to the seriousness of the crime of supplying criminals with firearms.

The Tiahrt amendments protect licensed gun dealers who sell many guns that are subsequently recovered from criminals by restricting the use of crime gun trace data. I have published research showing how this law increases the diversion of guns to criminals from suspect gun dealers.

Opponents also claim that requiring background checks for all gun sales is too great of a burden on gun purchasers to justify. We just completed a large national survey in which we found that 84 percent of gun owners and 74 percent of NRA members reported that they supported laws requiring a background check for all gun sales.

In the 14 States that currently require background checks for all handgun sales, including private sales, 89 percent, nearly 9 out of 10 gun owners supported universal background checks. Apparently, the overwhelming majority of gun owners consider any inconvenience associated with a pre-gun-sale background check to be acceptable because they want to keep guns out of the hands of dangerous people.

It has been claimed that the only thing that can stop a bad guy with a gun, is a good guy with a gun. This call to arms suggests that the best way to reduce violence is to allow and even encourage legal gun owners to carry loaded guns in public places. The best evidence indicates that so-called right to carry laws do not reduce violent crime and may actually increase aggravated assaults. Calls to do away with restrictions on concealed gun carrying suggest everyone who can legally own a gun is a good guy or gal. But research on people who are incarcerated for crimes committed with guns in States where the conditions for legal gun ownership mirror the Federal standards, 60 percent of those gun offenders were legally qualified to possess a gun just prior to committing the crime with a gun that led to their incarceration. Many had prior convictions for crimes involving violence, guns, drugs, or alcohol abuse.

Finally, some say that banning the sale of assault weapons and large-capacity magazines would not enhance public safety. Assault weapons and guns with large-capacity ammunition feeding devices are overrepresented in mass shootings, and these mass shootings involving assault weapons typically involve more victims per incident than mass shootings with other weapons. Although mass shootings or shootings in which an assailant fires more than 10 rounds are relatively uncommon, their victims and family members of victims of mass shootings here today who would not have experienced the pain and loss of gun violence if their assailants had not been able to legally purchase assault weapons and large-capacity magazines.

[The prepared statement of Professor Webster appears as a submission for the record.]

Chairman DURBIN. Thank you. Thank you for your testimony.

Mr. Cooper, let me address initially the *Heller* decision as you saw it and the subsequent decisions, and I am going to ask Professor Tribe to respond or comment. It strikes me that what *Heller* said is the absolute prohibition of gun ownership is unconstitutional under the Second Amendment. What I hear you argue on the other side—and you even used the provocative word "absolute" in your testimony—is that there is an absolute right of individuals to own certain arms, common arms.

I am wondering how you square that with the language of *Heller* where Justice Scalia went on to specify all of the regulations that he would find permissible, and he said this is not an exhaustive list, but he went through a list of regulations that would limit the right to own arms, certainly inferring they are not—ownership and use is not absolute. He included weapons not typically possessed by law-abiding citizens for lawful purposes, prohibitions on the possession of firearms by felons and the mentally ill, laws forbidding the carrying of firearms in sensitive places, laws imposing conditions and qualifications on the commercial sale of arms, laws prohibiting the carrying of dangerous and unusual weapons, laws regulating the storage of firearms to prevent accidents.

If you concede even one of those things, then to say that the Second Amendment right to bear arms is absolute just kind of falls on its face. How long has it been since we have had restrictions on the ownership of machine guns under the Federal law? It has been quite a few years, if I am not mistaken. It may go back to the era of the 1930s, if I am not wrong about that.

So how do you reconcile that? How can you say this is an absolute right in light Justice Scalia's statement?

Mr. COOPER. Thank you, Mr. Chairman, for that question because I want to hasten to clear up confusion about my use of that term. It is not my position that the Second Amendment is unlimited. It never has been, and it certainly could not be after *Heller* makes clear that the kinds of limitations on the Second Amendment right that you have just articulated accurately from the decision itself are historically bound limitations and permissible restrictions that governments can place upon gun ownership and gun use.

What I tried to be careful to say, though, is that at its core—and this I believe that *Heller* does make clear. At its core, that is—and regardless of what one may argue is the core of the Second Amendment, it is clear from *Heller* that it is the use of arms—"arms" as that term is used in the Second Amendment itself—for self-defense within the home, the place where it is most acute, as the Court said, for the use of arms to be available.

It is not my position that any arms are protected by the Second Amendment. You have just mentioned M–16s. I do not think that an individual has, a law-abiding individual has a right to an M–16, even in his home. But it is my view that there are—that within the universe of arms, there are certain arms that are absolutely protected. And you cannot completely disarm an individual in his home. *Heller*, if it stands for nothing else, it stands for that.

And so the question before the Committee, before you, Mr. Chairman, and the others, is: What are those protected arms? Where does that line fall?

Chairman DURBIN. Okay——

Mr. COOPER. And it certainly falls at M–16s.

Chairman DURBIN. I am going to let the professor respond here to this argument that we are talking about the instrument, the weapon, as opposed to many other things. Tell me your reaction to this.

Professor TRIBE. Well, Mr. Chairman——

Chairman DURBIN. You need to turn your—thank you.

Professor TRIBE. Thank you. Much as I like and respect my friend Chuck Cooper, I just do not think he answered your question. The Supreme Court did not suggest in *Heller* or *McDonald* or in any other case that uniquely within the Constitution the Second Amendment protects a certain fixed set of objects, that somehow magically the M–16 machine gun floats from our 1791 history as out of the range of protection. It is a much more nuanced inquiry. It is an inquiry into how common the weapon is. It is an inquiry into how essential it is to self-defense. And it is an inquiry into how unusually dangerous it is.

Now, the suggestion that I get from Mr. Cooper's written statement in which he had more of a chance to elaborate is basically that a regulation of guns is allowed only if that regulation fits within a kind of specific historical pedigree, and somehow he gets that pedigree I am not sure quite where—from the 1930s, from the 1790s. But history has never been the sole determinant of the meaning of any constitutional provision, for Justice Scalia or for any other member of the Court. It certainly is not for the First Amendment. It is not for the Contract Clause. And more than any other constitutional provision, the objects addressed by the Second Amendment inherently evolve with technology. Guns today are exceptionally different from guns even a hundred years ago, let alone guns at the time of the framing. And in light of the Second Amendment's peculiarly close relationship with technology, it would make even less sense to be bound solely by history.

In his prepared statement, Mr. Cooper quoted from, I think it was, *Chicago v. McDonald* where the Court said that the Second Amendment is like the other amendments. It is subject to a consideration of competing constitutional claims, like claims to life, liberty, security, and—here is the language—"it is not to be singled out for special treatment."

And what I think Mr. Cooper is doing is the very thing that the Supreme Court said is not to be done. He is elevating the Second Amendment above all of the other values. Of course, the Court does not think that the Second Amendment should be subject to re-evaluation and rejiggering and rebalancing just because we live in the 21st century. But he, as all of the examples that you I think carefully enumerated, is clearly open to the idea that a whole range of regulations designed not to strip people of their right of self-defense but to balance that right, to accommodate that right to the severe dangers that we have seen these weapons provide, that that is permissible.

Chairman DURBIN. So if I can, if Senator Cruz would allow, I want to ask one more question and then turn over to him. Two weeks ago when we had this hearing, I asked the head of the NRA, Mr. LaPierre—I gave him an illustration of something that had happened to me as a politician back in Illinois. When I sat down with people who feel—members of his organization who feel very strongly about the Second Amendment and told them my views, they said, "You do not get it. You just do not understand it. It is not about sporting, hunting. It is not even about defending my home or self-defense. It is about my right to bear arms so that I am adequately armed if the Government turns on me, so that I can suppress tyranny if someone should turn on me."

And I asked Mr. LaPierre, is that the standard? I expected him to say no, but he did not. He said, "In the historic context of the Second Amendment, that is what it was about. This was a brand-new Nation. They had just thrown off the tyranny of England, and they wanted to preserve," in Mr. LaPierre's words, "the right to bear arms to protect those basic freedoms as individuals."

Now what we are finding is something interesting growing out of this mind-set. It is a form of nullification which we are seeing evidence of. In my home State of Illinois, there are sheriffs, duly elected sheriffs of counties who have publicly stated that they will not enforce any Federal laws restricting the Second Amendment. They have taken on the name of "Oath Keepers." I have some of their literature in front of me.

I would like for you to comment on the history of the Second Amendment and this view of the right of an individual to defend himself, herself, against a Government that may be tyrannical. Is that built into the Second Amendment?

Professor TRIBE. Well, Justice Scalia, in a very erudite, historical discussion in *Heller*, talked about how part of the historic origin of the need to codify the Second Amendment was exactly the sense that shortly after the Revolution and when we were still a forming Nation, when we really did not have a Government under a rule of law that had conformed itself to a new Constitution, that that was one of the elements. But he makes it clear that to make the Second Amendment serve that purpose today, we would have to let every individual have his own rocket launcher, his own tank. I mean, if the Government of the United States were ever to turn on any of us as individuals, it would not be enough to have a handgun or even a semiautomatic weapon.

So, clearly, the purpose has now become one of self-defense against marauders, against criminals, against errant individual police officers, but not against the entire Government.

And you mentioned nullification and the Oath Keepers. We have had a history of claims by States that they could nullify the operation within their own jurisdiction of Federal laws that they did not agree with. It was a bloody history. It was settled, I think, by the Civil War, if I remember my history correctly, and it is not a history that I would want to relive.

The Oath Keepers, like anybody else, are entirely free to agitate, litigate, argue for their own view of the law, but as Justice Scalia said in 1990, "... democratic government must be preferred to a system in which each conscience is a law unto itself ..." And the

Supreme Court of the United States said in 1960 that nullification and "interposition is not a constitutional doctrine. If taken seriously, it is illegal defiance of constitutional authority."

Chairman DURBIN. Thank you.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman. I would like to thank all of the witnesses for your time and preparation and being here. I apologize that with votes on the floor of the Senate and also other Committee hearings that not all of us were able to be here for this very learned testimony.

I would like to give particular thanks to Ms. Hupp, a constituent from the State of Texas, whose testimony I think was moving and powerful, and your personal life experience I think is very important for this debate. And I would urge anyone interested in assessing what the proper standard is for protecting our right to keep and bear arms to watch Ms. Hupp's testimony, to see her personal experience of the importance of the right to keep and bear arms to protect ourselves and to protect our family.

I would also note, in the interest of full disclosure, that as a law student I took constitutional law from Professor Tribe, and that my very first employer in private practice was Chuck Cooper. And with both of you on each end of this table, I would simply say you are both held harmless.

[Laughter.]

Senator CRUZ. Should I make any mistakes of constitutional law, I will take the brunt of all of that myself rather than attributing any blame to either one of you.

Mr. Cooper, a lot of discussion today has been had that the Second Amendment allows what is described as reasonable, commonsense regulations. And "reasonableness" is a term that encompasses a lot.

I would like to understand the scope of the argument that was made by Washington, DC, and Chicago in the *Heller* case and the *McDonald* case. As I understand it, both Washington, DC, and Chicago, with the support of the great many groups who are now calling for gun control regulation, made the argument that the Second Amendment right to keep and bear arms does not protect any individual whatsoever. And if I understand that correctly, that would mean, under their interpretation, that this Congress could pass a law that says it is a Federal offense, it is a crime for any American to own any firearm whatsoever—pistol, shotgun, rifle—any firearm is hereby criminalized.

Am I correct that the position that was advocated in those cases is just that radical?

Mr. COOPER. It was just that sweeping, Senator Cruz. The claim made by the cities in those cases was that the Second Amendment protects only a collective right, a right relevant only with respect to the organized militia. It was rejected by the Supreme Court, and that rejection reiterated and reaffirmed in *McDonald*, it rejected initially in *Heller*.

The Court said—Mr. Chairman, this refers back to your earlier question. The Court was quite clear that concerns by the Founders and the framing generation about tyranny and the notion that a standing army could disarm the populace, disarm the people, was

at the root of the codification in the Bill of Rights of the Second Amendment.

It was not the core concern, however, of that founding generation and of the people at the time. The core concern, the central component, according to the majority in *Heller*, was self-defense. And it also recognized the lawful purpose of hunting. So people had an individual, fundamental right, Senator Cruz, to keep and bear arms for those lawful purposes, the core of which—and I have earlier characterized it as absolute, and I reiterate that—the core of which was to keep an operable firearm in the home for the purpose of self-defense.

Senator CRUZ. And, Mr. Cooper, am I correct, the first argument in those cases was that it was not an individual right at all?

Mr. COOPER. Yes.

Senator CRUZ. Or that it was not incorporated against the States in *McDonald*?

Mr. COOPER. Just a collective right.

Senator CRUZ. But the second argument was that even if it was, that a total ban on firearms, as Washington, DC, and Chicago had, constituted reasonable, common-sense gun control, even if it did protect your right? In other words, it was a right that could be legislated entirely out of existence?

Mr. COOPER. That is—a right that could include a sweeping and comprehensive ban on the possession of an operable firearm in the home.

Senator CRUZ. Now, Professor Tribe, many have made reference to Justice Scalia's opinion in *Heller* that recognized that there are some limits on the Second Amendment. Am I correct, though, that *Heller* actually went further than that and enumerated some specific examples: namely, a ban on felons possession firearms *Heller* said was permissible under the Second Amendment; a ban on what *Heller* characterized as "dangerous and unusual weapons," such as M–16 machine guns, satisfied the Second Amendment. *Heller* did not once suggest that the sort of restrictions here—in terms of when it was enumerating examples of restrictions, the sort of restrictions currently being considered by the Senate, *Heller* did not say those would be permissible, did it?

Professor TRIBE. Well, it certainly, Senator Cruz, did not have these in front of it. But it said in Footnote 26 that the examples it gave were only examples. And if there is any regulation that could survive Second Amendment scrutiny, it is the kind of regulation that is being considered, namely——

Senator CRUZ. Well, but it did say that what was critical was whether the particular weapons were in common use at the time. Is that correct?

Professor TRIBE. That is not, with all respect, Senator Cruz, quite correct. It said that if they are not in common use at the time, as the handgun had been, then they are out of contention for Second Amendment protection. But being in common use at the time did not in itself guarantee that they were within the core. Otherwise, if you flood the market with machine guns, with M–16s, so that they are suddenly in common use, then they would get the kind of protection the Court said they did not have.

Senator CRUZ. Although M–16s currently are functionally illegal for the public to enjoy, fully automatic machine guns——

Professor TRIBE. That is right. But if you flood the market, it would no longer be constitutional to outlaw them if it were true that just being in common use was enough. That is why the Court had three criteria.

Senator CRUZ. But they are not in common use right now, are they?

Professor TRIBE. They are not. But the Court said——

Senator CRUZ. Okay. And a final question because my time has expired. With the Chairman's indulgence, I would like to ask a final question of Ms. Hupp, which is: If you look at the Nation of Australia, which in 1997 banned guns, Australia saw from 1995 to 2007 sexual assaults and rape increase 29.9 percent and violent crime increased 42.2 percent, largely after they had banned guns altogether.

In contrast, the United States during that same time saw violent crime decrease 31.8 percent and rape decrease 19.2 percent.

To my mind, that data suggests that allowing law-abiding citizens to arm themselves, and in particular protecting the right of women to protect themselves, is an important safeguard against violent offenses.

Are you aware of any data or any argument to the contrary that stripping women of the right to defend themselves does not make them more vulnerable to violent predators?

Ms. HUPP. Well, you are asking me to provide, I believe, some statistical evidence that I do not have with me. Common sense, I believe—we have talked about common-sense gun laws, and saying something is common sense does not necessarily make it so. But common sense tells me that if my aged grandmother in a wheelchair is approached by three thugs with baseball bats wanting her Social Security check, if she pulls out a revolver, now all of a sudden she is on equal footing.

If I may, I would like to offer a couple of things that I believe could be done to help eradicate these mass shootings that seem to be so prevalent in the last couple of decades. One thing is that we could—that you all could encourage States to get rid of gun-free zones, because is it not fascinating that nearly all of these mass shootings that we have seen have occurred in gun-free zones, places where there are so many people that are like fish in a barrel? These mass shootings do not occur at the dreaded gun show. They do not occur at NRA conventions or skeet and trap shoots. They occur where madmen want to go and be able to shoot people who are defenseless. Murder and crimes of passion have been occurring in this world since the dawn of man, and nothing—nothing—that your Committee can do will change that, unfortunately.

The second thing I would strongly recommend is I would encourage—or I would ask you all to encourage the media, not legislate but encourage the media to quit using the murderers' names. These people typically come from a background of bullying or feeling as if they are worthless and have no ability to change their lives, so they know there is an aspect of glory to these mass murders. They know they are going to go down in the history books. And if you can ask the media to stop using their names after that first day—

and, second, if the person actually does not put a bullet in their own head or they are not killed in the process, when they go to trial, fuzz out their faces. Stop encouraging their infamy.

Senator CRUZ. Thank you very much, Ms. Hupp, and my time has expired.

Chairman DURBIN. Senator Graham.

Senator GRAHAM. Thank you all. In the last round of questioning, I asked a question of our first witness: What percentage of people who fail a background check actually get prosecuted? And I should have asked actually get convicted, because it is even less. So you can check our math, but he said there were about 80,000 background checks, and some of them are false positives, a small number, so that would definitely affect the numbers, but not a whole lot. There were 44 people prosecuted. I do not know exactly how many were convicted. But in 2010, there were 76,142 FBI denials referred to ATF. There were 62 charges referred for prosecution, and 13 resulted in a guilty plea. But when you do the math, it is 0.000055 of a percent, and that gets to be where I really cannot put my arms around it.

So the point I guess I am trying to make to the Committee and the public at large, if you expand background checks and no one ever suffers the consequences of lying or making a straw purchase, I do not think it is going to do much good.

Professor Tribe, do you agree with the concept that people, to obey the law, they have to fear that there will be a consequence if they break it?

Professor TRIBE. I certainly do, and I think that the fear of a really serious consequence rather than a slap on the wrist would make a difference. But the key point, to me, is that when you have so many loopholes so that somebody who thinks he is going to flunk a background check unless he lies goes to a gun show or buys on the Internet, of course, the system of background checks is not going to work. It works only better—it works better the more universal you make it.

Senator GRAHAM. Well, would you agree that criminals universally will try to get a gun outside the law?

Professor TRIBE. And they will try to violate the law in every way. I agree.

Senator GRAHAM. Absolutely. So it is never really universal. It is really about law-abiding citizens, what we expect of them. And I guess my point is this number to me is startling. I think if you are looking for some common ground, Mr. Cooper, it seems to me this would be a good place to start. Try to find, if it is a resource problem, let us dedicate some money. If it is an attitude problem, let us adjust attitudes. But in all honesty, to the panel, I do not think any expansion of background checks is going to be a deterrent until somebody in a real way suffers the consequences under the current system.

So when you say people fall through the cracks, I would say there is a hole a mile wide in the current system—I mean, it is just a flood gate—that your chance of being prosecuted for violating a background check or providing false information is probably a lot less than being struck by lightning or hit by a meteor. So I do not know what those numbers are, but I would say let us focus on that.

Now, Dr. Tribe, when it comes to defining the constitutional parameters of what you can do up here to regulate gun ownership, one is common usage. There were two other——

Professor TRIBE. Right. The two others, Senator Graham—thank you for giving me a chance to get to them—were the degree of unusual dangerousness, and that was not simply another way of saying common use; that is, of course, all guns are dangerous or they would be useless. But a gun that can spray bullets without being reloaded is more dangerous. And the third criteria was how vital it is to self-defense.

Now, none of those things can be answered in a kind of easy, black-and-white way, because in a sense the more dangerous a gun is, the more useful it also is for self-defense.

Senator GRAHAM. Well, that is a good point, and I guess that is what I am trying to tell the public.

Could you put our chart up about the different guns? Do we have it?

Ms. Hupp, I think we all agree that any weapon—one bullet in the hands of a mentally unstable person is one too many. Do you all agree with that concept? Any gun should be denied someone who is mentally unstable?

Ms. HUPP. Yes.

Senator GRAHAM. Okay, and I think everybody would. And we do not want felons, because that is already the existing law.

Now, a circumstance you have described very eloquently, the circumstance you found yourself in, Ms. Hupp, but there is a case in Atlanta recently, Dr. Tribe, of a lady who was defending her home against a home invader. She was home with twin daughters, 9 years old. She ran up to the closet, hid in the closet. She was on the phone to her husband. The guy followed up the steps, broke into the closet. She had a six-shot revolver. She emptied the gun, hit him five of six times—it was a .38 revolver—and he was still able to get up and drive away. Now, I have been told that one-third of all attacks involve more than two people.

So is it unfair for Congress to say that in the hands of a mother defending her children against a home invader, six rounds may not be enough, ten rounds may not be enough? In that situation I wish she would have had 15 or more because six rounds were not able to do the job. Does that make sense to you how I could think that way?

Professor TRIBE. Well, it makes a certain kind of sense, Senator Graham, but it is an argument that has no limit, because if she had a machine gun, she might have been even safer, or, you know, if she had a hand grenade, better still, blow them all out of the water.

Senator GRAHAM. But here is where democracy works. I do not want her to have a machine gun or a hand grenade. I just do not want her to be limited to ten bullets when the real world—everything is a balance. She may need more than ten. And the mentally unstable person does not need more than one.

Now, the second series of weapons, after natural disasters you have had mobs roam around areas that are lawless. Basically there is no power or the police cannot get there. Katrina, Sandy, Haiti, you name it. But you have got three homes: one home, the home-

owner has no gun; the second home has a shotgun; the third home, they have an AR–15. Mr. Cooper, what home do you think would be best protected?

Mr. COOPER. I would rather be in the home that has the AR–15, Senator Graham. But a shotgun would come in very handy as well. And I think that your comments about the Atlanta episode really bring into very sharp focus why this magazine ban is so misguided in addition to being unconstitutional.

Senator GRAHAM. There are over 4 million high-capacity magazines out on the market, right?

Mr. COOPER. There are, and——

Senator GRAHAM. And criminals are likely to get them no matter what we do up here.

Mr. COOPER. They will undoubtedly get them.

Senator GRAHAM. And the only person that could be really affected is the law-abiding person who could be limited. Does that make sense?

Mr. COOPER. Absolutely.

Senator GRAHAM. Now, we can have great disagreements about how far the Second Amendment goes, and there are limits, just like freedom of speech. So I just hope the Committee will understand a good place to start, Mr. Chairman, is taking the laws we have and bring about a sense of you better not violate that law because something bad will happen to you. And when you are at 55 of one/one hundred thousandths in prosecution, we got a ways to go.

Thank you all.

Chairman DURBIN. Thanks, Senator Graham. I appreciate you coming back. I know this has been tough on our schedule and tough on your schedule, but thank you for being part of this important hearing.

Ms. Hupp, your story about your parents is heartbreaking and touching, really. I agree with Senator Cruz. It is something that everyone should hear, even those who were not here today. I would like to ask you a couple questions about some things that you have said.

You stated—again, what you said before—that nearly all mass shootings in recent years have occurred in gun-free zones. The Mayors Against Illegal Guns did an analysis of every reported mass shooting, defined by the FBI as involving four or more people being killed, between January 2009 and January of this year. Of the 43 mass shootings by FBI definition, 14 of those mass shootings—about a third—took place in public places that were considered gun-free zones—one-third, gun-free zones. The rest took place in private homes or public places where concealed-carry was permitted.

In light of this analysis, do you still stand by your statement that "nearly all mass shootings in recent years have occurred in gun-free zones"?

Ms. HUPP. Yes, I would, and the reason I say that is because I would like to know what the numbers are—you mentioned that they said four or more they are calling a mass shooting?

Chairman DURBIN. By FBI definition.

Ms. HUPP. But certainly the ones that you and I hear about when we turn on the news are more like ten or more or six or

seven or more. And in all of those cases that I can think of, they have occurred in places where guns were not allowed. And I believe that the four or five category that you are talking about, that has a different intent behind it. You mentioned that they were typically in homes?

Chairman DURBIN. No. It said the rest took place in private homes or public places where concealed-carry was permitted.

Ms. HUPP. Okay. In a private home situation, I am assuming that most of those are going to be cases where you have some family member who has gone berserk, and I believe it is a different scenario. The one thing that I can assure you is that having a gun is not going to prevent somebody from coming in and shooting their estranged wife and the person sitting next to them. It is not.

Chairman DURBIN. So let me ask you this question——

Ms. HUPP. But it will prevent the high body bag count.

Chairman DURBIN. Illinois has the distinction, my home State, of the last State in the Union without a concealed-carry law. They are currently debating it in the General Assembly. And there are a lot of choices to make in terms of concealed-carry.

The Violence Policy Center reported that since May 2007 there have been at least 499 people, including 14 law enforcement officers, shot and killed either by concealed-carry permit holders or by gunmen in the four States where there is no permit at all required. These shootings include incidents such as:

June 6, 2010, the murder of four women in Hialeah, Florida, by a man who had reportedly served time in a Cuban prison but had a concealed-carry permit under Florida law;

The April 4, 2009, killing of three Pennsylvania police officers by a white supremacist who had a concealed-carry permit even though a former girlfriend had a protection order against him;

And July 23, 2011, the murder of five people at a roller rink in Grand Prairie, Texas, your home State, by a gunman who was a reported domestic abuser and was carrying a concealed weapon legally under Texas law.

So I would just like to ask you this question: What standards can we, should we apply to concealed-carry permit holders to avoid abuses such as these?

Ms. HUPP. That is a weighty question. When you were referring to the roller rink, I thought of our local roller rink, and the owner actually requires that all of his employees carry to prevent just that scenario.

I will have to revert back to what I said earlier. A gun is not a guarantee. It just changes the odds. And it is a tool that can be used to kill a family or a tool that can be used to protect a family, but it seems to me that you all are focusing on the tool. If I were to take—and I hate to say this out loud, honestly, because I have children in a public school. But is there any doubt in anyone's mind that the maniac that went into the Sandy Hook Elementary could not have murdered as many children if he had carried a samurai sword?

My contention is that guns are very effective tools and in the right hands can prevent some dreadful things.

Chairman DURBIN. So, Ms. Wortham, your experience with your brother, a law enforcement officer who was armed, your father

nearby with a gun, and, sadly, despite that, your brother lost his life. You have heard this argument now on both sides. Where do you come down on this? How do you—I mean, as reflect on this——

Ms. WORTHAM. Right. So perspective is everything, and I think Ms. Hupp's story is horrible. I was telling her at the break that I read it and I was traumatized. But I think that what we know, as I said in my statement, is they were both armed, and Thomas is dead. And it is true. It betters your odds sometimes. But I also think that we are kind of not focused on the big picture here, and I think that is what kind of concerns me.

It is not about disarming law-abiding people. We are talking about doing our best to keep the guns away from people who should never have them in the first place, right? So I feel like we are going off track a lot here with the focus on people should have guns, people should have guns. I do not think anyone is saying that there should not be a right to bear arms. I do not think anyone is saying that here. I think what we are saying is that the second amendment does not prevent us, you, the law-making body here, from looking at ways that we know we can try and reduce the amount of people who should not have guns from having them so that the situations like Ms. Hupp's, like ours, like all the families who are here this weekend, we will not see them as much. And I think that is what we should talk about more than saying, oh, well, yes, guns are helpful sometimes, they sure are, but——

Chairman DURBIN. So in your case that I have read about and you told quite a bit about, there are still some elements that I would like to put in the record. None of the four suspects who were involved in your brother's murder was eligible to buy a handgun from a licensed gun seller. Three of the suspects were under the legal age to buy a handgun, and the fourth had served 6 years in prison on a drug charge. As far as we know, these suspects did not even try to buy a handgun from a licensed seller. That is just a conclusion we reached. They bought a trafficked gun from a private seller on the streets.

So, in general, do you think that ineligible buyers are deterred from trying to get guns from licensed gun dealers because of the fact that they are going to face a background check?

Ms. WORTHAM. I think that is definitely helpful, yes. I mean, I think they go the way that they know they will not have to be subjected to that, so yes.

Chairman DURBIN. Even getting back to Senator Graham's prosecution numbers—and we started the hearing talking about these are paperwork crimes and often do not carry strong penalties and the prosecutor has limited resources to apply to enforcing the law and so forth—I think it is fairly obvious and rational to believe some of these gang bangers are never going to walk into a gun dealer.

Ms. WORTHAM. Right, and I think that the part—all due respect to Senator Graham—that we miss with the chart was that, yes, maybe the prosecution of those who are flagged as not eligible for guns is not what we would like it to be. But we miss the fact that they were flagged as not eligible for guns. So the tool is still an effective deterrent, and that part is not displayed in the chart with

the numbers of the maybe not so great prosecution numbers. So I think we miss that in depicting the numbers that way.

Chairman DURBIN. Professor Webster, one of the things I find interesting is kind of the hands-off attitude that Congress takes when it comes to many of these gun issues. To think of the number of Americans who die from violent gun crime and the like and the fact that we have expressly prohibited certain agencies of Government from doing any research into gun violence and how to reduce it, we do not think twice about calling for research in reducing epidemics and reducing the incidence of disease.

Can you talk from a public health perspective about the problem of gunshot deaths in our country and what you think we need to do to address it?

Professor WEBSTER. Sure. As I indicated in my testimony, I think from a policy standpoint, really the most important thing is that we currently make it way too easy for criminals to get guns, and there are some common-sense ways to address that. We need comprehensive background checks. We are never going to be effective without that.

As is indicated by the numbers, it is difficult to prosecute them, and that is, frankly, by design. The laws are written in a way to minimize accountability for those who are buying and selling firearms. I think that is very wrong-headed.

I have several studies that I have conducted that show very consisted evidence that States that have greater measures to hold firearms sellers and purchasers accountable have substantially less diversion of guns to criminals. They also happen to enjoy some of the lowest rates of firearm mortality among the 50 States.

So I think there are things that we can do, again, that focus on really what most of us agree upon. None of us want dangerous people to have guns, yet Congress has currently given us a set of laws that make it very difficult for law enforcement to do what we want them to do, which is keep guns out of the hands of dangerous people.

Chairman DURBIN. Thank you, Professor Webster, and I want to thank the panel for your patience and forbearance as we raced around doing our roll calls.

The record will be open for a few days—Professor Tribe, you know this; you are a regular—and there may be some questions sent your way, and I hope, if you can, that you will respond promptly.

There is a lot of interest in this subject and in today's hearing. More than 120 individuals and organizations submitted written testimony. I am supposed to be handed a prop now and show you the big stack of them, but I am going to skip that. And, without objection, I am going to ask that these statements be placed in the record.

[The information referred to appears as a submission for the record.]

Chairman DURBIN. We are going to keep the record open for a week. Written questions for the witnesses may be submitted, as I mentioned earlier. And if there is no further business to come before the panel, I am going to ask that this hearing stand adjourned. Thank you.

[Whereupon, at 1:17 p.m., the Subcommittee was adjourned.]
[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

Witness List

Hearing before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

On

"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

Tuesday, February 12, 2013
Hart Senate Office Building, Room 216
10:00 a.m.

Panel I

Timothy J. Heaphy
United States Attorney
Western District of Virginia
United States Department of Justice
Washington, DC

Panel II

Laurence H. Tribe
Carl M. Loeb University Professor
Harvard Law School
Cambridge, MA

Dr. Daniel Webster
Director and Professor
Johns Hopkins Center for Gun Policy and Research
Baltimore, MD

Sandra J. Wortham
Chicago, IL

Charles J. Cooper
Partner
Cooper & Kirk, PLLC
Washington, DC

Suzanna Hupp
Lampasas, TX

Department of Justice

STATEMENT OF

TIMOTHY J. HEAPHY
UNITED STATES ATTORNEY FOR THE
WESTERN DISTRICT OF VIRGINIA

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

FOR A HEARING ENTITLED

"PROPOSALS TO REDUCE GUN VIOLENCE:
PROTECTING COMMUNITIES WHILE RESPECTING THE SECOND AMENDMENT"

PRESENTED ON

FEBRUARY 12, 2013

Testimony of Timothy J. Heaphy
United States Attorney for the Western District of Virginia
United States Department of Justice
before the
United States Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

February 12, 2012

Good morning, Chairman Durbin, and Members of the Subcommittee, it is a privilege to appear before you today on behalf of the Department of Justice. As the United States Attorney for the Western District of Virginia, I am pleased to speak with you about the continuing work of the United States Attorney community and the Department of Justice to address gun-related violence. In particular, I want to talk to you today about our efforts to bring to justice those individuals and criminal organizations who have endangered our communities and undermined public safety through the illegal possession and use of firearms.

Recent tragedies at Sandy Hook Elementary School in Newtown, Connecticut; at a nursing school in Oakland, California; at a movie theater in Aurora, Colorado; and at a Sikh Temple in Oak Creek, Wisconsin have reminded us of the overwhelming tragedy caused by gun-related violence. In my district, we experienced the same kind of tragedy several years ago, on the campus of Virginia Tech. We also confront the awful reality of gun violence in the diverse communities in which we serve, from Chicago, Illinois to Roanoke, Virginia. All of these incidents reinforce our continuing obligation to enforce the federal firearms laws we currently have, and of the need to find additional tools to help prevent violent crime in all its forms.

As the chief federal law enforcement officer in my district, I have taken an oath to uphold the Constitution and the laws of the United States. Like my fellow United States Attorneys, I am duty-bound to do everything within my authority to ensure the safety of the citizens of our communities. As a former line prosecutor who has handled numerous violent crime cases, including one trial involving 17 defendants charged with a total of 31 murders, I have seen firsthand the crucial role that federal law enforcement plays in this effort. My colleagues and I consider it a solemn obligation and a privilege to bear the responsibility of keeping our people safe, and today I want to discuss with you what we have done to address the particular challenges of gun-related violence – through both prevention and enforcement efforts.

I. Combatting Violent Crime is a Key Department of Justice Priority.

Attorney General Holder has consistently emphasized that combatting violent crime and fostering safe communities is a top priority of the Department of Justice. To that end, he has tasked the United States Attorneys with the responsibility to develop localized strategies to

apprehend and prosecute individuals, street gangs, and other criminal organizations that engage in gun-related violence. In a meeting of federal prosecutors in New Orleans dedicated to the protection of our communities in July of 2010, Attorney General Holder urged United States Attorneys to be more than mere "case processors" and to embrace the additional role of "problem solvers" when it comes to the gun violence plaguing our communities. He instructed us "to bring innovative, evidence-based solutions to the work of addressing our most overwhelming and intractable challenges – namely, the prevalence and consequences of gun-, gang-, and drug-related violence, as well as the devastating impact of childhood exposure to violence." We continue to follow these instructions in our ongoing efforts to protect our children and communities while holding violent offenders accountable for their criminal actions.

Each United States Attorney, working with federal, state, local and tribal prosecutors, law enforcement, and community leaders, has implemented a district-specific, anti-violence strategy, consistent with the Attorney General's direction. These local strategies provide specific plans that combine targeted enforcement with support for crime prevention and viable offender reentry. We work closely with our state and local partners to apply this comprehensive approach to violence prevention in communities both large and small, urban and rural.

Our work reflects the priority we put on preventing gun violence in every district in the country. We must continually strive to make the most of the finite number of federal prosecutors, agents, and state and local officers we have deployed in this fight. This requires us to work smarter by gathering intelligence and targeting our enforcement efforts at the most dangerous and complicated criminal justice threats in our communities. By doing so, we are bringing impactful cases that help change neighborhoods. This data-driven approach makes us more effective. We work cooperatively with state and local law enforcement to identify and support their efforts where it makes the most sense for them to be in the lead. We continue to do all we can to vigorously prosecute gun crime, relying on close coordination with ATF and our other federal, state, and local partners in a targeted approach.

II. Prevention

As the Attorney General has said repeatedly, any effective response to a criminal justice challenge must combine enforcement with prevention – violent crime is no exception. In this regard, preventing prohibited persons from even obtaining a firearm is a crucial component in the overall strategy to reduce gun-related violence. Federal law precludes certain categories of "prohibited persons" from receiving or possessing firearms, including those who have been convicted of, or are currently under indictment for, a felony; are an unlawful user of a controlled substance; have been involuntarily committed to a mental institution; are illegally or unlawfully present in the United States; have been dishonorably discharged from the Armed Forces; have renounced their citizenship; are subject to a domestic violence order of protection; or have been

convicted of a misdemeanor crime of domestic violence.

Federal law also requires licensed gun dealers to ensure that they are not selling firearms to prohibited persons. Specifically, before a federal firearms licensee (FFL) can transfer a firearm to an unlicensed individual, the dealer must request a background check through the FBI's National Instant Criminal Background Check System (NICS) to determine whether the prospective transfer would violate federal or state law. During the NICS check, personal information provided by the prospective firearms purchaser is used to search national databases containing criminal history and other relevant records to determine if the person is disqualified by law from receiving or possessing a firearm. The information in NICS is largely furnished by state and local governments, and we're doing all we can to create incentives and provide assistance to state actors to ensure that NICS information is complete and thorough.

Since it was created in 1998, the NICS background check system has kept more than 1.5 million guns out of the wrong hands. That's why expansion of this system is so vital to public safety. Many individuals who are prohibited by law from purchasing a firearm have been stopped from making a firearms purchase. Approximately 83,000 of these sales were prevented in FY 2012 in states that rely on the FBI to process the background checks.

Of course, these denials only represent instances where the prohibited person attempted to purchase a firearm from a FFL. Under current law, in most states, when a prohibited person attempts that same purchase from an unlicensed seller at a gun show, from an unlicensed private individual, or from any source other than a licensed FFL, no background check is required. As a result, prohibited persons are able to evade background checks. A recent case in the Western District of Oklahoma provides a good example of the problem. Local law enforcement officers in Oklahoma City observed a previously convicted felon and gang member of the Southside Locos – a violent street gang known for its long history of violent crime – visit multiple vendors at a local gun show. Law enforcement officers watched as the felon deliberately avoided purchasing firearms from any of the FFLs in attendance. Instead, he purchased, without any paper trail, a machine pistol with a high-capacity magazine and another gun from non-licensed vendors who were not required to perform background checks. It was only because this individual was already known to law enforcement and law enforcement happened to be on-site at the time he visited the gun show that this gang member was prosecuted by the United States Attorney's Office for being a felon in possession of a firearm, and was sentenced to 46 months in federal prison. Without this unique confluence of events, this prohibited person would have had all too-easy access to firearms.

Cases like these provide strong support for universal background checks. Without a comprehensive background check system, it is too easy for violent criminals to seek out sellers – whether at gun shows, on the Internet, or in the Yellow Pages – who are not licensed dealers,

who the criminals know do not require paperwork. And unlicensed sellers of these guns, whether at a gun show or for any private sale, would have no systematized way of being informed of the defendant's felony record unless they conduct the transaction through an FFL. The most effective way to ensure that the only people able to buy guns are those who are legally able to own them is to require background checks for all private sales. This rule should admit some important, limited exceptions – such as certain transfers between family members and temporary transfers for hunting and sporting purposes. Except for these private, non-commercial transfers, however, any sale of a firearm should trigger the background check requirement. Quite simply, requiring universal background checks is our best opportunity to keep firearms out of dangerous hands and to help keep our children and communities safe.

III. Criminal Enforcement

Enforcement of the federal firearms laws is one of the Department's core missions and the primary focus of our approach to combatting violent crime. We use the firearms laws to apprehend violent offenders, those who possess firearms illegally, and those who facilitate gun distribution and gun trafficking.

United States Attorneys recognize that "one-size-does-not-fit-all" and that the prosecution strategies for firearms offenses will vary depending on the nature of the problem in a given judicial district or community. Our enforcement strategies must necessarily take into account differences in state laws and state prosecution priorities. With many firearms cases, the question is not whether any given defendant will be prosecuted – they will be. The question is whether it is most effective for the case to be prosecuted at the federal or state level. Working in conjunction with our state and local partners, United States Attorneys make strategic judgments about the most effective approach for their district. Our overall goal is the pursuit of impactful cases that help change neighborhoods, not simply locking up everyone with a gun. We have to develop good intelligence about where the need is greatest and be smart about how we deploy our investigative and prosecutorial resources. Notwithstanding variations from district-to-district, the mission remains the same across the country: apprehending those who threaten the safety of our children, our families, and our communities. Yet, despite our commitment to enforcing the laws, more must be done to enhance the laws available to law enforcement to keep our communities safe.

A. Prosecutions of Prohibited Persons in Possession of Firearms and Those Who Sell to Them.

One component of our enforcement strategy across the country is keeping prohibited persons, such as the convicted felon in the Western District of Oklahoma described above, from obtaining and possessing firearms. Our statistics are reflective of our work in this area. The

statistical report released by the Executive Office of United States Attorneys (EOUSA) reveals that the number of defendants charged nationwide with violations of 18 U.S.C. § 922 or 18 U.S.C. § 924 – which, generally speaking, prohibit the sale, receipt, or possession of firearms to prohibited persons and the use of firearms to commit other crimes – remained fairly consistent from FY 2007 to FY 2011, ranging from 11,421 in FY 2010 to 12,087 in FY 2007. These numbers are significantly higher than they were back in FY 2000 (when the total was 8,054), FY 2001 (when the total was 8,845), and FY 2002 (when the total was 10,634). In FY 2005, when federal gun prosecutions peaked at 13,062, there were 17,128 murders nationwide according to the FBI's uniform crime report data. Since FY 2005, murders nationwide have declined by 13.7 percent. The number of defendants prosecuted federally for gun crimes has declined by 9.6 percent.

On the supply side, we prosecute individuals who are engaged in the business of dealing with firearms without a license and who ignore or disregard the law preventing gun sales to prohibited persons. A recent case in my district is a good example. Don Simonpietri ran a pawn shop in Front Royal, Virginia. After losing his federal firearms license in 2005, he continued to sell multiple firearms from the pawn shop and at gun shows in Virginia. Undercover agents working with a task force of agents from the ATF, the Virginia State Police, and the Shenandoah County Sheriff's Office made several controlled purchases of firearms from Mr. Simonpietri, each time indicating to him that the purchaser was a convicted felon. Mr. Simonpietri sold guns – including an AR-15 Bushmaster assault rifle – to these undercover officers acting as felons. On one occasion, Mr. Simonpietri directed the sale to the undercover officer through a "straw purchaser" who he did not believe was a felon, in direct violation of law. ATF agents later seized 1,350 guns from Mr. Simonpietri at his pawn shop and his residence. In 2010, my office charged Mr. Simonpietri and three others with unlawful firearms transfers, resulting in forfeiture of all 1,350 guns and jail sentences for all four defendants.

B. Prosecutions of Firearms Trafficking and Straw Purchasing Cases

In addition to prosecuting prohibited persons illegally in possession of firearms and illegal gun dealers who sell to them, the Department emphasizes building and prosecuting firearms trafficking and straw purchasing cases. A recent prosecution from the Southern District of Mississippi is an excellent example. After an investigation of gun trafficking among the Simon City Royals street gang and its affiliates, the United States Attorney's Office secured a 30-count indictment charging 15 defendants with firearms-conspiracy charges. The defendants were part of a group that procured and sold weapons to the gang. In November of 2012, 12 of these defendants – only one of whom was a previously convicted felon – were sentenced. One defendant received a sentence of only 33 months in prison and another defendant received a sentence of only 41 months. Similarly, ATF and ICE investigators in the Middle District of Florida developed information about a firearms ring that was moving more than 200 guns from

Florida to Puerto Rico. Last year, the trafficker pled guilty and was sentenced to 38 months of imprisonment.

We pursue these trafficking cases despite the fact that they present an enormous challenge for federal agents and prosecutors. United States Attorneys have only a limited range of statutory "tools" in our collective tool-box, and the penalties for many of these offenses remain relatively low. These cases are also made more difficult by the fact that no single federal statute is specifically devoted to punishing firearms trafficking or straw purchasing. This requires prosecutors to try to find other gun-related criminal statutes that can be applied to the facts of a particular trafficking scheme. While we can and do use every tool we have to bring unlawful gun traffickers to justice, without more meaningful penalties for those who traffic in firearms, we will continue to find it difficult to dismantle the criminal networks that exploit these statutory gaps.

C. Prosecutions of "Lie and Try" Cases

There has been much public discussion lately about the Department's prosecution philosophy with regard to individuals who improperly attempt to purchase a firearm by lying to an FFL. We do prosecute these cases. For example, the United States Attorney's Office in Maine recently prosecuted a defendant who falsely completed an application form in the attempted acquisition of a Colt, Model 1911A1, .45 Caliber pistol. The defendant did not reveal that he was subject to a domestic violence protection order obtained by his abused, live-in girlfriend. He was denied the firearm and subsequently prosecuted for violating 18 U.S.C. §922(a)(6), which prohibits making false representations in connection with the acquisition of a firearm. He was convicted at trial and sentenced to six months' imprisonment. The victim's family expressed deep appreciation for the officers and prosecutors who helped avert a potentially lethal domestic incident. Despite the nominal sentence, this case provides an example of the type of "lie and try" case that it makes sense for the Department to prosecute, given the defendant's history of violence, the existence of a domestic violence protection order, and the fact that the woman he had abused continued to reside in the home they had previously shared together.

For the most part, however, the Department prioritizes prosecuting prohibited persons who actually *obtain* guns – people who have gotten around the background check system and acquired weapons illegally – rather than those who attempted to purchase a firearm through the background check system but were unsuccessful. In cases where a prohibited person attempted to purchase a firearm and was denied as a result of the background check, the system worked at the front end. That prohibited person was prevented from obtaining the gun he was attempting to purchase. In some cases, the prohibited person may not have known that they were prohibited and, therefore, may not have committed the crime of making an intentional misrepresentation

when filling out the form. As I said before, United States Attorneys around the country work with our state and local counterparts to make thoughtful decisions about how to use our finite prosecution resources to best protect public safety in our communities.

D. Use of Statutory and Sentencing Guidelines Enhancements in Violent Crime Cases

Lastly, federal prosecutors rely on gun charges and sentencing enhancements in broader violent crime cases. Section 924(c) of Title 18 provides a mandatory, consecutive sentence when a gun is used to commit a federal crime. While that provision is not perfect, I can say that we use that overall statute in connection with a variety of underlying crimes – everything from drug sales to robberies to homicides. Similarly, the Sentencing Guidelines provide for an enhancement in the defendant's recommended sentencing range if he or she uses a firearm during the course of any criminal offense. We use these provisions to hold violent offenders accountable. The serious penalties they carry allow us to obtain actionable intelligence about drug organizations, violent street gangs, and other criminal enterprises. These provisions help us build the kind of large, impactful cases that we have prioritized.

IV. Conclusion

In sum, we need to implement both front and back end solutions to the problem of gun violence in America. As the Attorney General articulated in his anti-violence strategy, the combination of prevention and enforcement works. As we try to prevent kids from joining gangs, we must prevent unlawful firearms transfers and ensure that we do all we can to keep guns out of the hands of dangerous persons. We must also react swiftly and with certainty when people break the law. We have to make impactful cases that remove dangerous criminals and their guns out of our communities. Our efforts to stop gun violence must be targeted and coordinated. Nothing less will be successful.

Those of us who work within the Department of Justice are doing what we can to rid communities across the country from the scourge of gun violence. We are implementing a comprehensive strategy, working in tandem with our state partners, and letting reliable intelligence guide our work. We will continue to do all we can to rise to this challenge and promote public safety. The legislative proposals put forth by the President would provide much needed additional tools for us to deploy in this important effort.

Thank you for the opportunity to appear before you today and to reiterate my commitment and the commitment of my colleagues in the Department of Justice to ensure the safety of our families and the peace of our communities.

Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment.

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights

February 12, 2013

Prepared Testimony by Laurence H. Tribe*

Mr. Chairman and members of the Committee:

I am honored and grateful for the invitation to testify before you today. I know I am not alone in wanting us to do all we can, consistent with the Constitution, to reduce the awful specter of rampant gun violence and the far too frequent massacres of our children, our friends, and our fellow citizens.

Like all decent Americans, I felt a pang of unspeakable horror on December 14, when I learned that twenty first-grade children had been brutally slaughtered in their first-grade classroom in Newtown, Connecticut. Those children, and the brave grown-ups who died at Adam Lanza's hands as they tried to save the young lives entrusted to their care, deserve every effort to translate our shared grief into shared national action. That action must not be deterred by the defeatist argument that, because we will never solve this problem in its entirety, we might as well give up. Nor should it be deterred by distorted interpretations of the United States Constitution. As others have often reminded us about that great and enduring document, it is many things to many people, but one thing it is *not* is a suicide pact.

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While we debate the pending proposals to reduce gun violence through measures focused on gun safety as part of a holistic national response, it's crucial that we not permit any part of our Constitution to become a collateral casualty of our conversation. Proposals to disarm the American people, to leave firearms solely in the hands of the military and the police, have been decisively taken off the table – if they were ever truly *on* the table – by the Supreme Court's Second Amendment decisions in 2008 and 2010. "Slippery slope" arguments predicated on the unsettled state of the law prior to 2008 have been rendered irrelevant. The only proposals under serious consideration in this body are reasonable measures that would fully respect the basic rights of responsible citizens to use ordinary firearms for self-defense and other lawful purposes. They cannot lead to unacceptably extreme measures as long as the Supreme Court sits.

Having examined those proposals, having looked at the steps announced by the President under his power faithfully to execute the laws of the United States, and having studied the decisions of the Supreme Court and lower courts around the country, I am convinced that nothing under discussion in the Senate Judiciary Committee represents a threat to the Constitution or even comes close to violating the Second Amendment or the Constitution's structural limits either on congressional power or on executive authority.

Undoubtedly we should have a national debate about how best to reconcile the Second Amendment rights of every individual with the full range of proposals to reduce gun violence in America. As someone who has studied and taught constitutional law for four decades and argued dozens of cases in the Supreme Court and dozens more in the lower courts, I am obviously interested in engaging those questions. In today's testimony, however, I will focus not on

competing theories of how the Second Amendment ought to have been interpreted but on the law as it stands. I am here not as an academic theorist but as a constitutional lawyer. As a lawyer, I've won some and I've lost some, and I know a losing argument when I see it. And the argument that any of the proposals to reduce gun violence currently being considered here might be struck down as unconstitutional is decidedly a losing argument.

There is plenty of room for policy debate over the best steps to take to reduce gun violence, but we mustn't confuse those policy differences or the ideological and cultural divisions that underlie them with genuine constitutional doubts about whether any of those steps crosses the constitutional line. Everyone in this room knows that anything Congress or the President does in this field will confront opposition. And in a nation as litigious as ours, some of that opposition will no doubt find its way into the courts. But there is no basis to suppose that the courts will or should rebuff any of the steps being debated here today. They should not, and they will not.

What I hope to do this morning, setting all hyperbole aside and approaching the law on the books with a fair-minded eye, is explain why reforms such as those this committee is considering clearly pass constitutional muster.

I. Introduction:

Taking the Second Amendment Seriously, But Applying it Cautiously

I begin by reaffirming my agreement with the Supreme Court that the Second Amendment guarantees Americans the right as individuals to possess guns for reasonable self-defense. Some of my friends and colleagues devoted to the cause of responsible firearms regulation evidently wish to relitigate this point. They continue to insist that the best reading of the Second Amendment would secure gun rights only in connection with service in the state militia and not for individual possession and use. For nearly a decade and a half, I have disagreed with them and have defended the individual rights view ultimately taken by the Supreme Court in 2008. In October of 1999, for example, I joined a fellow constitutional law scholar in publishing an op-ed in *The New York Times* arguing that "bearing arms [is] a 'privilege' of each citizen."[1] I continue to defend this position today.

That matters only insofar as it bears on my credibility as a witness in today's hearing. If I were among those who had *opposed* the individual rights interpretation adopted by the Supreme Court in *Heller*, some might wonder whether my conclusions about the regulations *Heller* permits Congress to adopt reflect wishful thinking rather than a realistic and sympathetic appraisal of what the Court that decided *Heller* would in fact permit. But there is no wishful thinking here. I am being a hard-headed realist in reading the *Heller* decision and extrapolating conclusions from the majority opinion.

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[1] Laurence H. Tribe & Akhil Reed Amar, *Well Regulated Militias and More*, N.Y. TIMES, Oct. 28, 1999, at A25; 1 Laurence H. Tribe, *American Constitutional Law* 900–902 (3d ed. 2000).

Although many in the community advocating gun rights had long assumed that the individual rights interpretation governed the scope of the Second Amendment, it was not until the Supreme Court's 2008 ruling in *District of Columbia v. Heller*[2] that a majority of the Court's Justices agreed. In so doing, the Court recognized that the core individual liberty protected by the amendment affords Americans the right to purchase and store operable firearms for self-defense in the home. Two years later, in *McDonald v. City of Chicago*,[3] the Court extended the *Heller* ruling to cover restrictions imposed by state and local governments, making it unmistakably clear that the right at issue was not and is not simply a right of the state-organized militia against being overrun by federal authority.

Despite this fundamental affirmation, the *Heller* decision is exceedingly narrow in many important respects. As Judge Brett Kavanaugh of the D.C. Circuit Court of Appeals recently put it, "It bears emphasis that *Heller,* while enormously significant jurisprudentially, was not revolutionary in terms of its immediate real-world effects on American gun regulation." "Indeed," he continued, "*Heller* largely preserved the status quo of gun regulation in the United States."[4] To understand what he meant, it helps to look first to the Washington, DC ordinance implicated in the *Heller* case. The District had in place one of the most restrictive firearms regulations in the nation; it essentially outlawed the possession of handguns in the home, where the need for self-defense is, as Justice Scalia wrote, "most acute."[5] For the majority on the Court, a policy like the one the District had adopted, a policy on the outer edge of gun control's reach in the United States, was irreconcilable with the Second Amendment.

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[2] 554 U.S. 570 (2008).
[3] 130 S.Ct. 3020 (2010).
[4] Heller v. Dist. of Columbia, 670 F.3d 1244, 1270 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).
[5] *Heller*, 544 U.S. at 628.

The *Heller* decision took great pains to emphasize its relative modesty. It repeated the mantra that the Second Amendment right "is not unlimited"[6] and devoted an entire section to listing types of regulation – for example, limits on gun ownership "by felons and the mentally ill" and, most relevant to today's hearing, regulation of "dangerous and unusual weapons" – the constitutionality of which the Court had no intention of casting into doubt.[7] The decision paused to note that, by specifically giving a constitutional green light to some regulatory efforts, the Court did not mean to signal that others were constitutionally dubious.[8] Justice Scalia closed his opinion for the Court with an expression of solicitude for the regulatory goals that Washington, DC sought to advance and, more importantly, an invitation to pursue those goals with the "variety of tools" still available to the District and to other states and localities across the country even in *Heller*'s wake.[9]

Since that decision and its extension to state and local laws in 2010, the vast majority of federal and state courts to adjudicate Second Amendment claims have responsibly hewed to the cautious approach espoused by the Supreme Court in *Heller* and *McDonald*. For example, in a ruling highly relevant to the topic of this hearing, the D.C. Circuit recently upheld the constitutionality of Washington D.C.'s assault weapons ban, which included a restriction on

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[6] *Id.* at 595, 626.
[7] *Id.* at 626 – 28.
[8] *Id.* at 627 n. 26. There is no doubt, for instance, that regulatory provisions targeting firearms and ammunitions *manufacturers* in addition to those who transfer, possess, carry, or use the resulting weapons are at least as easy to defend from Second Amendment challenge as are measures that do not take effect until the point of sale.
[9] *Id.* at 636.

high-capacity magazines, as well as gun registration requirements.[10] The majority in the case, following the broad consensus that has emerged among federal and state judges,[11] evaluated the regulations against a standard of heightened judicial scrutiny while preserving both the option to adopt a more skeptical mode of review for restrictions on core self-defense firearm possession and the option to exempt other laws from Second Amendment review entirely when they do not enter the amendment's zone of protected conduct.[12] In another notable decision staking out a similar approach, a panel of the Seventh Circuit Court of Appeals struck down Chicago's firing-range ban given the close nexus between regular firing practice and training and safe, responsible self-defense in the home.[13] And state appellate courts from North Carolina to Wisconsin to California have joined with their federal brethren in upholding state restrictions on firearms ownership under this middle-of-the-road approach that molds the degree of judicial scrutiny to the extent of a law's burden on the core self-defense right secured by the Second Amendment.[14]

The central message of *Heller* and its lower-court progeny is thus to take the application of the Second Amendment seriously but also cautiously. When necessary to vindicate the core right to self-defense respected by *Heller*, neither courts nor lawmakers should be shy about invoking the Second Amendment. But because few public responsibilities are as important to

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[10] Heller v. Dist. of Columbia, 670 F.3d 1244 (D.C. Cir. 2011).
[11] *See, e.g.*, Kachalsky v. County of Westchester, 701 F.3d 81, 93 – 94 (2d Cir. 2012); United States v. Booker, 644 F.3d 12, 25 (1st Cir. 2011) cert. denied, 132 S. Ct. 1538 (U.S. 2012); United States v. Masciandaro, 638 F.3d 458, 469-70 (4th Cir. 2011) cert. denied, 132 S. Ct. 756 (U.S. 2011); United States v. Marzzarella, 614 F.3d 85, 97 (3d Cir. 2010);
[12] *Heller*, 670 F.3d at 1256 – 58.
[13] The court applied what it called "not quite strict scrutiny" because the law's burden struck so close to the core Second Amendment right to self-defense in the home. Ezell v. City of Chicago, 651 F.3d 684, 708 (7th Cir. 2011).
[14] *See, e.g.*, Johnston v. State, 735 S.E.2d 859 (N.C. Ct. App. 2012); State v. Brown, 815 N.W.2d 407 (Ct. App. Wisc. 2012); People v. Ellison, 196 Cal. App. 4th 1342, 1347 (2011).

good governance as legislating to secure public safety, lawmakers and jurists should not casually give the amendment an expansive scope nor unduly scrutinize reasonable firearm regulations. In the wake of the Newtown massacre and the push to propose sensible new rules about firearms, the Obama administration and many leaders in Congress have conducted themselves precisely along these lines.

II. The Second Amendment Propriety of Recent Policy Proposals

Limits on Large-Capacity Magazines

A core feature of the Assault Weapons Ban of 2013, introduced by Senator Dianne Feinstein, as well as the primary component of a freestanding bill championed by Senator Frank Lautenberg, is a ban on magazines capable of firing more than ten rounds of ammunition without reloading.[15] Before moving into the weeds of the constitutional analysis, it would be useful to contrast such a high-capacity magazine restriction to the law *Heller* struck down. *Heller* axed a local ordinance that adopted about as blunt an approach to restraining gun violence as possible: By its very design, the DC law espoused disagreement with the whole idea of law-abiding gun ownership for self-defense in the home. A limit on large-capacity magazines, by contrast, is a regulation of an entirely different caliber. It does not challenge the fundamental recognition that gun possession for self-defense is a right of every citizen; it merely seeks to reset the parameters of responsible ownership to advance the cause of public safety. It operates with a scalpel rather than an ax. Even Robert Levy, the man who largely funded the challenge to DC's sweeping

[15] The Assault Weapons Ban of 2013 also prohibits firearms with fixed magazines capable of holding more than ten rounds of ammunition.

handgun ban in *Heller* and served as an attorney on the case, concedes that bans on both high-capacity magazines and assault weapons almost certainly do not infringe the Second Amendment rights he successfully fought to vindicate in court.[16]

By any reasonable reckoning, this crucial measure might not even trigger heightened Second Amendment review at the threshold stage that the *Heller* ruling requires courts to undertake. But even if the high-capacity magazine prohibition does require further analysis, it safely falls within a zone of regulations that do not unconstitutionally abridge Second Amendment rights.

Most constitutional challenges require lawyers and scholars to carry out two stages of analysis. First, we must assess whether a given government policy even *implicates* a given right in the first place. For example, in 1915, the Supreme Court entertained a First Amendment challenge to a filmmaker's punishment under an Ohio censorship law but, in a clear misjudgment the Court would later correct, decided that movies were not even a form of "speech" entitled to First Amendment protection.[17] More recently, in a ruling that may perhaps give pause to members of this committee (despite the distinct protections of the Constitution's Speech and Debate Clause), the Court concluded that votes by legislators are not a form of "speech" over which any public official can claim a personal First Amendment right.[18] Assuming that a law *does* implicate the right in question, the government must then proceed to justify the challenged

[16] Interview with Robert A. Levy by the Washington Post (Jan. 10, 2013), *transcript available at* http://articles.washingtonpost.com/2013-01-10/lifestyle/36272630_1_assault-weapons-high-capacity-magazines-military-style-guns.
[17] Mut. Film Corp. v. Indus. Comm'n of Ohio, 236 U.S. 230, 243 (1915).
[18] Nevada Comm'n on Ethics v. Carrigan, 131 S. Ct. 2343, 2350 (2011).

law so that the court hearing the challenge may evaluate, roughly speaking, whether the justification is strong enough to permit the law to stand or, alternatively, whether the measure goes too far and thus violates the Constitution.

I begin with this return to fundamentals because it never ceases to surprise me how often those engaged in legal debate talk past one another by conflating these distinct steps. In the Second Amendment context particularly, there is no excuse for making that mistake. For *Heller* itself makes it absolutely plain that not every gun regulation even triggers Second Amendment review. In other words, sometimes governments may enact regulations addressing the manufacture, transfer, possession or use of firearms that categorically fall outside the Second Amendment's scope, freeing governments of any burden even to make detailed defenses of the provisions in question. For example, the *Heller* opinion specifically named "longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" as illustrative examples of regulations that should not even receive further constitutional review.[19] The importance of this point should not be underemphasized. If too many entirely reasonable firearm regulations, like assault weapon bans and background checks, or rules about trafficking and straw purchases, are subjected to heightened Second Amendment review, it will become difficult if not impossible to separate those regulations categorically from the restrictions that *Heller* specifically approved without subjecting them to any "scrutiny" at all.

[19] Dist. of Columbia v. Heller, 554 U.S. 570, 626 - 27 (2008).

Beyond the examples appearing in the decision, *Heller* also identifies the three primary factors to consider in judging whether other types of regulation trip the Second Amendment's alarm. First, the Court carefully frames the scope of the Second Amendment to cover *only* firearms "in common use at the time."[20]

Second, *Heller* recognized that "dangerous or unusual" weapons may be and have historically been heavily regulated or banned.[21] It is not inconceivable – indeed, it seems quite likely – that the Court's pause to distinguish unusually dangerous weapons from widely possessed handguns had precisely the 1994 Assault Weapons Ban, which included a prohibition on high-capacity magazines, in mind. At the very least, the *Heller* majority recognized that the government could keep machine guns —"M-16 rifles and the like"—out of the hands of civilians.[22] The Supreme Court thus emphatically rejected the extravagant, or as Justice Scalia characterized it, "startling" notion, still promoted by some, that the Second Amendment could fulfill its original purposes only if citizens were guaranteed a right to arm themselves to the teeth, matching in their private armories essentially the full array of weapons possessed by the United States Military.[23]

Third and finally, the Court emphasized the importance of a nexus to core self-defense needs.[24] The majority in *Heller* had no trouble recognizing that handguns represented the

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[20] *Id.* at 627.
[21] *Id.*
[22] *Id.*
[23] *Id.* at 624.
[24] *Id.* at 599 ("Justice Breyer's assertion that individual self-defense is merely a 'subsidiary interest' of the right to keep and bear arms . . . is profoundly mistaken. He bases that assertion

"quintessential self-defense weapon," particularly in the home.[25] Moreover, handguns were not categorically more dangerous than other types of firearms. So Washington D.C.'s handgun ban clearly fell within the scope of the Second Amendment.

The clarity of *Heller*'s guidance on how to apply these threshold factors begins to dissipate, however, when they no longer align so strikingly in one direction. To begin with, the Court left "dangerousness" undefined, and what the Court meant by that term is not entirely self-evident. In an obvious sense, *all* firearms are dangerous; that is what makes them effective instruments of self-defense. The *Heller* ruling, therefore, asks us to balance any *exceptional* dangerousness of particular firearm design features against the potential self-defense value of those features. For example, even if home possession of machine guns for self-defense might, on rare occasion, deter criminal trespassers more than home possession of handguns, that benefit is simply not sufficient to overcome the substantial hazards to innocent bystanders and intentional targets, in particular the police. *Heller* obviously does not contemplate asking the government to provide an intricately reasoned justification for banning machine guns; instead, it recognizes – and it surely authorizes Congress, and indeed all of us, to recognize – excessive dangerousness in the inherent design of the weapon[26] so as to cut off Second Amendment review at the threshold.

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solely upon the prologue—but that can only show that self-defense had little to do with the right's *codification;* it was the *central component* of the right itself." (emphasis in original)).

[25] *Heller*, 544 U.S. at 629.

[26] Throughout this debate, opponents of restrictions on large-capacity magazines have repeatedly demanded empirical evidence showing a link between magazine capacity and gun violence. Studies in that mold certainly exist, and I discuss them later. *See, e.g.,* text accompanying notes 48 – 50. But at this threshold stage of the Second Amendment inquiry, the *Heller* decision's meaning of dangerousness cannot be equivalent to an empirically demonstrated effect on public safety. Rather, the standard is one that asks us to examine design features to assess whether the

All things considered, I conclude that reasonably restricting magazine size and availability does not implicate the core Second Amendment right as *Heller* conceived of it. The reason is not the first factor, that of "common use," because, of course, large-capacity ammunition magazines and the firearms outfitted for them are, by any reasonable measure, in quite common use in the United States. I note here just a few examples. The standard Glock pistol, the firearm that one reporter called "America's handgun" in a recent book on the subject, comes equipped with a seventeen-round magazine.[27] And America's most popular rifle, the AR-15 model,[28] typically comes with a thirty-round magazine and can accommodate magazines with even larger capacities.[29]

But to contend that the sizeable market presence of a particular firearm feature is sufficient in itself to trigger full Second Amendment scrutiny is to misrepresent the lesson of *Heller*. The relative dangerousness and self-defense-serving capacity of a firearm or design

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weapon poses an aggravated threat to safety as a common-sense matter. First, if the former were the meaning of dangerousness, the threshold inquiry, which may lead courts to conclude that the Second Amendment does not even apply, would become indistinguishable from the more advanced stage of review, in which courts scrutinize a government's public safety rationale. Second, making empirical evidence of salutary public-safety impacts a prerequisite to gun regulation would defeat efforts to respond to new technologies and lethal features that pose a substantial threat to public safety. The Second Amendment does not require that Americans afford the gun industry a "wait and see" grace period on the (in)famous theory that even a vicious dog deserves one free bite.

[27] Erin McCarthy, *Why the Glock Became America's Handgun,* POPULAR MECHANICS (Jan. 12, 2012, 6:30 AM), http://www.popularmechanics.com/technology/military/weapons/why-the-glock-became-americas-handgun

[28] Erica Goode, *Rifle Used in Killings, America's Most Popular, Highlights Regulation Debate*, N.Y. TIMES (Dec. 16, 2012), http://www.nytimes.com/2012/12/17/us/lanza-used-a-popular-ar-15-style-rifle-in-newtown.html?pagewanted=all.

[29] Steven Almasy, *Newton Shooter's Guns: What We Know*, CNN (Dec. 19, 2012, 10:11 AM), http://www.cnn.com/2012/12/18/us/connecticut-lanza-guns/index.html.

feature are also crucial considerations. This approach makes complete sense. The common use and possession of a given firearm feature is, at best, just one helpful indicator of whether restricting that feature will stymie or frustrate the exercise of the core Second Amendment protection of lawful self-defense to a constitutionally cognizable degree. For instance, in the case of high-capacity magazines, significant market presence does not necessarily translate into heavy reliance by American gun owners on those magazines for self-defense. Analysis of the modern development of the U.S. gun market demonstrates that the firearms industry, driven by an obvious profit motive, ushered in a revolution in the state of the market during the 1980s. Manufacturers began to roll out increasing numbers of pistols with ever-larger-capacity magazines rather than revolvers, which take just six rounds of ammunition and had traditionally been the most popular firearm for personal self-defense.[30] The frequent purchase of such large-capacity magazines, then, may not be attributable purely or even primarily to actual gun-owner preferences, much less to gun-owner needs. Rather, guns equipped with or ready for large-capacity magazines may simply be the weapons most readily made available on the market. And even if this market presence begins to influence more Americans to purchase firearms with high-capacity magazines because they fear attacks from criminals possessing guns outfitted with the same high-capacity magazines, nothing in *Heller* suggests that it is improper for the government to halt the escalation of this arms race in its tracks. The one-way ratchet of ever more powerful firearms is not a constitutional inevitability. For unlike the doctrine of mutually assured destruction that some say maintained an uneasy peace during the nuclear arms buildup of the

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[30] *See* DC Reedy & CS Koper, *Impact of handgun types on gun assault outcomes: a comparison of gun assaults involving semiautomatic pistols and revolvers*, 9 INJURY PREVENTION 151, 151 (2002), *available at* http://injuryprevention.bmj.com/content/9/2/151.full#aff-1.
VIOLENCE POLICY CENTER, BACKGROUNDER ON GLOCK 19 PISTOL AND AMMUNITION MAGAZINES USED IN ATTACK ON REPRESENTATIVE GABRIELLE GIFFORDS AND OTHERS 1 (2011), *available at* www.vpc.org/fact_sht/AZbackgrounder.pdf.

Cold War, the propagation of increasingly dangerous guns on American streets has already taken an all-too- violent toll. In other words, tempering the trend toward more dangerous weapons actually *vindicates* the core Second Amendment right of self-defense and personal safety that *Heller* recognizes. In this context, as in many others, less is more.

But even looking beyond the market saturation of large-capacity magazines, this feature runs headlong into the other threshold obstacles that *Heller* requires Second Amendment claims to clear. As experts in effective firearms regulation have preached for years and particularly fervently in recent weeks, higher-capacity magazines pose greater dangers to public safety. By permitting shooters using semi-automatic weapons to continue firing more bullets without interruption, these magazines increase the potential lethality of armed killers.[31] Though well-trained gun users can change magazines quickly, this interruption may, as we saw last year in the Arizona shooting of Rep. Gabby Giffords, afford time for heroic men or women to intervene and disarm the shooter.[32] Moreover, this interruption gives our police a chance to return fire.[33] And it may even provide time for reflection and rethinking before murder becomes massacre.

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[31] BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, ASSAULT-STYLE WEAPONS: HIGH-CAPACITY MAGAZINES, http://www.bradycampaign.org/legislation/msassaultweapons/highcapacity (last visited Feb. 2, 2013).

[32] Ken Dolak & Justin Wealer, *Woman Wrestled Fresh Ammo Clip From Tucson Shooter as He Tried to Reload*, ABC NEWS (Jan. 9, 2011), http://abcnews.go.com/Politics/patricia-maisch-describes-stopping-gunman-reloading/story?id=12577933.

[33] I believe I can speak for many Americans when I thank Baltimore County Police Chief Jim Johnson for the illuminating insights he has publicly offered on the threats of high-capacity weapons not just to public safety in general but also law enforcement officer safety more specifically. *See, e.g.*, John Quinones, *Baltimore Police Chief Wants to Ban High-Capacity Firepower*, ABC NEWS (Dec. 20, 2012), http://abcnews.go.com/US/baltimore-police-chief-ban-high-capacity-firepower/story?id=18030163

Against the evident dangerousness of high-capacity magazines as a design feature, we must evaluate the strength and plausibility of asserted self-defense interests. Critics of recent proposals to reestablish a limit on high-capacity magazines have argued that firing more than ten rounds without changing a magazine is necessary for effective self-defense. While I have no doubt that subscription to this perspective among some law-abiding gun owners is sincere, I doubt that it is well-founded. It's rhetorically effective to ask, "How many bullets do *you* want in your magazine when an intruder breaks into your home?" But the answer tells us little that is of relevance to the Second Amendment as *Heller* conceives that provision. I might want a magazine with twice as many bullets as any possible home intruder; I might want a machine gun too. But in the end that can't be the measure of what the Second Amendment says I have a *right* to own and deploy.

Despite the emotional resonance of this kind of appeal, incidents like burglaries and home invasions – even when they lead to the exchange of fire – are unlikely to *require* firing many shots. The NRA publishes a regular column featuring newspaper clippings of gun owners protecting themselves against intruder attacks, and an analysis of these reports over a five-year period demonstrated that in 50% of all cases, two or fewer shots were fired, and the average number of shots fired across the entire data sample was also about two.[34] Of course, this data comes from the episodes the NRA chooses to report, so selection bias is possible, meaning the

[34] Claude Verner performed the analysis of reporting over the period 1997 to 2001. The findings further show that when many shots were fired, a (presumably frightened) gun owner finished an entire magazine rather than firing the number of shots that necessarily had to be fired in light of the scenario. The analysis can be found reprinted with the author's permission at *Analysis of Five Years of Armed Encounters (With Data Tables)*, GunsSaveLives.net (March 12, 2012), http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/.

average number of shots fired per incident could be even lower.[35] Even police officers traditionally found revolvers with six-bullet magazines sufficient for their own safety until more dangerous guns flooded the market.[36] And we should not lose track of the bigger picture: studies show that self-defense in the home with firearms is rare.[37] Additionally, firearms accidents are all too common: between 1965 and 2000, unintentional shootings accounted for the deaths of over 60,000 Americans.[38] Firing more bullets quickly may compound their damage.

Another version of the critics' response is that in scary situations, like home invasions, gun owners may go through bullets too quickly in a fit of nervousness or panic.[39] That may be true, but it also aggravates the downside hazard in cases of error,[40] so it is not at all clear that increased access to large-capacity magazines for shooters subject to fragile nerves represents a

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[35] It seems likely, for example, that merely brandishing a weapon may often lead intruders to flee. A non-exhaustive review of the NRA column reveals several examples of exactly this scenario, giving me the impression that the NRA's reporting is not demonstrably biased toward extreme scenarios or even those in which some shots are fired. *See, e.g.*, Armed Citizen, NRA (March 2012), http://www.nrapublications.org/index.php/12492/armed-citizen-23/ ("[The resident] met the intruder at her bedroom door, pointed the gun at him and demanded he leave. The trespasser fled without hesitation.").

[36] *See* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and A Research Agenda*, 56 UCLA L. REV. 1443, 1489 (2009).

[37] A study of Atlanta police records, for example, found that victims of burglaries used guns in self-defense just 3% of the time. For a description of the study and a rich discussion of self-defense uses for firearms, see DAVID HEMENWAY, PRIVATE GUNS, PUBLIC HEALTH 67 (2004). The study is A.L. Kellermann et al., *Weapon involvement in home invasion crises*, 273 J. OF THE AM. MED. ASSOC. 1759 (1995).

[38] HEMENWAY, *supra* note 38, at 27 – 35.

[39] *See, e.g.*, Heller v. Dist. of Columbia, 670 F.3d 1244, 1261 (D.C. Cir. 2011); Emily Miller, *The High Capacity Magazine Myth*, WASHINGTON TIMES (Jan. 27, 2013), http://www.washingtontimes.com/news/2013/jan/27/the-high-capacity-magazine-myth/; Jacob Sullum, *The Threat Posed by Gun Magazine Limits*, REASON (Jan. 16, 2013), http://reason.com/archives/2013/01/16/the-threat-posed-by-gun-magazine-limits.

[40] *Heller*, 670 F.3d at 1263 - 64 ("[T]he tendency is for defenders to keep firing until all bullets have been expended, which poses grave risks to others in the household, passersby, and bystanders." (internal quotations omitted)).

net gain for home security or public safety. Finally, some critics of magazine-capacity limits have pointed out that, realistically, many gun owners have not received proper training and for that reason, may fire bullets indiscriminately; a larger magazine – so the thinking presumably goes – will increase the chances that at least one of their wayward shots will hit its mark.[41] As the Supreme Court recognized in *Heller*, however, the Second Amendment protects only the right of "*responsible* citizens to use arms in defense of hearth and home."[42] In other words, a dangerous firearms feature otherwise outside the Second Amendment's scope cannot become subject to heightened constitutional scrutiny because of the shortcomings of *irresponsible* gun owners.

To be sure, *some* gun owners may struggle to change magazines quickly not for lack of adequate training but rather by reason of disability or old age.[43] Perhaps a ban on high-capacity magazines without any exception for the disabled or elderly might, for this reason, trigger heightened scrutiny of such a ban as applied specifically to those individuals. But the possibility that a prohibition could raise constitutional questions in some subset of its applications does not mean that the prohibition is constitutionally vulnerable on its face.[44] And it remains the case that

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[41] *See, e.g.*, Stephen Hunder, *Why 33 rounds makes sense in a defensive weapon*, WASHINGTON POST (Feb. 6, 2011), http://www.washingtonpost.com/wp-dyn/content/article/2011/02/04/AR2011020407083.html

[42] Dist. of Columbia v. Heller, 554 U.S. 570, 635 (2008) (emphasis added).

[43] Yih Chau-Chang, *High-Capacity Magazines And Their Critical Role In Lawful Self-Defense*, THE EXAMINER (March 10, 2011), http://www.examiner.com/article/high-capacity-magazines-and-their-critical-role-lawful-self-defense

[44] The Supreme Court has exhibited an extreme reluctance to strike down laws on their face – meaning in all applications – when only some applications would fall afoul of a constitutional provision (with the exception of the First Amendment, as facially overbroad laws may chill protected free speech). *See* RICHARD H. FALLON, DANIEL J. MELTZER & DAVID L. SHAPIRO, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 162, 168 (6th ed. 2009).

large-capacity magazines are highly unlikely to be necessary to self-defense in the vast majority of home invasions or burglaries, even those that resort to the exchange of fire. The facial validity of a high-capacity magazine ban is therefore clear.

Despite the considerable market presence of high-capacity magazines, the danger they pose to public safety and the weakness of the self-defense justification for their possession means that two of the three threshold *Heller* factors point strongly against extending Second Amendment protection to high-capacity magazines. The D.C. Circuit Court of Appeals, in a case challenging Washington D.C.'s restriction on magazines with more than ten rounds, recently struggled with this first stage of analysis and determined that the court did not have before it sufficient evidence to decide whether the Second Amendment even *reached* large-capacity magazines.[45] However, the court went on to conclude that, even if it was proper to extend coverage of the amendment to large-capacity magazines, the government's interest in banning them was strong enough to do so without violating Second Amendment rights.[46]

Having now reviewed the best evidence and argumentation advanced by defenders of high-capacity magazine possession, I doubt that the Supreme Court would find it necessary to reach that second stage of review in dealing with a ban on high-capacity magazines and am quite confident that, in any event, the Court would agree with the ultimate conclusion that, even if the amendment applies, a ban on high-capacity magazines withstands Second Amendment scrutiny.

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[45] *Heller*, 670 F.3d at 1261.
[46] *Id.* at 1263 – 64.

In explaining that conclusion, I emphasize that commonly advanced rejections of a legitimate government interest in banning high-capacity magazines are deeply misleading. Many opponents of reasonable firearms regulation insist that we tried banning large-capacity magazines in 1994: the results are in, they say, and we failed. One favorite trope is to cite to a 1997 Department of Justice study, which, according to the recent testimony of Wayne LaPierre, "proved that [the] ban had no impact on lowering crime."[47] But no one is even *arguing* that a ban on high-capacity magazines (or on assault weapons, for that matter) will necessarily decrease crime rates; highly lethal firearms will still be widely available on the market, and some criminals will use them, just as they do now.

What defenders of a ban on high-capacity magazines *do* argue is that such a ban will help prevent these criminals from killing or maiming as many people when they commit violent crimes. And that argument is solidly grounded. One study, for example, found that between 1984 and 1993, criminals using guns with high-capacity magazines or assault weapons as defined by the 1994 Assault Weapons Ban killed or injured an average of 29 victims, compared to the average 13 victims shot by criminals unequipped with large-capacity magazines.[48] Another study suggests that, since the lapse of the ban in 2004, high-capacity magazines have once again

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[47] *See, e.g.*, *What Should America Do About Gun Violence?: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013) (prepared testimony of Wayne LaPierre, Executive Vice President and Chief Executive Officer of the National Rifle Association).

[48] This study considered all "mass shooting" incidents: those in which six or more were killed or twelve or more were wounded. For an explanation of this study, see Christopher S. Koper, *America's Experience with the Federal Assault Weapons Ban*, *in* REDUCING GUN VIOLENCE IN AMERICA 167 (Daniel W. Webster & Jon S. Vernick, eds., 2013). The study is Christopher S. Koper & Jeffrey A. Roth, *The Impact of the 1994 Federal Assault Weapon Ban on Gun Violence Outcomes: An Assessment of Multiple Outcome Measures and Some Lessons for Policy Evaluation*, 17 J. OF QUANTITATIVE CRIMINOLOGY 33 (2001).

become common in episodes of violent crime after the beginnings of a decline, which probably took place because the black market for these magazines had begun to dry up.[49]

Even more misleading is the suggestion that in 1997 we could (or even today that we can) draw meaningful conclusions from the absence of unmistakable evidence of a decrease in violence following the 1994 ban. That legislation grandfathered or exempted many thousands of weapons already owned, and those could still be sold or transferred.[50] In other words, the 1994 ban was crafted with long-term effects in mind; to measure its effects notwithstanding its untimely end is to misunderstand fundamentally how the legislation was designed to work. It is therefore all the more telling that supporters of reasonable regulation can cite studies based upon identifiable trends emerging during the latter years of the ban, as well as evidence from both before and after the ban, showing that the legal availability of large-capacity magazines is indeed correlated with increased deaths and injuries caused by gun violence. Considered alongside the dangerousness inherent in a large-capacity magazine as a design feature, this evidence provides the government with a sufficient basis to satisfy the Second Amendment under any plausible understanding of the Supreme Court's jurisprudence surrounding that amendment.

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[49] *See* David S. Fallis and James V. Grimaldi, *Va. data show drop in criminal firepower during assault gun ban*, WASH. POST (Jan. 23, 2011), http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html (finding that in Richmond, Virginia, the percentage of guns with high-capacity magazines seized from criminals by police fell to a low of 10% by 2004, when the federal assault weapons ban expired, but has since rebounded to 22%).
[50] Koper, REDUCING GUN VIOLENCE IN AMERICA, *supra* note 49, at 165 – 66.

Assault Weapons Ban

By many accounts, the most important component of the newly proposed assault weapons ban is its prohibition on high-capacity magazines.[51] But that does not mean that the remaining features of the proposal stand on weaker constitutional ground. Far from it. Application of *Heller*'s three threshold factors – dangerousness, commonness of use, and connection to core self-defense interests – demonstrates that the Second Amendment does not provide legal shelter to the features that trigger a firearm's prohibition under the ban.

Opponents of the legislation as well as some proponents of new firearms regulation have observed that some of the "military characteristics" that can lead to prohibition under the legislation[52] (and, by some accounts, under assault weapons bans in general[53]) are mostly cosmetic traits designed to make a gun *appear* dangerous and are not, in fact, intrinsically hazardous. But Congress would surely be acting within its constitutional authority if it were to reject this characterization as self-serving or otherwise unreliable. For example, the Brady Campaign to Prevent Gun Violence insists that "[p]istol grips . . . help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position [and that] [b]arrel

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[51] Tom Diaz, a researcher for the Violence Policy Center, has repeatedly called on lawmakers to focus their attention on a high-capacity magazine ban. *E.g.*, Tom Diaz, *Ten Ways to Spot a Sell-Out on Gun Control*, FAIRLY CIVIL (Jan. 14, 2013, 2:26 PM), http://tomdiazgunsandgangs.com/2013/01/14/ten-ways-to-spot-a-sell-out-on-gun-control/ ("An effective law will focus on one prime feature—the ability to accept a high-capacity magazine.").
[52] *See, e.g.*, *What Should America Do About Gun Violence?: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013) (statement by Sen. Ted Cruz) ("Now, what the assault weapons ban instead targets are cosmetic features.").
[53] See, e.g., Nicholas J. Johnson, *Supply Restrictions at the Margins of Heller and the Abortion Analogue: Stenberg Principles, Assault Weapons, and the Attitudinalist Critique*, 60 HASTINGS L.J. 1285, 1295 (2009).

shrouds on assault pistols protect the shooter's hands from the heat generated by firing many rounds in rapid succession."[54] Moreover, even if the characterization of these features as cosmetic were accurate, it would make little difference as a constitutional matter. In a recent televised interview, Justice Scalia explained the basis in history for exempting certain types of regulations from Second Amendment review. Certain limitations on gun ownership are constitutionally permissible, he contended, "because there were some [regulations] that were acknowledged at the time [of the Founding]. For example, there was a tort called affrighting . . . if you carried around a really horrible weapon just to scare people, like a head ax or something. . . ."[55] What the Justice evidently meant was that regulating weapons because they are chosen specifically for their intimidating appearance is constitutionally unproblematic because the very use of intimidation is unnecessarily disruptive to organized society.[56]

Even more important to the constitutionality of the assault weapons ban is the absence of any connection to the core Second Amendment right to defend oneself with a firearm. At this committee's hearing on January 30, several witnesses criticized the assault weapons ban on policy grounds, but in my role as a constitutional lawyer listening intently for arguments relevant to the proposal's Second Amendment propriety, I was struck by the failure of anyone's

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[54] Brady Campaign to Prevent Gun Violence, The Top 10 NRA Myths About Assault Weapons, http:// www.bradycampaign.org/issues/assaultweapons/nramyths/.

[55] Interview with Justice Antonin Scalia by Chris Wallace, FOX NEWS SUNDAY (July 29, 2012), *transcript available at* http://www.foxnews.com/on-air/fox-news-sunday/2012/07/29/justice-antonin-scalia-issues-facing-scotus-and-country#p//v/1760654457001.

[56] Justice Scalia's point about the tort of affrighting surfaces in the *Heller* decision itself: the majority opinion cited three illustrative examples of state courts entertaining such actions in the nineteenth century. *See* Dist. of Columbia v. Heller, 554 U.S. 570, 627 (2008) (citing, e.g., State v. Lanier, 71 N.C. 288, 289 (1874) ("The elementary writers say that the offence of going armed with dangerous or unusual weapons is a crime against the public peace by terrifying the good people of the land, and this Court has declared the same. . . .")).

testimony to support these features as essential to self-defense. In fact, I have searched in vain for any reasoned arguments that pistol grips, forward grips, telescoping stocks, grenade or rocket launchers, and barrel shrouds are indispensable or even contribute to self-defense.

Finally, it is relevant to ask how many assault weapons Americans currently own. Data is hard to come by in large part because firearms manufacturers refuse to release data tracking their sales.[57] What we do know is that the number of weapons that would qualify under either the proposed ban's so-called "characteristics test" or its explicit list of banned models is smaller than the number of guns with standard-issue high-capacity magazines.[58] One reporter's painstaking analysis estimated that there are 3.75 million AR-15-style rifles owned in the U.S. today, and AR-15s are the most popular although not the exclusive type of qualifying assault weapon.[59] The NRA's lobbying arm estimates that, depending upon the definition of assault weapon, assault weapons represent 15% of all semi-automatic guns owned in the U.S., which in turn represent about 15% of all firearms owned in the U.S.[60] Given that the Congressional Research Service recently found that, as of 2009, Americans own about 310 million guns,[61] the NRA's estimate would translate into approximately 7 million assault weapons owned today. Although 7 million is hardly a negligible figure, it still corresponds to quite a small portion of the

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[57] Justin Peters, *How Many Assault Weapons Are There in America? How Much Would It Cost the Government To Buy Them Back?*, SLATE (Dec. 20, 2012), http://www.slate.com/blogs/crime/2012/12/20/assault_rifle_stats_how_many_assault_rifles_are_there_in_america.html.

[58] *See* Koper, REDUCING GUN VIOLENCE IN AMERICA, *supra* note 49, at 161 (explaining that the universe of large-capacity magazine equipped firearms is broader than the universe of weapons satisfying the criteria for categorization as an assault weapon).

[59] Peters, *supra* note 58.

[60] *Top Ten Frequently Asked Questions*, NRA-ILA, http://www.gunbanfacts.com/FAQ.aspx (last visited February 2, 2013).

[61] WILLIAM J. KROUSE, CONG. RES. SERV., RL32842, GUN CONTROL LEGISLATION 8 (2012).

overall gun market – hardly enough to justify calling such weapons "common" within the meaning of *Heller*.

But for the purposes of constitutional analysis, debating how to characterize the significance of assault weapons' market presence would be a waste of time. To make a difference to *Heller*'s threshold inquiry, which must take notice of the complete lack of any connection of assault-weapon features to self-defense as well as these features' dangerousness in both fact and appearance, the market presence of assault weapons would have to be overwhelmingly large (and even then, I doubt seriously the bottom line would change as a constitutional matter). And overwhelmingly large it assuredly is not.

Universal Registration and Background Checks

All responsible participants in the gun safety debate agree that some groups of people simply should not be allowed to own, keep, or carry guns. Those groups include children, dangerous felons, and those with serious mental illnesses that preclude safe gun ownership. When some observers casually compare the Second Amendment to the First, they forget this essential difference: Although freedom of speech sometimes comes at a price, and although speech can at times pose dangers, our constitutional system addresses those dangers by permitting government to impose carefully crafted limits on speech, not by limiting or licensing eligible speakers. The Constitution's strategy with respect to guns is entirely different. It addresses the dangers of guns in the wrong hands by permitting government to keep them out of

those hands in the first place, and, of course, by permitting government to regulate where and under what conditions people can bear those weapons in possible confrontation with others.

Accordingly, this Congress might be called upon to consider measures designed to minimize the risk that guns fall into the hands of such prohibited purchasers and owners. Measures dealing with straw purchases and trafficking are obviously important in that effort and are clearly constitutional. Rather than spending the committee's time on those measures, I will focus here on provisions that mandate universal registration requirements or a universal background check, closing the many notorious loopholes that characterize current laws on the subject. There is no serious doubt that requiring universal registration or a universal background check would comply with the Second Amendment.

It is important to recognize, at the outset, that prohibiting particular groups of people from owning or possessing guns is fully compatible with the Second Amendment. In the first place, such prohibitions are consistent with the original and traditional understanding of the Second Amendment. It was widely accepted at the time of the framing that not every person had a right to keep and bear arms; instead, the right was closely tied to the notion of responsible citizenship, and it has long been denied to criminals and others whose possession of guns would pose a severe danger to the public.[62] On this point, precedent aligns closely with history. The Supreme Court said in *District of Columbia v. Heller*: "[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the

[62] *See United States v. Rene E.*, 583 F.3d 8, 15–16 (1st Cir. 2009).

mentally ill …"[63] The Court fortified this conclusion in *McDonald v. City of Chicago*, when it added: "We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill' … We repeat those assurances here."[64]

Once the constitutionality of prohibiting gun possession by some people is accepted, the constitutionality of a reasonable system of registration or background checks follows automatically. The most powerful argument for this inference is not a technical legal point; it is, instead, common sense. And, although it shouldn't be necessary to cite authority for the point, it's worth noting that as eminent an authority as Alexander Hamilton wrote in *The Federalist* that "[t]he rules of legal interpretation are rules of *common sense*," and that the "true test" of a "just application" of these rules is whether the resulting interpretation is "consistent with reason and common sense."[65]

Consider, then, whether the Constitution would be "consistent with reason and common sense" if it allowed prohibitions on firearms purchases by felons but disallowed background checks to determine whether a felon was the would-be purchaser of a firearm. As a matter of common sense, we all know that guns do not of their own accord stay out of the hands of prohibited purchasers. Nor are prohibited purchasers likely to confess their legal inability to buy guns when talking to gun dealers. The prohibitions, in short, do not enforce themselves. In order to be effective, in order to be meaningful, in order to be anything more than rules on paper, they

[63] 554 U.S. 570, 626 (2008).
[64] 130 S. Ct. 3020, 3047 (2010) (plurality opinion).
[65] *The Federalist* No. 83, at 495 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

must be comprehensive and must be carried into operation by the government. It contradicts common sense—it ignores the fact that "the framers of the Constitution were not mere visionaries, toying with speculations or theories, but practical men"[66]—to say on the one hand that prohibiting felons from owning guns is constitutional, but to insist on the other hand that the background checks that seek to make those prohibitions effective are unconstitutional.

The Supreme Court's decisions in *District of Columbia v. Heller* and *McDonald v. City of Chicago* confirm the constitutionality of reasonable background check requirements. *Heller* expressly affirms that the Court was not calling into doubt "laws imposing conditions and qualifications on the commercial sale of arms."[67] The *McDonald* Court "repeat[ed] those assurances," observing that its holding "does not imperil every law regulating firearms."[68] The universal registration requirement or background check is simply a "condition[]" on the transfer of arms; it is therefore expressly within the zone of permissible regulation identified by *Heller* and *McDonald.*

Analogous Supreme Court doctrine points in the same direction. The right to vote, like the right to keep and bear arms, is a fundamental right of Americans.[69] But no serious legal scholar doubts that before letting a citizen cast his ballot, the government may require the citizen to register and may take steps to check whether he or she really is an eligible voter. And the

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[66] *NFIB v. Sebelius*, 132 S. Ct. 2566, 2589 (2012) (opinion of Roberts, C.J.) (quoting *South Carolina v. United States*, 199 U.S. 437, 449 (1905)).
[67] 554 U.S. at 626–27.
[68] 130 S. Ct. at 3047 (plurality opinion).
[69] *Compare Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966) (holding that the right to vote is fundamental), *with McDonald v. City of Chicago*, 130 S. Ct. 2020 (2010) (holding that the right to keep and bear arms is fundamental).

Supreme Court agrees; in *Crawford v. Marion County Election Board*, for example, it concluded that Indiana's voter ID law was a permissible means of ensuring that only eligible voters participate in an election.[70] Checking whether a voter is eligible before giving that voter a ballot is comparable to checking whether a purchaser is eligible before letting her acquire a gun. Just as the former is constitutional, so is the latter. And the argument is of course even stronger in the instance of firearms. For, unlike a ballot in the hands of an ineligible voter, which might in the end prove to make no difference to who wins or loses the election at issue, a gun in the hands of even one ineligible owner poses a deadly danger all by itself.

History reinforces common sense and case law in this regard. The Supreme Court in *Heller* and *McDonald* stressed the role of history in interpreting the scope of the Second Amendment; "longstanding" prohibitions upon gun ownership, the Court indicated, are presumptively exempt from Second Amendment scrutiny.[71] Lower courts have likewise noted that history plays an important, though not exclusive, role in determining the scope of permissible regulation under the Second Amendment.[72] Measures to keep guns out of the hands of prohibited owners – owners who could not safely be entrusted with control of a lethal weapon – have a strong historical pedigree. For example, many states have longstanding laws—sometimes, laws dating back a century or more—requiring sellers to keep registers of all firearm purchasers; the registers had to be open to peace officers.[73] The government could use thus use

[70] 553 U.S. 181 (2008) (plurality opinion).
[71] *See* 554 U.S. at 626–27; 130 S. Ct. at 3047 (plurality opinion).
[72] *See, e.g.*, *Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011); *Ezell v. City of Chicago*, 651 F.3d 684, 701–04 (7th Cir. 2011); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792, 800–01 (10th Cir. 2010).
[73] *See Heller*, 670 F.3d at 1253–54.

these registers to determine whether any of the purchasers had obtained weapons in violation of the law.

To be sure, modern computerized background checks differ from the more cumbersome historical enforcement measures known to hisory. But "a constitution [is] intended to endure for ages to come."[74] Just as the Second Amendment covers modern weapons, like handguns, that did not exist when the Bill of Rights was ratified in 1791, so too does it cover modern enforcement measures, like mandatory computerized background checks, that could not have been anticipated in 1791. Reasonable background checks fit into the long historical tradition to which registration requirements belong, and that is enough to sustain them without further ado under the tests established by the Supreme Court in *Heller* and *McDonald*.

In short, all relevant legal considerations—logic and common sense, directly applicable precedent, analogies to surrounding legal doctrines, and history and tradition—point to the same conclusion. The Second Amendment does not prohibit Congress from passing laws to carry into effect concededly constitutional prohibitions on firearm purchases. The universal background check, in particular, easily passes constitutional muster as a permissible regulation of the transfer of firearms.

This is not to say that all conceivable background check systems would comport with the Constitution. Suppose, for example, that Congress were to pass a law requiring handgun purchasers to undergo an extensive check on the purchasers themselves and all their family

[74] *McCulloch v. Maryland*, 17 U.S. 316, 415 (1819).

members and housemates, a check that took years to complete. Such a scheme would plainly impose a very severe burden on the right to keep and bear arms for self-defense. The burden would be entirely disproportionate to the objective the government is seeking to pursue. Where a background check is taken to such lengths that it effectively destroys the right to keep and bear arms, rather than ensuring that the right is enjoyed only by those constitutionally entitled to it, the government has overstepped the lawful boundaries of its power.

Such concerns are entirely out of place here, however. Whether a particular background check scheme that Congress adopts would go too far obviously depends on the specific details of that scheme. But none of the proposals seriously under consideration at the present come remotely close to overstepping constitutional boundaries. The proposed background check frameworks, especially those that rely on checks conducted instantaneously through the National Instant Background Check System, impose a constitutionally insignificant burden upon law-abiding citizens. Indeed, an instant background check is much *less* onerous than the Voter ID law that the Supreme Court upheld in *Crawford v. Marion County Election Board*; it is also much less cumbersome than longstanding registration requirements and other conditions on sale[75] that are concededly constitutional. Ultimately, therefore, I see no merit to the constitutional objections to the background check proposals presently being seriously considered by Congress.

III. The Consistency of the President's Measures with the Separation of Powers

[75] *See Heller*, 670 F.3d at 1253.

This January, President Obama announced twenty-three steps that his Administration would take to prevent gun violence.[76] The President has begun to implement these steps by using the executive powers vested in him by the Constitution and laws of the United States. Because the President adopted these measures by executive action, without specific congressional involvement, some have concluded that the President violated the separation of powers established by the Constitution. This claim is legally untenable; the President is acting well within his powers as head of the executive branch.

Some of the President's measures involve nothing beyond communicating with members of the public. Measure 23, for example, is to "[l]aunch a national dialogue … on mental health." There is plainly no constitutional problem with executive steps of this sort. The President obviously does not need congressional permission every time he decides to give a speech or publish a press release.

Another category of measures—and this covers the great majority of the actions that the President has committed to take—includes steps that will improve the enforcement of federal laws already on the books. Thus, the President has agreed to "[m]aximize enforcement efforts to prevent gun violence and prosecute gun crime."[77] He has likewise decided "to require federal law enforcement to trace guns recovered in criminal investigations."[78] These improvements to

[76] *See, e.g.*, Colleen Curtis, *President Obama Announces New Measures to Prevent Gun Violence*, Jan. 16, 2013, available at http://www.whitehouse.gov/blog/2013/01/16/president-obama-announces-new-measures-prevent-gun-violence.
[77] Measure 13.
[78] Measure 9.

federal law enforcement efforts plainly fall within the President's constitutional power—and constitutional responsibility—to "take Care that the Laws be faithfully executed."[79]

A third group of measures involves the making of rules and regulations under preexisting congressionally granted authority. For instance, step 21—"[f]inalize regulations clarifying essential health benefits and parity requirements within ACA exchanges"—simply carries into effect authority granted by the Patient Protection and Affordable Care Act.[80]

Step 11, "[n]ominate an ATF director," is equally clearly within the President's constitutional powers; the Constitution expressly states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint … Officers of the United States."[81] Likewise, the Constitution plainly authorizes the President's requests for information from executive branch officials, such as step 15, "direct[ing] the Attorney General to issue a report on the availability and most effective use of new gun safety technologies and challenge the private sector to develop innovative technologies"; Article II provides that the President "may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices."[82]

Finally, and perhaps most controversially, some of the President's measures entail the issuance of interpretations of existing laws. To this class belongs, for instance, step 16, "[c]larify[ing] that the Affordable Care Act does not prohibit doctors asking their patients about

[79] U.S. Const. art. II, § 3.
[80] Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, § 1321(a).
[81] U.S. Const. art. II, § 2, cl. 2.
[82] U.S. Const. art. II, § 2, cl. 1.

guns in their homes." To be sure, the Article III judiciary must ultimately interpret laws when applying those laws in the context of concrete cases or controversies. But it is well established that the President also has the authority to interpret the law—and especially the power to announce legal interpretations concerning issues that have not yet been settled by the courts. In fact, the tradition of presidential clarifications of the law goes back to President George Washington's Neutrality Proclamation. The tradition also has a solid grounding in the text of the Constitution; it is based on the Constitution's vesting in the President of "the executive Power," and in its imposition on the President of the power and duty to "take Care that the Laws be faithfully executed."[83]

In sum, although some opponents of gun regulation might disagree with some of the President's executive actions as a matter of policy, those disagreements cannot plausibly be translated into constitutional objections. From a separation-of-powers perspective, the President has acted well within the bounds of his constitutionally assigned authority.

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In closing, I note that I share the beliefs of many that the prevalence of guns in our country is by no means the only significant contributor to the tragedy at Newtown and to the many other gun-related massacres we have seen in recent months and recent years, or to the deaths of an average of over 30 Americans, nearly 5 of them children, *each and every day* as a result of gunfire homicides in less visible, and often virtually unnoticed, tragic incidents. [84]

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[83] U.S. Const. art. II, §§ 1, 3.

[84] The Center for Disease Control reports that in 2010, 11,078 individuals in the U.S. died from firearm-related homicides. 1,773 of them were between the ages of 0 and 19. *See* CENTER FOR DISEASE CONTROL, NATIONAL CENTER FOR INJURY PREVENTION & CONTROL, *WISQARS*

Violence has many causes. Violent video games, for example, some of them simulating mass shootings, may well play a significant role in the inculcation of violent attitudes among children.[85] And mental illness plainly played a significant part in bringing about the massacre at Newtown. If our country is to reduce the incidence of similar unspeakable violence in the future, the widespread availability of high-powered guns to people who should not possess them and who have no constitutional right to do so is by no means the only phenomenon that our government, our society, and our families need to address.

But it is simply not true that the presence of other causes of gun violence means that we neither can nor should do anything significant about the prevalence, too often in the wrong hands, of high-powered guns and high-capacity magazines that turn those guns from means of self-defense into weapons of mass destruction. It is not true constitutionally, it is not true politically, and it is not true morally. We must do our best to address in a serious way *every* source of avoidable death by firearms that we can, and if we always point to other problems still waiting to be solved we will never get started.

The time to get started on sensible gun regulation is not now—it was weeks, months, years, even decades ago. The Second Amendment is not a barrier. We have already delayed too long, and our society has paid a terrible price. We should delay no longer.

Fatal Injury Reports, National and Regional, 1999 – 2010, http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html (last visited Feb. 4, 2013).

[85] *See Brown v. Entertainment Merchants Ass'n*, 131 S. Ct. 2729, 2767–71 (2011) (Breyer, J., dissenting).

Written Testimony

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For the hearing before the

Senate Subcommittee on the Constitution, Civil Rights, and Human Rights

on

"Proposals to Reduce Gun Violence: Protecting Our Communities

While Respecting the Second Amendment."

Tuesday February 12, 2013

Mr. Chairman, members of the Committee, I appreciate the opportunity to testify before you today. I am the director of the Johns Hopkins Center for Gun Policy Research. The Center engages in original scholarly research, policy analysis, and agenda-setting public discourse with the goal of bringing public health expertise and perspectives to the complex policy issues related to gun violence prevention. An important part of the Center's mission is to provide objective information and analysis to policymakers.

The Burden of Gun Violence in the United States

The burden of gun violence on American society is substantial, whether measured in years of productive life lost, disability, fear, or economic costs. More than 31,000 people a year in the United States die from gunshot wounds.[1] Because victims are disproportionately young, gun violence is one of the leading causes of premature mortality in the U.S.[2] In addition to these deaths, in 2010 there were an estimated 337,960 non-fatal violence crimes committed with guns, and 73,505 persons treated in hospital emergency departments for non-fatal gunshot wounds.[3]

There are enormous economic costs associated with gun violence in the U.S. Firearm-related deaths and injuries resulted in medical and lost productivity expenses of about $37 billion in 2005.[4] But the overall cost of gun violence goes well beyond these figures. When lost quality of life, psychological and emotional trauma, decline in property values, and other legal and

societal consequences are included, the cost of gun violence in the U.S. in 2010 was estimated to be $174 billion with government absorbing $12 billion of those costs.[5]

Addressing Weaknesses in Current Gun Laws Would Reduce the Burden of Gun Violence

On January 14-15, 2013, I along with more than twenty other top researchers and gun policy experts gathered to participate in a Summit on Reducing Gun Violence in America at Johns Hopkins. After the experts shared their research and analyses at the summit, the experts evaluated various proposals to reduce gun violence, and I would refer to the Committee the full presented findings and analyses that were just published in a book that I co-edited with Jon Vernick entitled *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*.[6] Collectively, the summit participants recommended a set of reforms to current gun laws that we believe would reduce the burden of gun violence in the United States, including the establishment of a universal background check system, strengthening laws to reduce firearms trafficking, banning the future sale and possession of assault weapons and large capacity ammunition magazines, expanding incentives for states to provide information about disqualifying mental health conditions to the National Instant Check System for gun buyers, and encouraging research to better understand the causes and solutions of gun violence. A full list of the summit's recommendations is included as an appendix to this testimony. Information presented at the summit demonstrated that these policies would enhance public safety and have broad public support. Further, as constitutional experts from across the ideological spectrum have explained, policies such as these would not violate constitutional rights.[7]

Opponents of the types of reforms recommended by the experts who participated in the summit make several common arguments. At the summit and in the book, compelling evidence was put forward to rebut those arguments. In my testimony today I would like to discuss several of those arguments and summarize the evidence that refutes them.

Opponents' Claim #1: Our nation's high rate of homicide has nothing to do with firearm availability.

Evidence in Response: Dr. Matthew Miller and his colleagues at Harvard[8] presented data demonstrating that the homicide in the United States is nearly seven times higher than the average homicide rate among other high-income countries due to the fact that our rate of homicides with firearms is 20 times higher than the average rate of firearm homicide in those countries.[9] Arguments that this gross disparity in homicide rates is due to the United States being more violent and crime-ridden than other high-income countries are inconsistent with available data. Rates of robbery, sexual assault, aggravated assault, burglary, car theft, and adolescent fighting in the United States are not significantly different from that of other high-income countries.[10,11]

Opponents' Claim #2: Gun control laws don't work because criminals won't obey them and will always find a way to get a gun through theft or the illegal market.

Evidence in Response: First, the logic of this argument is flawed. Using this logic, laws against drunk driving are pointless because drunks will always disobey those laws. Just as drunk driving

laws provide law enforcement with the tools to arrest individuals who break those laws and deter others from driving drunk, laws such as background check requirements for all gun sales will help law enforcement combat illegal gun trafficking and keep guns from prohibited individuals.

Opponents of gun control point to the frequency with which criminals obtain firearms through unregulated private transactions as proof that regulations are pointless. However, I and many of the experts convened for our conference believe that the weaknesses in current federal firearms laws are the reason that many gun traffickers, criminals, underage youth, and other prohibited individuals are able to obtain firearms in the underground market.[12,13,14, 15,16]

Second, the argument is based on invalid claims about how criminals acquire their guns. I analyzed 2004 survey data from a nationally-representative sample of state prison inmates to identify those who were incarcerated for crime committed with handguns. Only 9.9 percent of these offenders reported that they acquired their handgun by stealing it. Nearly eighty percent had acquired their handguns via a transaction with unlicensed private sellers, a category of transactions that current federal law illogically exempts from mandatory background checks or record-keeping by sellers.[14*]

Third, this argument implies that criminals have no difficulty in obtaining firearms which is also inconsistent with the facts. Most criminologists as well as the general public would consider people who commit robberies to fit the definition of "criminals." Although a firearm would seem an excellent tool to use if you are a robber for increasing compliance of victims to hand over their goods, only 29 percent of robberies reported in the National Crime Victimization Survey involved the robber's use of a firearm.[17] Furthermore, in an in-depth, multi-method study of the underground gun market in Chicago only twenty percent of male arrestees who participated in an anonymous survey reported that they had owned a handgun and sixty percent of those who did own one reported that it had taken them more than a week to search for and obtain a handgun. Criminals reported wariness of purchasing firearms from sellers they did not know or trust, a dearth of trusted suppliers of guns, and considerable mark-ups in price from the legal market.[18]

Fourth, gun sales regulations do impact the illegal gun market. My research has shown that when states enact laws to increase gun seller and purchaser accountability including universal background checks, strong regulation and oversight of licensed gun dealers, and mandatory reporting of theft of loss of firearms, far fewer guns are diverted from the legal to the illegal market.[14,19] Unfortunately, the success of these state gun laws in reducing the diversion of guns to criminals is undermined by gaps in federal laws which facilitate interstate trafficking of firearms from states with the weakest gun control laws to those with comprehensive policies to keep firearms from dangerous people.[14,16,20]

Missouri's repeal of its permit-to-purchase licensing law for handgun sales in late August 2007 provides an example of the value of policies designed to reduce the diversion of guns to criminals. The law had required handgun purchasers, whether they were purchasing a handgun from a licensed gun dealer or a non-licensed private seller, to obtain a permit from the local

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* Sources of handguns used in crime included family and friends (39.5%), "street or black market" (37.5%), gun shows/flea markets (1.7%), licensed gun dealers (11.4%), and theft (9.9%).

sheriff following a background check. My colleagues and I used annual state-level data on crime guns recovered by police in Missouri and traced by the ATF during the period 2002 – 2011 to examine changes in a commonly-used indicator of illegal gun diversion – the number and proportion of guns with short sale-to-crime intervals – before and after the state repealed the law.

Immediately following the repeal of the law, the share of guns recovered by Missouri police agencies that had an unusually short time interval from retail sale to crime indicative of trafficking more than doubled. Importantly, the sharp increase in short time-to-crime guns coincided with the length of time between the repeal of the law and a crime gun's recovery by police. Crime guns with a sale-to-crime interval of less than three months increased from a pre-repeal stable mean of 2.9 percent to 4.5 percent in 2007 when the repeal was in effect for only four months, and then increased further to a mean of 8.4 percent for 2008 through 2011. Crime guns with sale-to-crime intervals of 3-12 months increased sharply beginning in 2008 from a pre-repeal mean of 5.9 percent to 13.9 percent for 2008-2011. Following this same pattern, the percentage of crime guns recovered one to two years after retail sale increase beginning in 2009 from a mean of 6.4 percent to 12.8 percent during 2009-2011. The sharp increase in very short sale-to-crime intervals for guns in Missouri cannot be explained away as being part of a national trend toward shorter time-to-crime guns because the average sale-to-crime interval for the U.S. increased from 10.2 years in 2006 to 11.2 years in 2011.[14]

States with stricter gun sales laws tend to attract guns originating in states with weaker gun laws, resulting in proportionately fewer crime guns being sold by in-state gun dealers.[21] This is likely to be due to a relative scarcity of guns to criminals in states with more comprehensive gun sales regulations which drives up the price and attracts suppliers from states with weaker gun laws. Following the repeal of Missouri's purchase permit law requiring handgun purchasers to obtain licenses from local sheriffs who would photograph and fingerprint applicants, the percentage of crime guns that had been sold by in-state gun dealers increased from 55.6 percent when the law was in place to 70.8 percent by 2011. This is a significant change for an indicator that tends to change very little over time in most states.[14]

I am just beginning a study of the effects of Missouri's repeal of its permit-to-purchase licensing system on violent crime. Preliminary evidence suggests that the increase in the diversion of guns to criminals linked to the law's repeal may have translated into increases in homicides committed with firearms. From 1999 through 2007, Missouri's age-adjusted homicide rate was relatively stable, fluctuating around a mean of 4.66 per 100,000 population per year. In 2008, the first full year after the permit-to-purchase licensing law was repealed, the age-adjusted firearm homicide rate in Missouri increased sharply to 6.23 per 100,000 population, a 34 percent increase. For the post-repeal period of 2008-2010, the mean annual age-adjusted firearm homicide rate was 5.82, 25 percent above the pre-repeal mean. This increase was out of synch with changes during that period in age-adjusted homicide rates nationally which decreased ten percent and with changes in other states in the Midwest which declined by 5%.[†]

[†] Annual age-adjusted firearm homicide rates in the U.S. averaged 4.03 during 1999-2007 and 3.81 for 2008-2010. Firearm homicide rates in states in the Midwest other than Missouri averaged 3.52 during 1999-2007 and 3.33 for 2008-2010. Data taken from National Center for Injury Prevention and Control, Fatal Injury Reports. Web-based Injury Statistics Query and Reporting System (WISQARS), Centers for Disease Control and Prevention, Accessed February 1, 2013.

In our new book, researchers reported several examples in which state laws prohibiting high-risk groups – perpetrators of domestic violence, violent misdemeanants and the severely mentally ill – from possessing firearms reduced violence,[22,23] especially if necessary records are available for law enforcement to deny prohibited individuals.[24] Such laws would be even more effective if gaps and weaknesses in federal laws were addressed.

A case study from Brazil provides useful lessons relevant to the debate over the ability of gun control laws to curtail criminal use of firearms.[25] Brazil has historically had one of the highest homicide rates in the world amid enormous challenges including well-armed organized crime syndicates, income inequality, and high rates of substance abuse, as well as corruption within the military, law enforcement, and criminal justice system. Seventy percent of Brazil's homicides were committed with firearms. Efforts to strengthen Brazil's gun control laws were met with skepticism and the same arguments used to dismiss calls to reform U.S. guns laws, principally that the illicit gun market is awash with guns that criminals will have little difficulty accessing. Yet in December 2003, the Brazilian government responded to an outcry for change from its people and enacted an array of gun control measures. Prior to the new gun laws, Brazil's deaths from firearms had been steadily increasing, but this trend was reversed following the new gun control laws. Researchers estimated that the laws reduced firearm-related deaths by 15.8 percent nationally.[26] Brazil has had approximately 5,000 fewer firearm-related deaths per year following the enactment of the gun law reforms.[25]

Opponents' Claim #3: We don't need to pass new gun laws, we just need to enforce current ones.

Evidence in Response: This is a common response to calls for strengthening current gun laws. But federal gun laws are currently written in ways that make it very difficult to hold firearm sellers, whether licensed dealers or private sellers, accountable if they sell firearms to criminals or traffickers.[27,28] Non-licensed sellers of firearms have no obligation to ensure that the prospective purchasers have passed a background check and can legally possess firearms. There is no statute defining and outlawing straw purchases or gun trafficking. To prosecute gun traffickers, federal prosecutors must use laws against being in the business of selling firearms without a license or intentionally providing false information on the form used to process background checks for firearm sales by licensed dealers. Standards of evidence are high while penalties are weak relative to the seriousness of the crime of supplying criminals with firearms. Legislation has been proposed in the Senate that addresses these weaknesses.

Congress would do well to rewrite several prior laws that shield scofflaw gun dealers from scrutiny, civil penalties, and criminal prosecution. The 1986 Firearm Owners Protection Act weakened penalties for gun sales violations, increased standards of proof for prosecutions and actions against licensed gun dealers, and limited ATF law compliance inspections. The Protection of Lawful Commerce in Arms Act provided special immunity from lawsuits for negligent practices which enable criminals and other prohibited individuals to obtain guns. The Tiahrt Amendments provided further protections to licensed gun dealers who sell many guns that subsequently are recovered from criminals by restricting the use of crime gun trace data.[15] Laws that increase gun seller accountability and increase the risk to those involved in illegal gun transactions significantly reduce the number of guns diverted for criminal use.[14] Whereas the Tiahrt Amendments, which reduce firearm seller accountability, have been shown to increase the diversion of guns to criminals from suspect gun dealers,[29] strong regulation and oversight of gun

dealers reduces guns diverted to criminals as does being vulnerable to lawsuits for making illegal sales.[30,31]

Opponents' Claim #4: Requiring background checks for all firearms sales is too great of a burden to gun purchasers to justify.

Evidence in Response: My colleagues and I just completed a large survey of a nationally-representative sample of adults and found that 84 percent of gun owners and 74 percent of NRA members reported that they supported laws requiring a background check for all gun sales.[32] In the 14 states that currently require background checks for all handgun sales, 89 percent of gun owners supported universal background checks for gun sales. More broadly, large majorities of gun owners supported an array of policies intended to keep guns from criminals and the severely mentally ill. Thus the overwhelming majority of gun owners apparently consider any inconvenience associated with pre-gun-sale background checks to be acceptable given the importance of keeping firearms out of the hands of dangerous people.

Opponents' Claim #5: Proposed universal background checks would allow the federal government to create a registry of gun owners.

Evidence in Response: Under current federal law, the FBI must destroy records from background checks within 24 hours of the background check being completed. Current federal law explicitly forbids the federal government from creating anything remotely related to a registry of gun owners - even preventing the ATF from automating records from out of business firearms dealers in order to facilitate crime gun trace requests. There is no evidence that proposals to fix the gap in current law that exempts individuals purchasing firearms from private sellers from having to pass a background check would alter current prohibitions against creating a registry of gun owners or their guns.

Opponents' Claim #6: Limits on assault weapons and large capacity magazines would not enhance public safety.

Evidence in Response: Assault weapons and large capacity magazines (LCMs) or ammunition feeding devices are common characteristics of guns discussed in policy debates because they are disproportionately used in mass shootings. Mass shootings involving assault weapons typically involve more victims per incident than mass shootings with other weapons.[33] Recent examples of firearms with LCMs being used in mass shootings include the Glock 9mm semi-automatic pistol, with a magazine holding 33 rounds of ammunition, used to murder six and wound 13 others, including Congresswoman Gabrielle Giffords. The suspect assault rifle with a 100-round magazine used in the mass shooting at a movie theater in Aurora, Colorado that left 12 dead and 58 injured. A Bushmaster XM15 assault rifle was used in the Newtown, Connecticut mass-murder of 20 children and six adults. Weapons with LCMs were also used in the mass shootings at Virginia Tech University and Fort Hood, Texas. It is impossible to determine if these and other perpetrators of mass shootings would have been able to acquire assault weapons or LCMs had the weapons and magazines been banned. But if the perpetrators had used firearms that were not equipped with LCMs, it is very likely that fewer people would have been injured and killed. Indeed, it has been shown that there is a positive correlation between the ammunition capacity of firearms used in mass shootings and the number of victims murdered or wounded.[34]

Christopher Koper conducted an evaluation of the federal ban of assault weapons and LCMs and found that the ban led to a significant reduction in the use of assault weapons, but no statistically change in the use of guns with LCMs in the cities where data were available.[35] An analysis of data collected on firearms recovered in crimes in Virginia found, however, that use of firearms with LCMs declined significantly after the federal ban and abruptly increased when the ban expired.[36] Although Koper's study assessed the effects of the federal ban of assault weapons and LCMs on overall homicides and shootings, relatively few shooting incidents involve more than 10 rounds fired from a single firearm – about three percent of shooting incidents and five percent of victims shot in one city.[37] Thus, his analysis is unlikely to be able to detect the small and gradual effects that might be expected population-wide.

Koper indicated that the lack of statistically significant findings does not mean that the law did not prevent a small percentage of the over 10,000 firearm-involved homicides and nonfatal woundings of nearly 50,000 people annually. Even if the ban eventually prevented only 1 of every 5 of the five percent of incidents in which LCMs are relevant, that would translate into about 100 fewer homicides and 500 fewer people wounded by gunshots per year. Such effects would not be definitively detectable with national data, but would be nonetheless meaningful, given the magnitude of the problem. Further, focusing solely on the "body count" glosses over the considerable psychological trauma and other social costs resulting from mass shootings. We have decided to regulate the design of numerous consumer products, such as cribs and small, high-powered magnets, in order to prevent far fewer deaths than could be prevented with a ban of LCMs. Opponents of such bans do not have a compelling reason why law-abiding citizens need to have firearms with unlimited ammunition capacity.

Opponents' Claim #7: "The only thing that can stop a bad guy with a gun, is a good guy with a gun."

Evidence in Response: First of all, I am not aware of any current Congressional proposal to reform federal gun laws that would disarm any law-abiding citizen who is not prohibited from possessing firearms under current law. Second, this call to arms suggests that the way to reducing violence in the United States is to allow or even encourage anyone who can legally possess a firearm to arm themselves not only in their homes, but in public places. The best evidence on the effects of so-called right to carry laws shows that they do not reduce violent crime[38] and may lead to small increases in aggravated assaults.[39,40] Arguments to expand concealed carrying of firearms suggests that everyone who is a legal firearm possessor is a "good guy (or gal)," yet my own research on the backgrounds of persons who were incarcerated for crimes committed with guns in states where conditions for legal firearm possession mirror those stated in federal law indicate that sixty percent of these offenders were legally qualified to possess firearms in their home prior to committing the crime with a gun that led to their incarceration. Many had prior arrests and convictions for misdemeanors involving violence, guns, drugs, or alcohol abuse or had committed more serious crimes processed in juvenile courts.[41]

Conclusion

In summary, Congress could significantly reduce the availability of guns to dangerous individuals by enacting the recommendations made by our summit participants such as requiring background checks for all firearms sales, strengthening laws against illegal straw purchasing and gun trafficking, and doing away with laws that offer special protections that law-abiding gun dealers don't need and scofflaw dealers don't deserve. Evidence demonstrates that these reforms would translate into fewer lives lost, safer streets and homes, increased quality of life, and reduce government expenditures on health care, disability payments, criminal justice, and corrections. Furthermore, the reforms would not involve unreasonable burdens on law-abiding gun owners and are supported by the vast majority of Americans including large majorities of gun owners.

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APPENDIX TO TESTIMONY

Summit on Reducing Gun Violence in America Policy Recommendations

JANUARY 15, 2013

A Summit of more than 20 of the world's leading gun policy experts has identified several research-based policies to reduce gun violence in the United States. The policy recommendations were the result of a two-day Summit on gun violence convened by The Johns Hopkins University on January 14 and 15, The Summit on Reducing Gun Violence in America: Informing Policy with Evidence and Analysis.

During the Summit, experts presented and analyzed research-based approaches to reducing gun violence. Collectively, the Summit participants recommend* the following:

Background Checks

Fix the background check system by:

- Establishing a universal background check system, which would require a background check for all persons purchasing a firearm (inheritance exception).
- All sales would be facilitated through a federally licensed gun dealer. This would have the effect of mandating the same record keeping for all firearm transfers.
- Increase the maximum amount of time for the FBI to complete a background check from 3 to 10 business days.
- Require all firearm owners to report the theft or loss of their firearm within 72 hours of becoming aware of its loss.
- Persons who have a license to carry a firearm, permit to purchase, or other firearm permit must still be subject to a background check when purchasing a firearm.

Prohibiting High-Risk Individuals from Purchasing Guns: Expand the conditions for firearm purchase to include:

- Persons convicted of a violent misdemeanor would be prohibited from firearm purchase for a period of 15 years.
- Persons who committed a violent crime as a juvenile would be prohibited from firearm purchase until age 30.
- Persons convicted of 2 or more crimes involving drugs or alcohol within a three-year period would be prohibited from firearm purchase for a period of 10 years.
- Persons convicted of a single drug-trafficking offense would be prohibited from firearm purchase.
- Persons determined by a judge to be a gang member would be prohibited from firearm purchase.
- Establish a minimum age of 21 years for handgun purchase or possession.

- Persons who have violated a restraining order issued due to the threat of violence (including permanent, temporary and emergency) are prohibited from purchasing firearms.
- Persons with temporary restraining orders filed against them for violence or threats of violence are prohibited from purchasing firearms.
- Persons who have been convicted of misdemeanor stalking are prohibited from purchasing firearms.

Mental Health

- Federal restrictions of gun purchase for persons with serious mental illness should be focused on the dangerousness of the individual.
- Fully fund federal incentives for states to provide information about disqualifying mental health conditions to the National Instant Check System for gun buyers.

Trafficking and Dealer Licensing

- A permanent director for the ATF should be appointed and confirmed.
- ATF should be required to provide adequate resources to inspect and otherwise engage in oversight of federally licensed gun dealers.
- Restrictions imposed under the Firearm Owners Protections Act limiting ATF to one routine inspection of gun dealers per year should be repealed.
- Provisions of the Firearm Owners Protection Act raising the evidentiary standard for prosecuting dealers who make unlawful sales should be repealed.
- ATF should be granted authority to develop a range of sanctions for gun dealers who violate gun sales or other laws.
- The Protection of Lawful Commerce In Arms Act, providing gun dealers and manufacturers protection from tort liability, should be repealed.
- Federal restrictions on access to firearms trace data, other than for ongoing criminal investigations, should be repealed.
- Federal law mandating reporting of multiple sales of handguns should be expanded to include long guns.
- Adequate penalties are needed for violations of the above provisions.

Personalized Guns

- Congress should provide financial incentives to states to mandate childproof or personalized guns.
- The Federal Consumer Product Safety Commission should be granted authority to regulate the safety of firearms and ammunition as consumer products.

Assault Weapons

- Ban the future sale of assault weapons, incorporating a more carefully crafted definition to reduce the risk—compared with the 1994 ban—that the law can be easily evaded.

High Capacity Magazines

- Ban the future sale and possession of large capacity (greater than 10 rounds) ammunition magazines.

Research Funding

- The federal government should provide funds to CDC, NIH and NIJ adequate to understand the causes and solutions of gun violence, commensurate with its impact on the public's health and safety.
- The Surgeon General should produce a regular report on the state of the problem of gun violence in America and progress towards solutions.

"The purpose of putting forth these recommendations is to provide a research-based framework for reducing the staggering toll of gun violence in America," said Summit organizer Daniel Webster, ScD, MPH, director of the Center for Gun Policy and Research at the Johns Hopkins Bloomberg School of Public Health. "Importantly, most recommended policies have broad public support and would not violate constitutional rights."

New national public opinion polling data presented during the Summit from Johns Hopkins researchers showed the majority of Americans—including gun owners—support a universal background check system, more oversight on gun dealers, restricting access to guns among high-risk individuals such as those with previous criminal convictions, and banning the sale of large-capacity ammunition clips or magazines that allow some guns to shoot more than 20 bullets.

Presentations included research findings from experts at Johns Hopkins, Harvard, Yale, Duke, Rutgers, Michigan State, George Mason and Howard universities, the universities of Chicago, Connecticut and California-Davis, and insights from former federal law enforcement officials. Experts from Great Britain, Australia and Brazil presented evaluations of gun policy reforms in their nations.

"This has been an important two days," said Ronald J. Daniels, president of The Johns Hopkins University. "We knew that a critical outcome of this Summit would be a set of research-based recommendations designed to inform the current debate. These will help lawmakers and opinion leaders identify the policy changes that are most likely to reduce gun violence in the United States."

Last month's shootings in Newtown, Conn., opened the door to new federal action to reduce gun violence in the United States. Johns Hopkins University's Center for Gun Policy and Research believes that any action should be based on the best available research.

"The research-informed measures address not only mass shootings but also the less publicized U.S. gun violence that takes an average of 30 lives every day," said Summit organizer Jon Vernick, JD, MPH, co-director of the Center for Gun Policy and Research at the Johns Hopkins Bloomberg School of Public Health. "We can reduce this number through implementation of such measures as expanding conditions which would prohibit high-risk individuals from possessing guns, strengthening the background check system by covering all firearm sales, and ensuring that necessary records for prohibited individuals are available."

The Summit convened by the University, its Bloomberg School of Public Health and the Center for Gun Policy and Research is believed to be the most extensive summit meeting ever of gun policy researchers to discuss the evidence and make specific action recommendations.

"Gun violence is an urgent public health problem facing our country. I'm proud of our faculty for their contributions to the prevention of gun violence and for their leadership in this important summit," said Michael J. Klag, dean of the Johns Hopkins Bloomberg School of Public Health. "Efforts like this Summit showcase what we do best, providing the science and evidence to solve the major challenges to our health."

According to the Centers for Disease Control and Prevention, guns kill more than 31,000 people each year in the U.S., including more than 11,000 homicides. The U.S. homicide rate is seven times the average of other high-income countries.

Within weeks of the Summit, the Johns Hopkins University Press will publish the book, *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*. Collected for the first time in one volume, this reliable, empirical research and legal analysis will inform the policy debate by helping lawmakers and opinion leaders identify the policy changes that are most likely to reduce gun violence in the U.S. The book will be available in late January. Copies of the book will be delivered to policymakers from across the country, including members of Congress and the Administration.

** These recommendations represent the consensus of the experts presenting at the Johns Hopkins Gun Policy Summit. However, it may not be the case that every expert endorsed every specific recommendation.*

(THIS DOCUMENT IS AVAILABLE AT HTTP://WWW.JHSPH.EDU/NEWS/NEWS-RELEASES/2013/GUN-POLICY-SUMMIT-RECOMMENDATIONS.HTML)

Testimony of Sandra J. Wortham
"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"
Hearing before the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights
February 12, 2013

Good morning Chairman Durbin, Ranking Member Cruz, and members of the committee. My name is Sandra Wortham, and I want to thank you for the opportunity to testify today. It is an honor.

On May 19, 2010 I was having a good day. During the early evening I went to line dancing class with my mother, as we did every Wednesday. We had fun. When I got home a friend asked me to go out with her to scout locations for her birthday party. I of course said yes. So, we went out. Again, we had fun. Then, we got in the car to head home.

The fun ended then.

When we were about 5 minutes away from my house my mother called me. It wasn't unusual for her to call because we talk a thousand times a day. But this call was different. She was crying. She said, "Sandy, come home." She continued to speak through her tears, "They tried to rob him." The "him" my mother spoke of was my older brother, Thomas E. Wortham IV.

Thomas and I grew up in a strong family. Our parents taught us that we could be anything we wanted to be. But they also taught us that we had a responsibility to help others along the way. That is how Thomas lived his life. Like many other siblings we often fought like cats and dogs, but he always watched out for me.

Thomas dedicated his professional life to serving others. He joined the National Guard, serving two tours in Iraq. He was also a Chicago Police Officer, and he worked to protect our community on the South Side of Chicago. Earlier that week he'd traveled here, to Washington, D.C., to participate in activities for National Police Week honoring our Nation's fallen law enforcement officers. He then traveled to New York City to run in a race in honor of Chicago Police Officer Alex Valadez, who was shot and killed in the line of duty the year before. So, on the night of May 19th Thomas stopped by to show our parents his pictures from Police Week. When they finished, he walked to the front door to leave. My father followed him to the door to watch him out.

I wasn't there, but this is what reports say happened. As Thomas walked over to his motorcycle two men walked towards him, pulled out a gun, and tried to take his motorcycle. Two more men were in a car nearby. Thomas was armed, and he identified himself as a police officer. My father, a retired Chicago Police Sergeant, also had a gun and when he saw what was happening he ran back into the house to get it. There was an exchange of gunfire between Thomas, my father, and the robbers.

When I got the call from my mother I had no idea how bad it was. My friend tried to drive me to the house but shortly after I got the call the traffic stopped. When I looked ahead I saw that the police had blocked off all of the streets on our route. Again, it didn't even occur to me that this had anything to do with Thomas. But I knew I needed to get home. So I got out of the car and started to run. As I ran an ambulance passed me. I know now that the ambulance was carrying my brother. He had been shot.

We went to the hospital and we waited. I prayed, and we waited. But Thomas died.

Just a few days before my brother was killed he was interviewed by the Chicago Tribune about recent shootings in our neighborhood. He said, "When people think of the South Side of Chicago, they think violence." He went on to say, "We're going to fix it, so it doesn't happen again." I am here today because I want to fix it too.

This hearing has been called to show that we can protect our communities while respecting the Second Amendment. I have to be honest and say I'm not sure where there can be serious disagreement on this. My family and I are not anti-gun people. My brother and my father were police officers- they were trained with guns and carried them most of the time. I value and respect the rights provided by our Constitution. However, I find it hard to believe that our founders intended those rights to go unreasonably unchecked.

This isn't about taking away the right to lawfully own guns. This is about trying our best to keep guns out of the hands of people like the ones who killed my brother. They didn't walk into a gun store and buy a handgun, because if the news reports are right they wouldn't have been eligible to buy one. So they got the gun the same way many ill-intentioned individuals obtain weapons---they bought it on the street.

It is also reality that the gun used to kill my brother didn't get to Chicago on its own. It was trafficked from a pawn shop in Mississippi. According to news reports, a gun trafficker went to Mississippi, used straw purchasers to buy multiple handguns from that shop and other shops, and then brought those guns to Chicago to sell to gang members.

I cannot accept the notion that we can't fix this. If we know, as we do, that in many places criminals have fairly easy street access to guns, don't we have a responsibility to address that issue to the best of our ability? I would say yes. Common sense gun laws to keep guns out of the wrong hands do not hurt decent people. The only people who should be disturbed by them are those people that shouldn't have guns in the first place and those who participate in funneling guns to those criminals.

When we speak about rights and the Constitution I think we would all be well served to remember the words of another important document in our Country's history---"life, liberty and the pursuit of happiness." Those rights were taken away from my brother at age 30.

My brother carried a gun. My father carried a gun. But the fact that my brother and father were armed that night did not prevent my brother from being killed. We need to do more to keep guns out of the wrong hands in the first place. I don't think that makes us anti-gun, I think it makes us pro-decent, law abiding people.

I am not here to say that any one law would necessarily have stopped what happened to my brother. But I am saying that we can do better.

This isn't about me, Thomas or our family alone. This is about our country. We are just one of too many families who have experienced horror and death as a result of gun violence. Some of our loved ones were killed with assault weapons. Some with guns that were straw purchased or sold without background checks. All of us want to prevent any more families from going through what we have endured. Gun violence is a problem in our country that needs to be fixed, and we have an opportunity, through this process, to help save lives. I hope we can do it.

Thank you for your time.

STATEMENT OF CHARLES J. COOPER

Before the
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

Concerning

"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

February 12, 2013

Good morning Mr. Chairman, and Members of the Subcommittee. Thank you for inviting me to participate in today's hearing entitled "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment." I am honored to be included among the very distinguished members of this panel and to share with you my thoughts on the constitutional issues raised by this important subject.[1]

It is critical, of course, that any legislation enacted to reduce gun violence respect the Second Amendment, which provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The Supreme Court's recent decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and

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[1] I have spent much of my professional life working on issues relating to the meaning of the United States Constitution. Shortly after serving as law clerk to Judge Paul Roney of the Fifth (now Eleventh) Circuit Court of Appeals and to Justice William H. Rehnquist, I joined the Civil Rights Division of the U.S. Department of Justice in 1981. In 1985 President Reagan appointed me to serve as Assistant Attorney General for the Office of Legal Counsel. I reentered private practice in 1988, and in October 1996 I became a founding partner of Cooper & Kirk, PLLC.

In private practice, I have litigated numerous cases involving the meaning of the Second Amendment. Long before the Supreme Court's decision in *Heller*, I was appointed a Special Assistant Attorney General for the State of Alabama for the purpose of presenting oral argument as an amicus in *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001). *Emerson* was a seminal case because the Fifth Circuit agreed that the Second Amendment guaranteed an individual right to keep and bear arms and decided the case based on the Founding-era history surrounding the adoption of the Second Amendment. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), I submitted an amicus brief on behalf of former officials in the Department of Justice arguing that the Second Amendment guarantees an individual right to keep and bear arms. Subsequent to *Heller*, the State of Oklahoma appointed me a Special Assistant Attorney General for the purpose of presenting oral argument in defense of its statute allowing employees to keep a firearm locked in their vehicles in their employers' parking lots. *See Ramsay Winch Inc. v. Henry*, 555 F.3d 1199 (10th Cir. 2009). I am currently litigating cases on behalf of individuals and organizations, including the National Rifle Association, seeking to vindicate rights under the Second Amendment, including a case in which the Seventh Circuit recently struck down the State of Illinois's ban on carrying operable firearms in public for self-defense. *See Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012).

McDonald v. City of Chicago, 130 S. Ct. 3020 (2010), provide authoritative guidance for interpreting and applying the Second Amendment. I believe that the principles established by these decisions cannot be reconciled with certain gun control measures pending before the Congress, including the proposed ban on certain semiautomatic rifles, pistols, and shotguns tendentiously dubbed "semiautomatic assault weapons" and the proposed 10-round limitation on the capacity of ammunition magazines.

I. Principles Established by *Heller* and *McDonald*.

In analyzing the constitutional implications of the proposed gun control measures, one must first identify the pertinent principles established by the *Heller* and *McDonald* decisions.

First, the Second Amendment protects an "*individual right*" that "*belongs to all Americans*." *Heller*, 554 U.S. at 581, 595 (emphasis added). The Court thus rejected the notions that the Second Amendment protects only a "collective" right and that it protects a right only to bear arms in connection with militia service. While the right to arms was "*codified* . . . to prevent elimination of the militia . . ., most [Americans] undoubtedly thought it even more important for self-defense and hunting." *Id.* at 599 (emphasis added). Indeed, the Court repeatedly emphasized in both *Heller* and *McDonald* that the "inherent" and "pre-existing" right of self-defense is the "core" and "the *central component* of the right itself."[2]

[2] *See id.* at 592, 594 ("[T]he Second Amendment codified a *pre-existing* right. . . . It was, [Blackstone] said, 'the natural right of resistance and self-preservation, and 'the right of having and using arms for self-preservation and defence.' ") (original emphasis, citation omitted); *id.* at 599 ("Justice Breyer's assertion that individual self-defense is merely a 'subsidiary interest' of the right to keep and bear arms is profoundly mistaken. . . . [S]elf-defense . . . was the *central component* of the right itself.") (original emphasis); *id.* at 628 ("[T]he inherent right of self-defense has been central to the Second Amendment right."); *id.* at 630 ("[T]he District's requirement . . . that firearms in the home be rendered and kept inoperable at all times . . . makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional."); *McDonald*, 130 S. Ct. at 3026 (all citations to controlling opinion of Alito, J.) ("Two years ago, in *District of Columbia v. Heller*, . . . we held that the Second Amendment

Second, the right to keep and bear arms is a *fundamental* right, implicit in our constitutional scheme of ordered liberties and "deeply rooted in this Nation's history and tradition." *McDonald*, 130 S. Ct. at 3042. It "was considered . . . fundamental by those who drafted and ratified the Bill of Rights" and by the "Framers and ratifiers of the Fourteenth Amendment," *id.* at 3037, 3042, and it is still considered fundamental by countless millions of Americans today. The fundamental Second Amendment right to arms, accordingly, is entitled to no less respect than the other fundamental rights protected by our Constitution. As the Court emphasized in *McDonald*, it is not to be "treat[ed] . . . as a second-class right" or "singled out for special – and specially unfavorable – treatment." *Id.* at 3043, 3044.

Third, the line between permissible and impermissible arms regulations is established by looking to the Second Amendment's *text* and *history* and to the history of arms regulations in this country. The Second Amendment is "enshrined with the scope [it was] understood to have *when the people adopted [it]*, whether or not future legislatures or (yes) even future judges think that scope too broad." *Heller*, 554 U.S. at 634-35 (emphasis added). This passage from *Heller* is an express admonition that all government officials, including Members of this body, are oath-bound to respect and obey the command of the Second Amendment as it was understood in 1791, no matter how much they may disagree with the breadth of that constitutional command. To be sure, this does not mean that the Second Amendment right has no limits. Rather, it means that the Second Amendment's scope is determined through "historical analysis" and that any

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protects the right to keep and bear arms for the purpose of self-defense . . . ."); *id.* at 3036 ("Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is 'the *central component*' of the Second Amendment right.") (original emphasis); *id.* ("[W]e concluded [in *Heller* that] citizens must be permitted 'to use [handguns] for the core lawful purpose of self-defense.' "); *id.* at 3047 (*Heller* "stressed that the right was also valued because the possession of firearms was thought to be essential for self-defense. As we put it, self-defense was 'the *central component* of the right itself.' ") (original emphasis).

limits on the right must be supported by "historical justifications." *Id.* at 627, 635. Indeed, even as the Court in *Heller* recognized the presumptive validity of certain "longstanding prohibitions on the possession of firearms," it expressly reserved for future cases the ultimate question whether "the historical justifications for [those] exceptions" would suffice to uphold their validity. *Id.* at 626, 635.

Fourth, and relatedly, the line between permissible and impermissible arms regulations *is not* to be established by balancing the individual right protected by the Second Amendment against purportedly competing government interests. This balance has already been struck, for the Second Amendment "is the very *product* of an interest-balancing by the people," and "[t]he very enumeration of the right takes out of the hands of government . . . the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Id.* at 634-35 (original emphasis).

Thus, while *Heller* made clear that the District of Columbia's handgun ban would fail "any of the standards of scrutiny that [the Court has] applied to enumerated constitutional rights," *id.* at 628, the Court pointedly did not apply any of those standards but rather flatly and categorically struck down the ban after finding it irreconcilable with the Second Amendment's text and history. Likewise, the Court categorically invalidated the so-called "trigger-lock requirement" – the separate, independent provision of D.C. law requiring "that firearms in the home be rendered and kept inoperable at all times" – without subjecting it to any form of heightened scrutiny. *Id.* at 630. Indeed, the Court squarely rejected the "interest-balancing" approach proposed by Justice Breyer in dissent, *see id.* at 634-35, an approach that was in substance if not in name a form of intermediate scrutiny, *see, e.g.*, *Heller*, 554 U.S. at 704-05 (Breyer, J., dissenting) (finding "no cause here to depart from the standard set forth in *Turner*

[*Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997)]," a "First Amendment case[] applying intermediate scrutiny"). *McDonald* reiterated that *Heller* "expressly rejected the argument that the scope of the Second Amendment right should be determined by judicial interest balancing." 130 S. Ct. at 3047. Indeed, *McDonald* emphasized that resolving Second Amendment cases *would not* "require judges to assess the costs and benefits of firearms restrictions and thus to make difficult empirical judgments in an area in which they lack expertise." *Id.* at 3050.[3]

In sum, *Heller* and *McDonald* establish that the Second Amendment guarantees a fundamental, individual right to keep and bear arms, the scope of which is established by the Second Amendment's text and history and which cannot be circumscribed by appeal to countervailing government interests.

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[3] Despite the Supreme Court's clear guidance on this issue, a number of lower courts in the wake of *Heller* have resolved Second Amendment claims by applying a levels-of-scrutiny analysis, often settling on an intermediate scrutiny approach that resembles Justice Breyer's rejected interest-balancing test. These decisions fly in the face of *Heller* and *McDonald*. *See, e.g.*, Allen Rostron, *Justice Breyer's Triumph in the Third Battle Over the Second Amendment*, 80 GEO. WASH. L. REV. 703, 706-07 (2012) ("The lower courts . . . have effectively embraced the sort of interest-balancing approach that Justice Scalia condemned . . . ."); Darrell A.H. Miller, *Text, History, and Tradition: What the Seventh Amendment Can Teach Us About the Second*, 122 YALE L.J. 852, 855 (2013) ("Some judges . . . have simply ignored the Court's rejection of balancing tests. Instead they have allowed the right to keep and bear arms to be gobbled up by intermediate scrutiny or similar tests that weigh serious, important, or compelling government interests against Second Amendment commands."). *But see, e.g.*, *Moore v. Madigan*, 702 F.3d 933, 939, 941 (7th Cir. 2012) (recognizing that "the Supreme Court made clear in *Heller* that it wasn't going to make the right to bear arms depend on casualty counts," and striking down the State of Illinois's ban on publicly carrying firearms "not based on degrees of scrutiny, but on Illinois's failure to justify the most restrictive gun law of any of the 50 states"); *Heller v. District of Columbia*, 670 F.3d 1244, 1271 (D.C. Cir. 2011) ("*Heller II*") (Kavanaugh, J., dissenting) ("*Heller* and *McDonald* leave little doubt that courts are to assess gun bans and regulations based on text, history, and tradition, not a balancing test . . . ."); *Houston v. City of New Orleans*, 675 F.3d 441, 448 (Elrod, J., dissenting) (5th Cir. 2012), *withdrawn and superseded on rehearing on other grounds*, 682 F.3d 361 (5th Cir. 2012) (agreeing with Judge Kavanaugh that "*Heller* and *McDonald* rule out scrutiny analysis").

II. The Second Amendment's Protection of Certain "Arms" Is Absolute.

As noted earlier, the text of the Second Amendment provides that "the right of the people to keep and bear *Arms*, shall not be infringed." U.S. CONST. amend. II (emphasis added). The amendment is thus one of the few enumerated constitutional rights that specifically protects the possession and use of a particular kind of personal property – "arms." It follows that there are certain "instruments that constitute bearable arms," *Heller*, 554 U.S. at 582, that law-abiding, responsible adult citizens have an absolute, inviolable right to acquire, possess, and use. Indeed, the Court in *Heller* made clear that the Second Amendment's "core protection" – the right to armed self-defense, including, most acutely, in the home – is no less absolute than the First Amendment's protection of the expression of unpopular opinions: "The First Amendment contains the freedom-of-speech guarantee that the people ratified, which included exceptions for obscenity, libel, and disclosure of state secrets, but not for the expression of extremely unpopular and wrong headed views. The Second Amendment is no different. . . . And whatever else it leaves to future evaluation, it surely *elevates above all other interests* the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 634-35 (emphasis added).

The key question, then, is what arms are protected by the Second Amendment. For again, under the Supreme Court's categorical approach, the Second Amendment guarantees a fundamental, inviolable right to own and possess the arms that fall within its scope.

While *Heller* and *McDonald* instruct that we look to history to determine the types of arms that fall within the Second Amendment's scope, those cases have already done the analysis and answered the question: The arms protected by the Second Amendment are those weapons that are "of the kind in common use . . . for lawful purposes like self-defense." *Heller*, 554 U.S. at 624. Conversely, "the Second Amendment *does not* protect those weapons not typically

possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." *Id.* at 625 (emphasis added).

This distinction – between firearms in common use by ordinary Americans and unusual, sophisticated weapons historically confined to military use – is hardly novel.[4] Indeed, the distinction was central to the Supreme Court's 1939 decision in *United States v. Miller*, 307 U.S. 174 (1939), which rejected a Second Amendment challenge to convictions for unlawfully transporting in interstate commerce a short-barreled shotgun. As *Heller* emphasized, the *Miller* Court's "basis for saying that the Second Amendment did not apply . . . was that the type of weapon at issue was not eligible for Second Amendment protection." *Heller*, 554 U.S. at 622 (emphasis omitted). "*Miller* said . . . that the sorts of weapons protected [by the Second Amendment] were those 'in common use at the time.' " *Id.* at 627. According to *Heller*, then, possession and use of short-barreled shotguns, like modern-day "M-16 rifles" and other "sophisticated arms that are highly unusual in society at large," can be banned or otherwise regulated without constitutional concern. *Id.* But possession and use of firearms of the kind in common use for self defense and other lawful purposes are constitutionally protected.

Applying this "common use" test, *Heller* flatly and categorically struck down the District of Columbia's handgun ban. "The handgun ban," the Court reasoned, "amounts to a prohibition

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[4] This is the distinction Judge Silberman adopted in the D.C. Circuit decision that was affirmed by *Heller*. *See Parker v. District of Columbia*, 478 F.3d 370, 394-95 (D.C. Cir. 2007). This distinction is "fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons,' " 554 U.S. at 627 – a tradition that did not bar "Persons of Quality [from] wearing *common Weapons* . . . for their Ornament or Defence, in such places, and upon such Occasions, in which it is common Fashion to make use of them, without causing the least Suspicion of an intention to commit any Act of Violence or Disturbance of the Peace." 1 HAWKINS, TREATISE OF THE PLEAS OF THE CROWN 136 (1716) (emphasis added). And this distinction is rooted in founding-era militia practices: "Ordinarily when called for militia service able-bodied men were expected to appear bearing arms supplied by themselves and of the kind *in common use* at the time." *Heller*, 554 U.S. at 625 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)) (emphasis added, brackets omitted).

of an entire class of 'arms' that is overwhelmingly chosen by American society for [the] lawful purpose [of self-defense]." *Id.* at 628; *see also id.* at 628-29 (Handguns are "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family.") (quotation marks omitted); *id.* at 629 ("[T]he American people have considered the handgun to be the quintessential self-defense weapon."); *id.* ("[H]andguns are the most popular weapon chosen by Americans for self-defense in the home . . . ."). The Court thus held "that the District's ban on handgun possession in the home violates the Second Amendment," and ordered that, "[a]ssuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home." *Id.* at 635. Because "[t]he vast majority of handguns today are semi-automatic," *Heller II*, 670 F.3d at 1286 (Kavanaugh, J., dissenting), *Heller* necessarily holds that semiautomatic handguns are constitutionally protected and cannot be banned. *See id.* at 1289 ("semi-automatic handguns are constitutionally protected under the Supreme Court's decision in *Heller*").

The constitutionality of the pending proposals to ban certain "arms" thus turns on whether the banned rifles, shotguns, and pistols are in common use for lawful purposes in this Nation. The answer to that question is plainly yes.

Indeed, the answer to that question should be apparent from the very term that one of the pending bills, S.150, uses for the weapons it seeks to ban: "*semiautomatic* assault weapons." As explained below, "assault weapon" is a term of opprobrium invented for political and public relations purposes. But "semiautomatic" *is* a term that has a distinct meaning, and it is a weapon type that has been in existence for over a hundred years. *See* David B. Kopel, *Rational Basis Analysis of "Assault Weapon" Prohibition*, 20 J. CONTEMP. L. 381, 413 (1994) ("semiautomatics are more than a century old"). And unlike "machineguns, sawed-off shotguns, and artillery

pieces," semiautomatic firearms "traditionally have been widely accepted as lawful possessions." *Staples v. United States*, 511 U.S. 600, 611-12 (1994). "Automatic" refers to the fact that the user need not manipulate the firearm (via mechanisms such as a bolt or lever) to place another round in the chamber after each round is fired. *See id.* at 602 n.1. A fully automatic firearm on one pull of its trigger will fire continuously until the trigger is released or until the ammunition in the firearm's magazine is expended. *See id.* But a semiautomatic firearm requires the user to pull the trigger each time he or she wants to discharge a bullet – hence the qualifier "semi."

A large percentage of firearms in common civilian use in the United States are semiautomatic, including many handgun, rifle, and shotgun models that fall outside S.150's definition of "assault weapons." *See Heller II*, 670 F.3d at 1269 (Kavanaugh, J., dissenting) ("the vast majority of [handguns] today are semi-automatic"); Declaration of Mark Overstreet ¶ 13 ("Overstreet Decl."), *Heller v. District of Columbia*, No. 08-1289 (D.D.C. July 23, 2009), ECF No. 23-8 ("Annual firearm manufacturing and export statistics published by ATF indicate that semiautomatic pistols rose as a percentage of total handguns made in the United States and not exported, from 52 percent of 1.3 million handguns in 1986, to 77 percent of 1.5 million handguns in 2007."); Nicholas J. Johnson, *Supply Restrictions at the Margins of* Heller *and the Abortion Analogue*, 60 HASTINGS L.J. 1285, 1293-95 (2009) (noting that in a 1994 survey "sixty percent of gun owners reported owning some type of semiautomatic firearm" and that "it is just not credible to say that semiautomatic technology is unusual or uncommon"). Again, all semiautomatic firearms – including so-called "semiautomatic assault weapons" banned under S.150 – discharge only a single shot per trigger pull. They are thus functionally distinguishable from fully automatic, military weapons. But the semiautomatic "assault weapons" that would be

banned by S.150 are *not* functionally distinguishable from the semiautomatic firearms that would be permitted under the measure.

Indeed, Americans own millions of the very semiautomatic firearms S.150 seeks to ban. Take, for example, the AR-15 rifle, which S.150 would prohibit along with any "copies, duplicates, variants, or altered facsimiles with the capability . . . thereof." § 2(a)(1). The AR-15 "is the most popular semi-automatic rifle; since 1986, about two million semi-automatic AR-15 rifles have been manufactured. In 2007, the AR-15 *alone* accounted for 5.5 percent of firearms and 14.4 percent of rifles produced in the United States for the domestic market." *Heller II*, 670 F.3d at 1287 (Kavanaugh, J., dissenting) (citation omitted, original emphasis); *see also id.* at 1261 (majority opinion); Johnson, 60 HASTINGS L.J. at 1296 ("the AR-15" is "now the best-selling rifle type in the United States"). Indeed, the AR-15 is the very firearm that the Supreme Court in *Staples* deemed among those weapons that "traditionally have been widely accepted as lawful possessions." 511 U.S. at 611-12.

The AR-15, of course, is just one of scores of specific firearm types singled out by S.150. In addition to these specifically identified firearms, S.150 would also outlaw an untold number of other weapons through its ban on semiautomatic rifles, handguns, and shotguns with certain features. Semiautomatic rifles with the capacity to accept detachable magazines, for example, are banned if they have one additional enumerated feature such as a pistol grip, a folding stock, or a threaded barrel. A detachable magazine does nothing to distinguish a semiautomatic weapon from the mine-run of familiar, commonly-possessed firearms. Indeed, most semiautomatic firearms in America have a detachable magazine. *See* Johnson, 60 HASTINGS L.J. at 1298 n.100 (citing David B. Kopel, *Assault Weapons*, in GUNS: WHO SHOULD HAVE THEM? 159, 165 (David B. Kopel, ed., 1995)).

To be sure, under S.150 a detachable magazine, standing alone, is not enough to transform an otherwise lawful pistol or rifle into a "semiautomatic assault weapon" (a detachable magazine standing alone would make a semiautomatic shotgun unlawful). But to the extent the additional attributes that, when combined with a detachable magazine, push a firearm over the line from acceptable to contraband make a difference in the functionality of the firearm at all, they tend to *improve* the firearm's utility and safety for self-defense and other lawful purposes. A pistol grip, for example, makes it easier to hold and stabilize a rifle or shotgun when fired from the shoulder, and therefore promotes accuracy. *See* Kopel, 20 J. CONTEMP. L. at 396 ("The defensive application is obvious, as is the public safety advantage in preventing stray shots."). A grip that can be held by the non-trigger hand – such as a forward grip on a long gun or a second pistol grip on a handgun – also promotes better control by the user. A threaded barrel facilitates the attachment of a muzzle brake, which "reduces the gun's recoil and makes it easier to control," resulting in a weapon that is "significantly more accurate . . . and more comfortable to shoot." *Id.* at 396-97. A telescoping or folding stock not only makes it easier to transport a firearm in a vehicle or to store it in the home, *id.* at 398-99, but, more importantly, also promotes accuracy by allowing the stock to be adjusted to fit the individual user's physique, thickness of clothing, and shooting position.

What, then, can possibly explain why S.150 singles out the firearms that it does? A little history goes a long way towards providing an explanation. The term "assault weapon" is a neologism – a recent invention that does not denote any pre-existing category of weapon recognized in the history of firearms. "Prior to 1989, the term 'assault weapon' did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists to expand the category of 'assault rifles' so as to allow an attack on as many additional firearms as possible on

the basis of undefined 'evil' appearance." *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting) (quotation marks omitted)). The leaders of this movement were not coy about the political agenda behind their invention of this term:

> Assault weapons . . . are a new topic. The weapons' menacing looks, coupled with the public's confusion over fully automatic machine guns versus semi-automatic assault weapons – anything that looks like a machine gun is assumed to be a machine gun – can only increase the chance of public support for restrictions on these weapons.

Josh Sugarmann, *Assault Weapons and Accessories in America* (Violence Policy Center 1988), *available at* http://www.vpc.org/studies/awaconc.htm (emphasis omitted). *See also* Johnson, 60 HASTINGS L.J. at 1289-90 ("Some people still believe the assault weapons debate is about machine guns. This is not surprising given that proponents of the 1994 ban were counting on precisely that confusion. The calculation was political.").

In accord with this pedigree, S.150's definition of "assault weapons" turns not on a firearm's value or appropriateness for self-defense or other lawful civilian purposes, nor on features that render a firearm "unusually dangerous" to the public or the police. *Heller*, 554 U.S. at 627. Rather, firearms are classified (and banned) based primarily on whether they have features used on military firearms – which, like their civilian defensive counterparts, are designed to be accurately fired under life-threatening circumstances – or are believed simply to have particularly "menacing looks." Sugarmann, *Assault Weapons and Accessories in America.* This is perhaps best exemplified by S.150's ban on semiautomatic pistols that both (a) have the capacity accept a detachable magazine and (b) are "[a] semiautomatic version of an automatic firearm." § 2(a)(1). The *only* thing that distinguishes these pistols from other, permissible semiautomatic pistols that accept a detachable magazine is that they *look like* (but in fact are not) automatic weapons.

III. The Public Interest.

Because S.150 outlaws firearms that are "of the kind in common use . . . for lawful purposes," *Heller*, 554 U.S. 624, it is unconstitutional – period. But even if some sort of "interest balancing" test were allowed, S.150's ban on such firearms would not pass constitutional muster.

As an initial matter, the only balancing test that possibly could be appropriate is strict scrutiny, which requires that a restriction on a fundamental constitutional right be narrowly tailored to serve a compelling governmental interest. As explained above, the Supreme Court held in *McDonald* that the Second Amendment right to keep and bear arms is *fundamental*. And when a law interferes with "fundamental constitutional rights," it generally is subject to "strict judicial scrutiny." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16 (1973). *See also, e.g.*, *Clark v. Jeter*, 486 U.S. 456, 461 (1988) ("classifications affecting fundamental rights . . . are given the most exacting scrutiny"); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 54 (1983) ("strict scrutiny [is] applied when government action impinges upon a fundamental right protected by the Constitution"). Because S.150 strikes directly at the fundamental, enumerated right to keep and bear arms, nothing less than strict scrutiny would be appropriate.

At any rate, S.150's ban on "semiautomatic assault weapons" could not pass even intermediate scrutiny, for it is not even "substantially related to the achievement" of the government's objective of advancing public safety. *United States v. Virginia*, 518 U.S. 515, 533 (1996). As an initial matter, it is wholly implausible that criminals bent on committing murder or other acts of deadly violence would give serious thought to whether their weapon of choice would be legal for them to possess. And even if this were not the case, a criminal could simply

substitute for a banned "semiautomatic assault weapon" another equally powerful – or even more powerful – semiautomatic weapon. *See* GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL 128 (1997) (Assault rifles "are generally less lethal than ordinary hunting rifles, while ['assault weapon'] pistols are no more lethal than [non-'assault weapon'] handguns."). Again, the term "semiautomatic assault weapon" does not denote any mechanically distinct category of semiautomatic firearms, but rather bans certain semiautomatic firearms because of certain user-friendly features or simply because of the way they look, while leaving other functionally indistinguishable and equally (or more) lethal firearms untouched. *See id.* at 121 (noting that "[t]he few dozen models of semiautomatic guns that ha[d] been banned as ['assault weapons' by the 1994 federal ban and similar State laws] are, as a group, mechanically identical to the hundreds of models not banned" in relevant respects, and "[t]herefore, there is no basis for expecting that the outcomes of *any* shootings would be different . . . if unbanned semiautomatic guns capable of accepting detachable magazines were used instead of mechanically identical, though cosmetically different, banned ['assault weapons']") (original emphasis). Indeed, as explained above, several of the forbidden features singled out by S.150 actually serve to *enhance* a firearm's utility and safety for self-defense. Thus, far from *substantially serving* its goal of advancing public safety, S.150's ban on certain types of semiautomatic firearms is actually at war with it. Indeed, such a ban on "semiautomatic assault weapons," as Professor Randy Barnett has recently noted, "is simply irrational and therefore unconstitutional" under any standard of review. Randy Barnett, *Gun Control Fails Rationality Test*, WASH. EXAMINER, Jan. 29, 2013, http://washingtonexaminer.com/gun-control-fails-rationality-test/article/2519971.

Not surprisingly, empirical evidence from the now-expired 1994 federal ban on semiautomatic "assault weapons" supports the commonsense proposition that S.150 will not

materially advance public safety. To begin, this evidence indicates that criminals use "assault weapons" so infrequently that it cannot reasonably be expected that banning them will have a significant impact on crime or homicide rates. Assault weapons "were used in only a small fraction of gun crimes prior to the [1994] ban: about 2% according to most studies and no more than 8%." Christopher S. Koper et al., Report to the National Institute of Justice, United States Department of Justice, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* 2 (2004); *see also* KLECK, TARGETING GUNS at 41-42, 112. These results are consistent with studies conducted in prisons indicating that "criminals not only did not 'prefer' military-style guns, they were strongly *dis*inclined to carry them during commission of their crimes, even when they owned one." KLECK, TARGETING GUNS at 116-17 (original emphasis). Police officers also report that criminals prefer not to use "the sophisticated and expensive assault weapons as commonly thought." Thomas E. Romano, *Firing Back: Legislative Attempts to Combat Assault Weapons*, 19 SETON HALL LEGIS. J. 857, 890 & n.171 (1995) (citing George R. Wilson, chief of the firearms division for the Washington, D.C. police department).

Of course, one could "artificially increase the share of crime guns that are ['assault weapons'] simply by expanding the definition of an ['assault weapon']," KLECK, TARGETING GUNS at 112-13, and S.150's definition of prohibited weapons is broader than that contained in the 1994 ban. But a definition of assault weapons that sweeps in a broader range of guns used by criminals simply means that more criminals will either ignore the law or use a different semiautomatic gun that is equally effective for their criminal purposes. In other words, at most "violent criminals will simply resort to more easily attainable, equally lethal weapons." Romano, 19 SETON HALL LEGIS. J. at 892; Eugene Volokh, *Implementing the Right to Keep and*

Bear Arms for Self-Defense: An Analytical Framework and A Research Agenda, 56 UCLA L. REV. 1443, 1468 (2009) ("[A]nyone who is denied an 'assault weapon' will almost certainly substitute another gun that is equally lethal. It's therefore hard to see how assault weapons bans will do much to reduce danger of crime or injury."); KLECK, TARGETING GUNS at 106 ("restrictions on one subtype of firearms encourage criminals to substitute other gun types, and in some cases the most likely substitutes are even more dangerous than the targeted"). This is not mere conjecture, it has already occurred. *See* Koper, Report to the National Institute of Justice at 2 (noting that following the 1994 federal ban any "decline in ['assault weapon'] use was offset throughout at least the late 1990s by steady or rising use of other guns equipped with" magazines holding more than 10 rounds).

Therefore, it is not surprising that the 10-year national "assault weapons" ban had "very modest effects on homicide" which were "statistically insignificant." Peter Reuter & Jenny Mouzos, *Australia: A Massive Buyback of Low-Risk Guns*, *in* EVALUATING GUN POLICY 121, 141 (Jens Ludwig & Philip J. Cook eds., 2003); National Research Council, *Firearms and Violence: A Critical Review* 97 (Charles F. Wellford et al. eds., 2005) ("[G]iven the nature of the [1994 assault weapons ban], the maximum potential effect of the ban on gun violence outcomes would be very small and, if there were any observable effects, very difficult to disentangle from chance yearly variation and other state and local gun violence initiatives that took place simultaneously."). Indeed, before the 1994 ban expired in 2004, a study sponsored by the National Institute of Justice reported that, if the ban were continued, "effects on gun violence [were] likely to be small at best and perhaps too small for reliable measurement." Koper, Report to the National Institute of Justice at 3. *See also* Johnson, 60 HASTINGS L.J. at 1290, 1302; Kopel, 20 J. CONTEMP. L. at 404-13.

In sum, given S.150's arbitrary classification of firearms on the basis of largely cosmetic differences and the ready ability of criminals to substitute functionally indistinguishable lawful weapons for the weapons it would ban, enacting the Bill's ban on certain semiautomatic firearms plainly will not improve public safety. This dooms S.150 under intermediate scrutiny, for a legislative restriction on a constitutional right is presumed invalid unless it can be shown to serve an important government interest in a direct and substantial way. *See, e.g.*, *Nguyen v. I.N.S.*, 533 U.S. 53, 73 (2001) (upholding sex classification because it was based on "basic biological differences" between men and woman, not "misconceptions and prejudices"); *Virginia*, 518 U.S. at 533 (striking down sex classification that the Court deemed relied on "overbroad generalizations" rather than "enduring" or "inherent" differences between men and women). Indeed, it is unlikely that the proposed ban on semiautomatic firearms could even pass rational basis review. *See City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 448 (1985) (requiring a special use permit for a home for the mentally disabled failed rational basis review when there was no "rational basis for believing" that the "home and those who would occupy it would threaten legitimate interests of the city in a way that other permitted uses such as boarding houses and hospitals would not"); *Department of Agriculture v. Moreno*, 413 U.S. 528, 537 (1973) (a limitation on food stamp eligibility failed rational basis review when "[m]ost people in the category" targeted by Congress "can and will alter their living arrangements in order to remain eligible for food stamps").

IV. The Ban on 11-Plus Round Magazines Would Also Violate the Second Amendment.

1. The principles established by *Heller* and *McDonald* likewise demonstrate that S.150's proposed ban on magazines with a capacity to accept more than 10 rounds of

ammunition is unconstitutional. Again, the key question is whether firearms equipped with such magazines are of a kind that are in common use for lawful purposes. Clearly they are.

Americans own tens of millions of magazines fitting this description. *See* Koper, Report to the National Institute of Justice at 65 ("[G]un industry sources estimated that there were 25 million [such magazines] available as of 1995 . . . . [N]early 4.8 million . . . were imported for commercial sale . . . from 1994 through 2000 . . . . During this period, furthermore, importers received permission to import a total of 47.2 million [such magazines]; consequently, an additional 42 million may have arrived after 2000 or still be on their way, based just on those approved through 2000."). Indeed, magazines with a capacity to accept more than ten rounds of ammunition are standard equipment on many popular firearms owned by many millions of Americans for self-defense, hunting, and target shooting. *See* Overstreet Decl. ¶ 14 ("Standard magazines for very commonly owned semiautomatic pistols hold up to 17 rounds of ammunition. In 2007, about two-thirds of the 1.2 million pistols made in the United States and not exported were in calibers typically using magazines that hold more than 10 rounds."); *id.* ¶ 17 ("More than six million M1 Carbine series rifles have been made since their introduction in the 1940s, and the standard magazines for them hold 15 or 30 rounds. . . . Numerous other rifle makes and models also have the capacity to accept, and are commonly equipped with, magazines holding more than 10 rounds."); *What Should America Do About Gun Violence?: Hearing Before the Senate Comm. on the Judiciary*, 113th Cong. 15-17 (2013) (Written Testimony of David B. Kopel) ("Kopel Testimony").[5]

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[5] A review of the most recent edition of Gun Digest, a standard reference work that includes specifications of currently available firearms, indicates that about two-thirds of the distinct models of semiautomatic centerfire rifles listed are normally sold with detachable magazines that hold more than ten rounds of ammunition. (Even many rifles normally sold with magazines of smaller capacity are also capable of accepting standard magazines without

The defensive utility of having a magazine with more than ten rounds of ammunition is obvious. As an initial matter, while the need for armed self-defense rarely, if ever, arises for the vast majority of people, it can be a matter of life and death when it does. And when life or serious bodily injury is at stake, the prudent person would, obviously, rather have ammunition that she does not need than need ammunition that she does not have. A law-abiding person who runs out of ammunition before her attacker does is very likely to become a crime victim. And a person faced with one or more armed assailants could well need to fire more than ten shots to defend herself and may not be able to change magazines immediately. Because criminals rarely announce their intentions in advance, victims will rarely have more than a single magazine immediately available. And a law-abiding person who is suddenly confronted by an armed assailant may take longer to change magazines under such stress than when calmly shooting the firing range. If she is elderly or disabled, changing magazines may prove to be no easy task.

Defensive utility is also demonstrated by the fact that police officers' duty handguns are typically equipped with magazines capable of holding more than ten rounds. *See* Kopel Testimony at 16. To be sure, a police officer is more likely than a private citizen to face a situation in which he would need to fire more than ten rounds, but private citizens nonetheless reasonably choose to arm themselves with firearms equipped with magazines capable of holding more than ten rounds of ammunition. *Cf.* Overstreet Decl. ¶ 15. And S.150 would exempt from its limit on magazine capacity not only active duty law enforcement officers but also, in certain

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modification.) GUN DIGEST 2013 455-64, 497-99 (Jerry Lee, ed., 67th ed. 2012). The same book indicates that about one-third of distinct models of semiautomatic handguns listed – even allowing for versions sold in different calibers, which often have different ammunition capacities – are normally sold with magazines that hold more than ten rounds of ammunition. *Id.* at 407-39. In both cases, but especially for handguns, these figures underestimate the ubiquity of magazines holding more than 10 rounds of ammunition, because they include many minor variations of lower-capacity firearms offered by low-volume manufacturers.

situations, retired officers. *See* § 3(a)(1). "If retired cops need 15 rounds to effectively protect themselves and others, then so do other citizens. Arbitrarily discriminating among Americans in this way is irrational and unconstitutional." Barnett, *Gun Control Fails Rationality Test.*

While some people, including no doubt members of this committee, believe that private citizens do not need these magazines for self-defense, hunting, or other lawful purposes, tens of millions of Americans disagree. And it is the judgment of these law-abiding, responsible citizens, made manifest through the choices they have made in exercising their fundamental, individual right to keep and bear arms for lawful purposes, that matters under the Second Amendment.

2. Because firearms equipped with magazines capable of holding more than ten rounds of ammunition are in "common use" for "lawful purposes," the Constitution guarantees the right of law-abiding, responsible citizens to acquire, possess, and use them. *Heller*, 554 U.S. at 624. But even if a levels-of-scrutiny-analysis were to apply, and even if, contrary to *Heller*, intermediate scrutiny was the applicable standard of review, S.150's magazine ban could not stand.

To be sure, the time it takes to change magazines could, in some situations, make a difference in the outcome of a confrontation. But it is clear that, on balance, restricting magazines to 10 rounds will work to the advantage of criminals, not law-abiding citizens. First, there are many millions of 11-plus round magazines already in circulation, and while most law-abiding citizens will obey any new law restricting the purchase or transfer of such magazines, most criminals will not. And even if one indulges the notion that such a ban will operate equally on law-abiding citizens and criminals alike, it is criminals, not their victims, that generally choose the time and place of an armed confrontation. A criminal can thus plan in advance for

the possibility that he will need more than a single 10-round magazine and equip himself accordingly.

Nor does available empirical evidence support a substantial connection between a ban on 11-plus round magazines and public safety. As an initial matter, limiting magazine capacity to ten rounds will be simply irrelevant to the vast majority of gun crimes. *See* KLECK, TARGETING GUNS at 123 ("It is unlikely that large-capacity magazines are currently relevant to the outcome of a large number of violent incidents, since few cases involve large numbers of shots fired."). "[A]vailable studies on shots fired show that assailants fire less than four shots on average . . ., a number well within the 10-round limit . . . ." Koper, Report to the National Institute of Justice at 90. While these studies generally did not report how many incidents involved more than ten shots fired, one study that did address the issue reported that only "2.5% of the gunfire cases involved more than 10 shots." *Id.*

Further, it is unlikely that magazine size would have much of an impact even in those rare instances in which more than ten shots are fired. A study of "mass shootings" – *i.e.*, incidents in which "six or more victims were shot dead with a gun, or twelve or more total were wounded" – from 1984 to 1993 found that "[f]or those incidents where the number of rounds fired and the duration of the shooting were both reported, the rate of fire never was faster than about one round every two seconds, and was usually much slower than that." KLECK, TARGETING GUNS at 124-25. Thus, "[n]one of the mass killers maintained a sustained rate of fire that could not also have been maintained – even taking reloading time into account – with either multiple guns or with an ordinary six-shot revolver and the common loading devices known as 'speedloaders.' " *Id.* at 125. Furthermore, as more recent incidents demonstrate, a mass shooter may simply change magazines each time one is spent. *See* Kopel Testimony at 19 ("At

Newtown, the murderer changed magazines many times, firing only a portion of the rounds in each magazine. . . . In the Virginia Tech murders, the perpetrator changed magazines 17 times.").

Putting this data to the side, it is not even evident that S.150 would reduce attacks with firearms equipped with magazines capable of holding more than ten rounds of ammunition. Indeed, although the 1994 federal law also limited magazine capacity to ten rounds, research sponsored by the National Institute of Justice found that "it seems unlikely that the federal ban had any such effect." Koper, Report to the National Institute of Justice at 90 n.107. To be sure, S.150 is stricter than the 1994 federal ban, for unlike the 1994 ban, it would prohibit the transfer of grandfathered magazines that were lawfully possessed before the date of enactment. But again, given that "most of the methods through which criminals acquire guns and virtually everything they ever do with those guns are already against the law," JAMES D. WRIGHT & PETER H. ROSSI, ARMED AND CONSIDERED DANGEROUS xxxv (new 2d ed. 2008), it is highly implausible that this distinction will make much of a difference.

V. *Heller II.*

In *Heller II*, a divided panel of the D.C. Circuit held that the District of Columbia's ban on semiautomatic "assault rifles" did not violate the Second Amendment. I commend to the subcommittee the dissenting opinion of Judge Kavanaugh, which forcefully and compellingly explains why *Heller* and *McDonald* mandate a textual and historical inquiry, not an intermediate scrutiny analysis, and why D.C.'s assault rifle ban – and thus the "assault weapon" ban proposed in S.150 – is unconstitutional under either of these approaches.

Here, though, I would like to address several of the flaws in the *Heller II* majority opinion, for they are indicative of the types of arguments that will be advanced to justify S.150's

proposed bans on certain semiautomatic firearms and on ammunition magazines holding more than 10 rounds.

1. *First*, the panel majority acknowledged that semi-automatic rifles are in "common use" (without identifying the purposes for which they are commonly used) and that there is no "longstanding" tradition of prohibiting their use. *See Heller II*, 670 F.3d at 1260-61. Under *Heller*, that should have been the end of the case, and the District of Columbia's ban should have been struck down. But the panel majority instead proceeded to apply a levels-of-scrutiny analysis, with the level of scrutiny turning on the Court's view of "how severely the prohibitions burden the Second Amendment right." *Id.* at 1261. Under the panel majority's analysis, in other words, the level of scrutiny to be applied in Second Amendment cases turns on the very type of balancing of interests assessment that *Heller* forbids.

Second, the panel majority erred by deeming intermediate scrutiny the proper standard. As explained above, the *Heller* majority rejected the test Justice Breyer advanced in his dissent, which essentially was a form of intermediate scrutiny. Indeed, it is telling that in explicating the intermediate scrutiny standard it was applying, the panel majority in *Heller II* repeatedly invoked *Turner*, the very case that Justice Breyer held up as exemplary of the interest-balancing approach he was advocating, and indeed the panel majority *quoted much of the same language from Turner quoted by Justice Breyer*. *Compare Heller II*, 670 F.3d at 1259, *with Heller*, 554 U.S. at 704-05 (Breyer, J., dissenting). *Heller* prohibits application of this standard to a ban on possessing arms protected by the Second Amendment.

Third, the panel majority's reasoning for applying intermediate scrutiny cannot be squared with *Heller*. In particular, the panel majority reasoned that "the laws at issue here do not prohibit the possession of 'the quintessential self-defense weapon,' to wit, the handgun," *id.* at

1261-62 (quoting *Heller*, 554 U.S. at 629), and thus that "the ban on certain semi-automatic rifles [does not] prevent a person from keeping a suitable and commonly used weapon for protection in the home or for hunting," *id.* at 1262. "But that's a bit like saying books can be banned because people can always read newspapers. That is not a persuasive or legitimate way to analyze a law that directly infringes an enumerated constitutional right." *Id.* at 1289 (Kavanaugh, J., dissenting). And under *Heller*, it is not the government's prerogative to pick and choose which constitutionally protected arms may be used for lawful purposes; rather, that right is reserved to the law-abiding citizens of this Nation. Thus, in *Heller*, "[i]t [was] no answer to say . . . that it is permissible to ban handguns, so long as the possession of other firearms . . . is allowed." 554 U.S. at 629. And in *Heller II*, it likewise should have been no answer to say that it is permissible to ban some semiautomatic rifles so long as the possession of other firearms is allowed.

Fourth, the panel majority's application of intermediate scrutiny cannot be reconciled with *Heller*. *Heller* concluded, as noted earlier, that the District of Columbia's handgun ban would "fail constitutional muster" under "any of the standards of scrutiny the Court has applied to enumerated constitutional rights," 554 U.S. at 571, including intermediate scrutiny, which is applied in some situations in which an enumerated right is burdened in an incidental or marginal way. *See, e.g.*, *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 566 (1991) ("expressive conduct within the outer perimeters of the First Amendment, though . . . only marginally so"); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978) (commercial speech, which has a "subordinate position in the scale of First Amendment values"). If the District of Columbia's ban on handguns could not pass intermediate scrutiny (*i.e.*, was not substantially related to public safety), it follows that its ban on certain semiautomatic rifles likewise could not pass this level of

heightened scrutiny. For while the panel majority attempted to build a case that criminals could misuse "assault weapons," *see Heller II*, 670 F.3d at 1262-63, the far more prevalent misuse of handguns by violent urban criminals could not save the District of Columbia's handgun ban. *See, e.g.*, *Heller*, 554 U.S. at 697-99 (Breyer, J., dissenting) ("From 1993 to 1997, 81% of firearm-homicide victims were killed by handgun. . . . Handguns also appear to be a very popular weapon among criminals. . . . [T]he linkage of handguns to firearms deaths and injuries appears to be much stronger in urban than in rural areas.").

This points to another flaw in the panel majority's reasoning: its focus on ways in which certain firearms may be misused by criminals, rather than on ways in which they may be put to lawful defensive use by law-abiding citizens. Unlike the *Heller* dissenters, the Supreme Court's majority opinion focused on the latter, not the former, explaining that a handgun "is easier to store in a location that is readily accessible in an emergency; it cannot easily be redirected or wrestled away by an attacker; it is easier to use for those without the upper-body strength to lift and aim a long gun; it can be pointed at a burglar with one hand while the other hand dials the police." 554 U.S. at 629. Many of these attributes, of course, likely also explain why criminals prefer to use handguns, but that is not what the *Heller* majority deemed relevant. Conversely, many of the attributes of "assault weapons" that the *Heller II* panel majority deemed pernicious enhance their fitness as defensive, *anti-assault* weapons when in the hands of law-abiding citizens. *See Heller II*, 670 F.3d at 1262-63 (*e.g.*, features that "help stabilize the weapon during rapid fire").

The Supreme Court's approach is authoritative, of course, but it also makes more sense. Criminals are by definition much less likely than law-abiding citizens to abide by restrictions on the types of guns that may be owned. Thus, to the extent a certain weapon gives one party to a

confrontation an advantage, banning that weapon will on the whole work to the benefit of the criminals, not the law-abiding.

At any rate, the panel majority's intermediate scrutiny analysis ultimately is at war with itself. For recall the panel majority's reasoning for applying intermediate scrutiny in the first place: that the ban would not "prevent a person from keeping a suitable and commonly used weapon for protection in the home or for hunting." *Id.* at 1262. Of course, it is also true that the ban would not prevent a criminal from simply substituting for a banned semiautomatic "assault rifle" another equally lethal semiautomatic firearm just as "suitable and commonly used" for criminal purposes. As explained above, it is therefore simply irrational to expect that dubbing a subcategory of semiautomatic weapons "assault weapons" and banning their possession will improve public safety.

Fifth, and finally, the panel majority erred by likening semiautomatic "assault weapons" to fully automatic firearms. According to the panel majority, "*Heller* suggests 'M-16 rifles and the like' may be banned because they are 'dangerous and unusual.' " *Heller II*, 670 F.3d at 1263 (quoting *Heller*, 554 U.S. at 627). Citing the *Staples* decision, the panel majority then concluded that the two firearms are essentially equivalent: "The Court had previously described the 'AR-15' as 'the civilian version of the military's M-16 rifle.' " *Id.* (quoting *Staples*, 511 U.S. at 603). But *Staples* was not *equating* the AR-15 with the M-16; to the contrary, it held that the AR-15, *unlike* the M-16, is among weapons that "traditionally have been widely accepted as lawful possessions." 511 U.S. at 612. The key distinction between these two firearms, of course, is that the AR-15 is semiautomatic, while the M-16 is fully automatic, and thus has long been effectively restricted to military use. The panel majority acknowledged this difference, but instead of recognizing its importance, sought to diminish it: "Although semi-automatic firearms,

unlike automatic M-16s, fire only one shot with each pull of the trigger, semi-automatics still fire almost as rapidly as automatics." 670 F.3d at 1263 (quotation marks and citation omitted). There are two problems with this argument. Not only does "the majority opinion's data indicate that semi-automatics actually fire two-and-a-half times slower than automatics," *id.* at 1289 (Kavanaugh, J., dissenting), but, taken to its logical conclusion, the majority opinion's reasoning would justify a ban on *all* semiautomatic weapons. This cannot possibly be right under *Heller*, given that semiautomatic firearms are ubiquitous and used by tens of millions of Americans for self-defense and other lawful purposes.

2. The plaintiffs in *Heller II* also challenged the District of Columbia's ban on magazines capable of holding more than ten rounds of ammunition. The *Heller II* panel majority also rejected this challenge. (Judge Kavanaugh would have remanded for further proceedings on this issue.) Given that the panel majority addressed both bans together, the panel majority's ruling on the magazine ban is subject to many of the same criticisms as its ruling on the semiautomatic "assault rifle" ban. For example, like "assault rifles," the panel majority found it "clear enough" that "magazines holding more than ten rounds are indeed in 'common use.' " *Heller II*, 670 F.3d at 1261. That should have been the end of the matter, yet rather than striking down the law, the panel majority proceeded to apply intermediate scrutiny. And in applying intermediate scrutiny, the panel majority invoked testimony that "the '2 or 3 second pause' during which a criminal reloads a firearm 'can be of critical benefit to law enforcement' " without acknowledging the fact that a 2 or 3 second pause during which a victim reloads a firearm can be of equally critical benefit to a criminal. *Heller II*, 570 F.3d at 1264. And the panel majority did not address the evidence discussed above showing that banning magazines capable of holding more than ten rounds of ammunition is unlikely to promote public safety.

VI. Conclusion.

In sum, the principles established by the Supreme Court's decisions in *Heller* and *McDonald* must guide Members of this body as it considers various proposals intended to reduce gun violence. In applying these principles to S.150's proposed ban on what it calls "semiautomatic assault weapons" and on magazines capable of holding more than ten rounds of ammunition, I have concluded that these provisions would violate the Second Amendment by prohibiting the use of arms that are in common use by ordinary Americans for self defense and other lawful purposes.

Written Testimony of Suzanna Gratia Hupp, D. C.
Senate Judiciary Committee – Subcommittee on the Constitution, Civil Rights and Human Rights
"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"
February 12, 2013

I want to thank you ladies and gentlemen for asking me to testify today. I am speaking for myself and not in any official capacity. Many of you have heard my story before and, of course, it really hasn't changed. I didn't grow up in a house with guns. But I did grow up in a house where my father was an expert on the founding of the country and the meaning of the Second Amendment. So it amazes me that we are back here having the same discussions that we have had several years ago.

When I was 21 and moved out on my own, I was given a gun and taught how to use it. After I became a chiropractor, one of my patients (who was an assistant district attorney in Houston) convinced me to carry it with me at all times. Please understand that at that time in the state of Texas it was illegal to carry a gun, except in your car. We did not have a permitting system.

In 1991, on a beautiful October day, my parents and I went to a local cafeteria to have lunch with a friend of mine who was managing the cafeteria. It was Boss' Day and the day after payday, so the place was packed. We were unable to sit in our usual position by the front window. As we finished lunch and my friend got up to check on things in the kitchen, this pickup truck came crashing through the floor-to-ceiling window where we normally sat. It came to rest about 15 feet from us after knocking over a number of tables and injuring several people. Of course, we all thought it was an accident, and I began to rise to go help the people that he had knocked over. But as I began to stand up, we heard gunshots. Immediately, my Dad and I got down on the floor and turned the table up in front of us. Mom got down behind us. I continued to hear shooting on the opposite side of the truck. Remember, this was 1991 and the type of mass shootings we have seen since were not yet occurring on a regular basis. I kept waiting for him to say something like, "Everyone put your wallets up on the tables!" But the gunshots continued. It took a good 45 seconds...which is an eternity, to realize that he was just there to execute people. As he made his way around the front of the truck, I watched as he leveled his gun on the head of a person crouched beneath him. He pulled the trigger. Then he calmly walked to the next person, pointed the gun and pulled the trigger. It was then that I thought, "I've got him!" I reached for my purse on the floor next to me. I had a perfect place to prop my shooting hand, and I have hit much smaller targets at much greater distances. Could I have missed? It's possible. But it sure would have changed the odds. Then I realized that a few months earlier I had made the stupidest decision of my life. I had begun to leave my gun in my car because at that time, in the state of Texas, concealed carry laws did not exist. I was concerned about getting caught with it. I did what most normal people would do: I wanted to obey the law and certainly didn't want to lose my license to practice my livelihood. I never thought I'd need it in the middle of a crowded restaurant. I remember looking around for something to use as a weapon, and thinking, "Great...what do I do now? Throw a salt shaker at him?" I can't begin to get across to you how incredibly frustrating it is to sit there, like a fish in a barrel, and wait for it to be your turn, with no hope of defending yourself.

It was then that my father took my attention. He began to rise up and said, "I've got to do something! I've got to do something or he's going to kill everyone in here!" I turned to him and tried to hold him down by the shirt collar. But when he saw what he thought was a chance, he stood up and ran at the guy, who at that point was about a dozen feet from us. But the gunman had complete control of the room. He simply turned, and shot my father in the chest. My father fell in the aisle maybe 7 or 8 feet from me. And although he was still alive and conscious, I saw the wound and as awful as this may sound, wrote him off at that moment.

The good news is that it made the gunman change directions slightly, and he went off to my left. That was the first time I had gotten a good look at him. He was a tall 30 something year old man. And I remember wondering what could be so terribly wrong in this man's life that he would be committing this horrible act. At that point, I heard another window crash toward the back of the restaurant. I thought, "Oh my God, here comes another one!" But when I looked, I realized that someone had broken out a window at the back of the restaurant and people were pouring out through it. I peeked over the top of the upturned table, and when the gunman's back was to me, I stood up, grabbed my mother by the shirt collar and said, "Come on, come on! Let's go! We've got to get out of here!" And then my feet grew wings. I was one of the only ones from that front area to make it out that back window. As I stumbled through the broken window I ran into my manager friend who had come out a side, kitchen door. He said, "Thank God you're all right!" I told him, "Yes, but Dad's been hit and it's bad." Then I turned to say something to my Mom, and realized she had not followed me out. Because it was glass three quarters of the way around the restaurant, I could not see the interior due to the backlighting. And I had no idea where my mother was.

In the interest of time, I will spare you details of the next several minutes. However, I will tell you that several of the first responders were patients of mine. A week or so after the event they took me and my siblings to lunch and filled in some gaps. They told us that they had been in a conference at a hotel one building away when the shooting occurred. In an odd twist of gun control fate, the manager of the hotel asked them to leave their weapons in their vehicles so as not to make her customers uncomfortable. So precious minutes were lost as they retrieved their weapons from their locked trunks and made their way to the restaurant. They told us that as they worked their way through the broken window, they weren't sure who the gunman was. They saw a lot of bodies, and a woman, on her knees in the aisle, cradling a mortally wounded man. They said that a man walked up to her, she looked up at him, he put a gun to her head, she looked down at her husband, and he pulled the trigger. That's how they knew who the gunman was. All they had to do was fire a shot into the ceiling, and this guy immediately rabbitted to a back bathroom alcove area. He exchanged some gun fire with them, and then put a bullet in his own head. 23 people were killed that day, including my parents. Mom and Dad had just had their 47th wedding anniversary 2 weeks prior to this. And although it didn't occur to me at the time, Mom wasn't going anywhere without Dad.

Now it may sound odd to you, but I wasn't angry at the guy that did it. That's like being mad at a rabid dog: you don't be mad at it. You might take it behind the barn and kill it, but don't be mad it. I told the newspapers the next day that I was mad as hell at my legislators because they had legislated me

out of the right to protect myself and my family. The *only* thing the gun laws did that day was prevent good people from protecting themselves.

Since that time, we have seen dozens of these mass shootings. Isn't it interesting that nearly all have occurred *in places where guns were not allowed*. If guns are the problem, then someone explain to me why we haven't seen these mass shooting at skeet and trap shoots, or NRA conventions, or the dreaded gun show. We will never know if lives could have been saved at Sandy Hook if a teacher or two been armed.

Look, guns are just a tool. They are tools that can be used to kill a family, or tools that can be used to protect a family. It merely depends on whose hands that tool is in. You may wonder why I take issue with an assault weapons ban. That is simple. It is because there's no logic involved with the proposed ban. I believe that the public and much of the media have been misled to believe that assault weapons are rapidfire, automatic, machinegun-like weapons. I know this from the many interviews I have done on television, radio and newspaper. Automatic weapons have been illegal for regular use in this country since the 1930s. And yet, that is what much of the media and public believe you are trying to ban. In fact, the proposed ban is being based almost entirely on cosmetics. So you are talking about guns that shoot in the exact same manner as the guns I have at home. So it becomes perfectly clear to me that this is merely a gun grab that is based on nothing but the desire to strip citizens of their rights.

Universal background checks? That is no more than a means to register all gun owners. And registration is *always* the first step to confiscation.

Prohibiting people with a diagnosis of PTSD? I believe you would be starting down a very slippery slope if you begin to single out those with emotional problems and strip them of their constitutional rights. Would ADHD or depression be next? We already have a system in place by which those deemed mentally unstable may be stripped of their rights.

I have heard many pundits and legislators say, "Why would anyone *need* this type of gun or a magazine that carries this many bullets?" Well, in this Land where Freedom hangs by a thread, I hate to think we are going to begin having government committees determining what each citizen *needs*. They may decide you don't *need* to drive a particular car, or *need* send your child to private school.

And in this Land of Liberty, it is not only our right to keep and bear arms, I would go so far as to say it is our duty.

With that, I would like to leave you with something to ponder. Can you imagine leaving these chambers and going to a local café with your family, perhaps your children or grandchildren? And as you're quietly finishing your meal you notice a man come in and who pulls a weapon from his overcoat, and calmly begins executing people...people who have no means of defending themselves. As the gunman works his way around the room and gets closer to you, imagine the frustration that you have not having any chance of defending yourself against him. As he levels his weapon on your child or grandchild's forehead, even if you have chosen not to have a gun with you, don't you hope the guy

behind you has one and knows how to use it at that point? It makes me physically ill to think of being in that position with my children, and having no way of protecting them.

If you really want to make a difference, and eradicate mass shootings, there are a couple of things that you can do:

1. Rid the country of gun free zones. Don't get me wrong, you won't be able to stop someone from going into a workplace and shooting his estranged wife and the person sitting next to her. But you will prevent the high body bag counts we are seeing now.

2. Encourage, not legislate, but encourage the media to quit using the murderers' names in all of their follow-up reporting. I would love to see them never show the creep's picture after the first day. If the killer is still alive and going to trial, wouldn't it be great if they fuzzed out their names and faces as if it were obscene? We all know they have to report the news. But they could be part of the solution and help take the glory out of their horrendous acts.

I am proud of my Texas Capitol. While visitors wait to go through a metal detector, we have a fast-track queue that allows concealed carry permit holders to zip right through. Many legislators carry on the House and Senate floors and committee hearings, while permitted citizens with guns sit in the gallery. There would be no high body bag count there. Our State government trusts its' people. With that, I would like to say that if I had it to do over again, I would much rather be in prison with a felony offense on my head, and have my parents alive to know their grandchildren.

Thank you for your time.

Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing of the Subcommittee on the Constitution, Civil Rights and Human Rights entitled
"Proposals to Reduce Gun Violence: Protecting Our Communities
While Respecting the Second Amendment"
February 12, 2013

I want to thank Senator Durbin for chairing today's hearing. Two weeks ago, the Committee began the new Congress with a hearing on what our Nation should do to address gun violence in the wake of the tragic shootings in Newtown. We have begun the collective effort to find solutions to help ensure that no family, no school, and no community ever has to endure such a grievous tragedy again. Today's hearing will continue this important discussion and make clear that we are mindful of the constitutional limits of what can be done by Congress.

Today's hearing focuses on ways to reduce gun violence while respecting Americans' Second Amendment rights. As a responsible gun owner and strong supporter of Second Amendment rights, I know we can do both. I have always believed that the Second Amendment affords a fundamental individual right. The Supreme Court has now clearly recognized that right, and it is settled in our law. Following the decisions in *Heller* and *McDonald*, there is no question that Americans have a right to self-defense and to keep a firearm to protect their families.

Our conversations take place against a backdrop that recognizes and protects the Second Amendment and the basic rights it secures. But I also agree with Justice Scalia and the other Justices on the Supreme Court that "the right to bear arms is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." I think we all can agree that the individual right does not include weapons of war like machine guns, or rocket-propelled grenades. And as Justice Scalia has noted, the Second Amendment does not prevent laws restricting "the possession of firearms by felons or the mentally ill."

In the wake of the recent mass killings that have shaken the country, we must consider what more can be done to keep guns out of the hands of criminals and the mentally infirm who threaten our communities. We need to close existing loopholes that allow criminals to avoid the common sense requirement that gun sales should be performed with a background check. Responsible gun store owners in Vermont and around the country carry out these checks every day. Requiring buyers at gun shows to take the same reasonable steps as buyers in stores is a sensible, straightforward solution to help keep firearms out of the wrong hands. In 1999, the NRA fully supported such background checks.

We also need to help our law enforcement officers by providing them with the tools they need to keep our communities safe. We should strengthen law enforcement's ability to prosecute straw purchasers who buy firearms on behalf of criminals who otherwise would not pass a background check. The legislation I introduced with Senator Durbin and other Senators last month to combat this type of illegal trafficking would not affect licensed gun dealers, and in no way alters the rights of those who lawfully trade in guns. It is another commonsense solution that will help make us safer as a Nation.

As we discuss responses to address gun violence, some have proposed changes that would prohibit violence in movies and in video games. As a parent and a grandparent, I share concerns about the pervasiveness of violence in our popular culture. I am also mindful, however, that efforts to regulate content risk undermining our country's strong First Amendment tradition of protecting free speech no matter how objectionable it is. As we reflect on the lessons of recent months, the entertainment industry must renew its efforts to be a responsible leader in this area.

As parents, as lawmakers, as citizens, we must all play a role in addressing the problem of gun violence. We must work together to find reasonable, balanced solutions to improve our laws where they are lacking. I urge us to listen to each other and to work together to find areas of agreement. The American people are looking to us to act.

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Statement of Senator Orrin G. Hatch
Before the Subcommittee on the Constitution, Civil Rights and Human Rights
"Proposals to Reduce Gun Violence"
February 12, 2013

Thank you, Mr. Chairman. Two weeks ago, I participated in the full Judiciary Committee's hearing on what American should do about gun violence. In the statement I submitted for the record at that hearing, I said that legislation in this area must meet three criteria. First, legislation must be consistent with the Constitution in general, and with the Second Amendment in particular. Second, we must draw on the experience of past legislative efforts. Third, we must examine the causes of this problem, not simply its symptoms. Legislation that fails to meet all three criteria will be ineffective and a disservice to victims and their family members.

These criteria bear repeating because this hearing narrows the focus to actual legislative proposals. When I look at the list of proposals offered by the Johns Hopkins Gun Policy Summit, I see item after item that fail one or more of these criteria. And one of the most significant things about this list is what is not there – anything other than guns.

I question whether there actually is a specific, separate, unique category called *gun violence*. Rather than focusing exclusively on the particular tool used to commit violence, we should be exploring violence in our society more generally.

Like President Obama's list of executive actions, this Johns Hopkins list urges the federal government to approach gun violence as a public health problem. The obvious intent is to encourage the American people to think one day about guns the way they think today about cigarettes. That is a seriously flawed strategy. There is no constitutional right to smoke, there is a constitutional right to keep and bear arms. There is no safe way to smoke, there are many safe ways to use firearms. Cigarettes can take lives, firearms can save lives.

Other items on the list are also troubling. It defines anyone under 21 as a "high risk individual" who should be prohibited from purchasing or even possession a handgun. Tell that to the thousands of young people in the armed forces who are using firearms every day to defend freedom around the world.

With freedom comes the potential for tragedy. In a free society, we simply cannot ensure that danger will disappear, that violence will never occur, that lives will never be lost. But freedom itself is not the problem. I urge my fellow citizens to help make our country a better and safer place and to preserve the fundamental rights that keep us free.

Senator Ted Cruz
Opening Statement – "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"
Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
February 12, 2013

Thank you, Mr. Chairman. Let me say it is a particular honor to serve as Ranking Member on this Subcommittee with you. It is also a high honor to serve with two former Ranking Members and Chairmen of this Subcommittee—Senator Cornyn and Senator Hatch—as well as the Ranking Member of the full Committee, Senator Grassley.

All of us were rightly horrified by the tragedy in Newtown, Connecticut. To see young children senselessly murdered takes your breath away. Let me say to each of you who has come here today that are the victims of crimes of violence, my heart goes out to you. Thank you for coming. Thank you for standing for your lost loved ones. I have spent much of my own professional career working in law enforcement to prevent these horrible crimes of violence and ensure that anyone that carries them out is subject to the very strictest punishments.

I am hopeful that the fervor that we see on this Judiciary Committee hearing, for standing up for victims of crimes of violence, will carry over to issues other than gun control. I am hopeful that same fervor will be present when judicial nominees are here who have a record and history of allowing those who have committed violent crimes to walk free. I hope that same fervor on a bipartisan

basis will be present when we're talking about how to ensure that laws and resources exist to prevent violent criminals from carrying out their horrific crimes and to ensure that every one of them receives a fair and just punishment.

In my view, the divide on this issue is fairly straightforward. The focus of law enforcement should be on criminals, and we should be unstinting in protecting communities. Sadly, law enforcement has been failing in many of the communities in which each of you has suffered losses. We should be working to fix that problem.

At the same time, we should continue to respect and protect the constitutional rights of law-abiding citizens. It is often lost in the debate over guns that the Second Amendment is a vital part of our Constitution. It is part of the Bill of Rights. It is indeed, as Justice Joseph Story put it, the "palladium of the liberties of a republic." Stripping the constitutional rights of law-abiding citizens does nothing to prevent criminals from carrying out violent crime.

The overwhelming weight of the empirical evidence demonstrates that violent crime *increases* when the rights of law-abiding citizens to protect themselves, to protect their homes, and to protect their families are taken away. Defenseless citizens are more vulnerable to violent criminals.

For that reason, the two cities with the strictest gun control policies in the country, Washington, D.C., and Chicago, have suffered from some of the highest

crime and murder rates, notwithstanding those laws. Both cities had, for years, effectively total bans on firearms ownership and both still have among the highest murder rates in the nation.

Likewise, when Australia banned guns, violent crime went up. And after Great Britain banned guns, its violent crime rate was more than four-times higher than the rate in the United States. If you look in contrast to jurisdictions that have protected the constitutional right to bear arms, you have consistently seen lower crime and murder rates, as individual citizens are able to protect their families.

Aggressive gun control would restrict the constitutional rights of every American. We cannot outlaw evil, but we can remain vigilant in working to deter and punish violent criminals. And we should vigorously defend the constitutional right of law-abiding citizens to protect themselves and others from deadly attacks.

The Supreme Court's decisions in *Heller* and *McDonald* were landmark decisions. They concerned the question whether each of us is protected by the Bill of Rights. The cities took the position, in those cases, that individuals have no right whatsoever under the Second Amendment and that the Second Amendment does not apply to the States. The position of the litigants in those cases, I would suggest, was quite extreme.

Heller made crystal clear that individuals have a Second Amendment right to keep and bear arms. Like virtually all constitutional rights, however, everyone

acknowledges that there are *some* limits on this right. For example, the government may prohibit felons and the mentally ill from possessing firearms, as *Heller* explained.

The key question, which I hope we will explore in this hearing, is the scope of an individual's Second Amendment right to keep and bear arms. But we are not discussing this in a vacuum, as *Heller* and *McDonald* should guide our inquiry. *McDonald* explicitly stated that an individual's Second Amendment right "is fundamental to our scheme of ordered liberty" and is "deeply rooted in this Nation's history and tradition."

And *Heller* establishes that the Second Amendment protects in particular those firearms that are in "common use." So the Second Amendment does not give citizens the right to have "dangerous and unusual" weapons, like fully automatic machine guns—which are already functionally illegal under current law. But it does give individuals the right to keep and bear firearms that are widely used. I therefore have serious doubts about the constitutionality of the proposed Assault Weapons Ban and a ban on magazines with more than 10 rounds—because both of these bans would cover millions of firearms that are "commonly used" by Americans.

In any event, we should not pass legislation that the evidence has proven is utterly ineffective. In particular, the Department of Justice has already concluded

that the so-called "assault weapons ban," when it was in effect from 1994 to 2004, had no impact on reducing crime. This is unsurprising, because real assault weapons—machine guns—have been functionally illegal since 1934. All an "assault weapons ban" would do is restrict cosmetic features of firearms, in effect, banning "scary-looking guns." Instead of passing ineffective show legislation—sound and fury, signifying nothing—we should be acting to deter and punish violent criminals and to prevent those with dangerous mental illness from illegally acquiring firearms.

There is wide agreement that guns should not be in the hands of the mentally ill. Current law seeks to identify those individuals, but it relies on states submitting relevant medical records. Not all states are doing this. A July 2012 GAO report explained that the federal government is not enforcing or implementing a 2007 law that was supposed to reward states for submitting mental health records and to punish states that do not. We should make sure current law is enforced and work with states to help them get past the challenges that prevent them from providing more robust data. This is an area of bipartisan agreement and a direct way to address the real problem of the mentally ill getting guns.

In doing so, we can respect the Second Amendment rights of all Americans. So today, as we discuss the limits on the Second Amendment right to bear arms, we should keep in mind that the Supreme Court made absolutely clear that the

Second Amendment is a constitutional right of every American. And I would point out that constitutional rights are designed to be protected not just when they are popular but especially when passions are seeking to restrict and limit those rights. I look forward to this hearing underscoring the vital protections of the Second Amendment to every American.

Senator Lindsey Graham (R-SC)
"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

Written questions for:

Laurence H. Tribe:

1. How can the lower courts' widespread adoption of an "intermediate scrutiny" standard be squared with the Heller court's rejection of the interest-balancing approach advocated by Justice Breyer? Isn't intermediate scrutiny just another name for interest balancing?

2. You mention the 1915 case in which the Supreme Court held that motion pictures—a new technology at the time—weren't entitled to First Amendment protection. You call that a "misjudgment," and I agree. But isn't this comparable to your argument that certain modern firearms that you consider "unusually dangerous" aren't protected by the Second Amendment?

3. You refer to the Heller court's list of "longstanding prohibitions" as "examples of regulations that should not even receive further constitutional review." But the Court referred to these measures as "presumptively lawful." In your view, can that presumption ever be rebutted? For example, not every "condition and qualification on the commercial sale of arms" is automatically constitutional, is it? In fact, you say that a background check that took years to complete would be "a very severe burden" on Second Amendment rights, so doesn't that confirm that the "presumptively lawful" measures mentioned in Heller aren't immune from review?

4. You mention the court's reference to "dangerous and unusual weapons." But isn't the historical record clear that the old rule against carrying such arms—going back to 14th century England—was really a time, place and manner restriction? After all, in the 14th century, there wasn't that much variety of swords, spears, crossbows and so on, and in the American cases applying it (notably in North Carolina, well into the 1960s) it was held to refer to perfectly ordinary, unquestionably common guns that were brandished or fired in a dangerous way. In fact, in the Lanier case that you cite, wasn't the North Carolina Supreme Court dealing with a defendant who rode his horse through a courthouse, and didn't the court say it would "attach no importance to the fact that *the defendant had no arms*"?

5. You suggest that guns with "large" magazines may have become common simply because they're "most readily … available on the market." Are you really suggesting that revolvers or smaller-capacity pistols are not readily available? How can you square this with the ATF manufacturing and export reports, which show that more than 500,000 revolvers were sold in the U.S. in 2011? Surely, between those new guns and all the used ones on the market, anyone who wants a lower-capacity gun can find one.

Senator Lindsey Graham (R-SC)
"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

Written questions for:

Dr. Daniel Webster:

1. You mention your analysis of a survey of prison inmates, which concluded that nearly 80 percent had acquired their guns from "unlicensed private sellers." You suggest that these transfers are currently exempt from background checks. This raises a couple of questions:

    a. Did your analysis look at the states in which those acquisitions occurred? If not, given that a number of states do require background checks or purchase permits for at least some private gun sales, how can you know whether those inmates' transactions actually were exempt from background checks?

    b. Did your study analyze whether those inmates' decisions were related to the existence or non-existence of any background check system, at either the federal or state level?

2. You mention your study of Missouri, based on information on firearms traced in the state. Is the ATF tracing system designed to collect statistics for academic research, or to provide the history of individual firearms for investigative purposes? Does the trace system provide a random sampling of firearms used in crime? Is it even limited to firearms actually used in crime?

Senate Committee on the Judiciary

Hearing on "Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment"

Questions for the Record from

Ranking Member Charles E. Grassley

Questions for Timothy J. Heaphy, United States Attorney, Western District of Virginia, U.S. Department of Justice

(1) **Prosecution of Straw Purchasers for Lying and Buying.**

At the hearing, I asked you about the number of cases presented to the U.S. Attorney's by federal, state, and local law enforcement for violations of 18 U.S.C. §924 (a)(1)(A). You stated that "I don't know exactly. I can get that information for you." Please provide a complete answer breaking down: (a) the number of cases presented to the U.S. Attorneys for prosecution of violation of 18 U.S.C. § 924(a)(1)(A) that were accepted, including an analysis of those cases to include whether the case resulted in a guilty verdict, plea bargain, acquittal, or other disposition; (b) the number of cases presented to the U.S. Attorneys for prosecution of violation of 18 U.S.C. § 924(a)(1)(A) that were declined by the U.S. Attorney; (c) the number of cases presented to the U.S. Attorneys for prosecution of violation of 18 U.S.C. § 922(a)(6) that were accepted, including an analysis of those cases to include whether the case resulted in a guilty verdict, plea bargain, acquittal, or other disposition; and, (d) the number of cases presented to the U.S. Attorneys for prosecution of violation of 18 U.S.C. § 922(a)(6) that were declined by the U.S. Attorney.

(2) **Constitutionality of the Assault Weapons Ban**

The hearing was called to address the issue of gun violence while respecting the Second Amendment. In your testimony, you indicated support for new gun laws such as prohibiting firearms trafficking, or illegal straw purchasing. You also stated that "the Department supports an assault weapons ban, and will work hard to ensure that whatever comes out, if one comes out, is constitutional." However, you did not answer my specific question as to whether the Department has conducted a formal constitutional analysis of these proposals.

(a) Has the Department, via the Office of Legal Counsel or other office, conducted a legal analysis to determine if pending legislation, including legislation banning so called assault weapons, large capacity magazine, criminalize straw purchasing, or new legislation criminalizing firearms trafficking, are constitutional? If so, please provide such analysis. If not, why not?

(b) In the event the Department has not conducted a constitutional analysis of pending legislation, how do you propose the Department "work hard to ensure that whatever comes out…is constitutional"?

(c) At the hearing, I asked you about the level of scrutiny that the Supreme Court decision in *Heller v. District of Columbia*, 554 U.S. 570 (2008) requires when conducting an analysis of whether a statute restricting the Second Amendment is constitutional. You responded that you are "not familiar enough with the *Heller* opinion to really give you a…opinion on that." As you know, the *Heller* decision requires a heightened level of scrutiny when analyzing laws that seek to impede the Second Amendment.

(i) What is your understanding of the level of scrutiny required to analyze a statute that seeks to limit the Second Amendment individual right to possess a firearm?
(ii) What level of scrutiny should be applied to address whether an assault weapons ban is constitutional?
(iii) Would the same level of scrutiny apply to a limitation on ammunition capacity? Why or why not?
(iv) What level of scrutiny would apply to a statute prohibiting straw purchasing?
(v) What level would apply for firearms trafficking?

(3) **Operation Fast & Furious**

In a March 9, 2011, email to U.S. Attorneys in Southwestern border states, Deputy Attorney General James Cole outlined a new policy in response to Operation Fast and Furious: "We should not design or conduct undercover operations which include guns crossing the border." The Department has subsequently pointed to this policy when referencing changes it has made to remedy the problems with Fast and Furious.

This policy, however, does nothing to prevent an operation like Fast and Furious from occurring again. Fast and Furious was not an undercover operation, and the crux of the problem in Fast and Furious was ATF's encouraging Federal Firearms Licensees (FFLs) to sell firearms to suspected straw purchasers. Such behavior by federal agents is problematic regardless of whether those suspected straw purchasers ultimately traffic the firearms over the border or use them for crimes here in the U.S.

Would you support a new federal law prohibiting ATF from asking FFLs to cooperate by making sales to people ATF has reason to believe are straw buyers? If not, why not?

(4) **Mental Illness and Gun Violence**

I recently met with the chief law enforcement advisor for the State of Connecticut to discuss the tragedy in Newtown and what the response should be. A significant part of our discussion was focused on mental illness and what can be done to ensure that those who have problems are

treated. I read of similar concerns from law enforcement officers across the state of Iowa who argued that addressing mental illness was arguably more important than new gun control laws.

(a) Specifically, what is the Justice Department doing at the federal level to address mentally ill offenders and to treat the thousands of federal prisoners that have mental illness?

(b) At our last hearing, a couple of witnesses argued that changes made to civil commitment laws for those with serious mental illness has had an impact on violence across the country. Do you agree with this statement? What should Congress do to address this?

(5) **NICS Improvement**

The NICS Improvement Act of 2007 was passed by Congress and signed into law to strengthen the background check process by ensuring that states provided mental health records to the system.

According to a recent GAO study, the number of mental health records in the NICS system has increased by nearly 800%. However, GAO found that this increase is largely based upon the effort of only 12 states. GAO found that technological, legal, and other barriers are prohibiting the states from sharing this information with the NICS system. The GAO also found that the Justice Department is not "administering the reward and penalty provisions of the NICS Improvement Amendments Act because of limitations in state estimates of the number of records they possess that could be made available to NICS."

Ultimately, GAO recommended that DOJ share the promising practices of the states complying with the law and assess how to reward and penalize states effectively.

(a) What is the Justice Department doing to ensure that these recommendations are being implemented?

(b) Before broadly expanding the background check process to more transactions, shouldn't we ensure that the database has the required mental health records the law already requires? If not, aren't we passing problems along for another day without fixing them?

(c) One other side effect of the NICS Improvement Act has to do with the Veterans Administration. The VA has provided records to the NICS system when a veteran has a fiduciary appointed—including when they are appointed to deal with purely financial matters. As a result, hundreds of thousands of veterans are prohibited from owning a firearm, as they have been deemed mentally defective by the VA for not being able to balance their checkbooks. Do you agree with this policy? Would you prosecute a veteran in your district who tried to purchase a firearm but was rejected by NICS because of the VA's determination that he or she was mentally defective simply for failing to handle their financial matters?

Senate Committee on the Judiciary

Hearing on "Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment"

Questions for the Record from

Ranking Member Charles E. Grassley

Questions for Suzanna Gratia Hupp:

(1) Senator Feinstein has proposed banning semi-automatic firearms with certain accessories designed to increase a gun owner's comfort, maneuverability, and accuracy such as a pistol grip, a forward grip, a barrel shroud, a threaded barrel, and a folding, telescoping, or detachable stock. Is there a value of having such items on a semi-automatic rifle when faced with a situation requiring self-defense? Would it be important for the gun owner to have the benefits provided by these additional features?

(2) Do you agree that in order to successfully defend oneself against one or more armed attackers, it is critical that the victim be able to handle a firearm efficiently and shoot accurately?

   a. If so, how would banning firearms accessories such as a pistol grip, a forward grip, a barrel shroud, a threaded barrel, and a folding, telescoping, or detachable stock impact a responsible gun owner's ability to defend herself?

(3) Senator Lautenberg has introduced legislation that seeks to ban magazines holding more than 10 rounds or can readily be converted to accept more than 10 rounds. If the typical magazine capacity for commonly used semi-automatic rifles contains 30 rounds, do you think that it would be unreasonable to impose a ban of 10 rounds per magazine? Please explain.

Senate Committee on the Judiciary

Hearing on "Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment"

Questions for the Record from

Ranking Member Charles E. Grassley

Questions for Laurence Tribe, Carl M. Loeb University Professor, Harvard Law School:

(1) Your prepared testimony quite correctly noted that the Supreme Court's *Heller* decision confirmed the constitutionality of "longstanding prohibitions on the possession of firearms by felons and the mentally ill" as well as historic prohibitions on "dangerous or unusual" weapons. However, on page 11, you wrote, "It is not inconceivable – indeed, it seems quite likely—that the Court's pause to distinguish unusually dangerous weapons from widely possessed handguns had precisely the 1994 Assault Weapons Ban, which included a prohibition on high-capacity magazines, in mind."

I fail to see the basis for the inference. The Court made clear the constitutionality of existing statutory prohibitions on possession of firearms by felons and the mentally ill, which dated back many decades. The analogous longstanding prohibition on dangerous weapons that the Court signaled was constitutional was obviously the longstanding ban on very dangerous machine guns. By contrast, the "assault weapons" ban existed for only ten years, and it had expired by the time of the *Heller* ruling. I do not think any fair reading of this language from the Court's opinion conclusively determines that an "assault weapons" ban, as opposed to a ban on machine guns, is constitutional under the Second Amendment. What is your basis for concluding that this language shows that such a ban would not "even implicate[] a [Second Amendment] right in the first place"?

(2) On page 21 of your prepared testimony, you criticized the original "assault weapons" ban because it "grandfathered many thousands of weapons already owned, and those could still be sold or transferred." Do you believe that assuming that an "assault weapons" ban were constitutional, it could only be truly effective if it did not grandfather existing weapons, or at least criminalized the sale or transfer or such weapons?

(3) You testified that universal registration of firearms is constitutional under the Second Amendment. Do you believe that universal registration is an advisable measure to enact?

(4) On page 24 of your prepared testimony, you indicated that conditions and qualifications on the commercial sale of arms are constitutional under the Second Amendment. Does this

mean that Congress can ban the sale or transfer of all arms that are not handguns? Can Congress constitutionally ban the sale of any arms by citizens?

Senate Committee on the Judiciary

Hearing on "Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment"

Questions for the Record from

Ranking Member Charles E. Grassley

Questions for Dr. Daniel Webster, Director and Professor, Johns Hopkins Center for Gun Policy and Research:

(1) Your testimony referenced a number of studies on gun violence, some conducted by the Centers for Disease Control, but many others of which you conducted or which were conducted by others and included in your book.
   (a) Who funded the studies referred to in your testimony?
   (b) Did you receive any salary, income, or other benefits in connection with funding, conducting, or publishing the result of these studies?
   (c) If so, who provided the salary, income or other benefits

(2) Your testimony at page 6 and note 32 states "84 percent of gun owners and 74 percent of NRA members reported that they supported laws requiring a background check for all gun sales." How was it determined with certainty that the survey respondents owned guns or were NRA members? Did respondents self-identify as falling within these categories? Were respondents required to provide proof of their ownership of guns or membership in the NRA?

(3) Your testimony advocates the banning of so-called "assault weapons." Many hunting weapons are more powerful and can do more damage to human flesh than many guns that would be singled out in the "assault weapons" bill that is before the Senate. Why is it sensible to ban the guns in the bill that can do less damage rather than the more powerful guns?

Responses to Questions for the Record, March 6, 2013
Professor Laurence Tribe

QFRs from Senator Grassley

(1) **Your prepared testimony quite correctly noted that the Supreme Court's *Heller* decision confirmed the constitutionality of "longstanding prohibitions on the possession of firearms by felons and the mentally ill" as well as historic prohibitions on "dangerous or unusual" weapons. However, on page 11, you wrote, "It is not inconceivable – indeed, it seems quite likely—that the Court's pause to distinguish unusually dangerous weapons from widely possessed handguns had precisely the 1994 Assault Weapons Ban, which included a prohibition on high-capacity magazines, in mind."**

I fail to see the basis for the inference. The Court made clear the constitutionality of existing statutory prohibitions on possession of firearms by felons and the mentally ill, which dated back many decades. The analogous longstanding prohibition on dangerous weapons that the Court signaled was constitutional was obviously the longstanding ban on very dangerous machine guns. By contrast, the "assault weapons" ban existed for only ten years, and it had expired by the time of the *Heller* ruling. I do not think any fair reading of this language from the Court's opinion conclusively determines that an "assault weapons" ban, as opposed to a ban on machine guns, is constitutional under the Second Amendment. What is your basis for concluding that this language shows that such a ban would not "even implicate[] a [Second Amendment] right in the first place"?

RESPONSE

In *Heller*, the Supreme Court recognized the "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons'" and unambiguously advised that the decision did not cast doubt upon this tradition.[1] Furthermore, the 1994 Assault Weapons Ban fit soundly within this tradition. At the time *Heller* was argued, the federal assault weapons ban was the most recently enacted – and still to this day remains – the paradigmatic contemporary example of major federal legislation prohibiting dangerous weapons. Thus, when I wrote in my prepared testimony that "it seems quite likely . . . that the Court[] had precisely the 1994 Assault Weapons Ban . . . in mind," I meant simply that, because the federal assault weapons ban was the paradigmatic example of contemporary federal gun-control legislation, it was likely on the minds of the justices and one factor that prompted the Court to reaffirm explicitly the tradition of prohibiting dangerous weapons. Although the federal assault weapons ban was, of course, not

[1] Dist. of Columbia v. Heller, 554 U.S. 570, 627 (2008).

before the Court in *Heller*, it was referenced throughout the briefs submitted to the Court,[2] confirming that it was almost certainly on the minds of the justices.

I also feel compelled to point out that your question mischaracterizes, in several respects, the point I made in my testimony as well the *Heller* decision itself. First, you assert that no "fair reading of [the] language from the Court's opinion *conclusively* determines that an 'assault weapons' ban . . . is constitutional under the Second Amendment." (emphasis added). I agree entirely and never contended that the Court's reference to prohibitions on "dangerous and unusual" weapons or any part of *Heller conclusively* addresses the constitutional questions raised by the proposed assault weapons and high-capacity magazine bans. The majority decision in *Heller* never so much as mentions the term "assault weapon," so I hardly could have argued that the decision takes a conclusive position on the matter. But a reasonable inference from *Heller* is that the majority went out of its way to affirm the constitutionality of "dangerous" weapon prohibitions to quell any concern that the Second Amendment would restrict future efforts to reauthorize the most well-known contemporary prohibition on "dangerous" weapons.

Second, your reading of *Heller*'s reference to a "historical tradition" of prohibiting "dangerous" weapons seems to presume that the Court meant to freeze that tradition in place, permitting the government to prohibit dangerous weapons historically banned but not newer weapons that lack the same regulatory pedigree. Yet the very nature of a "tradition" is that it links our past with our present. From that perspective, I find it quite significant that the Court did *not* narrowly define the relevant tradition as, for example, "the tradition of banning machine guns." In defining the tradition as the "tradition of prohibiting . . . 'dangerous and unusual' weapons,"[3] the Court signaled its support for allowing contemporary legislatures to maintain that tradition by banning especially dangerous weapons that new technologies introduce to American markets.

(2) On page 21 of your prepared testimony, you criticized the original "assault weapons" ban because it "grandfathered many thousands of weapons already owned, and those could still be sold or transferred." Do you believe that assuming that an "assault weapons" ban were constitutional, it could only be truly effective if it did not grandfather existing weapons, or at least criminalized the sale or transfer or such weapons?

RESPONSE:

As someone who supports an assault weapons ban because it will help to stem the tide of gun violence in our country, I of course would like to see the enactment of a ban that is as effective as possible, consistent with all applicable constitutional constraints. Many gun-

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[2] *See, e.g.*, Brief of the American Bar Association as Amicus Curiae Supporting Petitioners, at 13 – 14, District of Columbia v. Heller, 554 U.S. 570 (2008), 2008 WL 136349; Brief for State Firearm Associations as Amici Curiae in Support of Respondent at 21, n. 19, District of Columbia v. Heller, 554 U.S. 570 (2008), 2008 WL 383519.
[3] *Heller*, 544 U.S. at 627.

control experts believe that the best means to effectuate the goals of an assault weapons ban is to get those guns off the streets immediately. However, I recognize that at least some steps designed to achieve that aim would raise substantial constitutional questions. I also understand that, as with any sweeping regulatory change, sometimes the best way to change minds and gain broad-based buy-in from the American public is to take incremental steps.

I believe an assault weapons ban, with or without a grandfathering provision, will be an effective measure in reducing gun violence. The grandfathering approach may, however, take more time to prove its effectiveness. In drawing attention to the grandfathering policy in the 1994 ban, I meant only to rebut unfair criticisms of that ban for failing to contribute to a significant decline in gun violence before its premature expiration. The ban was not designed to work in a single a decade, and the Second Amendment certainly does not require that courts adopt such a short window for evaluating effectiveness.

(3) You testified that universal registration of firearms is constitutional under the Second Amendment. Do you believe that universal registration is an advisable measure to enact?

RESPONSE:

Many states have enacted gun registration laws, and as my prepared testimony demonstrates, there is no Second Amendment bar to reasonable registration requirements at either the state or federal level. As a policy matter, I find that mandatory, loophole-free registration is an eminently sensible means to aid law enforcement efforts to investigate crime and to ensure that firearms do not fall into the hands of felons and mentally ill persons, as well as others to whom the Second Amendment, rightly understood, does not extend a right to keep and bear arms. And federal efforts in particular are essential because no state or locality is an island when it comes to the sea of firearms.

(4) On page 24 of your prepared testimony, you indicated that conditions and qualifications on the commercial sale of arms are constitutional under the Second Amendment. Does this mean that Congress can ban the sale or transfer of all arms that are not handguns? Can Congress constitutionally ban the sale of any arms by citizens?

RESPONSE:

I believe your question mistakenly cites to page 24 of my prepared testimony. Perhaps you intended to reference page 28, in which I quote the Supreme Court in *Heller* as recognizing the common sense proposition that "laws imposing conditions and qualifications on the commercial sale of arms" are constitutionally permissible.[4] As my testimony demonstrates, this statement in the *Heller* decision means that Congress may

[4] *Id.* at 626 – 27.

enact reasonable background-check rules for gun sales. I have no doubt that Congress may lawfully enact similar types of regulations governing all firearm sales, including private sales between citizens. Your question further asks whether Congress may ban the "sale of any arms by citizens" or whether Congress may prohibit the sale or transfer of "all arms that are not handguns." As my prepared testimony makes clear, the constitutionality of any ban on the sale or possession of a certain type of weapon must be determined, *first*, by evaluating the law in light of the three threshold factors that determine the scope of Second Amendment coverage (dangerousness, nexus to self-defense, and commonality of use), and *second*, assuming the law does not implicate core Second Amendment values, by applying an intermediate level of scrutiny to the law, just as most federal and state courts have done in response to Second Amendment challenges. Beyond offering that response, I do not think it would be sensible for me to speculate about the legality of hypothetical laws described at such an abstract level of generality.

QFRs from Senator Graham

(1) How can the lower courts' widespread adoption of an "intermediate scrutiny" standard be squared with the Heller court's rejection of the interest-balancing approach advocated by Justice Breyer? Isn't intermediate scrutiny just another name for interest balancing?

RESPONSE:

State and federal courts have typically applied some form of intermediate scrutiny when evaluating the constitutionality of gun regulations under the Second Amendment. This approach is not inconsistent with the Court's rejection of Justice Breyer's "interest-balancing approach," and the *Heller* majority expressly said so. In rejecting Justice Breyer's approach, Justice Scalia's majority opinion argued that Justice Breyer favored "none of the traditionally expressed levels (strict scrutiny, *intermediate scrutiny,* rational basis), but rather a judge-empowering 'interest-balancing inquiry.'"[5] Moreover, the Court in *Heller* expressly noted that the D.C. handgun ban failed to withstand "any of the standards of scrutiny that we have applied to enumerated constitutional rights."[6]. It is unclear whether Judge Breyer's "interest-balancing" approach would have meaningfully differed from traditional intermediate scrutiny in practice. The *Heller* majority certainly supposed that it could, and for that reason, we will never find out. What is unambiguously clear is that the plain text of *Heller* forecloses any contention that intermediate scrutiny is inappropriate for evaluating Second Amendment claims.

(2) You mention the 1915 case in which the Supreme Court held that motion pictures—a new technology at the time—weren't entitled to First Amendment protection. You call that a "misjudgment," and I agree. But isn't this comparable to your argument that certain modern firearms that

[5] *Id.* at 634 (emphasis added).
[6] *Id.* at 628.

you consider "unusually dangerous" aren't protected by the Second Amendment?

RESPONSE:

My characterization of the Supreme Court's 1915 ruling in *Mutual Film Corp. v. Indus. Comm'n of Ohio* is not at all analogous to my conclusion that the Second Amendment does not protect assault weapons and high-capacity magazines. First, the explanation for the Court's decision in *Mutual Film* seems to lie in the Court's inadequate understanding of film as a new technology and its unduly limited conception of "speech" as a constitutionally protected activity. By contrast, I contend that assault weapons and high-capacity magazines fall outside the Second Amendment's scope *precisely because of* my understanding of how they operate and the special dangers they pose.

Second, although they are of course comparable in some respects, the First and Second Amendments implicate different values and concerns, making simplistic analogies between the two fields more misleading than instructive. Given the potentially enormous hazards to public safety inherent in the development of new weapons technologies, our Second Amendment doctrine must take cognizance of the dangerousness of modern weaponry when determining whether certain types of weapons are constitutionally protected. It is for this reason that the Supreme Court in *Heller* was so wise to incorporate dangerousness as a threshold consideration. Though certain new types of speech may pose novel threats to public welfare – violent interactive video games, for example – the degree of that threat is not nearly so strong, and the threat is in any event far less direct. This difference means that special judicial caution when construing the First Amendment to embrace new technologies is unwarranted.

(3) You refer to the Heller court's list of "longstanding prohibitions" as "examples of regulations that should not even receive further constitutional review." But the Court referred to these measures as "presumptively lawful." In your view, can that presumption ever be rebutted? For example, not every "condition and qualification on the commercial sale of arms" is automatically constitutional, is it? In fact, you say that a background check that took years to complete would be "a very severe burden" on Second Amendment rights, so doesn't that confirm that the "presumptively lawful" measures mentioned in Heller aren't immune from review?

RESPONSE:
The text of the *Heller* opinion states unequivocally that longstanding regulations are "permissible"[7] and that these regulations fall within "exceptions" to the right to keep and bear arms.[8] These statements establish that, if a regulation falls squarely within a historical tradition, then it is no longer subject to Second Amendment scrutiny. There is

[7] 554 U.S. at 635
[8] *Id.*

no other way to make sense of *Heller*'s clear statement that such a regulation comes within an "exception" to the right.

To be sure, even if a longstanding regulation is not subject to *Second Amendment* scrutiny, it may still be unconstitutional because it violates *some other constitutional principle*. For example, it is an unfortunate truth that in our country many states historically had laws prohibiting African Americans from bearing arms. Notwithstanding the historical pedigree of these laws, they are obviously unconstitutional; they are blatant violations of the principle of equality expressed in the Fifth and Fourteenth Amendments. Hence, I agree that longstanding regulations are "presumptively lawful"—not automatically so.

But when it comes to the proposed regulations pending before Congress, there can be no suggestion that they violate a constitutional principle apart from the Second Amendment. It follows that, under *Heller*, the long historical pedigree of these types of regulations establishes that they fall within an "exception" to the Second Amendment—without any need for further constitutional review.

(4) You mention the court's reference to "dangerous and unusual weapons." But isn't the historical record clear that the old rule against carrying such arms—going back to 14th century England—was really a time, place and manner restriction? After all, in the 14th century, there wasn't that much variety of swords, spears, crossbows and so on, and in the American cases applying it (notably in North Carolina, well into the 1960s) it was held to refer to perfectly ordinary, unquestionably common guns that were brandished or fired in a dangerous way. In fact, in the Lanier case that you cite, wasn't the North Carolina Supreme Court dealing with a defendant who rode his horse through a courthouse, and didn't the court say it would "attach no importance to the fact that *the defendant had no arms*"?

RESPONSE:

When *Heller* says that historical tradition supports excluding "dangerous and unusual weapons" from Second Amendment coverage, it clearly means that certain *types of weapons* may be prohibited outright—not just that these weapons are subject to time, place, and manner restrictions.

First, as a matter of ordinary English usage, "dangerous and unusual weapons" refers to a category of weapons, not to a category of times, places, or ways to use a weapon. Second, the *Heller* Court explicitly said that the dangerous-and-unusual exception concerns the "sorts of weapons" covered by the Second Amendment.[9] Third, the Court said that a prohibition on machineguns was an example of a regulation of "dangerous and unusual weapons."[10] Such a regulation obviously cannot be rationalized as a time, place, and

[9] *Id.* at 627.
[10] *Id.* at 624, 627.

manner restriction; rather, it is an outright prohibition of a type of weapon – and indeed of a type of weapon that could easily have become "common" had it not been banned so quickly.

It is true that legislatures may go beyond prohibiting particularly dangerous and unusual weapons, and may in addition prohibit using ordinary weapons at dangerous times, in dangerous places, or in dangerous ways. For example, *Heller* indicated that longstanding laws "forbidding the carrying of firearms in sensitive places" comport with the Second Amendment.[11] But these time, place, and manner restrictions fall within a *separate* exception to the right to keep and bear arms. There is no sound basis in the *Heller* opinion or in the historical record for collapsing that exception into the rule that dangerous weapons may be prohibited altogether.

(5) You suggest that guns with "large" magazines may have become common simply because they're "most readily … available on the market." Are you really suggesting that revolvers or smaller-capacity pistols are not readily available? How can you square this with the ATF manufacturing and export reports, which show that more than 500,000 revolvers were sold in the U.S. in 2011? Surely, between those new guns and all the used ones on the market, anyone who wants a lower-capacity gun can find one.

RESPONSE:

I certainly did not suggest that smaller-capacity pistols are not readily available in the market. Instead, I merely said that "guns equipped with or ready for large-capacity magazines may simply be the weapons *most* readily made available on the market."[12] To say that large-capacity guns may be the weapons *most* readily available does not imply that small-capacity guns are not readily available at all.

[11] *Id.* at 626.
[12] Tribe Testimony, at 12 (emphasis added).

Senator Lindsey Graham (R-SC)
"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"
Dr. Webster's responses are written in italics.

Written questions for:

Dr. Daniel Webster:

1. You mention your analysis of a survey of prison inmates, which concluded that nearly 80 percent had acquired their guns from "unlicensed private sellers." You suggest that these transfers are currently exempt from background checks. This raises a couple of questions:

    a. Did your analysis look at the states in which those acquisitions occurred? *The data reported were not stratified based on whether the crime occurred in a state that required background checks for private handgun sales or not because the survey did not ask the offenders to identify the state in which the firearm originated or was purchased. Our research and others has shown that guns commonly flow from states with lax gun sales laws, most of which do not regulate private transactions of firearms. When we did stratify the data based on whether the state where the crime occurred regulated private handgun sales or not, we found that criminals in states with no background checks for private handgun sales were more likely than offenders in states where private handgun sales were regulated to have acquired their handgun from a licensed dealer (16.8% vs. 8.5%) or a friend, family member, or at a gun show/flea market (44.1% vs.38.3%). Conversely, offenders in states where private handgun sales were regulated were more likely than offenders in states where private handgun sales are not regulated to have acquired their handgun through the black market that includes interstate gun traffickers (44.3% vs.29.2%).*
    If not, given that a number of states do require background checks or purchase permits for at least some private gun sales, how can you know whether those inmates' transactions actually were exempt from background checks? *We could not determine with certainty whether each handgun acquisition was in a state that did or did not regulate private handgun sales, but we do know from ATF traces of crime guns that the large majority of guns recovered from criminals in states that do not regulate private handgun sales were initially sold within the state where the guns were involved in crime.*

    b. Did your study analyze whether those inmates' decisions were related to the existence or non-existence of any background check system, at either the federal or state level? *No, the inmates were no asked why they acquired their handguns from their sources.*

2. You mention your study of Missouri, based on information on firearms traced in the state. Is the ATF tracing system designed to collect statistics for academic research, or to

provide the history of individual firearms for investigative purposes? *To provide the history of individual firearms for investigative purposes.*
Does the trace system provide a random sampling of firearms used in crime? *No.*
Is it even limited to firearms actually used in crime? *Not always.*

Senate Committee on the Judiciary

Hearing on "Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment"

Questions for the Record from

Ranking Member Charles E. Grassley

Questions for Dr. Daniel Webster, Director and Professor, Johns Hopkins Center for Gun Policy and Research: *Dr. Webster's responses are printed in italics.*

(1) Your testimony referenced a number of studies on gun violence, some conducted by the Centers for Disease Control, but many others of which you conducted or which were conducted by others and included in your book.

   (a) Who funded the studies referred to in your testimony?
   Funding for each study cited is listed at the bottom of this document.

   (b) Did you receive any salary, income, or other benefits in connection with funding, conducting, or publishing the result of these studies?
   I received my normal salary from Johns Hopkins University for the research that I conducted.

   (c) If so, who provided the salary, income or other benefits
   The Johns Hopkins University.

(2) Your testimony at page 6 and note 32 states "84 percent of gun owners and 74 percent of NRA members reported that they supported laws requiring a background check for all gun sales." How was it determined with certainty that the survey respondents owned guns or were NRA members? *They were asked questions on a survey about whether they owned any firearms and whether they were a member of the National Rifle Association.*
Did respondents self-identify as falling within these categories? *Yes*
Were respondents required to provide proof of their ownership of guns or membership in the NRA? *No*

(3) Your testimony advocates the banning of so-called "assault weapons." Many hunting weapons are more powerful and can do more damage to human flesh than many guns that would be singled out in the "assault weapons" bill that is before the Senate. Why is it sensible to ban the guns in the bill that can do less damage rather than the more powerful guns? *Assault weapons have features that facilitate criminal use and an assailant's ability to rapidly fire a large number of rounds of ammunition and thereby increase both the likelihood of injury and death as well as the number of injuries and deaths in an attack. Such features include the ability to accept large capacity magazines, pistol grips and folding*

stocks on rifles (to make the weapon more concealable), and threaded barrels for attaching silencers. These features are unnecessary for legitimate sporting uses or self-defense.

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To: Subcommittee Chairman Durbin, Ranking Member Cruz, Members of the Subcommittee on the Constitution, Civil Rights and Human Rights

Date: February 12, 2013

For the last 50 years, the Academic Pediatric Association (APA) has represented the approximately 2000 generalist pediatric physicians who teach, conduct health services research and care for children at the country's teaching hospitals and related institutions. Members of the APA work in hospitals, in emergency rooms, in child protection and behavioral health programs and in primary care settings, caring daily for children like those who died in the horrible tragedy in Newtown, Connecticut. We know that the mass killing in Newtown is but the tip of the iceberg for the problem of gun violence, a problem that frequently devastates the children, youth and families in our care. On behalf of the Association, we thank you for the opportunity to provide testimony to this hearing of the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment". As you consider the Congressional response to gun violence, we ask that you remember the impact of your deliberations on the lives of children. Please ensure that we have resources to care for children and families affected by firearm-related violence, that you take common sense actions to reduce the risk of gun violence for children, that you lift

the restrictions on the scientific study of firearm-related violence that have been incorporated into your appropriations to the Department of Health and Human Services for the past 16 years and institute and that you evaluate a variety of interventions to prevent children from being the victims of gun violence.

As pediatric physicians, we are entrusted with the improving the health of American children. On any given day, we may provide antibiotics for an ear infection or give a wheezing child a breathing treatment. These physical ailments are relatively easy to heal. Much more challenging and devastating, however, is our daily work with children who are traumatized by gun violence. The impact of gun violence is not limited to damage from the bullet, and children's wounds are not limited to unnecessary physical disability and death. Childhood exposure to gun violence also leads to significant emotional health problems that can adversely affect children's development, school readiness and lifelong potential.

For example, during a recent clinic session, a resident physician learned that one of her adolescent patients had been shot and killed. The adolescent and several of her friends had found a loaded gun in the house, and had been joking around when the gun accidentally went off. The fired shot was fatal, instantly killing this bright young woman who hoped to one day become a physician and to commit her life to helping others. Media coverage revealed that the gun was legally owned by the father of one of the teenagers. The father was a police officer. Not only did this terrible accident end the life of an intelligent, compassionate child. It also changed forever the lives of her friends and family. Unfortunately, this event is not rare. Another colleague working in an urban health setting has faced a the same question twice in the month of January, working with his housestaff to answer the question, "How do you yell your child that a loved one was murdered with a gun?". Adolescents are more likely than any other age group to be victims of violent crimes or of accidental injury from firearms. Pediatric physicians regularly witness the impact of gun violence on our patients. We learn that, to provide optimal care to their patients, we must learn not only how to prevent, diagnose and treat medical illness but also

to identify and respond to potent traumatic stressors, like gun violence. We must teach our students to do the same.

The National Survey of Children's Exposure to Violence reported that >60% of children in the US were exposed to violence within the past year. The effects of gun violence exposure, in particular, are potent and long-lasting. Exposed children have higher rates than non-exposed peers of depression, anxiety, post traumatic stress disorder, and poor peer relations and school performance. For example, studies of school age children demonstrate that children exposed to gun violence may have difficulty forming lasting friendships—the quality of their friendships are hindered because exposed children often demonstrate anger, aggression, and withdrawal. Performance in school is similarly impaired—exposed children may experience sleep disturbances, and often have difficulty focusing in the classroom. Together, the adverse impact of gun violence exposure can derail children's development into healthy, productive adults.

In addition, empirical research is increasingly confirming that violence exposure harms children's physical health. Children exposed to gun violence are at-risk for health problems in part because they mount the "fight or flight" response repeatedly. This response is adaptive in urgent, stressful situations. However, activating the stress response repeatedly leads to pathologic changes in physiology and anatomy that compromise physical health from infancy through adolescence. Gun violence not only wounds and kills those hit by the bullets; it harms the emotional and physical health of the family and the community. We need to care for those afflicted and, with your support, we will do so. We need to teach our residents and students to provide that care, and, with your support, we will do so.

The fact that we need to do those two things, however, speaks to a larger question: Why do we have to do so? Over the past two decades, we have lost track of a larger truth. Death and injury from gun violence in America is a public health problem. Until we are able to look at the problem from that perspective and implement policies and programs focused

on reducing deaths from gun violence, we will not be able to protect our children and youth from harm.

In 2012, the Committee on Injury, Violence and Poison Prevention of the American Academy of Pediatrics released a detailed statement on firearm-related injuries. We support that statement. The literature is clear that the best way to prevent injury in any circumstance is to separate the victim from the immediate cause of the injury. In the case of gun violence, that presents challenges because of the perceived need of many to bear arms, as is their constitutional right under the Second and Fourteenth Amendments of the Constitution. With all individual rights, however, there are concomitant responsibilities to the community, which enable us to "secure the blessings of liberty to ourselves and our posterity". Most gun owners acknowledge their responsibilities and understand that reasonable regulation is not a threat to their rights. There is an evidence base for the use of universal background checks, limits on ammunition magazine capacity, tougher gun trafficking laws, and restrictions on military-style assault weapons in this work. We should move quickly to implement as many of those policies as possible, and to use the implementation process to move us further along to a safer world for our children and youth.

The key to making all of this work has two parts. The first is the implementation of new, common sense regulations to prevent gun violence. Proposals by President Obama and Senator Feinstein are a good start on this. The second and, from our perspective, equally important element is to carefully study the effects of these regulations. **The debate about policies to reduce firearm-related violence is severely hampered by a lack of good data. When policies are developed in the absence of good data, they are likely to be unsuccessful.** Yet, in the United States, we have, as a matter of policy, restricted funding for studies that could generate the data that would help develop better policies to reduce firearm-related violence. The restrictive language used in the HHS authorization bills for

the last 16 years reflects a desire by some in Congress to prevent the collection and analysis of data. It must be changed.

With that in mind, we suggest four research priorities that would inform policies to reduce firearm-related violence.

1. **Access to data:** Qualified, independent researchers should have access to data that would help them to better understand the ways in which guns are bought, sold and used. In particular, data to trace gun sales and to better understand how guns end up in the hands of people involved in criminal violence, in mass shootings, in unintended injuries, and in suicide would allow better understanding of ways to prevent these tragedies. Qualified, independent researchers should have access to better data on firearm-related injuries and deaths. Access to such data could be accomplished in ways that protect personal and private health information. The use of Medicare claims data is a model for this.
2. **Firearms and suicide:** Adolescents are impulsive, and often the time between contemplating suicide and attempting it can be measures in mere hours. When adolescents survive a suicide attempt, few go on to die at their own hand. However, suicide attempts with firearms result in death more than 90% of the time. There is a strong association between firearm availability and lethal suicide attempts. We need studies that help us understand how best to prevent teen suicides with firearms help us to construct evidence-based interventions within systems of adolescent health care delivery, studies which must look at the presence or absence of guns in the home.
3. **Deterrence and defense:** Perhaps the most volatile question in debates about the risks and benefits of gun ownership is whether guns in homes are effective deterrents against crime. Both sides in the debate are absolutely convinced about the answer to this question. Researchers should ask about gun use for deterrence and defense within the context of a broader array of strategies designed to defend

against or deter crime, such as positive youth development programs, and community policing. This is a big country. It is unlikely that one policy will fit in all places. Still, the central policy question is: What is the most effective way for our citizens to secure the safety of their homes and families while minimizing harm to rest of the community?

4. **Interventions to reduce access to firearms or to reduce the number of firearms in circulation:** These programs include better background checks, tougher licensing laws, gun buy-back programs, etc. Many mayors and municipalities are eager to implement voluntary and constitutional programs to restrict access to firearms. The federal government should fund—and evaluate—demonstration projects to test the effectiveness of different approaches to reduce access to firearms.
5. **Counseling by pediatricians:** The American Academy of Pediatrics recommends that pediatricians inquire about guns in homes and counsel parents about the risks to children. Studies are urgently needed on practical ways to implement such counseling. Can much can we change parental behavior and either reduce the presence of guns in homes or change the way guns and ammunition are stored? Are some counseling strategies more effective than others?

Findings from studies of these questions would improve our ability to care for families, lower the number of deaths, injuries, and reduce the psychological toll of violence on our children.

Again, we thank you for the opportunity give written testimony, and respectfully ask that you consider four things in your deliberations.

1. Ensure that all children and families have easy and comprehensive access to mental health services, both to help prevent gun violence and to help mitigate the psychological effects of gun violence.

WRITTEN TESTIMONY TO THE SENATE COMMITTEE ON THE JUDICIARY
Subcommittee on the Constitution, Civil Rights and Human Rights

2. Take initial common-sense actions to prevent guns and ammunition from falling into the hands of children and those who would seek to harm children.
3. Lift the restrictions on the study of gun violence so that we can study and address the public health problem of gun violence.
4. Institute and study interventions to keep children from being the victims of gun violence.

Respectfully Submitted on behalf of the Academic Pediatric Association

David Keller MD
President-Elect, APA

David Jaffe MD
President, APA

Benard Dreyer MD
Immediate Past President, APA

WRITTEN TESTIMONY TO THE SENATE COMMITTEE ON THE JUDICIARY

Subcommittee on the Constitution, Civil Rights and Human Rights

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February 21, 2013

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
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By mail and by email: Stephanie Trifione at Stephanie_Trifone@judiciary-dem.senate.gov

Re: "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment" Tuesday, February 12, 2013 Hearing

Dear Senator Durbin and the Senate Committee on the Judiciary:

The shooting at Sandy Hook Elementary School in Newtown, Connecticut left us all shaken and wondering what to do about gun violence in our communities, and we commend you for continuing your advocacy on making schools safe and supportive places for all of our students. You have shown incredible leadership in bringing federal attention to the school-to-prison pipeline, and have taken testimony from hundreds of parents, students, researchers, and advocacy groups around the country about the negative impact of police presence in school. Yet, despite this overwhelming evidence that police in schools don't work, in the wake of Newtown, some groups began calling for more guns, and more police officers, in schools across the country. Our experience has taught us that putting more police in schools will have a devastating effect on our young people- particularly students of color, students with disabilities, and gay, lesbian, bisexual, transgender, and gender nonconforming students. We urge the Committee to reject proposals that funnel more money to placing armed guards, school resource officers, or other law enforcement in our elementary, middle, and high schools.

Advancement Project is a next-generation civil rights organization that exists to fulfill America's promise of a caring, inclusive, and just democracy, rooted in the great human rights struggles for equality and justice. With our partners and community organizations across the country, we are working to stop the school-to-prison pipeline, the disturbing trend of youth being pushed out of school and into the juvenile and criminal justice system through the use of extreme disciplinary practices.

Across the country, young people are routinely suspended, expelled, and arrested for minor misbehaviors that used to result in a trip to the principal's office. Law enforcement presence in school contributes to the criminalization of youth in significant ways. Law enforcement officers are often called on to be disciplinarians, and arrest or ticket students for things like talking back to a teacher, being in the hallways during class time, or being late to school. Our schools today look and

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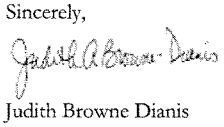
feel more like prisons: metal detectors, pat-downs, and surveillance techniques all contribute to a hostile environment. As a result, the relationships between young people, law enforcement, and school officials become strained, which creates a less safe environment for the entire community.

We direct your attention to an issue brief entitled *Why Police in School Are Not the Answer to the Newtown Shooting*, co-authored by the NAACP Legal Defense Fund, Inc., Alliance for Educational Justice, and the Dignitiy in Schools Campaign, and endorsed by over fifty civil rights and education organizations and individuals, available at http://safequalityschools.org/resources/entry/police-in-schools-are-not-the-answer-to-the-newtown-shooting. The brief explains, in greater detail, how increasing law enforcement is not the most effective way to make our schools safer. In considering safety in response to Newtown we hope that the Senate Judiciary Committee will reject proposals to put more police in schools, and prioritize evidence-based solutions for resolving conflict, identifying and responding to mental health issues, and creating safe and effective schools.

Sincerely,



Judith Browne Dianis
Co-Director

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™

Tuesday, February 12, 2013

Testimony for the record

On behalf of the
American Academy of Pediatrics

Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights hearing:

"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

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The American Academy of Pediatrics (AAP), a non-profit professional organization of more than 60,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults.

The AAP is committed to protecting children from the horrific consequences of gun violence and traumatic events, and ensuring children's safety within their homes, schools and communities. The tragedy at Sandy Hook Elementary School in Newtown, CT serves as a stark reminder that gun violence affects communities nationwide. Unfortunately, while outbursts of mass violence like that at Sandy Hook are at least relatively rare, the scourge of gun violence is a phenomenon that our nation's children experience every single day. In 2008 and 2009, 5,740 children were killed by guns, meaning that 55 died each week during that period[1]. The causes of gun violence are varied and complex but we must act to develop a comprehensive response centered on the rights children and families to be safe and free from its harmful effect in their lives and within their communities.

A Public Health Approach to Reducing Gun Violence

Gun violence is a public health issue with particularly pernicious effects on children. Firearm related deaths continue to be one of the top three causes of death among American youth[2], causing twice as many deaths as cancer, five times as many as heart disease, and 15 times as many as infections[3]. In 2009, 84.5 percent of all homicides of people 15 to 19 years of age were firearm-related. The United States has the highest rates of firearm-related death (including homicide, suicide and unintentional deaths) among high income countries. For youth ages 15 to 24 years of age, fire arm homicide rates were 35.7 times higher than in other high income countries[4]. For over 20 years, the AAP has supported stronger gun violence prevention policies because of the public health implications of this problem. Reducing its impact must be consistent with other initiatives that have reduced injury and mortality through evidence-based prevention efforts.

Policy of the AAP, based on extensive research, is that absence of guns from children's homes and communities is the most reliable and effective measure to prevent firearm-related injuries in children and adolescents[5]. Access to a firearm increases the risk of unintended injury or death among all children. A gun stored in the home is associated with a threefold increase in the risk of homicide and a fivefold increase in the risk of suicide. Individuals possessing a firearm are more than four times more likely to be shot during an assault than those who do not own one[6]. The association of a gun in the home and increased risk of suicide among adolescents is well-documented, even among teens with no underlying psychiatric diagnosis. These health risks associated with gun violence point toward the need for long term research investments on effective strategies to protect children and adolescents, particularly those within at-risk communities.

As part of its engagement with the White House Taskforce on Gun Violence Prevention, the AAP recommended federal support for gun violence research, and is pleased the President's plan recommended $10 million to support Centers for Disease Control and

Prevention (CDC) research into the causes and prevention of gun violence; $10 million for CDC to conduct further research regarding the relationship between video games, media images and violence; and $20 million to expand the National Violent Death Reporting System from 18 to 50 states. The AAP urges Congress to support these efforts within the annual appropriations process and to eliminate any restrictive language that may discourage gun violence research.

The AAP supports policies aimed at protecting children and adolescents from the destructive effect of guns through strong gun safety legislation that bans assault weapons and high-capacity magazines, requires universal background checks, and mandates safe firearm storage. Consistent with this policy, the AAP has endorsed the *Assault Weapons Regulatory Act of 2013* (S. 150/H.R. 437). According to a recent analysis by the Violence Policy Center (VPC), the five states (Alabama, Alaska, Louisiana, Montana, and Wyoming) with the least restrictive gun laws and high gun ownership rates also had the highest per capita gun death rates. States with strong gun laws and low rates of gun ownership had far lower rates of firearm-related death[7]. The AAP is encouraged that bipartisan efforts are underway to strengthen gun laws, and looks forward to the opportunity to review those plans as they materialize.

Responsible Gun Ownership

Policies to support safe and responsible ownership can go a long way toward keeping firearms out of the hands of children and adolescents who may harm themselves or others. An estimated 57 million Americans own 283 million firearms in 2004. Among gun owners with a child 18 years old or younger, 31 percent store their guns unlocked, 21 percent store them loaded, and 8.3 percent store them unlocked and loaded. Safe gun storage can reduce the risk of youth injury and suicide by more than 70 percent; therefore, efforts to educate families and require responsible practices through child access prevention (CAP) laws should be supported as important, but common sense, interventions.

CAP laws impose criminal liability on adults who negligently leave firearms accessible to children or otherwise allow children access to firearms. One study found that in twelve states where such laws had been in effect for at least one year, unintentional firearm deaths fell by 23% from 1990-94 among children under 15 years of age[8]. Laws reducing child access also are associated with lower overall adolescent suicide.

The AAP commends the Obama Administration's safe gun storage campaign proposal and urges Congress to support this initiative. Medical professionals and law enforcement officials should play an important role in implementing this campaign. The AAP's *Bright Futures* clinical guidance recommends that pediatricians ask about guns in the home and that they provide age-appropriate safety counseling, similar to the guidance they provide on other injury risks, like drowning and parental tobacco use[9]. Physician counseling of parents about firearm safety, particularly when combined with the distribution of gun locks, has been demonstrated to be an effective prevention measure and shown to increase compliance with safe storage principles[10].

At the federal level, the Affordable Care Act includes language barring the Secretary of the Department of Health and Human Services and health plans participating in the exchanges from collecting and housing information regarding the presence of firearms in the home. The AAP welcomes the president's guidance that the Affordable Care Act does not prohibit physicians from counseling patients regarding firearms.

The AAP remains concerned about state efforts to infringe upon physicians' rights to provide this crucial counsel such as the *Firearm Owners' Privacy Act,* enacted in Florida, which prevented physicians from providing such counsel under threat of financial penalty and potential loss of licensure. The law has been blocked from implementation by a U.S. District court but similar policies have been introduced in seven other states: Alabama, Minnesota, North Carolina, Oklahoma, South Carolina, Tennessee and West Virginia. This right must be protected to mitigate risk of injury to children in the environments in which they live and play.

Exposure to Violence and Toxic Stress

Addressing the needs of children exposed to violence should be a vital consideration when addressing both the immediate and long term impacts of gun violence. Over 60 percent of children and adolescents are exposed to violence each year. Children exposed to violence are at increased risk for future victimization, perpetration of violence, and other negative health and social outcomes[11]. Children and adolescents can be exposed to numerous types of violence and the effects can be devastating. An increasing body of evidence documents the robust relationship between adverse experiences in early childhood and a host of other medical complications that manifest throughout an individual's life. It was not until the 1980s and 1990s that researchers recognized that risk factors for diseases, such as smoking, alcohol abuse, and risky sexual behaviors, were not randomly distributed in the population. The landmark Adverse Childhood Experiences (ACE) study[12] sponsored by the CDC and Kaiser Permanente and conducted by co-principal investigators Vincent J. Felitti, MD and Robert F. Anda, MD MS, was one of the first long-term studies to examine the direct connection between risk factors for disease and poor health status in adulthood and their antecedents in adverse experiences during childhood.

Many of these negative impacts are results of maladapted neural connections in the brain. Further, research has shown that neural connections, which are particularly vulnerable in the early stages of life (even infancy), can be disrupted and damaged during periods of extreme and repetitive stress[13]. Some degree of childhood adversity is inevitable, and dealing with manageable levels of stress is an important part of healthy development; however, children in unsafe environments are at risk for exposure to what is called "toxic stress," which defined as the excessive or prolonged activation of the physiologic stress response systems in the absence of the buffering protection afforded by stable, responsive relationships.[14].

The effects of exposure to violence may be traumatic for any child. Long after the violence has ended, it is clear that the physiological effects on the child can carry significant ramifications for his life-long health unless they are addressed comprehensively through both traditional medicine as well as evidence-based psychosocial interventions[15]. There are effective treatments available, but early intervention is critical[16]. Primary prevention of the adverse consequences of toxic stress includes those interventions that strengthen a family's social supports and encourage a parent's adoption of positive parenting techniques that can be encouraged within the medical home. The AAP urges Congress to support resiliency-based violence prevention strategies in preschool children and high quality home visiting programs that provide essential family support and can be coordinated with the medical home. The AAP also urges Congress to pursue policies designed to prevent gun violence through evidence-based work with youth, families, and communities consistent with the recommendations within the House Democrats' Gun Violence Prevention Task Force proposal.

When considering violence prevention strategies, is it important to note that decades of extensive research has drawn a direct, causal link between violent media exposure and aggressive behavior and desensitization to violence. By the age of 18, the average young person will have witnessed 200,000 acts of violence on television alone[17]. Beyond passive media violence exposure such as television, children are increasingly exposed to active virtual perpetration of violence through video games, which rewards violent behavior. These exposures negatively affect children's cognitive development, as children are influenced by media and learn through observing, imitating, and adopting behaviors[18]. In addition to research, the AAP supports efforts to reduce exposure to violence in the media.

Increasing Access to Mental Health Care

Individuals with severe mental illness are more likely to be victims of violence than perpetrators. A 2005 study in the *Archives of General Psychiatry* found that in the past year a quarter of individuals with SMIs were victims of violence, a rate 12 times that of the general population[19]. According to the National Institute of Mental Health, the majority of individuals with mental illnesses are not violent, and most acts of violence are committed by individuals who do not have mental illnesses. However, there is a risk of violence for those who are untreated and entering their first episode of psychosis[20]. The greatest risk of violence among individuals with SMIs is self-inflicted. There are over 38,000 suicides annually in the U.S., and 90 percent of them are tied to mental illness[21].

Although 1 in 5 children in the U.S. suffer from a diagnosable mental health disorder, only 20 to 25 percent of affected children actually receive needed treatment. Inadequate insurance coverage and high out-of-pocket costs create barriers that prevent children from accessing needed mental health services[22]. A recent GAO report found that from 2007 to 2009, most children with a potential mental health need did not receive any mental health services. The report determined that 80 percent of such children, whether on public or private health insurance, did not receive psychosocial therapy and 70 percent did not have mental health office visits[23].

To address the shortage of mental health professionals, the Administration is proposing $50 million to train social workers, counselors, psychologists, and other mental health professionals. The Administration also plans to take action by ensuing newly covered Americans, under the Affordable Health Care Act, and those with health insurance get quality mental health coverage by: (1) finalizing the Mental Health Parity regulations to require insurance plans to cover mental health and (2) ensuring Medicaid is meeting its obligation to cover mental health equally. The AAP has urged HHS to use its current authority to improve access to critical mental health services and hopes policy makers will provide the support necessary to implement these recommendations.

Improving access to mental health prevention and treatment is necessary to any comprehensive approach to gun violence. The AAP supports efforts to address the administrative and financial barriers that prevent children from receiving necessary care and to address workforce shortage issues. Pediatricians serve as the main point of contact with the health care system for most children and youth, and any proposal to improve mental health access should embrace this key role pediatricians play in caring for children and assessing their health.

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American Baptist Home Mission Societies Public Witness Statement on Gun Violence
January 23, 2013

The December 14, 2012 shootings at Sandy Hook Elementary School in Newtown, Connecticut, as with other incidents such as those in Aurora, Oak Creek, Tucson, Ft. Hood, Virginia Tech, and Columbine give us pause as disciples of Jesus Christ and citizens of the United States of America. We recoil in horror at these mass shootings, as we also lament the daily toll of gun violence in the United States. Our hearts go out to the victims of these horrendous acts and to their families whom we continue to hold in prayer and for whom we will continue to work for justice and peace.

Firearms are a part of the history and fabric of our nation. Changes in the laws governing the ownership and use of firearms must take into account this uniquely American experience and the ways in which our understanding of the right to keep and bear arms has developed over time. The Supreme Court has held that the Second Amendment to the Constitution guarantees an individual right to "keep and bear arms," while also making it clear that this right is "not unlimited."[1] Nor should it be. The liberties we enjoy are often in tension with one another and no right should be so broadly construed as to undermine the ability of the broader community to maintain order and the peace necessary for human life and flourishing.

Today, approximately 300 people, including 65 children and teens, will be injured or killed with guns in murders, assaults, suicides, and accidents. Today, an estimated 40 percent of gun sales will occur without a criminal background check. Today, background checks for private gun sales have reduced illegal gun trafficking within states that employ them by 48 percent while strong, enforced gun dealer licensing laws have reduced illegal gun trafficking within states that employ them by 64 percent. Today, licensing and registration will make it more difficult to obtain crime guns locally.[2]

While we cannot put an end to gun violence, we can reduce its impact on individuals, families, communities, and our nation. Therefore, we, the board of the American Baptist Home Mission Societies, support the following measures:

- Decreasing the firepower available to civilians by banning assault weapons and prohibiting the sale of large capacity ammunition magazines;
- Closing gaps in the background check system including requiring criminal background checks for all sales at gun shows;
- Implementing a common sense, comprehensive approach to help law enforcement prevent gun trafficking that will decrease the availability of illegal guns, including licensing handgun purchasers and strengthening the regulation of gun dealers;
- Strengthening record keeping of gun transfers, and requiring the reporting of lost or stolen guns to law enforcement to ensure better accountability of guns for persons involved in the supply of guns to the illegal market;

- Increasing resources and capacity for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and repealing existing statutory restrictions that hamper the agency's ability to combat illegal gun trafficking;
- Developing new technologies to help law enforcement more effectively trace crime guns and developing safety features to childproof guns;
- Encouraging local efforts to prevent and reduce gun violence;
- Urging firearms retailers to implement protocols aimed at preventing the sale of firearms to prohibited purchasers and preventing "straw purchases"; and
- Improving the National Violent Death Reporting System and restoring firearms research funding for the Centers for Disease Control and Prevention.
- Encouraging greater societal attention to issues of mental health and illness as well as cultural issues including the pervasiveness of violence in entertainment and the media.

Pursued together, we believe these measures will reduce gun violence while maintaining access to firearms for individuals for the purposes of self-defense, sport, and hunting, and we reject the rhetoric that misleadingly portrays these goals (reduced violence and legitimate access) as incompatible. In the name of the Prince of Peace, we encourage our constituent congregations and the membership thereof to join us in support of these measures as we commit ourselves and the American Baptist Home Mission Societies to the patient work of reform, of taking the sensible steps necessary to reduce gun violence in our land.

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[1] District of Columbia v. Heller

[2] Faiths United to Prevent Gun Violence (www.faithsagainstgunviolence.org) and Mayors Against Illegal Guns (www.mayorsagainstillegalguns.org)

WASHINGTON
LEGISLATIVE OFFICE

February 12, 2013

The Honorable Richard J. Durbin
Chairman
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Committee on the Judiciary
Subcommittee on the Constitution,
Civil Rights and Human Rights
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The Honorable Ted Cruz
Ranking Member
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ROBERT REMAR
TREASURER

RE: Senate Judiciary Subcommittee Hearing Entitled *"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment."*

Dear Chairman Durbin, Ranking Member Cruz, and Members of the Committee:

On behalf of the American Civil Liberties Union (ACLU), its over half a million members, countless additional supporters and activists, and fifty-three affiliates nationwide, we offer this statement for the record of the hearing entitled *"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment."* We commend you for holding a hearing to address this issue of national importance, and we write to offer our recommendations for ensuring that a federal solution focused on reducing gun violence not only protects the physical security of Americans, but also protects their civil rights and liberties.

We urge you to carefully evaluate any potential legislative solutions to ensure that they will not lead to unintended consequences that improperly restrict civil rights and liberties. We are concerned about the increased policing and over-criminalization of young people, including any disproportionate negative impact on students of color and students with disabilities, the infringement of First Amendment rights, and possible rollbacks of privacy rights. We look forward to working with you to craft smart legislation that avoids these pitfalls, while effectively addressing the serious issues at hand.

Over-policing and Criminalization of Students

The recent tragedy at Sandy Hook Elementary School has sparked a national conversation about gun safety generally and school safety in particular.

However, it is important to note that gun violence occurs everywhere, and what happened at Sandy Hook was not the result of a school-specific problem. On January 16, following weeks of deliberation by the gun violence task force headed by Vice President Biden, which met with a wide variety of stakeholders, President Obama released a plan for reducing gun violence.[1] Included in the plan are a number of proposals aimed at making schools safer through a combination of executive action and legislation.

While we agree with the Administration's statement that "one of the best things schools can do to reduce violence and bullying is to improve a school's climate and increase trust and communication between students and staff,"[2] we disagree with the portions of their proposal that would lead to increasing police presence in schools. In particular, we disagree with the recommendation that Congress appropriate $150 million to school districts and law enforcement agencies to hire more police, including school resource officers.

While well-meaning policymakers might assume that adding police, metal detectors and surveillance necessarily makes students safer, experience demonstrates otherwise. In practice, most school police spend a significant portion of their time responding to minor, nonviolent infractions—children who have drawn on desks or talked back to teachers, for example—rather than behaviors that seriously threaten school safety. In New York City, which employs a school security force of over 5,000, schools with permanent metal detectors reported that 77% of incidents in which police personnel were involved during the 2004-2005 school year were classified as "non-criminal."[3] Only 4% were classified as "major crimes against persons," and only 2% were classified as "major property crimes."[4]

Criminalizing minor misbehavior that should be handled by teachers or school administrators has serious consequences for kids and contributes to the school-to-prison pipeline – policies that push kids out of classrooms and into jail cells. When students are arrested just once, their chances of graduating drop dramatically and they face lifelong repercussions as a result.[5] We must ensure that a legislative solution does not result in children being punished more severely in the name of school safety. We strongly caution against accepting any such proposals aimed at increasing law enforcement in schools because such action can harm educational opportunities by unnecessarily pushing students out of school and into the criminal justice system.

This is not the first time this nation has reacted to a violent act with proposals for increasing law enforcement in schools, and we should not ignore the lessons of the past. Immediately following the 1999 Columbine High School massacre, President Clinton dramatically increased federal funding for school-based police officers, and the Department of Justice created the COPS in

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[1] White House, *Now is the Time: The President's plan to protect our children and our communities by reducing gun violence*, Jan. 16, 2013, *available at* http://www.whitehouse.gov/issues/preventing-gun-violence?utm_source=email193a&utm_medium=text1&utm_campaign=nowisthetime.
[2] *Id.* at 12.
[3] New York Civil Liberties Union and American Civil Liberties Union, *Criminalizing the Classroom: the Over-Policing of New York City Schools*, 20 (2007), *available at* http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf
[4] *Id.*
[5] Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 Justice Quarterly 462, 473 (2006).

Schools (CIS) grant program the same year to help local communities pay for increasing police presence in schools.[6] This was true despite the fact that there were already police at Columbine.

Three school districts in the Hartford, Connecticut area, just an hour from Newtown, were among the many that took advantage of this funding, and the ACLU of Connecticut examined the results.[7] In all three districts, the study found, very young students were being arrested at school, including numerous children in grade three and below.[8] Among them, students of color were arrested at rates clearly disproportionate to their representation in the student population, and in some cases were even arrested for infractions when their white peers were not.[9] Though statistics do not capture the full story, the numbers in Connecticut included the arrest of two Hispanic fourth graders for "insubordination," the arrest of an African American first grader for "leaving school grounds," and the arrest of a Hispanic kindergartner for battery.[10] It is difficult to imagine any circumstances under which these arrests, rather than discipline meted out by an educator, were appropriate.

The disproportionate impact of over-policing and punitive school discipline policies on students of color, as well as students with disabilities, is a nationwide problem. According to national data released by the Department of Education, students of color are likely to be punished more harshly and more frequently in schools for the same infractions as white students.[11] Of all students arrested or referred to law enforcement nationally, 70% were Latino or African American.[12] African American students were also 3.5 times more likely than their white peers to be suspended—and while they represented just 18% of the students in the sample, they accounted for 39% of expulsions.[13] Students with disabilities, similarly, are more than twice as likely as their peers to receive one or more out-of-school suspensions.[14]

Recently, during the Subcommittee's landmark hearing about the school to prison pipeline and the dangers of overly punitive school discipline policies, this panel heard testimony from Edward Ward, who attended a public high school on the west side of Chicago with a completely African American and Latino student body, where he saw these trends first hand.[15] Though Ward graduated—one of just 27.7% of his classmates to do so—he described seeing many of his peers

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[6] American Civil Liberties Union and ACLU of Connecticut. *Hard Lessons: School Resource Officers and School Based Arrests in Three Connecticut Towns,* 14 (2008), *available at* http://www.aclu.org/files/pdfs/racialjustice/hardlessons_november2008.pdf.
[7] *See id.*
[8] *Id.* at 26.
[9] *Id.* at 36.
[10] *Id.* at 44.
[11] Tamar Lewin, *Black Students Face More Harsh Discipline, Data Shows*, N.Y. TIMES, March 6, 2012, *available at* http://www.nytimes.com/2012/03/06/education/black-students-face-more-harsh-discipline-datashows.html?_r=1&hp.
[12] DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, THE TRANSFORMED CIVIL RIGHTS DATA COLLECTION 2 (2012), *available at* http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf
[13] *Id. at 2.*
[14] *Id.* at 3.
[15] *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary,* 112th Cong. (2012) (statement of Edward Ward), *available at* http://www.judiciary.senate.gov/pdf/12-12-12WardTestimony.pdf.

pushed out of school by the harsh policing practices. Specifically, he noted that each morning he was faced with metal detectors, x-ray machines, and uniformed security officers, making school feel like a hostile, prison-like environment.[16]

He testified saying:

> [w]hen my classmates were suspended from Orr, they would disappear for days and when they were kicked out they would disappear sometimes for weeks. What was most shocking to me was discovering that they were being suspended for minor infractions, the kind of infractions that shouldn't merit more than a stern warning or reminder.[17]

A New York Civil Liberties Union complaint details another outrageous incident in which a school officer handcuffed and arrested a girl who tried to enter the school early to catch up on schoolwork, and then arrested the principal for attempting to intervene.[18]

Unfortunately, these stories are all too common. Past experience demonstrates that increasing police presence in schools after a tragedy, while well-intentioned, is misguided. Any proposals that would bring more police, school resource officers (SROs), or even the National Guard, as some current legislative proposals suggest, must be rejected.[19] Militarizing our schools is not the answer to improving school climate. The cost to the health and well-being of our children is just too great.

And in schools that already have a law enforcement presence, lawmakers and school administrators must put appropriate safeguards in place to ensure that officers do what they are intended to do—prevent serious crimes—not usurp the role of educators by engaging in routine school discipline. Some safeguards should include, but are not limited to:

- Specific, written memorandum of understanding (MOU) between the police department and the school on the appropriate role of police involvement, limiting that involvement to serious criminal law matters to ensure that law enforcement intervention is only used as a last resort. Community, advocacy and youth organizations should be given the opportunity to comment on the MOU before it is finalized;
- High-quality specialized training for educators and all police who work in schools in such areas as youth development, non-violent conflict resolution, cultural competency, implicit bias, and interacting with students with disabilities. This should include training on how to distinguish between situations to be handled by educators and those to be handled by police, as specified in the MOU;

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[16] *Id.* at 2.
[17] *Id.*
[18] Amended Complaint, *B.H., et al. v. City of New York, et al.* (E.D.N.Y. June 11, 2010) (No. 10-cv-0210).
[19] For example, Senator Barbara Boxer (D-CA) has introduced three troubling bills this Congress, including the Save Our Student Act (S.145), which would facilitate the installation of National Guard troops in U.S. schools, the School Safety Enhancements Act of 2013 (S. 146), which would create a national tip line to report students and increase surveillance at schools, and S. 148, which would increase funding for school resource officers. All three proposals would militarize schools to the detriment of students. *See* S. 145, 113th Cong. (2013); S. 146, 113th Cong. (2013); S. 148, 113th Cong. (2013).

- Regular data collection on school-based arrests and other law enforcement interactions with students, broken down by key identity indicators (such as race, gender, disability status, English-language learner status, etc.) as well as type of offense, to ensure that police are intervening only in appropriate situations;
- Regular reporting of data to federal, state and local governments and public access to data (in a format that protects individual students' privacy and confidentiality);
- Regular monitoring of data by federal, state, and local governments for indications that police are inappropriately involved in school discipline matters and/or that racial disparities exist;
- Development of plans for reducing reliance on police, as well as any racial disparities in arrests, citations, or tickets;
- Corrective action, including the reduction or elimination of federal funds where there is overuse and/or racially disproportionate use of law enforcement to respond to student misbehavior; and
- Denial of renewal grants where the federal government identifies persistent police overreliance or racial disparities.

Improving Outcomes for Students

Instead of focusing on proposals that would direct even more funds towards increased school policing, we encourage you to pursue federal funding for efforts that proactively improve learning opportunities and school climate for all students, such as training for teachers, additional counselors and health professionals, and additional positive programs to support students.[20] Some specific examples of steps to take at the federal level include:

- The Positive Behavior for Safe and Effective Schools Act, which would provide schools with the tools they need to improve learning environments by allowing them to dedicate Title I federal funds to the development of school wide positive behavior supports.[21] Positive behavior supports are evidence-based practices demonstrated to reduce disciplinary referrals, suspensions and expulsions, increase academic achievement, and improve school safety.[22] The bill would help to reduce reliance on suspensions, expulsions, and referrals to law enforcement, all of which push students out of schools and put graduation out of reach.[23] It would also enable the Department of Education to

[20] For a more detailed discussion of ACLU's federal recommendations for ending the school-to-prison pipeline and improving school climate, please see *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary,* 112th Cong. (2012) (statement of the Laura W. Murphy and Deborah J. Vagins, American Civil Liberties Union), *available at* http://www.aclu.org/files/assets/aclu_statement_for_sjc_subcomm_hearing_on_the_school_to_prison_pipeline_12_2012.pdf.

[21] Positive Behavior for Safe and Effective Schools Act, H.R. 3165, 112th Cong. (1st Sess. 2011), *available at* http://www.gpo.gov/fdsys/pkg/BILLS-112hr3165ih/pdf/BILLS-112hr3165ih.pdf

[22] Deborah J. Vagins, *Teach (and Treat) Our Children Well,* Huffington Post, Dec. 3, 2009, http://www.huffingtonpost.com/deborah-jvagins/teach-and-treat-our-child_b_378794.html.

[23] Letter from the Dignity in Schools Campaign to Members of Congress (Dec. 18, 2009), *available at* http://www.aclu.org/files/assets/PBSESA_-Dignity_in_Schools_Campaign_HR_2597_Support_Letter_FINAL.pdf

provide more training and technical assistance on effective school discipline practices and support the development of alternatives to over policing.[24]

- The Ending Corporal Punishment in Schools Act, which would prohibit the use of physical punishment at school[25]—a practice still legal in 19 states.[26] The most recent national data available indicates that over 200,000 students are the victims of this practice every year.[27] The use of corporal punishment is not only ineffective when it comes to improving behavior and disciplining students, but it can also cause children to withdraw academically and socially, leading to fear, depression, and anger and impacting long term well-being.[28]

  Moreover, data shows that corporal punishment is applied at shockingly disproportionate rates against African American students and students with disabilities.[29] For example, while African Americans made up 21.7% of public school students in states that allowed corporal punishment during the 2006-2007 school year, they accounted for 35.6% of those who were paddled.[30] The discriminatory use of corporal punishment against these student subgroups seriously undermines their ability to learn and further contributes to school push-out.

  Additional school officers with the power to administer school discipline in states where students can already be hit by school personnel and where such disparities exists, raises significant concerns about school climate and student safety.

- The Youth PROMISE Act, which would curb youth violence and gang involvement by providing federal funding and support to local stakeholders to identify underlying causes of violence and implement evidence-based prevention programs intended to keep youth from ever entering the criminal justice system. The legislation would provide support for

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[24] Positive Behavior for Safe and Effective Schools Act, H.R. 3165, 112th Cong. (1st Sess. 2011), *available at* http://www.gpo.gov/fdsys/pkg/BILLS-112hr3165ih/pdf/BILLS-112hr3165ih.pdf.

[25] http://www.gpo.gov/fdsys/pkg/BILLS-112hr3027ih/pdf/BILLS-112hr3027ih.pdf

[26] Yunji DeNies, *Should Your Child Be Spanked at School? In 19 States, It's Legal*, ABC News, March 16, 2012, *available at* http://abcnews.go.com/US/spanking-school-19-states-corporal-punishment-legal/story?id=15932135#.UL6PkFFAUTA.

[27] *See* DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION 2006, *available at* http://ocrdata.ed.gov/Projections_2006.aspx (The 2006 CRDC data is the most recent available, as national data on corporal punishment from the most recent CRDC has not yet been released).

[28] *Corporal Punishment in Schools and Its Effect on Academic Success: Hearing Before the Subcomm. on Healthy Families and Communities of the H. Comm. on Education and Labor*, 112th Cong. 1 (2010) (statement of the American Civil Liberties Union and Human Rights Watch), *available at* http://www.hrw.org/sites/default/files/related_material/CorpPunishStatement_041510.pdf; ACLU blog: http://www.huffingtonpost.com/deborah-j-vagins/corporal-punishment-in-schools_b_983041.html; ACLU blog: http://www.huffingtonpost.com/deborah-j-vagins/an-arcane-destructive_b_631417.html

[29] *Corporal Punishment in Schools and Its Effect on Academic Success: Hearing Before the Subcomm. on Healthy Families and Communities of the H. Comm. on Education and Labor*, 112th Cong. 1 (2010) (statement of the American Civil Liberties Union and Human Rights Watch), *available at* http://www.hrw.org/sites/default/files/related_material/CorpPunishStatement_041510.pdf

[30] *See* DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION 2006, *available at* http://ocrdata.ed.gov/Projections_2006.aspx (The 2006 CRDC data is the most recent available, as national data on corporal punishment from the most recent CRDC has not yet been released).

local youth organizations to create a PROMISE advisory panel. The panel would work with parents, teachers, law enforcement officers and other community members to evaluate needs of the community and identify and implement programs designed to address the drivers of crime in that community. This legislation is an important model for stopping more young people – overwhelmingly African American and Latino – from being funneled into the juvenile and adult criminal justice systems.

- Strengthening the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJDDP), which over the past decade has suffered depletion of funding and support. Funding levels for OJJDP have declined more than 90% since 2002. The Juvenile Justice and Delinquency Prevention Act (JJDPA) is more than five years overdue for reauthorization. In addition, the long absence of a permanent OJJDP Administrator has halted progress in advancing reforms, slowed the reauthorization of the JJDPA, and sent a message that federal leadership in juvenile justice is not a priority. The JJDPA must be reauthorized and adequately funded to assist states in advancing juvenile justice reforms such as reducing racial and ethnic disparities, ending the placement of youth in adult court and adult jails and prisons, and halting the inappropriate use of detention and incarceration.

Upholding the First Amendment

In addition to the collateral impact legislation could have on the school-to-prison pipeline, there are other civil liberties issues we hope would not be implicated by any gun control legislation. We urge Congress to resist calls for new studies on the purported link between depictions of violence in the media and gun violence. Years of study and many courts, including the Supreme Court, have found no evidence to link interactive media with real-world violence, and the First Amendment applies full-force to such media.[31] We oppose any proposed content regulation, including laws that would place the government in the shoes of parents in terms of deciding what children can see, read, play or hear. We also urge you to bear in mind that mere congressional scrutiny will result in self-censorship by media companies. Historically, calls for government regulation of disfavored media content have resulted in industry pressure on content producers to censor themselves. In and of itself, this also poses significant First Amendment consideration.

Protecting the Right to Privacy and Preserving Mental Health Protections

Federal legislation to address gun violence must protect the civil rights and liberties of all people, including those with psychiatric disabilities. Data shows that people with mental disabilities are no more likely to be violent than the general population, but are instead much more likely to be

[31] *See, e.g.*, *Brown v. Entm't Merch. Ass'n*, 131 S. Ct. 2729, 2733 (2011) ("[V]ideo games qualify for First Amendment protection . . . . The Free Speech Clause exists principally to protect discourse on public matters, but we have long recognized that it is difficult to distinguish politics from entertainment, and dangerous to try."); *Am. Amusement Mach. Ass'n v. Kendrick*, 244 F.3d 572, 577, 579-80 (7th Cir. 2001) ("All literature (here broadly defined to include movies, television, and the other photographic media, and popular as well as highbrow literature) is interactive; the better it is, the more interactive."); *Wilson v. Midway Games, Inc.*, 198 F. Supp. 2d 167, 169 (D. Conn. 2002).

victims of violence.[32] Yet, state legislation in New York, and much of the national dialogue assumes a link between gun violence and psychiatric illness. This creates a risk of further stigmatizing people who have mental health needs, and deterring them from seeking treatment.

President Obama's proposal to de-stigmatize mental health treatment through a national dialogue is a welcome policy decision. Further, since mental health services are chronically underfunded in many communities,[33] federal legislation should increase appropriations for mental health services and the training of additional mental health professionals. As an important step towards ensuring that all Americans can afford to access mental health care services, we are pleased to see President Obama's recent proposals to make sure that mental health services are funded at parity with medical and surgical benefits. As this Subcommittee considers the issue of gun violence and future legislation, we encourage a national dialogue between and among the Administration, Congress, and the public on the prevalence of psychiatric disabilities and the benefits of treatment.

We also oppose the creation of a national database to "track" people who receive mental health care, as it will only further stigmatize and deter people from seeking treatment when necessary. Further, any legislation impacting the right to purchase or sell a firearm or ammunition, the right to be employed in a gun store, or the right to engage in any other related activity must include due process protections to ensure accuracy and a fair adjudication. Whether such determinations are based on criminal background checks, with a record of a psychiatric disability diagnosis, or other factors, the information used to reach these decisions must be kept private. The use of any database should be securely maintained, not linked with other information databases, and kept for a limited period of time. Moreover, individuals must have the opportunity to seek a change in their legal status, when any factor impacting that status changes.

While increasing access to mental health resources is beneficial, any federal proposal under consideration should not include provisions to expand involuntary treatment. Not only would it be a significant infringement upon an individual's civil liberties, it is also a poor therapeutic approach, since forced treatment can create an understandable fear and suspicion of the mental health care community. Every state already has laws to detain and commit those who are viewed as a danger to themselves or others. No federal complement is appropriate or necessary.

Creating a Fair Criminal Justice System

While the justice system has been tasked with the responsibility of keeping us safe, which requires many serious offenders to be held in our prisons and jails, it also has a responsibility to deliver fair and proportional sentences. Mandatory minimum sentences are unfair because they eliminate a judge's ability to evaluate the facts of each case and consider the character and history of a defendant in determining the most appropriate sentence. Senate Judiciary Committee Chairman Patrick Leahy directly addressed this issue, stating in a recent address to Georgetown Law students:

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[32] Grohol, J. M. "Dispelling the violence myth." Psych Central. (June, 1998); Monahan, J. "Mental Disorder and Violent Behavior: Perceptions and Evidence." *American Psychologist* vol. 47 iss.4 (1992): 511-521.
[33] Charles M. Blow, *Guns, Smoke and Mirrors,* THE NEW YORK TIMES, Dec. 21, 2012, at A25.

> Our reliance at the state and federal level on mandatory minimums has been a great mistake. I'm not convinced it has lowered crime. I [know] that we have imprisoned people who should not be there, and we have wasted money better spent on other things.[34]

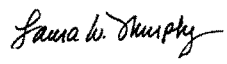
We are encouraged by Chairman Leahy's recognition of the problem with mandatory minimums and hope that legislative proposals considered by the Subcommittee will avoid new mandatory minimum sentences, and that Congress will work to eliminate those already in place.

Conclusion

Thank you for your leadership in seeking real reform on this crucial national dialogue about safety in our nation. We look forward to engaging in this process and working with you to implement smart reforms that will make us safer without sacrificing our civil rights and liberties.

If you have any questions or comments, please contact Legislative Counsel Jennifer Bellamy at 202-715-0828 or jbellamy@dcaclu.org.

Sincerely,



Laura W. Murphy
Director

Jennifer Bellamy
Legislative Counsel

[34] *The Agenda for the Senate Judiciary Committee for the 113th Congress* (statement of Sen. Patrick Leahy), *available at* http://www.cq.com/doc/newsmakertranscripts-4206024?wr=bzR2QWhQbmtjMG1yVVFhOHU1MDhRQQ

A Union of Professionals

Statement of Randi Weingarten,
President of the American Federation of Teachers

Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights Hearing on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"
February 12, 2013

On behalf of the 1.5 million members of the American Federation of Teachers, I would like to offer the AFT's perspective on gun safety issues. The AFT represents educators, some who lost their lives in Newtown, Conn.; nurses, one who lost her life in a shooting in Oregon this past December; and school counselors and other school employees who work every day to assist students who are traumatized by gun violence, too often in their own neighborhoods, as tragically evidenced by the recent shooting of 15-year-old Hadiya Pendleton, an honor student in Chicago who was killed just one week after performing at President Obama's inauguration.

Before specifically addressing the issue of gun violence, I would like to stress that the AFT believes we also must address other issues that affect the safety of communities, including comprehensive school safety programs and procedures, welcoming and supportive school environments, and access to mental health supports. Only a comprehensive approach will make our schools and communities safer. Our children deserve nothing less.

The brutal massacre of innocent children and educators in Newtown, Conn., shook us to our core. But sadly, gun violence is not an isolated occurrence—as evidenced by the shootings in Aurora, Colo., Phoenix, and at Virginia Tech. According to a recent report from the Children's Defense Fund, a child or teen dies or is injured from guns every 30 minutes. In 2010 alone, 18,270 children and teens died or were injured from guns; the total number of children under 5 killed by guns was more than the number of law enforcement officers killed in the line of duty that same year.[1]

These tragic events serve as a clarion call for immediate action to keep our communities safe from gun violence and ensure schools are the safe sanctuaries our children need to learn and grow. We applaud those who are heeding this call for action with a series of commonsense, balanced proposals that will make our nation safer.

We believe a good first step is reinstating the 1994 assault weapons ban and enacting a new ban on high-capacity ammunition magazines. The gun used to murder 26 innocent children and educators at Sandy Hook Elementary School in Newtown fired six bullets every second. That weapon, its high-capacity magazine, and weapons like it are designed for maximum carnage, not for hunting and sport.

To this end, the commonsense legislation introduced by Sen. Dianne Feinstein, the Assault Weapons Ban of 2013 (S. 150), will help keep our communities safe from gun violence. We urge its immediate passage. The bill bans the sale, transfer, importation, or manufacturing of 157 specifically named firearms, and it creates a safe storage requirement for grandfathered firearms. In addition to the assault weapons ban, the Large Capacity Ammunition Feeding Device Act of 2013 (S.33) introduced by Sen. Frank Lautenberg would ban the production and sale of the high-capacity ammunition clips such as those used by the Sandy Hook assailant. Large-capacity ammunition magazines are not designed for hunting or for self-defense. They are

[1] http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/protect-children-not-guns-key-facts-2013.pdf

designed to shoot mass numbers of people quickly without reloading. These devices should be banned.

Other important steps the Congress can take include: implementing universal background checks and closing the gun show loophole. The Gun Show Background Check Act of 2013 (S. 22), introduced by Sen. Lautenberg would close the "gun show loophole," that allows people to buy guns at gun shows in most states without passing a criminal background check. Allowing convicted felons and domestic abusers to buy guns without criminal background checks threatens the safety of our families and communities. According to a recent Quinnipiac University poll, 92 percent of voters, including 91 percent of gun-owning households, support background checks on all gun buyers. This bill should be enacted into law immediately.

The AFT also supports cracking down on gun traffickers. Too many criminals can buy guns from unlicensed dealers. According to the Brady Campaign, almost 60 percent of the guns used to commit crimes in our nation come from only 1 percent of gun dealers; weak gun laws make it all too easy for corrupt gun dealers to supply gun traffickers with an unlimited numbers of handguns and military-style assault weapons for the criminal market. The AFT supports swift passage of the Gillibrand-Kirk Gun Trafficking Prevention Act of 2013 (S. 179), which would give federal law enforcement officials the critical tools they need to crack down on illegal guns and illegal gun trafficking.

Just as guns have no place on the streets, they do not belong in schools, which must be safe sanctuaries, not armed fortresses. Anyone who would suggest otherwise doesn't understand that our public schools must first and foremost be places where teachers can safely educate and nurture students. Whether to bring school resource officers into schools should be decided on a school-by-school basis; it should be the decision of the school community and must be part of a comprehensive safety plan. Those officers must be appropriately trained both in maintaining security and in identifying and supporting at-risk students; they should be part of the fabric of the school community, not simply stationed armed guards.

In times of great tragedy, Americans have always come together to grieve, to support one another, and to act—to put aside what divides us and take collective action to heal and move our nation forward. Too many of our children have had their lives cut short and their futures denied by gun violence—in their schools and in their communities. We have a set of effective proposals, and now we must find the political will to get it done.

STATEMENT

of the

AMERICAN NURSES ASSOCIATION

to the

United States Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

regarding

Proposals for Reducing Gun Violence: Protecting Our Communities While Respecting the Second Amendment

February 12, 2013

American Nurses Association
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Statement
of the
American Nurses Association
to the
United States Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

Proposals for Reducing Gun Violence: Protecting Our Communities While Respecting the Second Amendment

February 12, 2013

The American Nurses Association (ANA) is deeply concerned over the continued gun violence perpetrated in this country every day. The recent tragic events that took the lives of 26 innocent men, women and children at Sandy Hook elementary school in Connecticut serve as a reminder of the continuing problem of dealing with both mental illness and access to weapons in our country. There are no easy answers or quick-fixes to these problems but we applaud the Subcommittee for addressing them here today.

ANA is the only full-service professional organization representing the interests of the nation's 3.1 million registered nurses, and advances the nursing profession by fostering high standards of nursing practice, promoting the rights of nurses in the workplace, and sharing a constructive and realistic view of nursing's contribution to the health of our nation.

As the largest providers of health care in this country nurses are uniquely positioned to witness first-hand the devastating impact of gun violence. Gunshot victims make up a sizeable number of patients in many of country's urban emergency rooms. While ANA fully respects the Second Amendment and a citizen's right to bear arms, we also know that some sensible steps can be taken to both protect the rights provided to us in the Constitution and tightening laws to help curb the ready access to assault weapons in this country.

ANA believes taking steps like closing the "gun show" loophole, strengthening penalties for gun trafficking and instituting a mandatory background check for anyone looking to purchase a gun will help to cut down the easy access to guns on our streets. That is not to say that guns purchased legally haven't been, and will continue to be, used in many of these crimes but we believe that adding additional steps will make it harder for those who commit these crimes to access them.

Any serious attempt to take on the issue of gun violence must also address the state of mental health in our country. For too long we have turned a blind eye to those suffering from mental illness. From its sheer stigma to a lack of education and funding many of those suffering from mental illnesses slip through the cracks and don't receive the proper care they need and deserve. ANA urges Congress to look at new ways to address these issues and renew a commitment to bettering the mental health of the American people.

When it comes to tackling the issues of gun violence and mental health, there are no easy answers. ANA strongly believes that the implementation of universal background checks and stiffer penalties for gun trafficking while addressing the growing problem of Americans suffering from untreated or undiagnosed mental health problems is a good first step. ANA applauds the Committee for addressing this critical problem facing our country and looks forward to working with Chairman Durbin, Ranking Member Cruz, the Senate Constitution, Civil Rights, and Human Rights Subcommittee, and other members of the full Committee in order to ensure that we continue to invest time and resources into tackling these tough issues facing the nation.

ANA would be happy to provide additional resources or assistance as the committee moves forward on this and other issues related to health care and nursing.

A Call to Action from the Nation's Nurses in the Wake of Newtown

Like the rest of the nation, America's nurses are heartbroken as we grieve the unthinkable loss and profound tragedy that unfolded last week in Newtown, Connecticut. This horrific event is a tipping point and serves as a call to action. The nation's nurses demand that political and community leaders across this country address longstanding societal needs to help curb this endless cycle of senseless violence.

Our country has witnessed unspeakable acts of mass shootings. The common thread in each of these tragedies has been the lethal combination of easy access to guns and inadequate access to mental health services.

As the largest single group of clinical health care professionals, registered nurses witness firsthand the devastation from the injuries sustained from gun violence. We also witness the trauma of individuals, families, and communities impacted by violence.

The care and nurturing of children in their earliest years provides a strong foundation for healthy growth and development as they mature into adulthood. Children, parents, and society face growing challenges with respect to widespread bullying and mental illness, and nurses understand the value of early intervention. Over the past decade, ill-advised and shortsighted cutbacks within schools and community health care systems have seriously impeded critical and needed access to school nurses and mental health professionals trained to recognize and intervene early with those who are at risk for violent behavior.

The public mental health system has sustained a period of devastating cuts over time. These cuts have been exacerbated during the Great Recession despite an increase in the demand for services for all populations, including our nation's veterans. States have cut vital services, such as community and hospital-based psychiatric care, housing, and access to medications. Looming budget cuts could lead to further cuts in services.

It is time to take action. The nation's nurses call on President Obama, Congress, and policymakers at the state and local level to take swift action to address factors that together will help prevent more senseless acts of violence. We call on policymakers to:

- Restore access to mental health services for individuals and families
- Increase students' access to nurses and mental health professionals from the elementary school level through college
- Ban assault weapons and enact other meaningful gun control reforms to protect society

The nation's nurses raise our collective voice to advocate on behalf of all of those who need our care. As a nation, we must commit to ending this cycle of preventable violence, death, and trauma. We must turn our grief into action.

Alabama State Nurses Association

American Academy of Nursing

American Nurses Association

American Psychiatric Nurses Association

ANA-Illinois

ANA-New York

ANA-Michigan/RN-AIM

Arizona Nurses Association

Arkansas Nurses Association

Association of Nurses in AIDS Care

Association of Women's Health, Obstetric and Neonatal Nurses

Colorado Nurses Association

Connecticut Nurses' Association

Delaware Nurses Association

Infusion Nurses Society

Louisiana State Nurses Association

Massachusetts Association of Registered Nurses

Minnesota Organization of Registered Nurses

Missouri Nurses Association

Montana Nurses Association

National Association of Clinical Nurse Specialists

National Association of Orthopaedic Nurses

National Association of School Nurses

National League for Nursing

New Hampshire Nurses' Association

New Jersey State Nurses Association

New Mexico Nurses Association

Nurses Organization of Veterans Affairs

Ohio Nurses Association

Oklahoma Nurses Association

Pennsylvania State Nurses Association

Preventive Cardiovascular Nurses Association

Rhode Island State Nurses Association

Virginia Nurses Association

Washington State Nurses Association

Wound, Ostomy and Continence Nurses Society

December 20, 2012

American
Public Health
Association

PROTECT, PREVENT, LIVE WELL

Statement of the American Public Health Association
Submitted for the record to the Senate Judiciary Subcommittee on the Constitution,
Civil Rights, and Human Rights
Proposals for Reducing Gun Violence:
Protecting Our Communities While Respecting the Second Amendment
February 12, 2013

The American Public Health Association is the oldest and most diverse organization of public health professionals and advocates in the world dedicated to promoting and protecting the health of the public and our communities. We believe all Americans have the right to live in communities that are free from violence and are very pleased with President Obama's proposal to protect our communities from the deadly impact of gun violence. We welcome the opportunity to submit a statement for the record regarding congressional efforts to prevent gun violence. APHA believes that Congress must take a comprehensive public health approach to preventing gun violence in our nation. This includes additional unrestricted funding for more research and data collection, stronger and more protective common-sense gun laws, ensuring access to adequate mental health services and ensuring our state and local public health and mental health systems have adequate funding to put into place interventions to reduce gun violence and to provide mental health services to those in need. We stand ready to work with Congress and the administration to pass legislation to protect our nation's children and their families from the growing epidemic of gun violence.

Gun violence is one of the leading causes of preventable death in our country and we must take a comprehensive public health approach to addressing this growing crisis. For too long we as a nation have failed to take on this devastating problem in our communities and we can wait no longer. The heartbreaking and senseless tragedy that took the lives of the innocent children and adults in Newtown, Conn. is a tragic example of how gun violence is devastating our communities. This tragedy follows other horrific acts of gun violence that have plagued our nation for too long.

APHA believes that there are a number of areas where Congress must enact legislation to address gun violence. The following are some of the top priorities for APHA and we urge you to include these recommendations as you move forward in developing legislation to prevent gun violence in the United States.

Increase funding for data collection and research

We must expand the collection of data and research related to gun violence and other violent deaths in order to better understand the causes and develop appropriate interventions. We oppose any restrictions on federal funding for research into gun violence and we strongly support

President Obama's call for increased funding for research into the causes of gun violence at the Centers for Disease Control and Prevention.

We support an increase of $10 million in Fiscal Year 2014 for the National Violent Death Reporting System (NVDRS), a state-based violent death prevention tool administered by CDC's National Center for Injury Prevention and Control. This important public health surveillance system is the underpinning of a multi-faceted, multi-agency approach. NVDRS requires cross-agency collaboration at the state level, and the surveillance data collected would prove invaluable for the design of targeted gun violence prevention strategies. But to do that, it must expand from its current 18 states and move toward nationwide implementation. CDC has developed a strategic plan for this expansion and is committed to full implementation of the program. Currently funded at $3.5 million, an increase of $10 million in FY14 would move the country half-way towards national implementation and represent a long-term, lasting contribution to the nation in state-based gun violence prevention efforts. We urge a multi-year approach following FY14 to secure the $25 million needed for nationwide expansion of NVDRS to all 50 states and U.S. territories.

Remove deadly weapons from our communities

APHA supports requiring and strengthening criminal background checks for all firearms purchases, including all firearms sold by all sellers at gun shows. The so-called "gun show loophole," currently exempts unlicensed private sellers of firearms from conducting criminal background checks on buyers at gun shows. This significant gap in federal law provides access to weapons for felons, the mentally ill and others prohibited from owning firearms.

We support Senator Dianne Feinstein's Assault Weapons Ban of 2013 to reinstate the federal ban on assault weapons and high-capacity ammunition magazines, which expired in 2004. These firearms are not suitable for hunting, collecting or self-defense, but are meant for military combat and have no place on our streets or in our homes. APHA has long supported strengthening and reinstating the federal ban on assault weapons and high-capacity ammunition magazines that can hold more than ten rounds. We have witnessed too many times the deadly impact of these weapons and high-capacity magazines and we urge Congress to pass Senator Feinstein's legislation.

Strengthen our nation's mental health system

In addition to common-sense gun control measures, we urge you to work with the administration to ensure adequate funding for critical mental health services. Like most public health funding at the state and local level, funding for mental health services has been on the decline in recent years. At the same time, funding for the Substance Abuse and Mental Health Services Administration has been proposed for cuts in the president's budget and in various spending bills in the House of Representatives. We urge you to ensure that state, local and community-based behavioral health systems have the resources they need to provide much-needed care. While the expansion of Medicaid coverage will provide mental health benefits to millions of currently uninsured Americans, gaps will likely still exist since several states have signaled they do not plan to expand this coverage.

We also urge the Department of Health and Human Services to ensure that the Affordable Care Act provides comprehensive coverage for mental health and substance use disorder services as part of the Essential Health Benefits. The design of EHB will have a direct impact on the health and wellbeing of over 70 million Americans. EHB design will also have a tremendous impact across our health system and is a central component of the ACA. We believe that EHB is a critically important opportunity to address the health needs of the 25 million Americans with untreated mental illness and/or substance use disorders, prevent these diseases in millions more, and provide necessary services to those seeking care for or in recovery from MH/SUD to improve their health and wellness and allow them to reach their full potential.

Support resources for school and community-based prevention

APHA supports comprehensive measures in community and school-based prevention, early intervention strategies and preparedness initiatives to prevent gun violence and prepare our communities and schools in the event of an emergency. We must make our schools safer, where teachers, faculty and students can dedicate their efforts to teaching and learning without the concern of violence. To improve the physical safety of students and others, we believe it is essential that schools collaborate with local community groups to develop and implement a comprehensive and effective emergency management plan. Teachers, other personnel and students should all be appropriately trained and prepared to implement the safety plan.

Beyond securing the physical safety of students, faculty and other personnel, school policies must promote a positive school climate to support the emotional and learning needs of all students to maintain a safe environment. We support school policies and programs that reduce bullying and at-risk behavior, and increase access to mental health supports, and urge you to ensure that schools have adequate funding to expand mental health services and resources. Increasing awareness, prevention, early detection and treatment are critical to ensuring appropriate care and can contribute to strengthening our nation's mental health system. To achieve this, we support providing on-site mental health services, through centers such as school-based health centers, in schools K-12, a common-sense approach to ensure that children and youth are able to access appropriate treatment and services. In addition to providing individualized services, SBHCs support all students' mental health by creating school-wide programs that address bullying, violence, anger, depression and other social and emotional issues that impede academic achievement.

We also urge you to ensure that schools and communities have the funding necessary to provide proper training for parents, teachers and other community leaders to identify mental health conditions early-on. These training programs will allow for an improved understanding of mental health warning signs, minimized stigma and a more robust referral system for students to access critical mental health resources.

Conclusion

Gun violence continues to take a tremendous toll on our communities and there is no excuse for inaction. APHA urges the Senate Judiciary Committee and both the House and the Senate to move forward with comprehensive legislation to address the public health crisis of gun violence in our nation.

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 18, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. I am a mother of two young children and have been a Virginian for over a decade. Originally from North Carolina, I obtained a BS from Duke University and a JD from Washington University in St. Louis. Upon graduation, I moved to Virginia for work and it is where I have decided to raise my family. I write today to express my concern for the lack of adequate gun regulation in the United States of America.

The proliferation of gun violence, most recently in Newtown, CT, is known all too well by Virginians. From the tragic massacre at Virginia Tech, the DC Sniper that terrorized an entire population for a month, and the stain of being the iron pipeline to the North-East corridor -- Virginia is, unfortunately, a poster-child for poor gun regulation in a nation that is reeling from poor gun regulation and the resulting, ever-increasing frequency of gun fatalities.

I ask that you support the President's Proposals to reduce gun violence, most notably – closing background check loopholes to keep guns out of dangerous hands and banning military-style assault weapons and high capacity magazines.

UNIVERSAL BACKGROUND CHECKS AND GUN TRAFFICKING LAWS

I attended the Senate Judiciary Committee Hearing on January 30th that asked the question: "What Should We Do about Gun Violence?" Testimony from that hearing made it apparent to me that one answer to this question is that we need universal background checks, a robust database and reporting system, and gun trafficking legislation, including requiring responsible gun owners to report lost or stolen weapons.

Testimony from Baltimore Chief of Police Jim Johnson was unequivocal on this point: "Background checks work." And, according to his testimony, most background checks are completed within a minute-and-a-half.

An overwhelming majority of Americans support universal background checks. A recent poll conducted by Quinnipiac University shows that ***by a vast majority*** men, women, Republicans, Democrats, whites, and blacks all favor background checks at gun shows. (See releases: http://www.quinnipiac.edu/institutes-centers/polling-institute/virginia/release-detail/?ReleaseID=1846 and http://www.quinnipiac.edu/institutes-centers/polling-institute/national/release-detail/?ReleaseID=1847). According to a poll conducted by Republican strategist Frank Luntz,74 percent of NRA members also support background checks for anyone purchasing a gun.

BAN THE SALE OF MILITARY-STYLE ASSAULT WEAPONS AND HIGH CAPACITY MAGAZINES

The proposal to ban the sale of assault weapons and the sale of high capacity magazines would have made great headway in protecting innocents, such as those so recently slaughtered in their Sandy Hook classroom. Not one single person has articulated a good reason as to why assault weapons and high capacity magazines should be in the hands of ordinary civilians. I understand business and the incentive to maximize profits, but when the products by which those profits are gained are meant for nothing more than shooting as many people as quickly, as many times, and as efficiently as possible -- then the onus is on our elected officials to stop the sale of those products.

At the Senate Judiciary Committee hearing on January 30, 2013, I was disappointed to hear tortured logic arguing for the need for the general populace to own assault rifles and/or high capacity magazines. First, there was confusion as to what is popular to own with what is reasonable to own. Many consumer products are popular because they are heavily promoted and marketed by their manufacturers, and sometimes even by their distributors and trade associations, but that does not make their ownership reasonable. Examples include: cigarettes ("*You've come a long way, baby*" said a Virginia Slims ad) and drinking then driving ("*One for the road*" was once a popular ad). Popular for the moment – yes. Reasonable – no. In addition, simply because something may be popular among some, small sub-segment of Americans does not make these types of weapons in fact popular relative to the general American population. Moreover, if this line of argument were to somehow implicate the language from Heller (for the proposition of not prohibiting weapons in common use at the time), I point out that a "dangerous and unusual weapon" would be one designed for military combat in the hands of civilian (i.e., assault rifles and high capacity magazines).

As for high capacity magazines, I heard the argument that the only way a woman in her home can defend herself in the hypothetical scenario where she is confronted with more than one assailant is by having a high capacity magazine in her firearm – with enough bullets to hit multiple assailants several times each. An easy response would be for said woman to have two separate firearms, each holding 6 bullets. Or a dog. Or an alarm, even a $15 personal alarm. That is what I own. As a mother, I would not consider holding an assault rifle or a firearm with high capacity magazines with my young children around. I can barely hold a cup of hot coffee in their presence.

A quick review of Ms. Trotter's Appendix to her written testimony is good evidence to the point that assault rifles and high capacity magazines are not necessary to defend oneself. First, none of the instances she cites to identify the type of weapon used and in fact, as pointed out during her live testimony, her Sarah McKinley example included a weapon that would not be subjected to Feinstein's ban. (Ms. McKinley subsequently went on Anderson Cooper 360 and stated that she has no problem with universal background checks and her only hesitation with the assault rifle ban would be slippery slope reasoning). In another one of Ms. Trotter's examples, an Oklahoma City woman was able to defend herself from five burglars by only shooting at one. A Detroit woman was able to fend off two carjackers by only firing her weapon, not shooting anyone. In fact, three of Ms. Trotter's examples involve self defense by simply brandishing a weapon, not shooting it. And the argument of needing a gun for self defense oversimplifies that complex mental processes a person is subjected to during the

heat of the moment that could render the use of a weapon impossible or even make a woman vulnerable to having her own weapon turned against her.

On the other hand, Chief Jim Johnson pointed out that a ban on the size of ammunition would make an active shooter need to reload more often and that "Reloading can provide a window of time in which to take down a shooter." We are talking about American lives and all we are asking for with this measure is enough time to make a gunman reload during his shooting spree. Respectfully, that is not asking for too much.

The Sandy Hook massacre has pushed the excessive latitude allowed for gun ownership as a front-running issue for many Americans, myself included. We have reached a tipping point in our society where ordinary citizens, like me, who are normally too busy with work and children to notice much about politics – the "hardworking, law abiding, taxpaying American" as Mr. LaPierre puts it -- to say *enough is enough*. I did not bring children into this world and dedicate my life to love, nurture, raise, educate, clothe and feed them, so that their precious life could be casually and callously ended with nine, ten, or eleven bullets hitting them within a matter of seconds – nor did any other American parent.

Most respectfully,

Angelike Andrinopoulos Mina, Esq.

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703-867-9573

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

February 12, 2013
10:00 a.m.
Dirksen Senate Office Building Room 226

TESTIMONY BY PATRICK M. MAGOON
PRESIDENT & CEO
ANN & ROBERT H. LURIE CHILDREN'S HOSPTIAL OF CHICAGO

On behalf of Ann &Robert H. Lurie Children's Hospital of Chicago, I appreciate this opportunity to provide testimony regarding reducing gun violence to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights. Our patients include children from every Congressional District in Illinois, and we provide more care to children insured by Medicaid than any other hospital in Illinois. We provide seven times more Medicaid pediatric care than Stroger (Cook County) Hospital. With 1,100 pediatric specialists focusing on more than 70 specialties in 11 locations, Lurie Children's annually provides quality care to over 149,000 children battling life's most complex health issues including cancer, heart conditions, organ failure, neonatal problems and a range of other rare medical concerns.

In many ways, the problem of violence is more complex than any of these health conditions. As a leading pediatric medical institution, Lurie Children's recognizes an inherent responsibility to apply our multidisciplinary expertise and resources to advance the well-being of children within and beyond the walls of the medical center by working to solve exactly this type of problem. Our approach is to combine clinical expertise with a public health model in our community-based work that emphasizes prevention, health promotion and risk reduction. Our experienced researchers identify issues affecting child health and well-being—clinical, behavioral, and social—where our medical center expertise can make a difference in improving children's lives, and we work with a variety of community partners to pursue social and health care policies and implement programs that promote children's health and safety.

In 2009, Lurie Children's established an internal task force of clinicians, researchers, child advocacy experts, and social workers to examine the role that Lurie Children's was playing in addressing youth violence in Chicago. The task force concluded that many experts at the hospital were working to prevent and treat the effects of violence. Those that shared common difficulties working in youth violence prevention in Chicago focused especially on lack of coordination both within and outside the hospital. Our team surmised that Lurie Children's could play an important role in supporting violence prevention activities across Chicago.

Following the work of the internal task force and consultation with various community stakeholders, the hospital convened the Strengthening Chicago's Youth (SCY) violence prevention collaborative, which began operations in 2012. SCY works to build capacity among numerous public and private stakeholders to connect, collaborate and mobilize so that they can more effectively work together to promote policy, systems and environmental change to prevent violence. SCY takes the public health approach recommended by the Centers for Disease Control and Prevention—adopting consistent messaging about the preventability of violence, promoting use of evidence-based violence prevention strategies and fostering multi-sector collaboration. This encourages partnerships that strengthen existing efforts and benefit the children of Chicago

Hundreds of organizations are now involved in SCY, and the collaborative's work is critically important in addressing the tragedy of youth violence in Chicago and rectifying the fact that Chicago now lags behind peer cities in reducing rates of violent crime. This work is complicated and addressing the many factors involved in the violence epidemic will take time. But Lurie Children's and organizations around Chicago agree that a crucial step can be taken today—adopting sensible, evidence-informed gun violence prevention policies. Firearm violence prevention policies will benefit not only the children and families of Chicago and other cities who are plagued by urban community violence, but also the youth and families of downstate Illinois and other rural areas where rates of suicide are elevated and suburban schoolchildren and parents who fear shootings like those in Winnetka in 1988 and in Newtown, Connecticut only two months ago.

HOW FIREARMS AFFECT CHILDREN AND YOUTH

Firearms in Chicago

The story of homicide in Chicago has become all too well known in the last year. In 2012, there were 506 murders in Chicago, 16% more than in 2011. The vast majority of these murders were committed with guns, and there were 2,460 police-reported shootings.

Analysis of 2012 homicide data is not yet complete, but the Chicago Police Department's 2011 Murder Analysis Report notes that 361 of the 433 (83.4%) homicides were committed with guns, nearly all handguns. The proportion of homicides committed with guns has climbed over the last two decades—in 1991, 69.0% of homicide victims were shot. Murder victims are disproportionately young—the average age of victims was 28 years, and 53% of victims were 25 or younger. 33 victims were 16 or younger. In every year from 1991 to 2011, there were more murder victims in the 17- to 25-year-old age group than in any other age group. Murder offenders are also disproportionately young—in 2011, the average offender age (among cleared cases) was 27 years, and 57% of offenders were 25 or younger. In every year from 1991 to 2011, the majority of murders in cleared cases were committed by offenders aged 25 or younger.[1]

Firearm homicide takes a particularly high toll on minority youth. From 2005 to 2008, 284 school-aged children (aged 5- to 18-years-old) were murdered in Chicago, 243 with firearms. When firearm type could be identified (over 80% of the time), handguns were used as the weapon in 97.1% of all school-age homicides. African American children were ten times more likely to be killed than white children and Hispanic children were six times more likely to be killed.[2]

Firearms in Illinois

Although the high number of homicides in Chicago has captured the nation's attention, examining the toll firearms take on urban communities tells only part of the story. With its mix of urban, suburban and rural areas, Illinois provides a telling example of the epidemiology of firearms-related injuries and deaths.

In 2010, there were 1,064 firearm-related deaths in Illinois; 577 were homicides and 442 were suicides. (The remainder were unintentional, due to legal intervention, or of undetermined intent.) Of the homicide victims, 251 were aged 24 or younger; the firearm homicide death rate was highest in the 20- to 24-year-old age group. Of the suicide victims, 42 were aged 24 or younger.[3] Combining data from 2000 to 2006, the highest firearm suicide rates were in the downstate counties of Franklin, Marion, and Williamson; the highest firearm homicide rates were in Cook and St. Clair Counties.[4]

School Shootings

The 1988 shooting of six children, one fatally, at an elementary school in Winnetka, Illinois was not the nation's first school shooting, but it raised the public's concern and consciousness in a new way in Illinois. Among high profile mass shootings since then, massacres at Columbine High School, Virginia Tech, Northern Illinois University, and Sandy Hook Elementary School have received particular attention and sharply raised students' and parents' fears. Although school shootings are actually quite rare and school is the safest place children spend time, fear of attending school can negatively affect school attendance and academic performance. In 2007, 5.5% of high school students reported that they did not go to school because they did not feel safe at school or on their way to or from school at least once in the last 30 days[5]; in Chicago, this figure was 12.3% of students.[6]

While we caution against focusing too much on rare, catastrophic mass shootings, the measures proposed below can make such events even less likely and will help alleviate parents' and children's fear and will serve as solid first steps in addressing firearm violence.

SENSIBLE GUN VIOLENCE PREVENTION POLICIES

Universal Background Checks

Federal law currently restricts firearm purchase or possession by certain categories of individuals, including juveniles. These categories stem from the likelihood of increased risk for violence among, for example, people with substance abuse problems or a history of domestic violence. Juveniles are certainly at heightened risk for involvement in violence. Adolescents' brains are not yet fully developed; it is developmentally appropriate, and indeed expected, that teenagers will exhibit poor judgment, lack impulse control, and engage in risk-taking behavior. As adults, it is our job to provide as safe an environment as possible to all youth to progress through this developmental stage and establish their independence. Similar to the minimum drinking age, keeping adolescents from having access to guns (outside of sporting/hunting use under adult supervision) is imperative to providing this safe environment. We cannot eliminate all risk from our children's lives, but we can mitigate sources of risk that research indicates pose too high a burden.

Because of legal restrictions on juveniles' ability to purchase or possess firearms, illicit markets are the primary source of guns for youth. An essential step to eliminating illegal guns is to close loopholes in the background check system. Lurie Children's and our partners in SCY support policies that will:

- Require background checks for all gun sales, not just those conducted through federally licensed firearms dealers
- Improve states' reporting of information about criminal backgrounds and prohibition of gun possession for mental health reasons to the federal background check system
- Investigate improved approaches to identify dangerous individuals and keep them from obtaining firearms without further stigmatizing mental illness or deterring people from seeking needed mental health care

Anti-trafficking Policies

A recent report by the Johns Hopkins Center for Gun Policy and Research notes that universal background checks are "a necessary foundation for federal gun control laws, but that [they are] insufficient for achieving the goal of preventing prohibited persons from accessing firearms."[7] We are particularly concerned with illegal gun trafficking in Chicago, which some have hypothesized is a factor behind Chicago's high homicide rate. Accordingly, Lurie Children's and our partners in SCY support anti-trafficking policies including:

- Increasing enforcement and penalties to hold gun dealers accountable for illegal practices
- Eliminating straw purchasing by limiting the number of guns that can be sold to an individual and requiring registration at the point of sale
- Enhancing gun tracing data
- Requiring reporting of lost and stolen guns and analysis of these data

Ban on Assault Weapons and High-Capacity Magazines

Weapons are not often recovered after a firearm homicide or assault. When weapons are recovered, the weapons are most likely to be handguns in Illinois and, thus, we strongly support measures to reduce the availability of handguns. Assault-style weapons and high-capacity ammunition magazines are used in many mass shootings. These military style weapons were designed for use in warfare to quickly kill as many people as possible and there is no need for their use by civilians in peacetime.

Thank you for your leadership in convening this important hearing on reducing gun violence. Every day children are affected—as victims, perpetrators, witnesses, family members and friends—by tragic shootings that are entirely preventable. We urge you and your colleagues in the Senate to take strong, immediate action to keep the children and families of Chicago, Illinois, and the nation safe.

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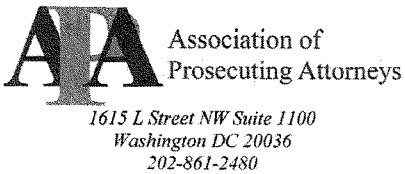

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February 11, 2014

Senator Richard J. Durbin
Chairman, Subcommittee on the Constitution,
Civil Rights and Human Rights
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Durbin,

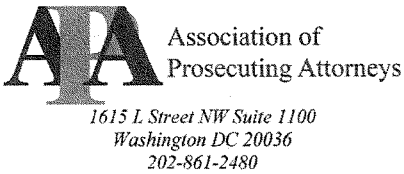
We are writing to share our thoughts with you and the Subcommittee in anticipation of the Subcommittee's hearing "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment," scheduled for Tuesday, February 13, 2013. Our board is reviewing the numerous gun violence prevention proposals that the committee will be considering, and we will be writing at a later time to more fully express our views and the interests of prosecutors on these critical public safety issues. We write today to present your Subcommittee with a few views in advance.

The Association of Prosecuting Attorneys (APA) is a private, non-profit organization whose mission is to support and enhance the effectiveness of prosecutors in their efforts to create safer communities. We are the only national organization to include and support all prosecutors, including both appointed and elected prosecutors, as well as their deputies and assistants, whether they work as city attorneys, city prosecutors, district attorneys, state's attorneys, attorneys general or U.S. attorneys.

On behalf of APA, I am pleased to have the opportunity to offer our assistance in efforts underway in Congress to address the serious problem of firearms-related violence including trafficking of these weapons both interstate and internationally. The number of citizens and communities affected annually by gun violence must be reduced and requires immediate attention from federal, state, local, and tribal prosecutors, legislative bodies, law enforcement agencies, the courts, and the community.

As prosecutors we have a strong interest in working with legislative bodies to ensure that laws designed to keep guns out of the hands of minors, felons, the mentally ill, persons convicted of domestic violence crimes, and terrorists are effective and enforceable; and that the regulatory system supporting those restrictions actually works.

Due to the lack of a dedicated federal statute prohibiting illegal gun trafficking, large numbers of guns are diverted from legitimate commerce into the criminal marketplace every year. As



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prosecutors, we are well aware of how specific legislation can help or hinder our ability to do our jobs.

As prosecutors, we are dedicated to reducing gun violence, and enforcing the laws we have. Federal, state and local prosecutors coordinate their efforts frequently, seeking the optimal allocation of resources and finding the best charging statute, be it federal, state or local.

Good law enforcement and crime prevention slowly but steadily close off avenues for criminality. We should always make it harder for a determined criminal to pursue his or her goals and should not just throw our hands up because of the criminal's persistence. A criminal's commitment must be countered with greater determination and fortitude from the law enforcement community.

Requirements like the mandatory background check for the purchase of a gun will keep guns out of the hands of criminals and other prohibited persons. Since the implementation of the National Instant Check System (NICS), almost 2 million prohibited transactions have been stopped. Many of those have been by individuals with domestic violence restraining orders, felony records or other prohibitions.

Every time we make it harder for a criminal to acquire a gun, we decrease the chance that he or she will succeed. And we succeed at effective law enforcement. We are available to answer any questions the Subcommittee may have, and we thank you for your attention to this real and pressing law enforcement concern.

Respectfully submitted,

Steven A. Jansen
Vice President and COO

The Senate Judiciary Committee

Subcommittee on the Constitution, Civil Rights and Human Rights

Chairman Dick Durbin

February 10, 2013

Dear Chairman Durbin and Senate Judiciary Subcommittee Members:

Thank you for the privilege of submitting testimony in advance of your hearing on Gun Violence Prevention. I am a retired Presbyterian Minister, a gun owner since 1958, an avid hunter and a member of the NRA. I have worked to prevent gun violence since 1975 when one of my church members was gunned down by a kid who went to the local bowling alley and complained to his friend that he had no money. His friend reached in his jacket and pulled out a Saturday Night Special saying, "Here, go get yourself some money and when you do, give me twenty bucks and you can keep the gun."

At long last there is a discussion of gun rights which for way too long was "the elephant in the living room" that too many clergy and legislators did not choose to acknowledge. The tragedy in Newtown, CT. has made it impossible to ignore it any longer. I am writing to express my support for all the provisions that President Obama and Vice-President Biden have been advocates for since the horrors that took place in that first grade classroom in Sandy Hook Elementary School.

The measures for which the President and Vice-President have been advocates are simply good common sense solutions to our national disgrace that the United States leads the entire developed world in gun deaths by such wide margins. 80 percent of adults killed by guns in these countries and 87 percent of children killed are Americans.

> I write because I yearn for the day when two Constitutional rights will become a recognized part of our social contract: 1. The right to keep and bear arms. And 2. The right to live in safety and enjoy Domestic Tranquility as is so beautifully expressed in the Preamble to our Constitution. Furthermore, the Declaration of Independence speaks of our human right to pursue "life, liberty, and happiness." As far as the Second Amendment is concerned: It is a friend to both of the rights mentioned above as it refers not only to keeping and bearing arms, but having good regulations on those arms.

While doing research for my book, *America and Its Guns: A Theological Expose*, which was published in June of 2012, I discovered some little known facts about many absurd laws that Congress has written which, in fact, make it easier for criminals, terrorists and violent individuals to get guns of choice, while simultaneously making it exceedingly difficult for the FBI and the ATF to inhibit or stop them.

> *** When the Congress through the NRA lobbyists prohibit The National Tracing Center on crime guns in Martinsburg, WV from using computers to do their work and insist that

it be done with pen or pencil, something is really out of whack. (See David Fallis, "The Hidden Life of Guns" Washington Post, Oct. 26, 2010)

*** The limits Congress imposes on the ATF and FBI are inexcusable in a democratic society. For the FBI there are 19 lines of Congressional direction. For the DEA there are ten. For the ATF there are 87 lines, including the requirement to keep the gun-tracing database hidden from the public. (See the 2010 Appropriations Bill and David Fallis, Ibid.)

*** The Congress has agreed with the NRA that free and unencumbered scientific research on gun violence in America must not take place. The gun lobby claimed political posturing for the facts because they often contradict the slogans of the gun lobby. e.g. "guns save lives." (See "NRA Stymies Firearms Research, Scientists Say," New York Time. Jan. 25, 2011)

*** "The Fire Sale Loophole" needs to be repealed if we want credible legislation. The Bill itself allows prohibited purchasers to obtain firearms without undergoing background checks and permits a gun dealer who loses his license for misconduct to dispose of his inventory privately without being charged for illegal dealing in firearms." (See Natalie Pompilio, "States With Weak Firearms Laws Lead in Crime Gun Exports," Philadelphia Daily News. Sept. 28, 2010.")

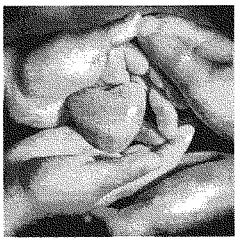
*** The Tiahrt Amendment must be repealed and ATF must be given the tools it needs to track criminals and make Gun Trafficking a Federal Crime. This would include the provision that all gun dealers conduct regular inventories of their stock to prevent the theft or loss of firearms through reckless supervision.

PUBLIC SAFETY IS A CONSTITUTIONAL RIGHT.

Thank you again for the privilege of submitting these comments. May God bless each of you as I pray you will forsake any political reasoning or manipulation of the facts that would in the long run endanger the life of even one American.

Respectfully,

James E. Atwood, Dr.
7510 June St.
Springfield, VA 22150



Dear Chairman Durbin & Senate Judiciary Subcommittee Members,

I am a resident of Newtown. My children, ages 8 and 5 who are pictured above, attend Middle Gate Elementary School in Newtown. We, along with so many others from our little town, have been directly impacted by the events of December 14, 2012. Rachel Davino, or as our son calls her 'Miss Davino', had been a one-on-one aide for a child in his classroom up until three weeks before the shootings. Although my husband and I didn't know her well, our son did. We had heard lots of stories about Miss Davino from our son. She was always smiling and we would see her in the halls and in our son's classroom on a daily basis. It is so hard to believe she is gone.

Although we have all had our share of struggles, loss, and hardship, this grief we are experiencing, both as a family and as a community has been unlike anything we have ever experienced before. It permeates everything we do, think, and feel and it is unending and relentless. I can only imagine what the families of those that were lost that day must be experiencing.

On that clear, cold Friday morning, I walked into Middle Gate to attend a parent volunteer meeting at almost the exact same time as everything was unfolding in Sandy Hook. While at the meeting, we could hear sirens going by and wondered what could possibly be happening. Even in my wildest dreams I could not have imagined what unfolded that day. Although the shootings did not occur at our elementary school, we have so many friends whose children attend Sandy Hook and we were terrified for them. As of right now, we have no idea why the shooter went to that school that day. For me, that has been a very difficult thing to grasp because we were so close and it could have just as easily have been us.

Ever since that December day, the 'what-ifs' have been haunting me. What if things had been just a little bit different? What if the shooter had turned a different direction on Route 34 and come to our school, Middle Gate Elementary, instead? When I arrived there that morning there was an assembly going on in the gym which is located directly across the hall from the front doors. I'd estimate that at least half of the school's teachers and students were in attendance in that one room. What if he had come to Middle Gate? That thought keeps me up at night and haunts me to this day. What if his mother or his family had been more proactive in getting him the help he so obviously needed? What if she had made the decision to keep her gun collection out of her home and away from her son? What if he had used a different type of gun, different ammunition, fewer bullets? What if there had been a security officer there that day? Would any of this have saved lives? Maybe. We'll never know. What's done is done. Our community will be struggling with this for years to come.

What gives me hope throughout all of this is the possibility for change. The 'what-could-be' is in your hands. Changes in our gun laws, ie. bans on military-style assault weapons, bans on high capacity ammunition magazines, universal background checks, registration for all guns, and limits on purchases of hand guns to one a month could make a difference. If it could prevent another community or another family from going through what we've been going through, it is worth doing. Even if there is the chance that it could save just one life it is worth doing. For the 26 lives lost at Sandy Hook, for the community of Newtown, and for the countless other lives that could be saved, I urge you to make these changes. We are counting on you.

Thank you,

Jill Baimel
7 Arlyn Ridge Road
Newtown, CT 06470

The Senate Judiciary Committee

Subcommittee on the Constitution, Civil Rights and Human Rights

Chairman Dick Durbin

February 10, 2013

Dear Chairman Durbin and Members of the Senate Judiciary Subcommittee:

Thank you for the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. As a member of the Church of the Holy Cross in Dunn Loring, Virginia, I speak to you from a faith community perspective and also as a gun-owner. The Episcopal Diocese of Virginia recently issued two resolutions in support of sensible gun control laws and encouraged all members to pledge as an Episcopalian committed to baptism to seeking justice and peace and promoting the dignity of every human being; commit to being part of the solution to the violence in our culture that claimed the lives of 28 people at Sandy Hook Elementary School and that claims the lives of 2,000 innocent children through gun crimes each year. I make this pledge and am committed to the pursuit of laws that keep guns out of the hands of criminals, prioritize the needs of at-risk children, provide care for mental illness, and address the many ways to which our culture both celebrates and trivializes violence. I believe that what I outline below does not infringe upon the Second Amendment rights and therefore ask that the Senate Judiciary Committee adopt the following and work to pass laws that will:

1. Require Universal Background Checks on both Guns and Ammunition: Every purchaser of a firearm should be subject to a background check through the FBI's National Instant Criminal Background Check System (NICS). Currently, an estimated 40 percent of gun sales are made by private individuals who have no legal duty to subject purchasers to background checks or maintain records of sale. With today's technology advances, NICS checks can be completed in minutes. As such, it should be a regulatory (lawful) requirement that any and all members of the more than 50,0000 federally licensed firearm dealers are required to perform. From an economic stand-point, I don't understand the whys or hows such a requirement would or could impede profit making. This same background check should also be required on all ammunition purchases (or better yet, impose a tax on ammunition purchases – certainly could help with the deficit).

2. Institute an Assault Weapons & High Capacity Magazine Ban: Renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. As I understand the numbers, the frequency of mass shootings and shootings in general have increased since the ban expired in 2004. I don't understand a need for a weapon designed for war to be in the hands of individual citizens. I recently show an interview of retired General Stanley McCrystal who also expressed the same sentiment (e.g., high-capacity ammunition magazines do not belong in the hands of individual citizens). I respect General McCrystal and wholeheartedly agree with his assessment. Let's save our Children's Lives (not guns).

3. Repeal Tiahrt and Make Gun Trafficking a Federal Crime: The Tiahrt Amendment should be repealed. It restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the ATF the authority to require gun dealers to inventory lost and stolen guns and requires that NICS background check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime so there can be tougher enforcement. We should be doing everything we can to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

4. Improve Mental Health Reporting: While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. Under current law, only individuals who have been *involuntarily* committed to a psychiatric institution or formally adjudicated as "mental defectives" (the law was written in 1968) are prohibited from buying firearms. This standard tells us little about who might be dangerous and allows people to acquire firearms who should never get close to a gun.

I recognize that there are many other issues that need to be addressed before we can completely change our culture of violence and the glorification of guns. I realize that we need to study and address the impacts of violent video games, movies and TV shows that glorify guns. However, I also recognize that we must begin a process; and I believe that process is what I have documented above.

Now is not the time for political partisanship or fear mongering or to appease an industry. Now is the time for action. I expect members of Congress (from both parties) to start enacting laws that will protect our children and bring to an end our culture of gun glorification and violence. Public Safety is paramount.

Most respectfully,

/s/

Karen D. Baker

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 10, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention.

During a career as a naval officer and aviator, I have fired thousands of rounds from 30 and 50 caliber and 20 mm weapons.

These weapons, in hand held form, have no place in our civil society. To make them available in an open market defies common sense. The consequences of such policies are self evident.

I join with many others in urging that these weapons be restricted to military and police usage.

-- Larry Baldwin

Rachel Basch
27 Gelding Hill Road
Sandy Hook CT 06482
mail@rachelbasch.com
203-426-8801

February 10, 2013

Dear Chairman Durbin and
Senate Judiciary Subcommittee Members:

My name is Rachel Basch. I've lived in Sandy Hook for 24 years. For 9 years, when my children were very young, we lived in a house directly behind the Sandy Hook School. We treated the school yard as an extension of our backyard. Until Friday, Dec. 14, 2012, the hallways and the classrooms of that school were the matrix of all that was sweet and generative in my experience of life on this planet.

There is no recompense, no balm, no salve for what 27 families lost that day. Their loss is unthinkable, immeasurable, unbearable. The bullets that ripped through those tiny, precious bodies were bullets that were designed for maximum tissue damage. And those bullets entered the collective body, too. I wonder how many people in our country now have children who in casual conversation describe where they will hide if it happens in art or gym or music. I wonder how many people here have children who are afraid to go to the movies, are afraid of being shot in their college classrooms. I wonder how many people now find themselves suddenly afraid at the mall, in the post office, in church. The presence of these assault style weapons with their large capacity ammunition magazines has robbed those of us fortunate enough to be alive of our most basic sense of life ---freedom.

I ask you to please pass legislation that contains the following stipulations:

1. Strengthen the assault weapons ban by requiring that all weapons having military features be banned and that existing weapons defined as assault weapons be destroyed, turned in to law enforcement or be removed.

2. Ban large capacity ammunition magazines of more than 7 rounds. Destroy, turn in to law enforcement or remove, existing magazines of more than 7 rounds.

3. Require permits and universal background checks on ALL sales and transfers of guns, including long guns.

4. Require registration of handguns with annual renewal. Require: annual fee and annual background check for all handguns owned; require that the owner stipulate that the guns are still in their possession or explain how the gun was transferred to another person; require safety inspection every 3 years.

5. Make gun owners liable for negligent storage if any person gains access to firearms and injures himself or another or causes damage to property. The violation would be a Class D felony.

6. Ban the right of way for transportation of firearms and ammunition bought over the Internet.

7. Tax ammunition sales and require a license/permit to purchase any gun or ammunition.

8. Restrict handgun sales to one gun per month.

Sincerely,

Rachel Basch

My name is Katharine Bensinger. I am Director of Parenting Fundamentals at Community Counseling Centers of Chicago. C4 provides Mental Health Services and Substance Abuse Treatment to over 10,000 low income ethnically diverse Chicago area residents per year. Since 1996, we have provided Parenting Education and Support Services that promote social emotional development, prevent child abuse, strengthen families and help parents become more involved in their children's education for more than 4000 parents, raising over 10,000 children.

By almost any statistical measure, children in North America today are losing ground compared to the recent past. Their educational performance is lower and does not compare well with that of children in many other developed nations. Health status, as shown in the incidence and prevalence of such things as obesity, juvenile diabetes, and other disorders and diseases are on the rise. More children, due to economic and social context, have less hope of upward social mobility than in the last 30 years. Public support and investment in programs that will provide support and assistance to children in need are at risk as states slash budgets.

Ideally, we want all parents to be involved in their children's education; parents would have good communication with their children and give them unconditional love. If this were true, we would not have so many children involved in gangs and dropping out of high school. Home would be a safe nurturing place. If this problem continues, children like Dejae Colman (age 14), an Evanston High School freshman, will continue to be victims of violent crime. He was fatally shot September 12 after coming out of a party. He was not the target, but he was at the wrong place and the wrong time. In his Humanities class, Colman wrote "I don't know what I would do without the family I have now. If I did not have them, I probably would be very bitter and have low self esteem. I probably would not care about my grades either, or anything." He was an exemplary student and an athlete who had a lot to contribute to society.

The link between childhood trauma and adult outcomes is striking. Childhood stress can have long lasting neural effects, making it harder to exercise self-control, focus attention, delay gratification and do many of the things that contribute to a happy life.

Over the past few years, an array of psychological researchers have taught us that motivation, self control and resilience are together as important as raw IQ, and are probably more malleable. In addition, health care systems are tracing obesity and self-destructive habits to social break down and stress.

The evidence for the benefit of investment in children is clear. We are learning more than ever before about the development of children's brains, bodies, and emotional resilience, and how important it is that even from the earliest ages, children have appropriate social, emotional, and physical care.

We know that relational development and health through the child life cycle, into and beyond adolescence, plays a pivotal role in long term health and functioning. There are strategies for prevention and intervention in the early years that work. They produce positive, beneficial long term effects in physical and relational health and increase the possibility of becoming productive, healthy, and generative contributors in society.

The 2009 Institute of Medicine report calculated a savings of $17 for every $1 in promotion and prevention. Parenting Education instruction and support equips parents with the tools they need to be good role models and effective parents. Children do not come with an instruction manual, and nurturing parenting skills are not inherited. Strong social emotional competence is the basis for all learning. Nurturing parenting is the first and most important gift we can give our children.

To reduce gun violence we need a ban on assault weapons, universal background checks, and mandatory reporting if a gun is lost or stolen. In Chicago, we are adding 200 more police on the streets, but what we desperately need more than a larger police force is a parenting education force helping equip parents with the parenting skills needed to raise socially and emotionally healthy children that do not want to kill other children.

Lisa Berger
13 Monitor Hill Road
Newtown, CT 06470

Dear Chairman Durbin and Senate Judiciary Subcommittee Members,

I Begin by Asking Which Right Is More Important? Right to Life? Or the Right to Bear Arms? I think if positioned this way everyone would agree that the Right to Life is our ultimate Right.

As a parent and a member of the Newtown community, I urge you to support smart gun legislation that will protect our children, not the NRA, NSSF and gun manufacturers. Please stand up to the extremists; do not allow them to define this debate. This should not be a political argument about which side will win or lose. This is about everyone's Right to Life, Liberty, and Pursuit of Happiness which is what our country was built on. Many argue common sense solutions impinge on some of our other individual rights but nothing is more important or sacred than ones right to live.

Different rights will inevitably conflict. Sometimes one person exercising his rights conflicts with others exercising their rights. The right to practice one's religion in the U.S., does not include the right to kill someone for human sacrifice. The right to life is more important. The right to bear arms does not trump the right to life. Yet people bearing arms take 30,000 lives a year in the US. This must stop.

We must pass laws that keep the weapons and ammunition off our streets that were used in the tragic massacre on December 14. Many of the pro gun advocates say that we would be punishing law abiding citizens by taking away their right to own a gun. One thing to keep in mind is that on December 13th Adam Lanza was a law abiding citizen and his mother was a gun activist that believed in her right to own these types of weapons and look where it got her and 26 other innocent victims. I know that it will not be an easy fight but I ask that you think of these innocent young lives that are lost every day and of those brave teachers that died trying to save their students. Vote with your heart.

I recommend the following agenda items:

Gun Laws

- Mandatory gun users education that includes a safety class and shooting license test (similar to driver's license)
- A ban on high capacity ammunition magazines (no grandfathering)
- A strengthening of the assault weapons ban (no grandfathering) and a ban on all semi-automatic weapons
- Get military-style assault weapons and high-capacity magazines off the streets
- Requirement of permits and universal background checks on ALL sales and transfers of guns
- Requirement of registration of handguns with annual renewal
- Requirement of annual fee and annual background check for all handguns owned
- Requirement that the owner stipulate that the guns are still in their possession or explain how the gun was transferred to another person; require safety inspection every three years
- Make gun owners liable for negligent storage if any person gains access to firearms and injures himself or another person or causes damage to property - the violation would be a Class D felony
- A ban on the right of way for transportation of firearms and ammunition bought over the Internet
- Taxing ammunition sales and requirement of a license/permit to purchase/and or use any gun or ammunition; restriction of quantity of handgun sales and ammunition sales on monthly basis.
- Limits to gun ownership in families with mental health or depression history.
- End the freeze on gun-violence research
- Preserve the rights of healthcare providers to protect their patients and communities from gun violence.
- Encourage gun owners to live up to their responsibility to store guns safely.
- Make gun manufacturers and gun associations liable for accidents, suicides and murders.

In addition to gun laws we must look at other areas that lead to these horrific mass killings. I support the following initiatives to address mental and social health as well as school safety.

Mental and Social Health

- Guidance classes that deal with violence, dealing with anger, emotional well-being. (similar to DARE). Teach children how to resolve problems without anger and violence.
- Support for parents of children and young adults that are showing signs of unhealthy behavior.
- Better mental health identification in our schools.
- More support for citizens dealing with mental health issues.
- Stricter laws on violent movies and video games.
- Improve the mental health process and system.
- Make sure students and young adults get treatment for mental-health issues.
- Ensure coverage of mental-health treatments.

School Safety

- Create environments in schools where students and faculty are comfortable reporting behavior that is suspicious or indications of plans for violence.
- All schools should have security systems including cameras.
- All schools should have lock down plans in place.
- One police officer in each school that also teaches kids about violence prevention.
- Teachers should have emergency panic button lanyard linked to the police station.
- Put up to 1,000 more school resource officers and counselors in schools and help schools invest in safety.
- Ensure every school has a comprehensive emergency-management plan.
- Create a safer climate at schools across the country.

I believe that the initiatives of this sub-committee should be the first step in making changes in our society and in this great nation. We need to continue to

talk about why our culture is so enamored by violence and guns. I know that people's background and experiences form their opinions on this emotional issue. But for those who believe they can only be happy with automatic weapons, I would hope they can find an alternative. There are so many amazing things in the world; surely there must be something else that can fulfill them. If not, I would point out that we are only guaranteed the pursuit of happiness, not necessarily its achievement. But life and liberty are guaranteed. Taking someone's life in pursuit of your happiness is not acceptable.

Thank you for your time and consideration,

Lisa Berger
13 Monitor Hill Road
Newtown, CT 06470
203-426-9625

To: Chairman Durbin and Members of the Judiciary Subcommittee Members

From: Paul Berger
13 Monitor Hill Rd.
Newtown, CT 06470

I'm a resident of Newtown, CT and I'm writing to express my belief that we all have a responsibility to take any and all actions to help reduce the likelihood of another tragedy like the mass shooting at Sandy Hook Elementary School. I urge you, as elected representatives and the people who could actually make a difference on this very important issue to find the wisdom and courage to take some long overdue steps:

> Require that all gun purchases go through a thorough and credible background check and waiting period. No loopholes period!!
>
> Create and enforce stringent laws against gun trafficking and submitting false information in the process of purchasing a guy.
>
> Limit the availability of assault weapons that are designed solely to kill as many people as possible
>
> Eliminate large capacity magazines that so effectively facilitate mass murder.
>
> Put reasonable limits on the overall amounts of ammunition anyone can buy.

While no set of laws and regulation can absolutely guarantee that we don't have more episodes of mass shootings, these are steps that surely will help keep at least a few guns out of the hands of individuals who have no business with such weapons, without putting an unreasonable burden on the legitimate gun owners. And that is certainly a worthy objective all reasonable people can agree on.

These are all very appropriate steps that I believe could help reduce the opportunity for people to inflict such terrible carnage like the shooter did in my town on Dec. 14, 2012.

I believe that many of us have become tired of hearing the old argument that *guns don't kill people, people kill people*. That somehow guns aren't really part of the gun violence problem. In Newtown, it is clear that in fact bullets, very, very many bullets (all of those 6 and 7 year olds were hit by multiple rounds) fired from an assault rifle killed 26 innocent people at the Sandy Hook Elementary School. The shooter did not kill all those people with a knife, a baseball bat, or an ice pick. He didn't strangle them with his hands. No. He had a military style weapon with unlimited rounds of ammunition and he used it precisely as it was designed to be used - to fire as many bullets, kill as many people (in this case first graders and their brave teachers and administrators) as quickly and easily as possible. In fact the only reason he gained access to the school is because he had a weapon that he could use to blast his way in.

On Thursday Dec. 13, this individual and his mother could have been the poster family representing the extremists' belief that that there should be absolutely no limits whatsoever on how many guns you can

buy, how often you buy them, how powerful those guns can be, how many rounds they can fire without reloading, and how much ammunition you can buy. On that Thursday it was their "right", the argument goes, to have those guns so they could protect themselves. Unfortunately, the data shows that households with firearms are much more likely to suffer injury and death from those very firearms. And the tragedy in this case is that along with the family that owned the guns, 26 other innocents lost their lives as well, just because someone felt they had a "right" to have that kind of fire power in their house. These *were* the law abiding gun owners that we are told must always have an untouchable "right" to acquire and keep unlimited arsenals in their houses. And that are so threatened by reasonable regulation of lethal weaponry they charge tyranny and whip up fears of an attack on the 2nd amendment. I feel very strongly there is no justification in a civilized and humane society for these types of military weapons and high capacity magazines except on the battle field for war.

This is NOT a constitutional question. Nowhere in the constitution does it say anyone has a right to own the most lethal weapons available. The founding fathers couldn't even have conceived of weapons that could be so deadly, let alone that they should be easily obtained and allowed in the hands of anyone who wanted one, without even the most fundamental review of their fitness to handle such a lethal capability.

I think it's time that we as a society decide to put some reasonable regulation in place with certain guns. Just like we've decided that you can't get really drunk and get behind the wheel of a car and drive through town at 125 MPH. We are not talking prohibition, but we are going to insist on some reasonable limits. Even one of the most fundamental of our rights, the right to vote, is not unlimited. We have to be a certain age to vote. We must register to vote, and in most states we have to show ID to cast our ballots. And we can only vote once in an election. Simple regulations that don't infringe our constitutional right to vote. Please don't tell me, and the other residents of Newtown, that we can't but any limits on the "right" to purchase and own guns.

I hope you can muster just a fraction of the courage that the principal, the teachers and undoubtedly some of the children displayed on that terrible day. They had the courage to risk their very lives trying to do the right thing and protect the children. The least you can do is find some political and moral courage to do the right thing when it comes to trying to reduce gun violence.

Thank you for your consideration.

Paul Berger

Newtown, CT

To Chairman Durbin & Senate Judiciary Subcommittee Members,

Thank you for giving this community the opportunity to share our thoughts on gun control.

My name is Maura Shannon Bergman. I am the mother of two children who attend school in Newtown, CT. On December 14 our seven-year-old son, spent three hours in hard lockdown: on the floor, against a wall, no talking, lights out. The weeks following he and his sister were often found in a closet, door shut, lights off, holding a light saber or pirate sword preparing in case a bad guy came. We took many hikes around the holidays, he always carried a club for the same reason. Is this what we want for our children: A culture that is ruled by fear?

The Center for Disease Control reports an average of 83 gun deaths a day. For those legislators who see no reason to ban guns created for the battlefield and limit the ammunitions for them, I ask: How many gun deaths a day will be enough? I want a number. How many? My brother-in-law lives in Bogota Columbia where schools are fortresses: high walls, barbed wire, armed gunmen. Is this what we aspire to be? An increase in guns is the easy answer to the gun question. Roll up your sleeves and do the hard work necessary to make an impact on the violence in our country. Ban assault weapons, limit ammunition rounds, require permits and universal background checks on all sales and transfers of guns. Require registration of handguns with annual renewal.

Better gun laws are good for responsible gun owners and non-gun owners alike. To legislators who say they need assault weapons in case the government comes after them I respond by saying you are more government than me or any of us in this country. You shouldn't fear the government; you should fear me. Me and the hundreds of thousands of voters who became single issue voters on December 14. If you are not capable of doing the hard work necessary to address gun violence, then those who can, will take your place. We are prepared to do the work necessary to make sure lawmakers represent our stand on the gun control issue and not the NRA.

Now let's get to work.

Kind regards,

Maura S. Bergman

February 11, 2013

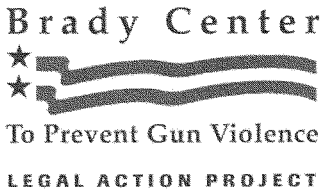
Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. A few says ago I attended a social gathering of mostly parents of preschoolers and primary school students. In this circle, many parents openly shared that since Newtown they have severely cut down on the outside activities of their kids - less cinema visits, less eating out, less socializing in public places. At least in my circle, it seems that the mall has become a "No-No" for responsible parents with children. Not only are we afraid of shooters, but we are also skeptical of each other, asking each other whether the hosting family has guns in the house and accepting or rejecting a birthday party invitation based on the answer (the preferred one is "No"). I believe that with every next shooting we will limit our children's' and our public interactions and engagement more and more. This, of course has, and will in the future have, significant economic and social implications. When businesses feel the economic effect of our scaled down 'going out', and we self-censure our engagement in the public space, there is no real freedom for anybody.

Please consider and adopt legislative action that will make us and our kids free and safe in the public space, and also take into consideration the pleas of non-gun owners who are also Americans, but seemed to be totally left out of the debate.

Respectfully,

Klara Bilgin,
Oakton, VA



February 12, 2013

Testimony of Jonathan E. Lowy, Director of the Legal Action Project
The Brady Center to Prevent Gun Violence

Mr. Chairman, Ranking Member, and Members of the Subcommittee, I want to thank you for the opportunity to provide this testimony.

My name is Jonathan Lowy and it is my privilege to serve as the Director of the Legal Action Project of the Brady Center to Prevent Gun Violence. The Brady Center is a non-profit, non-partisan organization whose mission is to create an America free from gun violence, where all Americans are safe at home, at school, at work, and in our communities. For 24 years the Brady Center's Legal Action Project has been the nation's only public interest law program devoted to representing victims and survivors of gun violence (pro bono) and defending reasonable gun laws, with the goal of reducing gun violence. LAP has filed amicus briefs on Second Amendment and other firearms-related issues in federal and state courts throughout the nation, and they have been relied on by numerous courts, including by the Supreme Court.[1] Our briefs are often joined by other prominent organizations that share our views in those cases, including the International Brotherhood of Police Organizations, the Major Cities Chiefs Association, the Federal Law Enforcement Officers Association, the Hispanic American Police Command Officers Association, the International Association of Chiefs of Police, the National Association of Police Organization, the National Black Police Association, the National Association of Black Law Enforcement Executives, the Police Executive Research Forum, the Police Foundation, as well as national associations dedicated to medicine, education, and public health. In firearms-related litigation our clients have included the NAACP, the cities of Boston, Massachusetts; Camden, New Jersey; Cincinnati, Ohio; Detroit, Michigan; the District of Columbia; Los Angeles, Oakland, Sacramento, San Francisco, and other California cities; Miami-Dade County, Florida; New York, New York; Pittsburgh, Pennsylvania; St. Louis, Missouri; victims of the D.C. sniper shootings; police officers who have been wounded or killed in the line of duty; mothers and fathers who have lost children to gun violence. To be clear, however, this testimony is only made on behalf of and represents the views of the Brady Center.

I personally have been involved in the litigation of most of the significant firearms cases, including Second Amendment cases, of the past 15 years, appearing in state and federal courts, at the trial and appellate levels, throughout the country, arguing and/or filing briefs in more than half the states.

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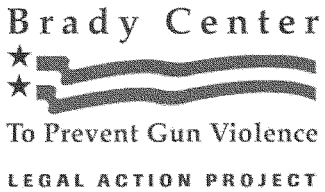
[1] *See United States v. Hayes,* 555 U.S. 415, 427 (2009).



My testimony today will not focus on the need for or merits of solutions to reduce gun violence in America, as that was not requested of me. Rather, I will focus my testimony on the constitutionality of gun violence prevention measures that may be under consideration by this Congress. Those measures are constitutional, and are fully respectful of the Second Amendment rights of law-abiding citizens.

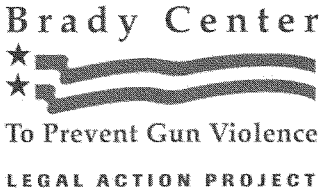
Firearms Regulations Permitted Under the Second Amendment

The government's broad authority to enact and enforce effective public safety measures that regulate firearms has been recognized and respected throughout American history -- and well before, from the English antecedent to the Second Amendment. Throughout our history, it has been largely left to the American people, through their elected representatives, to determine the extent to which firearms should be regulated to protect public safety.

The Supreme Court stated over a century ago that the Second Amendment was among those rights "inherited from our English ancestors . . . subject to certain well-recognized exceptions . . . which continue to be recognized as if they had been formally expressed."[2] As the United States Court of Appeals for the Fifth Circuit recently noted: "Since even before the Revolution, gun use and gun control have been inextricably intertwined. The historical record shows that gun safety regulation was commonplace in the colonies, and around the time of the founding, a variety of gun safety regulations were on the books; these included safety laws regulating the storage of gun powder, laws keeping track of who in the community had guns, laws administering gun use in the context of militia service (including laws requiring militia members to attend "musters," public gatherings where officials would inspect and account for guns), laws prohibiting the use of firearms on certain occasions and in certain places, and laws disarming certain groups and restricting sales to certain groups. See Adam Winkler, Gunfight: The Battle over the Right to Bear Arms in America 113–18 (2011); Saul Cornell & Nathan DeDino, A Well Regulated Right: The Early American Origins of Gun Control, 73 Fordham L. Rev. 487, 502–13 (2004). It appears that when the fledgling republic adopted the Second Amendment, an expectation of sensible gun safety regulation was woven into the tapestry of the guarantee."[3]

Firearms regulations have generally struck a balance respectful of the choices of some law-abiding citizens to own firearms, while cognizant of the desire of families and communities to be safe from gun violence. The Second Amendment co-exists with the

[2] *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897).
[3] *National Rifle Association v. ATF*, 700 F.3d 185, 200 (5th Cir. 2012).



fundamental rights of all Americans to life, liberty, and the pursuit of happiness, which support broad police power authority to protect public safety.

District of Columbia v. Heller was a landmark case that changed the face of Second Amendment jurisprudence, but *Heller* embraced the American tradition of firearms regulation, and it did not prevent stronger regulations from being enacted or enforced in the future.[4] *Heller* did nothing to undermine the constitutionality of the gun regulations and policies under consideration by Congress today. To the contrary, the Court's opinion supports the legality of those regulations. Both *Heller* itself and post-*Heller* case law confirm that the Second Amendment does not prohibit enactment of the sensible gun regulations under consideration here.

The Supreme Court held in *Heller* that the Second Amendment protects a right of law-abiding, responsible citizens to possess a gun in the home for self-defense.[5] In Justice Scalia's majority opinion, the Court took pains to identify regulations to prevent gun violence that are presumptively lawful – and made clear that list was not "exhaustive."[6] Specifically, the Supreme Court stated that "nothing in [the] opinion should be taken to cast doubt on longstanding prohibitions" on "the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."[7] *Heller* also approved of "prohibitions on carrying concealed weapons," as well as "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.' "[8]

Two years later, in *McDonald v. City of Chicago*, the Supreme Court held that the Second Amendment applies to the states as well, but "repeat[ed]" *Heller*'s "assurances" regarding the Second Amendment's limited scope, and agreed that "state and local experimentation with reasonable firearms regulations will continue under the Second Amendment."[9]

In the wake of *Heller* and *McDonald*, states and localities have been forced to fend off an array of legal challenges to sensible gun-violence prevention measures, with over 500 challenges brought by civil lawsuits or in defenses to gun crime prosecutions that have sought to expand these Supreme Court holdings. With remarkable uniformity, the vast

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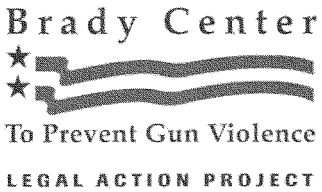
[4] 554 U.S. 570 (2008).
[5] *Id.* at 635.
[6] *Id.* at 626-27 and n. 26.
[7] *Id.* at 626-27.
[8] *Id.*
[9] 130 S. Ct. 3020, 3046-47 (2010) (internal citation omitted).



majority of courts have rejected those challenges, upholding laws that restrict firearms but – unlike the laws struck down in *Heller* and *McDonald* -- do not completely ban the use of firearms in the home. In addition to decisions discussed below that support background checks, assault weapon and high-capacity magazine laws, courts have generally upheld restrictions on the carrying of concealed weapons in public,[10] laws

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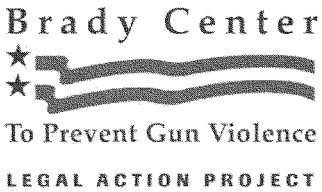
[10] *See, e.g., Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012) (upholding New York restrictions on public carrying); *Hightower v. City of Boston*, 693 F.3d 61 (1st Cir. 2012) (upholding Massachusetts' licensing and restrictions on public carrying); *United States v. Barton*, 633 F.3d 168 (3d Cir. 2011); *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011); *Piszczatoski v. Filko*, 840 F. Supp. 2d 813 (D.N.J. Jan. 12, 2012) (upholding New Jersey's restrictions on public carrying); *Riddick v. United States*, 995 A.2d 212, 222 (D.C. 2010); *People v. Williams*, 962 N.E.2d 1148, 1152 (Ill. App. Ct. 2011) ("[T]he rulings in both *Heller* and *McDonald* made clear that the only type of firearms possession they were declaring to be protected under the second amendment was the right to possess handguns in the home for self-defense purposes."); *State v. Knight*, 218 P.3d 1177, 1189 (Kan. Ct. App. 2009) ("It is clear that the [*Heller*] Court was drawing a narrow line regarding the violations related solely to use of a handgun in the home for self-defense purposes."); *Richard v. County of Yolo*, 821 F. Supp. 2d 1169, 1174 & n.4 (E.D. Cal. 2011) ("the Court, both in *Heller,* and subsequently in *McDonald,* took pain-staking effort to clearly enumerate that the scope of *Heller* extends only to the right to keep a firearm *in the home* for self-defense purposes."); *Dorr v. Weber*, 749 F. Supp. 2d 993, 1005 (N.D. Iowa 2010) ("[A] right to carry a concealed weapon under the Second Amendment has not been recognized to date."); *United States v. Hart*, 726 F. Supp. 2d 56, 60 (D. Mass. 2010) ("[Defendant] suggests this right extends to the possession of concealed handguns outside one's home. *Heller* does not hold, nor even suggest, that concealed weapons laws are unconstitutional."); *United States v. Tooley*, 717 F. Supp. 2d 580, 596 (S.D.W. Va. 2010) ("Additionally, possession of a firearm outside of the home or for purposes other than self-defense in the home are not within the 'core' of the Second Amendment right as defined by *Heller.*"). A divided Seventh Circuit panel became the only federal appellate court to invalidate a public carry law in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), *en banc petition pending*, for which an en banc petition is pending. A federal district court held that Maryland's restrictions on carrying firearms in public violate the Second Amendment in *Woollard v. Sheridan*, 863 F. Supp. 2d 462 (D. Md. 2012), *appeal pending*, which has been appealed and argued before the United States Court of Appeals for the Fourth Circuit, with a decision pending. One federal district court held that a state restriction on public carrying during emergencies was unconstitutional. *Bateman v. Perdue*, 881 F.Supp.3d 709 (E.D.N.C. 2011).



requiring that firearms be safely stored in the home,[11] laws requiring that firearms be registered,[12] and laws barring handgun sales to persons under 21,[13] among other firearms laws.

Many of these rejected arguments for an overly expansive reading of the Second Amendment rely on the same flawed logic: they claim that because *Heller* references "self-defense," and because self-defense can be needed anywhere, therefore, they contend, *Heller* must protect gun possession, of all types, in all places, at all times. But courts have overwhelmingly, and properly, rejected that reasoning. Indeed, Justice Scalia's majority opinion in *Heller* stated clearly that "From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."

While courts have rejected the notion that the Second Amendment mandates an "any gun, anywhere" agenda, courts have agreed that the government has a strong, compelling interest in preventing the gun violence which leads to 100,000 shootings each year in America, about 30,000 of them fatalities. A few salient facts provide a window into the scope of America's gun violence problem.

Because firearms are so easily available in the United States, while the United States' crime rate is comparable to other western democracies, America's homicide rate is several times larger.[14] As one pair of researchers has explained, "an increase in gun prevalence causes an *intensification* of criminal violence—a shift toward greater lethality, and hence greater harm to the community."[15]

Firearms are frequently used to kill, injure, threaten, or intimidate women. In 2006, 1,905 women were murdered with a firearm; in 2007, 4,808 women were treated in emergency rooms for gunshot wounds that stemmed from some type of assault.[16]

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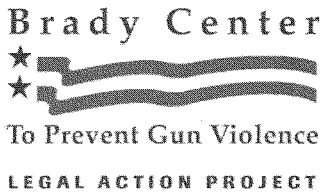
[11] *Commonwealth v. Runyan*, 922 N.E.2d 794, 796 (Mass. 2010); *Commonwealth v. Patterson*, 946 N.E.2d 130, 132 (Mass. App. Ct. 2011).
[12] *Justice v. Town of Cicero*, 577 F.3d 768 (7th Cir. 2009).
[13] *National Rifle Association v. ATF*, 700 F.3d at 200.
[14] Franklin E. Zimring & Gordon Hawkins, *Crime is Not the Problem: Lethal Violence in America* (1997).
[15] Philip J. Cook & Jens Ludwig, *Social Cost of Gun Ownership*, 90 J. of Pub. Econ. 379, 387 (2006).
[16] National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System, most recent years available), www.cdc.gov/ncipc/wisqars/ (Calculations by Brady Center to Prevent Gun Violence, 2009).



The governmental interest in regulating firearms is strong for, among other reasons, a large share of harm that falls on groups that are particularly in need of protection. For example, firearms are the third leading cause of death for children aged five to fourteen.[17] Every day an average of 9 young people, 19 years old and under, are killed by a firearm, and every year about 130,000 are shot and injured.[18]

Courts have properly relied on the government's compelling interest in preventing gun violence in refusing to inhibit the ability of Americans to enact and enforce sensible public safety policies that protect their communities. As noted conservative jurist Judge J. Harvie Wilkinson III wrote for the United States Court of Appeals for the Fourth Circuit in refusing to extend the *Heller* right into a broad right to carry firearms in public places: "This is serious business. We do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights."[19]

Another federal judge pointedly noted that the Second Amendment right "is unique among all other constitutional rights to the individual because it permits the user of a firearm to cause serious personal injury – including the ultimate injury, death – to other individuals, rightly or wrongly. In the protection of oneself and one's family in the home, it is a right use. In the deliberate or inadvertent use under other circumstances, it may well be a wrong use. A person wrongly killed cannot be compensated by resurrection."[20]

The Second Amendment poses no constitutional obstacle to assault weapons bans, bans on high-capacity magazines, or background checks. Put simply, there is no Constitutional right to buy or possess an AK-47, AR-15, or 30 round ammunition magazine, just as there is no Constitutional right to buy or possess a machine gun.

The Constitution does not bar the government from requiring that before a gun is sold, a background check must be conducted to determine if the purchaser is legally permitted to buy and possess that gun. Indeed, a reading of the Second Amendment as not permitting background checks would constitutionalize a "lie and buy" system, in which the only means to prevent criminals and other prohibited persons from buying guns would be to

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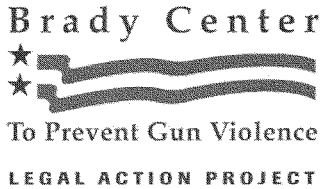
[17] *See* Matthew Miller et al., *Firearm Availability and Unintentional Firearm Deaths, Suicide, and Homicide Among 5-14 Year Olds*, 52 J. TRAUMA Injury, Infection, & Critical Care 267, 267 (2000).

[18] National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (2006 (deaths) and 2007 (injuries), www.cdc.gov/ncipc/wisqars/ (Calculations by Brady Center to Prevent Gun Violence, 2009).

[19] *Masciandaro*, 638 F.3d at 465.

[20] *Piszczatoski v. Filko*, 840 F. Supp. 2d 813 (D.N.J. 2012).



rely on them to honestly declare that they were prohibited. Such a reading of the Second Amendment is utterly contrary to the *Heller* Court's limitation of the right to "law-abiding, responsible citizens," as well as the Court's acceptance of bans on possession by felons and the mentally ill (which would be next to meaningless if felons could buy guns on the honor system), and the Framers' understanding that firearms should not be possessed by those who would pose a public danger.[21]

Assault Weapons

A ban on assault weapons would not violate the Second Amendment. As the Supreme Court noted in *Heller*, limitations on the "sorts of weapons protected" by the Second Amendment is fairly supported by the historical tradition of prohibiting the carrying of "dangerous and unusual weapons." The Court rejected any contentions that bans on M-16s and other military weaponry, for example, might be unconstitutional because those weapons might be needed to respond to forces armed with high-powered weaponry. Whatever differences there are between fully automatic M-16s and semi-automatic AK-47s or AR-15s, as a matter of Constitutional law there is no principled distinction between them. Just as nothing in the Second Amendment entitles civilians to possess machine guns, the Second Amendment does not entitle civilians to possess Bushmaster XM-15s.

In 2011, the United States Court of Appeals for the District of Columbia Circuit upheld the District of Columbia's assault weapons ban as constitutional.[22] The trial court had held that assault weapons are not protected "arms" within the meaning of the Second Amendment.[23] On appeal, the D.C. Circuit rejected the notion that assault weapons are among the "sorts of weapons" "'in common use at the time' for lawful purposes like self-defense."[24] And even if the District's assault weapons ban implicated the Second Amendment, the D.C. Circuit concluded that it still would be constitutional, because (i) "the prohibition . . . does not . . . substantially affect [individuals'] ability to defend

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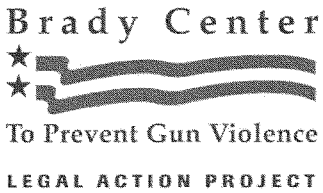
[21] *Id.* ("Noteworthy among these revolutionary and founding-era gun regulations are those that targeted particular groups for public safety reasons. For example, several jurisdictions passed laws that confiscated weapons owned by persons who refused to swear an oath of allegiance to the state or to the nation. See Cornell & DeDino, 73 Fordham L. Rev. at 507–08. Although these Loyalists were neither criminals nor traitors, American legislators had determined that Case: 11-10959 Document: 00512032188 Page: 22 Date Filed: 10/25/2012 permitting these persons to keep and bear arms posed a potential danger. Id.")

[22] *Heller v. District of Columbia* ("*Heller II*"), 670 F.3d 1244, 1260-64 (D.C. Cir. 2011).

[23] *Heller v. District of Columbia*, 698 F. Supp. 2d 179, 195 (D.D.C. 2010).

[24] *Id.* (quoting *Heller*, 554 U.S. at 624, 627).



themselves," and (ii) "the evidence demonstrates a ban on assault weapons is likely to promote the Government's interest in crime control."[25] Several state courts have also upheld similar bans after *Heller*.[26]

The D.C. Circuit's reasoning is well-founded. That court noted that there is no meaningful distinction between semi-automatic assault weapons and the military-grade weapons that the Supreme Court deemed unprotected.[27] Indeed, many parts found on the military's M-16 are interchangeable with the civilian AR-15 assault weapon.[28] With a few modifications, readily available on the Internet,[29] an AR-15 can be converted into a fully automatic weapon—a machine gun.

Such weapons, of course, are exceptionally dangerous. Assault weapons are designed to fire at extremely high speeds, particularly when coupled with easily available after-market modifications, such as bump or slide fire stocks.[30] Pistol grips allow the shooter to spray fire from the hip position.[31] According to the Bureau of Alcohol, Tobacco, Firearms and Explosives, assault weapons create "mass produced mayhem."[32]

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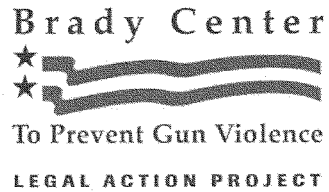
[25] *Heller II*, 670 F.3d at 1260-64.
[26] *People v. Arizmendi*, 2011 Cal. App. Unpub. LEXIS 7284 (Cal. Ct. App. 2011); *People v. James*, 174 Cal.App.4th 662, 676 (Cal. Ct. App. 2009) (holding that assault weapons are not protected "arms" under the Second Amendment).
[27] *Heller II*, 670 F.3d at 1263 (citing *Heller*, 554 U.S. at 627).
[28] *See id.* at 1263.
[29] *See* Drop In Auto Sear (Feb. 5, 2013), http://www.quarterbore.com/nfa/dias.html; Answerbag, *Which Cold AR-15 rifle takes an automatic sear?* (Feb. 5, 2013), http://www.answerbag.com/q_view/2160125&adt=0; Amazon.com, *Full Auto Volume 1: AR-15 Modification Manual* (Feb. 5, 2013), http://www.amazon.com/Ar-15-Modification-Manuel-Combat-bookshelf/dp/0879470615; *see also* Youtube.com, *How to make your AK-47 fully automatic* (Feb. 5, 2013), http://www.youtube.com/watch?v=k6MCtYXuuJ0.
[30] *See* Bureau of Alcohol, Tobacco, and Firearms, ASSAULT WEAPONS PROFILE 19 (1994); Dianne Feinstein, *Assault Weapons Ban of 2013* (Feb. 5, 2013), http://www.feinstein.senate.gov/public/index.cfm/assault-weapons-ban-summary.
[31] Brady Center to Prevent Gun Violence, ASSAULT WEAPONS: "MASS PRODUCED MAYHEM" 1 (2008).
[32] Bureau of Alcohol, Tobacco, and Firearms, ASSAULT WEAPONS PROFILE 19 (1994).



Assault weapons place law enforcement officers at particularly heightened risk: such weapons account for a higher share of guns used in murders of police.[33] And, more generally, any use of these weapons is exceedingly dangerous to public safety. The high firepower of assault weapons means bullets can penetrate multiple walls, exposing bystanders to substantial risk, especially given their capability for high-speed, indiscriminate fire.[34]

The extreme danger to public safety posed by assault weapons, and the government's unquestionable interest in protecting law enforcement and the public, are more than enough to satisfy the requisite constitutional tests.

Some opponents of assault weapons legislation rely on language in *Heller* that weapons in "common use" at the time are protected to argue that assault weapons may not be regulated if they are sufficiently used or in circulation. This argument was rejected by the D.C. Circuit in *Heller II*, and grossly misreads the Supreme Court in *Heller*. While the *Heller* Court found that the Second Amendment was not frozen in time to protect only muskets, the Court did not state that every weapon in "common use" was necessarily exempt from government regulation or prohibition. If that were the case, then .50 caliber sniper rifles (military surplus weapons that can pierce the fuselage of an airplane, and hit targets a mile away) would be constitutionally protected if enough of them were manufactured or sold before a court ruled of the constitutionality of a law regulating or banning them. In such a scenario, gun manufacturers and the market (including the criminal market) would determine the scope of the Second Amendment. There is no legal basis for such a view. And the *Heller* Court never stated such a rule.

Assault weapons legislation does not infringe on the Second Amendment. Such laws allow for numerous makes and models of handguns, rifles and shotguns by which enable law-abiding citizens to exercise their Second Amendment rights. An AR-15 is not necessary to exercise those rights, or to protect one's hearth and home, or to engage in other lawful uses of firearms.

High-Capacity Magazines

Likewise, a ban on high-capacity magazines is constitutional. In addition to upholding the District of Columbia's assault weapons ban, the D.C. Circuit also upheld the District's ban on magazines containing more than 10 rounds. In doing so, the court found

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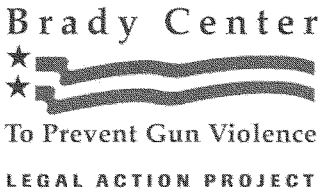
[33] Christopher S. Koper, AN UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN: IMPACTS ON GUN MARKETS AND GUN VIOLENCE, 1994-2003 2 (2004).
[34] Brady Center to Prevent Gun Violence, ASSAULT WEAPONS: "MASS PRODUCED MAYHEM" 16 (2008).



that the District's goal of protecting its police officers and controlling crime justified the ban.[35] Other courts are likely to follow the D.C. Circuit's sound reasoning.

The D.C. Circuit specifically observed that "large-capacity magazines tend to pose a danger to innocent people and particularly to police officers...."[36] The court cited evidence that "high-capacity magazines are dangerous in self-defense situations" due to the tendency of " 'defenders to keep firing until all bullets have been expended, which poses grave risks to others in the household, passersby, and bystanders.' "[37] And when being used offensively, including in a crime or a mass shooting, large magazines allow shooters to exponentially increase their firepower. In such situations, the few seconds that a shooter needs to reload provide law enforcement with a crucial opportunity to intercede.[38]

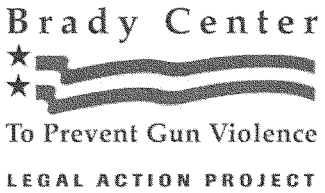
In short, high-capacity magazines present a substantial danger to the public and law enforcement, and their prohibition undoubtedly passes constitutional muster. The use of high-capacity magazines in numerous, horrific mass shootings (including the Sandy Hook Elementary School, the Aurora movie theater, Virginia Tech) demonstrate their utility to mass killers. However, law-abiding citizens do not need a 30 round magazine or a 100 round drum to exercise their Second Amendment rights. Limiting ammunition magazines to 10 rounds does not infringe on the Second Amendment rights of law-abiding citizens.

Background Checks

Finally, there is no serious question as to the constitutionality of background checks as a public safety measure to prevent firearms from falling into the hands of those prohibited from buying or possessing firearms. The *Heller* Court specifically cautioned that its decision should not be read to cast doubt on "laws imposing conditions and qualifications on the commercial sale of arms,"[39] implicitly placing background checks among *Heller*'s list of "presumptively lawful" regulations.[40]

In an effort to avoid misinterpretation of its holding, the Court in *Heller* expressly stated that its decision should not "cast doubt on longstanding prohibitions on the possession of

[35] *Heller II*, 670 F.3d at 1264.
[36] *Id.* at 1264.
[37] *Id.* at 1263-64.
[38] *Id.* at 1264.
[39] *Heller*, 554 U.S. at 626-27.
[40] Dennis A. Henigan, *The* Heller *Paradox*, 56 UCLA L. Rev. 1171, 1195 (2009).



firearms by felons and the mentally ill,"[41] and characterized Second Amendment rights as belonging specifically to "law-abiding, responsible citizens to use arms in defense of hearth and home."[42] Lower courts have followed suit, routinely upholding laws prohibiting certain classes of people, such as criminals and the mentally ill, from owning firearms.[43]

Background checks are a simple and efficient manner of ensuring that those categories of people not entitled to firearms under *Heller* do not receive them, while imposing a minimal burden on legitimate firearms purchasers.

Studies confirm that firearms laws, including background checks, can be tremendously effective at reducing gun violence. For example, when the Brady Handgun Violence Prevention Act, Pub. L. 103-159, 107 Stat. 1536, which mandated background checks on handgun purchases by licensed firearms dealers, went into force in February 1994, the number of violent crimes committed with a firearm had risen in nine of the ten preceding years.[44] In 1994, after enactment, that trend reversed sharply, and the number of violent crimes involving the use of a handgun declined for each of the six years that followed.[45] This decline was accompanied by a similar downward trend in the percentage of violent crimes committed with a firearm, demonstrating that this decline was not simply attributable to a drop in the overall crime rate.[46] By 2007, the number of violent crimes committed with a firearm had fallen by more than a third from 1993 levels—firearms were used to perpetrate 5,500 fewer murders, 89,000 fewer robberies, and 100,000 fewer

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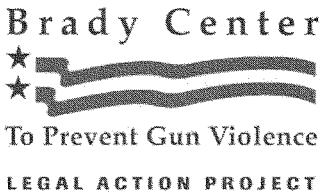
[41] *Heller*, 554 U.S. at 626.
[42] *Id.* at 635.
[43] *See, e.g.*, *United States v. Dugan*, 657 F.3d 998, 999-1000 (9th Cir. 2011) ("Because Congress may constitutionally deprive felons and mentally ill people of the right to possess and carry weapons, we conclude that Congress may also prohibit illegal drug users from possessing firearms."); *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010) (en banc) (upholding prohibition on firearm ownership by persons convicted of a domestic violence misdemeanor); *United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010) ("[S]tatutory restrictions of firearm possession, such as § 922(g)(1), are a constitutional avenue to restrict the Second Amendment right of certain classes of people.").
[44] *See* U.S. Dep't of Justice, *Percent of Murders, Robberies, and Aggravated Assaults in which Firearms Were Used, 1973 to 2007*, *available at*, http://www.ojp.usdoj. gov/ bjs/glance/tables/guncrimetab.htm ("DOJ Chart 1").
[45] *Id.*
[46] *See* U.S. Dep't of Justice, *Percent of Murders, Robberies, and Aggravated Assaults in which Firearms Were Used, 1973 to 2007*, *available at*, http://www.ojp.usdoj.gov/bjs/ glance/tables/gucrimetab.htm.



aggravated assaults.[47] These data more than support the government's reasonable – indeed, compelling – interest in requiring background checks for all gun sales.

There is no Constitutional right to buy a firearm without a background check, especially where that is an effective way (perhaps the only effective way) to determine whether that buyer is prohibited from buying or possessing firearms. As with the other measures being considered by Congress, they are plainly constitutional under the Second Amendment.

The Implications of *Heller* On Gun Policy In General

The sensible measures under consideration by this Subcommittee will not infringe on Second Amendment rights, but are reasonable public safety measures to reduce gun violence in our streets and neighborhoods. The Supreme Court's recent Second Amendment decisions not only support the legality of these measures, but should make consideration of these and other gun violence prevention measures less controversial than in the past, especially among those who have expressed fear that their Second Amendment rights might be infringed by firearms regulations.

Under *Heller* and *McDonald*, federal, state and local governments cannot enforce broad bans that prohibit law-abiding, responsible citizens from possessing any firearms in the home for self-defense. To those who feared total bans or confiscations of all firearms, those fears should be dispelled, for under *Heller* that cannot happen in America today. If there ever was a "slippery slope" to gun policy, there is no more.

At the same time, *Heller* made clear that reasonable gun violence prevention measures are Constitutional, and can fully co-exist with an individual Second Amendment right. To the extent that it was contended in the past that the Second Amendment does not allow for reasonable firearms policies, that contention can no longer be credibly made.

In sum, the Supreme Court has taken the extremes of gun policy off the table: the Constitution, the Court has said, does not allow for complete bans, and it does not mandate "any gun, anywhere, anytime" policies, without common sense gun laws. Sensible gun violence prevention measures are fully consistent with the Constitution, as well as the America tradition of broad police powers to protect public safety, and our long history of firearms regulation.

Mr. Chairman and Members of the Subcommittee, I thank you for your time and consideration.

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[47] *See* DOJ Chart 1.

CATHERINE E. BRAINARD

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Bethel, CT 06801 **catebrain18@yahoo.com**

February 5, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members,

I am a teacher at Newtown High School. My world view changed at approximately 10:00 AM on December 14th when, in lockdown with approximately fifteen students, I slowly learned what was happening less than two miles down the road to my colleagues, friends and the special needs students with whom I work in the summer. What I once believed to be an anomaly, I now know isn't. I believe, with every fiber of my being, that this can and will happen again. In the nearly two months since December 14th, I have had to provide a sense of safety and security for my students, provide comfort to my friends and provide reassurance to those who need it. Yet, I myself do not feel safe and reassured. The shooting remains compartmentalized in my brain with the door shut tight. Whenever I dare to open it, I can not handle the flood of emotion that I feel and so I close the door again.

We can not have a repeat of December 14th. You, as our representatives, hold the power and influence to prevent such a tragedy from ever occurring again. I implore you to work to ban possession and sales of all semi-automatic weapons, ban large capacity magazines of more than seven rounds, and to prohibit sales of guns or ammunition via internet to Connecticut residents. Furthermore gun owners should be liable for negligent storage if any person gains access to firearms and injures himself or another person or causes damage to property.

I attended the legislative hearing at Newtown High School on January 30th and much of the testimony was very compelling especially that of David Wheeler when he stated that his son Benny's right to life, liberty and the pursuit of happiness should outweigh any one's right to possess a semi-automatic weapon. The testimony that I did **not** feel was compelling was that of a gentleman who stated that individuals who live in economically challenged neighborhoods need semi-automatic weapons to fend off intruders. That testimony was preposterous. I can attest, having grown up in New York City, that no one I knew, short of criminals, had guns much less semi automatic weapons. As a matter of fact, I never knew anyone who owned a gun until moving to this part of Connecticut. I contend that anyone, with the exception of law enforcement or military personnel, who feels the need or desire to own such a weapon, probably shouldn't.

Sincerely,

Cate Brainard, MA Special Ed.

Gregory H. Brandon
1644 Maddux Lane
McLean, Virginia 22101-3231
(703)848-4796
gbrandon55@yahoo.com

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 10, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention.

1) Require Universal Background Checks on both Guns and Ammunition

2) Institute an Assault Weapons & High Capacity Magazine Ban

3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime

4) Improve Mental Health Reporting

There are many other issues that need to be addressed, such as violent video games, the glorification of gun violence in the movies and TV and the effect this has on our youth. But these issues will take time to tackle and resolve and will require a cultural shift. The suggestions I have made above are all simple and immediate steps that would help bring an end to gun violence.

Public safety should not be a politically charged issue. Legislators on both sides of the aisle have an obligation to protect and safeguard the welfare of Americans. Hiding behind the Second Amendment as an excuse for inaction is not acceptable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus. Every right has limits and the Second Amendment is no exception. Let's get this done; for our country and for our children; and let's get this done now.

Most respectfully,

Gregory H. Brandon

To Chairman Levin and members of the Senate Judiciary Committee and Subcommittee on the Constitution, Civil Rights and Human Rights

RE: "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

Dear Mr. Chairman and Members of the Committee:

My name is Nikolai Burlakoff. I am a US Army veteran with an Honorable Discharge. During the period of my service I qualified as a sharp shooter, and I have successfully passed US Army courses in small arms and demolitions. I mention this to assure you that I am familiar with weaponry and write to you from a position of experience.

I write in strong support of the proposals made by the current Administration so as to reduce the epidemic of gun violence that has engulfed our nation. While I support all the proposals made by the Administration the following are particularly critical in my view: 1)Requiring criminal background checks for all gun sales, including those by private sellers that currently are exempt; 2) Reinstating and strengthening the ban on assault weapons that was in place from 1994 to 2004; 3) Limiting ammunition magazines to 10 rounds; 4)

Increasing criminal penalties for "straw purchasers," people who pass the required background check to buy a gun on behalf of someone else, 5) Banning the possession of armor-piercing bullets by anyone other than members of the military and law enforcement.

In addition to these five priority items enumerated, and the remaining seven, I would also like to see consideration of the following by the Committee: An imposition of an **excise tax** on all guns sold in the U.S. **of sufficient size to offset the costs of medical care** incurred as a result of gun violence.

In a JAMA article, in 1999, the medical cost of a mean gun incident was pegged at $17,000 for a total cost of some $2.3 billion. Since medical costs have more than doubled from 2000 to today we can confidently assume that today's costs would be at least a mean of $34,000 per incident and nearly $5 billion overall. Of the total costs incurred, according to the JAMA article 49% are

taxpayer supported. Currently, while there is an excise tax imposed, it is not sufficient to cover all medical expenses due to gun injuries and it needs adjustment.

There is no earthly reason why non-owners of guns need to subsidize, through taxes and increased medical insurance costs, totally preventable expenses incurred by a relatively small number of people in pursuit of their private ends. It is my firm opinion that "those who wish to play need to pay." It is also my belief that once law-abiding gun owners see how irresponsible owners impact their pocketbook that they will cooperate more enthusiastically to find solutions to our national problem. In any case, having gun owners pay for the medical cost of our current gun anarchy would save us more money than firing Big Bird as was recently suggested as a tax-saving measure.

Whatever the Committee does as it proceeds with its hearings, and resulting recommendations, I would caution you to heed the warnings of Joseph Story in his 1833 *Commentaries on the U.S, Constitution*: *"... it cannot be disguised, that among the American people there is a growing indifference to any system of militia discipline, and a strong disposition, from a sense of its burthens, to be rid of all regulations. How it is practicable to keep the people duly armed without some organization, it is difficult to see. There is certainly no small danger, that indifference may lead to disgust, and disgust to contempt; and thus gradually undermine all the protection intended by this clause of our national bill of rights."* I believe that it is the duty of this Committee to ensure that a "disgust and contempt" with the current wholesale slaughter of civilians does not rise to the level that the Bill of Rights, or any of its clauses, becomes endangered.

Very Truly Yours,

--
Nikolai Burlakoff
AElitaPress.org
Available @ amazon.com ***A Kalmyk Sampler: Mongol Poetry and Mythic Tale*** (ISBN 978-1479111633) Illustrated by Eduardo Barrios & ***Erol Beet and the Borsch Angel: How the Borsch Angel Got Her Name*** (ISBN 978-0615655260) Illustrated by Roland Hale.
Coming in 2013 ***The World of Borsch***.

I've served as Commissioner of Youth Services in Massachusetts, was appointed by President Carter to serve as the Commissioner of the Administration for Children, Youth and Families, was CEO and President of the National Crime Prevention Council and, for the last several years have been directing the 13 California City Gang Prevention Network and am serving as a consultant to the U.S. Department of Justice for its National Forum on Preventing Youth Violence.

Our crime rates compared to most western is either roughly the same, or better - that is, until you throw in guns. Please, please, as a start we must:

- Ensure universal background checks and close gun show loopholes
- Ban assault weapons
- Ban multi-clip magazine clips
- Give ATF and others the authority to trace guns

Too many kids have been killed, families ruined, communities collapsed.

Please, please move forward.

Now is the time.

My thanks to you and the committee.

John A. "Jack" Calhoun
President and CEO, Hope Matters
Senior Consultant, National League of Cities, Institute for Youth, Education and Families

Chairman Durbin and Senate Judiciary Subcommittee Members,

My name is Jennifer Callery and I am a 20 year old lifelong resident of Sandy Hook. My parents built our home when they were 27, and we have lived in it for the past twenty years. I have always loved my town.Even in the toughest of times, Sandy Hook as served as a bright and comforting spot for me. I was blessed to attend SHS, and the years that I have there are some of my fondest memories. My heart has always been in this town and always will be. Even when I attended college in Ohio, my heart was always with Newtown. I used to drive people crazy talking endlessly about my perfect little New England world.I even had a post card with a painting of Newtown's main street above my bed, so that I was always close to where I came from. I now attend UCONN, and even at a school in state, I would have to explain where I lived, it was so small that no one had ever really heard of it. After the events that transpired on 12/14, I no longer have to explain where I am from. My words are no longer met with a question of "where is that?" but with a resounding and sorrowful "I'm so sorry". No person should ever have to hear an apology when they explain where they are from. No person should have to cry every time they sit down to their computer or sit down to watch the evening news. No family should have to look at an empty seat at the dinner table or a vacant space in their car. There needs to be intelligent and reasonable restrictions on guns in this state, it is as simple as that. We can no longer sit back and allow those who are mentally ill or previously convicted of crimes to possess weapons that lead to empty chairs and apologies. Apologies are not enough. We need action. I would do anything to be able to have to explain where I live to people again, I would do anything to refill those empty spots for those families, but unfortunately we cannot change what has already transpired. With that being said, we have the opportunity to change the future. We have a chance to take control of our society in 2013 and not hold true to laws that were established three hundred years ago. If we do not take action now, when will the next mass murder occur? How many more people will be missing from family dinners? How much farther will it go? I am a firm believer that guns breed violence. Yes, violent movies and video games contribute to a culture of violence in which many are numb to murders and death, but the fact of the matter is, a gun enabled a sick person to quickly and brutally slaughter 26 beautiful people,not a video game disc. If we allow gun purchasing to continue at the rate at which as which it currently is, we are doing nothing to ensure a future with less apologies. I am asking you on behalf of my incredible town to do anything and everything you can to make sure that gun control laws pass in this state and country. I ask you to think about your dinner tables, and your family cars. Would you ever be okay with an empty space being there? Would you ever be able to forgive yourself if another town like Sandy Hook was ripped apart by an unnecessary weapon?

Cardinal Glennon
SSM Cardinal Glennon Children's Medical Center
Missouri Quality Award Winner
1465 S. Grand Boulevard • St. Louis, MO 63104-1095 • (314) 577 5600 *phone* • www.cardinalglennon.com

February 7, 2013

The Honorable Richard J. Durbin
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Durbin:

Gun violence affects the lives of far too many children. At SSM Cardinal Glennon Children's Medical Center, we see the effects of this violence in our hospital. Our mission is a call to "do what is right for children," and our values tell us that we must advocate for policies that help safeguard the lives and health of these innocents. We feel a moral imperative to speak out about this issue.

As health care providers, we are focused on the costs of this epidemic on our children, not the broader debate about the second amendment. We encourage you, as the debate about guns and gun violence unfolds, to consider steps that will lead to fewer children suffering from gun violence. We believe improvements to the federal background check system, government sponsored research into gun violence and more mental health funding can reduce the incidence of children becoming victims of gun deaths and injuries.

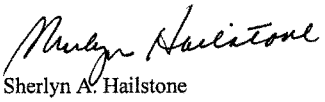
The statistics are stark. In 2009, the Children's Defense Fund found that 2,793 children and teens died from guns and 13,791 were injured. Of these children, 590 that died and 1,247 that were injured were under the age of 15. In 2012, Missouri hospitals treated 138 children that were victims of gunshots. Seventy-six of these were assaults and 62 were accidents. Of these children, 34 were under the age of 15.

Current federal law reads: "None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control." Recently, President Obama signed an executive order directing the CDC to start studying the causes of gun violence once again. We believe that additional data is needed to develop strategies to prevent and reduce gun violence involving children.

Finally, Missouri, Illinois and other states have cut spending on mental health services for children and adults living with serious mental illness. These cuts have led to significant reductions in both hospital and community services for vulnerable individuals with serious mental illness. A report from the National Alliance on Mental Illness finds that Missouri has reduced its mental health budgets by 6.8 percent between 2009 and 2012 and Illinois reduced its mental health budgets by 31.7% over the same time period. Missouri spent $86.15 per capita on mental health in 2009 and Illinois spent $85.30 per capita, ranking us in the lower tier of states.

Gun violence has no place in a child's life. Please thoughtfully consider proposals before congress, and support those that will help protect children.

Sincerely,



Thank you for your leadership!

Sherlyn A. Hailstone
President
SSM Cardinal Glennon Children's Medical Center

SH/jad

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for providing American citizens with the opportunity to voice our concerns about the frightening increase in mass shootings we have seen recently in this country. As someone with a dear friend who was huddled with her second grade class at Sandy Hook only fifty feet from the shooting on that horrible day in December, I urge you to take action against the kind of horror which occurred in a place which should be the safest of all: our children's schools.

So much can be done legislatively to make our country a safer place that will not infringe upon anyone's Second Amendment rights.We can: 1) Require Universal Background Checks on both Guns and Ammunition:2) Institute an Assault Weapons & High Capacity Magazine Ban: and 3) Make Gun Trafficking a Federal Crim.e

The American people are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting gunmakers and radical gun owners who have allowed their fear of the government to overrule their common sense. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

It is time for our leaders in Congress to have some courage. It is time for you to act.

Respectfully,

Cindy L. Casper
142 Gilman Street
Bridgeport, Connecticut 06605

Church of the Brethren

February 11, 2013

The Honorable Richard Durbin,
Chairman
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Ted Cruz, Ranking
Member
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Al Franken
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable John Cornyn
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Christopher Coons
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Orrin G. Hatch
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Richard Blumenthal
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Lindsey Graham
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Mazie Hirono
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Church of the Brethren

Dear Senators,

The Church of the Brethren has a long history of peacemaking and advocating for non-violent solutions to the problems that plague our world. We have consistently encouraged our congregations, communities, and neighbors to find ways to non-violently address their conflicts and be a powerful witness against the use of violence to settle disputes. As a denomination, we have always lamented the violence that soaks our culture, and today we write to you to express our support for your efforts to reduce gun violence in our country.

We support many of the initiatives that are being considered in the subcommittee, such as the institution of a universal background check, limits on ammunition magazine capacity and assault-style weapons, and stricter gun trafficking laws. As a denomination, we have historically called for laws such as these and believe that they will go a long way to helping curb the gun violence epidemic that has affected this country for decades.

These types of laws, however, will not magically solve our epidemic of violence. They will certainly help limit which types of deadly weapons are legally available for purchase, but if we are to take our culture of violence seriously, we must take a much broader approach. How can we honestly say that we are making dramatic efforts to reduce violence in our communities when our media is still saturated with violent images and messages, and our government is still constantly relying on violence to solve its own problems? We may wish to separate the violence at home from violence in the media and violence perpetrated overseas, but they are all connected. We must have a consistent ethic regarding the destructive effects of violence in communities abroad and our communities right here at home.

Additionally, it is imperative that we support efforts to remove the stigma from mental illness and create a society where mental health care is readily available for anybody who needs it. We cannot continue to mourn these victims of violence and regret what could have been done to prevent perpetrators from committing such atrocities. We must be proactive and implement comprehensive prevention methods that address all of the underlying causes of violence.

We recommend that the subcommittee seriously consider measures that address not only the loopholes and abuses in the current system, but also measures that lessen the need for such a system altogether. We support the implementation of a universal background check, federally criminalizing gun trafficking, limiting access to assault-style weapons and high-capacity magazines, but we also support increasing funding and access to mental health services, and emphasizing non-violent conflict resolution, both at home and abroad. We cannot continue to patch up the symptoms of violence without beginning to talk about and address the root causes.

Sincerely,

Peace Witness Ministries,
Church of the Brethren
110 Maryland Ave. Suite 108
Washington, DC 20002

Statement from Rebecca Cicarelli, Sandy Hook CT
Submitted 2.11.2013

To Chairman Durbin & Senate Judiciary Subcommittee Members:
For too long, I have distanced myself from the issue of gun violence. This was someone else's problem, in someone else's town. Now I can say that it is everybody's problem.
We all own this, and we have the responsibility to address it.

We as a nation need to examine our national character, and make a collective decision to make this a turning point. From a governmental point of view, however, there is an opportunity to create real change with gun control. I fully respect the rights of gun owners throughout our nation. I'm okay with the fact that rifles are used for hunting, and regrettably, pistols are sometimes held in a home for the purposes of self-defense. But assault weapons? I think we can all agree that when our founding fathers drafted the 2nd amendment, they were speaking to muskets, not the madness we have today. I am asking you as a committee to give full consideration to the following measures:

1. Require universal background checks on ALL gun sales and transfers.
2. Ban large capacity ammunition magazines of more than 7 rounds. **No** grandfathering.

3. Require registration of handguns with annual renewal.
   Require annual fees and background checks for all guns owned.

4. Restrict hand gun sales to one per month.

5. Require a permit to purchase and/or carry guns or ammunition.

6. Make gun owners liable for negligent storage if any person gains access to firearms and injures himself or another person or causes damage to property.
   Ensure that a violation is classified as a Class D felony

7. Create limitations on the sale of guns or ammunition via the internet.

And lastly, importantly, I ask you to please work to strengthen the restrictions on assault weapons. What we have right now is not working. Eliminate the loopholes and ensure no grandfathering,

It is the very least we can do as tribute to those who were so brutally taken from us on 12.14. Thank you.

CITY OF CHARLOTTESVILLE
"A World Class City"
Police Department
606 E. Market St. • Charlottesville, Virginia 22902
Telephone: 434-970-3280
Fax: 434-970-3502
www.charlottesville.org/police

February 8, 2013

The Honorable Patrick Leahy
Chairman
Committee of the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman,

Many thanks for your long and dedicated service to our great Nation.

I am pleased to write regarding the partnership that the Charlottesville Police Department enjoys with the United States Attorney's Office for the Western District of Virginia, and to outline our coordinated approach to the investigation and prosecution of gun crime in our district. We believe that this partnership has provided tremendous value and contributed to the safety and well- being of the community that I have been privileged to serve for the past 12 years.

Having served with the Baltimore City Police Department in various command positions for the first half of my professional law enforcement career, I have a great understanding of the impact violent crime has on a community and the difficulties that arise when criminal justice partnerships become fractured. When I assumed the position as Charlottesville's Chief of Police in February of 2001, it was immediately apparent to me that local law enforcement was complimented with competent, aggressive, and just prosecuting authorities at the local and federal levels.

Like many cities across America, Charlottesville has seen the impact of violent crime arising from illegal narcotic and gang related activity. More often than not, such crime brings with it senseless gun violence. I learned quickly that by partnering with our United States Attorney and leveraging the expertise and commitment of his prosecutors, we could systematically dismantle violent criminal enterprises and begin to see an impact on violent crime in our community.

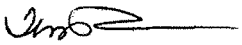
Over the years, the United States Attorney's Office for the Western District of Virginia has partnered with our agency to systematically dismantle groups responsible for the commission of violent criminal acts that threatened the quality of life in our community. We have worked closely with the United States Attorney's Office in investigating and prosecuting several violent drug gangs in Charlottesville. These successful cases have resulted in the removal of dangerous offenders from our streets. They show that leveraging federal resources in a collaborative way in an effort to make our community safe helps us maintain our city's quality of life.

Those of us who serve in local government cannot aggressively attack violent crime without aligning with partners like our United States Attorney. We are fortunate in Charlottesville to have this alignment. When it comes to gun crime, we use that partnership to make thoughtful decisions about the appropriate venue for particular cases. The decision about whether to prosecute violent criminal offenders who use a firearm to carry out their crimes is the product of careful consideration between our state and federal prosecutors. These decisions are made easier when there is both a relationship and track record of cooperation and historic level of success forged by the state/local collaboration

There is no question that we are being asked to do our jobs better and more efficiently, oftentimes with less money and fewer human assets. In order to accomplish our mission in a way that does not sacrifice our commitment to providing a safe community for our constituents, successful collaborations are a necessity.

I thank you for the opportunity to share my thoughts.

Respectfully Submitted,



Timothy J. Longo, Sr.
Chief of Police
City of Charlottesville, Virginia

To: Senate Judiciary Committee Subcommittee on Gun Violence Prevention

Dear honorable members of the committee;

I am writing to you as a US Citizen and a resident of CT, where I live in a town very close to Newtown CT, a place recently devastated by gun violence. I realize that this is not an issue with a quick fix, and there are US citizens with vastly differing opinions on the subject. However, some of the actions that gun control advocates are calling for are just plain common sense, and do not take away people's right to have guns. It's a dangerous thing to be afraid to look at an issue with clear eyes because of false rhetoric and leaps of logic. Here in CT there is not a day that goes by when we are not reminded of the devastation of gun violence in the people we talk to who lost sons, daughters, friends, neighbors, grandchildren, & cousins at Sandy Hook Elementary School.

I urge you to support the common sense recommendations of the Obama Administration, including strengthening the assault weapons ban, banning large capacity ammunition magazines, requiring permits and universal background checks for purchase of all guns, requiring a permit to buy ammunition, and restricting handgun sales to one per month. For goodness sakes, it took me four trips to the DMV and a lot of paperwork to get my car registered; when I lived in PA, I had to go to a special state run store to buy a bottle of wine- why should it be easier to buy a gun? Let's get some common sense into this conversation so that we are not facing the same levels of gun violence in our country in 50 years.

Sincerely,

Laura Cleary
27 Bogus Hill Rd
New Fairfield CT 06812

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members,

My name is Abbey Clements. I am a second grade teacher at Sandy Hook School.

On December 14th, instead of teaching my six, seven, and eight year olds how to make paper snowflakes, I huddled them into coats and tried to shield them from the sounds of endless gunshots coming through the loudspeaker by reading to them and singing songs with them. The sheer number of endless shots was immutable. Hundreds. Loud. Steady. Deafening. I was terrified even to open the door for the police.

Later I would learn that what I thought must have been a gang of gunmen was only one. The damage that this one gunman inflicted would never have happened without access to semi-automatic weapons and high-capacity magazines. If his mother hadn't legally purchased these weapons, he couldn't have murdered twenty children and six adults from my Sandy Hook School family. If those weapons were not in that house, none of this would have happened, regardless of the shooter's mental state.

Now we mourn for all we lost that day. We can't get out of our minds the unopened Christmas presents, the empty bedrooms, the violence that was unleashed on Sandy Hook. We can't get out of our minds the sounds of the shots, the police banging on the door, the terrifying run. Now some of my students can't sleep alone at night, many are in therapy, and one can't go into a bathroom alone.

I am a teacher. I have been for twenty years. How can I keep my students safe if these weapons are available to almost anyone and everyone? How can I keep my students safe if you don't change the rules? I can't. We can't.

The second amendment does not permit every citizen to have any weapon they want. We can permit ownership of reasonable weapons for hunting and self-protection without conceding our safety to paranoids who demand these weapons out of nothing more than fear. We must track every sale of every weapon, we must register every weapon. We must ban the sale and the possession of magazines of more than 7 rounds. Require universal background checks for all purchases and transfers. Do this for the sake of everyone's safety.

Respectfully,

Abbey Clements

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members,

I live in Newtown, my children both went to Sandy Hook School, and my wife has taught second grade there for 9 years. She was in the school on Dec. 14, about 50 feet from the shootings. I couldn't be more proud of the job she and her colleagues did to prevent more deaths than occurred on that horrible day.

But I write to you today not just about Sandy Hook, nor just about the other mass shootings that have seemed to increase exponentially in recent years in our county. I write to you today about the massive epidemic of gun violence that has infected our nation, of which Sandy Hook, unfortunately, is but a tiny portion.

I am sure you are aware that 30,000 people per year in the US die in incidents involving guns. How can this be true, and how can we allow it to continue? Since 1998, over 420,000 Americans have died in gun incidents. Let me just reiterate that point—in just the last 14 years, gun incidents have caused deaths roughly equal to the current population of Cleveland, Omaha, or Sacramento. How on earth can this be true, and how can we allow it to continue?

Are we really going to allow gun industry money and radical interpretations of the Second Amendment to chain us to these massive numbers of deaths every year? Whose life is worth keeping the status quo on gun laws? Were the 26 lives in Sandy Hook worth sacrificing to this misguided idea? Was Trayvon Martin's life worth sacrificing? Was Hadiya Pendleton's? Who is next? Someone you know? One thing you can rest assured, there will be about 29,000 more this year. How can that be true, and how can we allow it to continue?

Mr. Chairman, you and all of the members of the Subcommittee know that no one is demanding confiscation of weapons from hunters. Please don't give credence to these bogus red-herring arguments. We demand sensible laws to end the epidemic of gun violence. Increased vigilance on background checks is important, but not sufficient. It seems to me that the most reasonable course of action now would be to institute Federal laws to curb gun trafficking. This action alone would be a huge step towards curbing gun violence.

No matter how proactive states like CT and NY continue to be, their efforts will go for naught due to lax legislation and enforcement in other states, which essentially supply surrounding and nearby states with illegal guns. We can stop this state of affairs by:

- Requiring licensure of gun owners (to be presented and documented at purchase of weapons or ammunition)
- Requiring registration of all gun sales (not just first sales) with titles to accompany ownership (not unlike automobile ownership)
- Holding gun owners responsible for any crimes committed with their weapons (with a limited number of waivers available to a gun owner whose weapon is stolen).

We must also close all loopholes that allow any undocumented sale of firearms or ammunition. While these measures will not cure all of our gun violence problems, they will be important steps that in concert with other actions will gradually restore control and sanity to our gun violence problem in the US.

Mr. Chairman, we must not allow this violence to continue. Please do everything you can to help the American people through this epidemic, and please do everything you can to convince Senator Reid to bring legislation for gun violence prevention to the Senate floor.

Sincerely,

Brian Clements, PhD

Chairman Durbin and Senate Judiciary Subcommittee Members,

My name is Sarah Clements, and as your constituent; as a Sandy Hook Elementary graduate of 2006; as a daughter, a sister, and a friend; as a Newtowner; and as the daughter of a Sandy Hook School teacher, I am writing to you today to ask for your support on an issue about which I feel very strongly. On December 14, twenty of my young, beautiful neighbors had their lives abruptly and unfairly ended, as did 6 honorable women. This is the first time I have uttered that sentence because it is still hard for me to come to grips with. As I write this, my hands still shake. I not only can't believe it, it just doesn't make sense, and I have recently become overwhelmed with a constant, lingering fear because I know it still happens every day. Nine other children are taken every day from gun violence in the U.S. (along with anywhere between 30-90 adults) and I physically, emotionally, and mentally cannot handle it any longer. That is why when I say Newtown (including me) won't back down until something is done, I say the absolute truth.

Even before what happened in my beautiful town, I was for gun control. That does not mean "taking away all the guns" or dispensing of our Second Amendment rights, as extremists would like other Americans to believe. It means we want safe towns, so that parents do not have to fear sending their kids to school, so that couples can go on a date night to a theater fear-free, so that eager families can go Christmas shopping in peace and excitement, so that devoted community members may worship their religion without violence, so that there is no more emotional scarring like what I and all of my fellow Newtown citizens are trying to recuperate from. No town should ever have to go through what mine is going through, yet every day the number of towns that is subject to the torment increases.

One way I am healing myself is by advocating for common sense safety. There is so much change that must go into this, including a change in American culture. But one step that is included in this change is a change in gun culture. There is no way anyone can say that amid this plague of gun violence, it has nothing to do with guns. In fact, everything that plays into the crimes must be addressed.

Common sense. Are we going to wait until we all know someone who lost a loved one? That is unacceptable. 30,000+ dead a year is unacceptable. Nine children taken per day is unacceptable. The unfathomable act that happened in my town—that my beautiful, strong, caring, loving, tight-knit, peaceful, quiet town—will now be known for, is unacceptable. It is a national disgrace and embarrassment when compared to other first-world, industrialized, "civilized" countries. So I ask that you please help to pass common sense gun laws, as it is the *least* we can do.

On the 26th of January, I marched on Washington. I was joined by my community members, my dad, over 6,000 Americans, and 26 of the friends I lost who walked with us in spirit and love. I marched because of my mother, because of my town, because of the numbers killed by senseless gun violence. Because these are not just numbers; they are brothers, sisters, mothers, fathers; these are thousands of good deeds, volunteer hours, smiles, Valentine's cards, weddings, jobs, futures, families lost. Because I will be forever changed by that day. Marching gave me hope that my country can do better. I marched because I was surrounded (literally and figuratively) by members of the government that I know and trust. (I trust you to do the right thing.) I also marched with thousands of friends I will never formally meet. There were people of every age (newborn to 80s+), gender, religion, ethnicity, and state. I was surrounded by a small sampling of America. We are diverse—there were mothers, daughters, sons, fathers, grandparents, neighbors, godparents, cousins, teachers, pastors, rabbis, voters, people from Newtown and people from Texas and people from Alaska—and we have coalesced around a common goal. *This* is what America looks like. *This* is what citizenship looks like. *This* is what democracy looks like.

I marched, but it was just my first step, and it should just be yours, too. Please... do not let my friends pass in vain. If what happened in my town is not the turning point, I do not know what is. This cannot continue to be the disgusting and embarrassing status quo of the U.S. Please consider reinstating the assault weapon ban, banning high capacity ammunition magazines, requiring background checks for all guns, enforcing a 28 day waiting period (at least), requiring mandatory gun safety training

before the purchase of a gun, outlawing bullets that literally shatter in the body, and increasing productivity of the ATF, Dept. of Education, and gun research.

No one needs a magazine that fires 60 bullets in a few minutes. That is for the battlefield only; that is not self-defense. The man who shot up my elementary school shot each of my friends multiple times, literally tearing them apart. They were 6 and 7. The school nurse's car in the second row in the parking lot was hit by a bullet that went through the door, into a seat, and ricocheted back out. That was a car meters away... imagine what that did to Ben, James, Joey (Josephine), Vicki, Anne Marie, Dylan, Emilie, Olivia, Charlotte, Ethan, Dawn, Mary, Lauren, and the others. This is what we are left to picture and think about. My beloved third grade teacher and role model was shot three times. It was her daughter's birthday that day. She is still recovering, and she is one of the most positive and inspirational people in the entire world. But she was shot three times and needs countless surgeries and payments. All the teachers I know at the school (I know all of them) are emotionally scarred. Some can't sleep, some can't eat, some (like many of us) cry randomly on and off, and many are not fit to teach yet. I am telling you the worst of the worst in my town, not because it symbolizes us at all right now, but because it proves it's not "just a gun" or "just a bullet" or "just a hobby" or "just one time". It's all of this... aftermath. Please stop letting the gun lobby and the NRA bully you around. They simply want to make a profit, even if that means 30,000+ deaths a year and teachers being trained to shoot a weapon (I know MY mom trained to teach, not to shoot). Just remember, as American people, we did not elect the NRA for anything. We elected you to keep us safe and to do the right thing.

There is an old Native American proverb that says, "We did not inherit the Earth from our ancestors. We are borrowing it from our children." Keep this in mind, because as a junior in high school, I am between childhood and adulthood. I have heard countless stories of children in my town and all over who are scared every day because their friends died from a "bad man with a gun". Their best friends passed before they were even out of elementary school. How do you tell a child his best friend

Dylan, or her best friend Olivia won't be coming back next week? Hundreds of parents had to do that last month, and thousands around the country had to explain to their kids why they were crying. Then, I look to the other side, the adults, who are foolishly going back and forth with the same dialogue, going nowhere. It is upsetting. This is a glimpse into my town and my friends and our future generation. But if I told you the incredible strength, resilience, and love that was radiating from my town, it would not be the full truth because you have to *feel* it. Only when you experience pain that you can literally feel, that makes you double over and scream, that makes your hands shake, that makes you have anxiety attacks, can you truly experience, truly *feel* love. It can't be described. As Martin Luther King Jr. said, "Darkness cannot drive out darkness. Only light can do that. Hate cannot drive out hate. Only love can do that." Please lead with love.

Newtown can, must, and is becoming a symbol of hope and change, and I hope that continues. As the Sandy Hook Promise says, we want to be remembered, "not as the town filled with grief and victims, but as the place where real change began." Please let this come true. I co-created a video called "Make Your Own Sandy Hook Promise" that is now on YouTube, and I urge you to watch and share it with your fellow officials, as it sets the tone for common sense laws and humane conversations. My principal, who is one of the strongest individuals I have ever met, who lost his best friend Mrs. Dawn Hocksprung that day, gave us a mantra on the first day back that we have *all* memorized at school: Our collective strength and resilience will serve as an example for the rest of the world. I have total faith that it will. So help to make that reality.

As my town continues to heal, you must help us. We are all Newtown, and each person's son or daughter is *everyone's* son or daughter. When we stand together, we stand a chance. Thank you.

Sincerely,

Sarah Clements

TESTIMONY OF JOSHUA HORWITZ
EXECUTIVE DIRECTOR, COALITION TO STOP GUN VIOLENCE
HEARING OF THE SENATE JUDICIARY SUBOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS
"PROPOSALS FOR REDUCING GUN VIOLENCE: PROTECTING OUR COMMUNITIES WHILE RESPECTING THE SECOND AMENDMENT"
FEBRUARY 12, 2013

Mr. Chairman and Members of the Committee,

My name is Josh Horwitz and I am the Executive Director of the Coalition to Stop Gun Violence. I appreciate this opportunity to provide written testimony on behalf of my organization, a coalition of more than 48 national organizations dedicated to reducing gun death and injury in the United States. We seek to secure freedom from gun violence through research, strategic engagement, and effective policy advocacy.

On January 30th, at a hearing of the full Senate Judiciary Committee the following exchange took place between Senator Durbin and witness Wayne LaPierre, the Executive Vice-President of the National Rifle Association.

DURBIN: Mr. LaPierre, I run into some of your members in Illinois and here's what they tell me, "Senator, you don't get the Second Amendment." Your NRA members say, "You just don't get it. It's not just about hunting. It's not just about sports. It's not just about shooting targets. It's not just about defending ourselves from criminals," as Ms. Trotter testified. "We need the firepower and the ability to protect ourselves from our government--from our government, from the police--if they knock on our doors and we need to fight back." Do you agree with that point of view?

LAPIERRE: Senator, I think without any doubt, if you look at why our Founding Fathers put it there, they had lived under the tyranny of King George and they wanted to make sure that these free people in this new country would never be subjugated again and have to live under tyranny. [1]

As this subcommittee considers the various pieces of gun violence prevention legislation that have been proposed in this body Senators should understand that – contrary to Mr. LaPierre's assertion – taking up arms against the government has always been considered treason, and that the Second Amendment does not offer a constitutional safe harbor for traitors.

From the founding of the republic, we have rejected the notion that individual citizens may violently rise up against their government. Consider Shay's Rebellion of 1786, in which citizens from central and western Massachusetts shut down county courts to

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[1] Senate Judiciary Committee hearing on gun violence on Jan. 30, 2013 (Transcript), *available at* http://www.washingtonpost.com/politics/senate-judiciary-committee-hearing-on-gun-violence-on-jan-30-2013-transcript/2013/01/30/1f172222-6af5-11e2-af53-7b2b2a7510a8_story.html

prevent hearings for tax and debt collection, and attempted to seize a federal armory. In response, the governor of Massachusetts raised an army to quell the rebellion. Our Founding Fathers – James Madison, Samuel Adams, John Jay, George Washington, Benjamin Franklin, and John Marshall – endorsed the governor's action.[2] Furthermore, in a letter to Thomas Jefferson, James Madison defined the rebellion as treason.[3]

With Shay's Rebellion fresh in their minds, delegates to the Philadelphia Convention set to drafting a new constitution. In fact, Governor Edmund Randolph, when he introduced the Virginia Plan he noted, the "rebellion [that] had appeared . . . in [Massachusetts] underscored the need for a stronger government."[4] As such, the Framers included in the Constitution a series of clauses to address domestic insurrection. Specifically, Article I, Section 8, Clause 15, which states that one of the primary purposes of the [state] militia is "to … suppress Insurrections;"[5] and Article IV, Section 4, which provides, "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."[6]

The Founders' dismissal of the legitimacy of insurrectionism was affirmed during the Whiskey Rebellion of 1794, in which Pennsylvania farmers rebelled against a new tax on Whiskey. In response, George Washington said allowing such conduct would bring an "end to our Constitution & laws," and he personally led 12,000 troops to put an end to the rebellion. [7]

In the same manner, as a response to the nullification crisis in the early 1830's Andrew Jackson wrote, "Can any one of common sense believe the absurdity, that a faction of any state, or a state has the right to secede and destroy this union, and the liberty of our country with it, or nullify the laws of the union; then indeed is our constitution a rope of sand; under which I would not live."[8]

Most notably during the Civil War, this country reaffirmed its rejection of insurrectionist ideology. By accepting original jurisdiction, the Supreme Court in *White v. Texas* held that the Constitution does not permit States to unilaterally secede from the United States and that the ordinance of secession and all acts of the legislatures "intended to give effect to that ordinance were absolutely null."[9]

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[2] Carl T. Bogus, *Heller and Insurrectionism*, 59 Syracuse L. Rev. 253, 255 (2008).

[3] *Id* at 254-255.

[4] Paul Finkelman, *A Well Regulated Militia: The Second Amendment in Historical Perspective*, 76 Chi.-Kent L. Rev. 195, note 293, at 211. (2000).

[5] U.S. Const. art. I, § 8, cl. 15.

[6] U.S. Const. art. IV, § 4.

[7] Bogus, supra, at 255.

[8] Currie, David P. *The Constitution in Congress: Democrats and Whigs, 1829-1861*. Chicago: University of Chicago, 2005. Pg. 193-194.

[9] *Texas v. White*, 74 U.S. 700 (1869)

Arguments for the constitutionality of insurrectionist ideology, in part, stem from the 2008 Supreme Court case *District of Columbia v. Heller.* However, the Court held only that the Second Amendment conferred an individual right to keep a handgun in the home. It failed to articulate the scope of this right other than to say that it definitely included the right to own a handgun for the purpose of self-defense. Importantly, the Court recognized a non-exhaustive list of "presumptively lawful regulatory measures," and limited the right to weapons "in common use at the time."[10]

Lower courts have relied on *Heller* to uphold prohibitions on possession of firearms by felons,[11] and those convicted of misdemeanor crimes of domestic violence. [12] Lower courts have also held that the Second Amendment, as construed by *Heller*, allows for the prohibition of assault weapons and high-capacity ammunition.[13]

Though Justice Scalia, in the *Heller* decision, mused about why the right was not limited to participation in an organized militia, stating, "If ... the Second Amendment right is no more than the right to keep and use weapons as a member of an organized militia – if, that is, the *organized* militia is the sole institutional beneficiary of the Second Amendment's guarantee – it does not assure the existence of a 'citizens' militia' as a safeguard against tyranny,"[14] the Court stressed in its findings that the individual right to keep and bear arms protects only *lawful* conduct that properly falls within the confines of the rule of law.[15] The NRA and other proponents of insurrectionism have stretched Justice Scalia's words well beyond their intended meaning if they take them to mean that there is an individual right to use political violence to avoid following democratically enacted laws.

I make no judgment today about the rights of organized state militias to violently oppose tyranny. However, to endorse an individual right to armed rebellion against the United States Government is antithetical to a democratic society. Such a right makes each man a law unto himself; allowing him to make an individualized assessment of when democratically elected lawmakers become despots and allowing him to fashion an individualized, violent remedy.

Political scientists have long recognized that an integral feature of a State is to have a monopoly of the legitimate use of force.[16] Our strong yet democratic state--which maintains a monopoly on force--has allowed us to walk the fine line between anarchy and totalitarianism."[17] Legal scholar Roscoe Pound put it best when he wrote that a "legal right of the citizen to wage war on the government is something that cannot be admitted .

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[10] *Id* at 626-627.
[11] *See United States v. Barton*, 633 F.3d 168 (2011).
[12] *See United States v. Skoien*, 614 F.3d 638, 643 (7th Cir. 2010).
[13] *See Heller v. District of Columbia*, 670 F.3d 1244 (D.C.Cir.2011).
[14] *District of Columbia v. Heller*, 554 U.S. 570, 600, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008).
[15] *Id* at 620.
[16] Josh Horwitz, *The Game of Monopoly*, Huffington Post (2008) available at http://www.huffingtonpost.com/josh-horwitz/the-game-of-monopoly_b_99793.html
[17] *Id.*

. . a general right to bear efficient arms so as to be enabled to resist oppression by the government would mean that gangs could exercise an extra-legal rule which would defeat the whole Bill of Rights."[18]

When the Patient Protection and Affordable Care Act was being debated in the U.S. Congress, we experienced a small taste of why insurrectionism is such a dangerous ideology. Representatives received threats of physical violence and pictures of nooses. Windows were broken at Rep. Gabrielle Gifford's (D-AZ) Tucson office, Rep. Louise Slaughter's (D-NY) district office, and Democratic Party offices in Ohio, western New York and Kansas.[19] As you know, Jared Loughner, a man with serious mental illness, also targeted Gabrielle Giffords for "assassination" in the horrific mass shooting in Tucson on January 8, 2011.

The Founding Fathers never endorsed an individual right to armed political violence as such an idea could lead to the downfall of the newly created Republic. Senators should similarly reject this principle as they consider how best to improve our nation's gun policy.

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[18] Robert J. Spitzer, *Law and Politics Book Review,* Vol. 19 No. 6 (June, 2009) pp.390-393 (reviewing Josh Horwitz and Casey Anderson, *Guns, Democracy, and the Insurrectionist Idea* (2009)).
[19] http://tpmdc.talkingpointsmemo.com/2010/03/a-week-of-threats-and-vandalism.php

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NORTHWESTERN UNIVERSITY

February 11, 2013

Dear Chairman Durbin:

As an academic trauma surgeon, I would like to add my testimony to the public record with respect to firearm-related violence. In 2010, nearly 40,000 people lost their lives due to firearm related injuries, and hundreds of thousands suffered nonfatal injuries. It remains easier to obtain a firearm than it is to buy cigarettes, liquor, or drive a car. In the past 15 years alone, more Americans have died of firearm-related injuries than all the American casualties of both World Wars. It is time to take sensible steps to limit access to firearms.

Sandy Hook was a deeply disturbing tragedy, a window into the world of gun violence, gun rights activists, and the increasingly polarized dialogue in-between. Watching the truly catastrophic suffering of victims' families and community members reignited the debate about guns in America. Trauma surgeons know that mass shootings comprise only a small fraction of the endemic violence that saturates urban America, but they are often able to galvanize the public for change.

I trained at Martin Luther King Medical Center in South Central Los Angeles, and then did a residency at Cook County Hospital. I now work as a trauma surgeon in Chicago, and sometimes it seems that I've spent the better part of the past 20 years picking up the pieces of children trying to kill themselves and each other, which is absolutely heartbreaking. I pursued a Master's in Public Health after my residency because, though saving lives was rewarding like nothing else, I felt like sending kids back out on the streets without effecting change in some of the aspects of their lives that contribute to recidivism and poor outcomes was simply wrong, similar to sending someone home without beta-

blockers after a heart attack. Since then, I have been an active health services researcher, as well as a community advocate, working to find answers to the sometimes-unanswerable questions of risk factors and solutions.

In my research, I was fortunate to have been awarded grants from the American College of Surgeons, the Robert Wood Johnson Foundation, the American Medical Women's Association, and other organizations specifically to look at injury and violence epidemiology. I also teach a Master's-level course in my institution's Program in Public Health titled, "Injury and Public Health." Through some of my research on childhood injuries, racial and socioeconomic injury outcome disparities, and gunshot wound outcomes, I feel like I am contributing to knowledge in the field. On a community level, our hospital has partnered with many local organizations with a breadth of experience to help create safety nets and pathways to better serve our patients affected by violence.

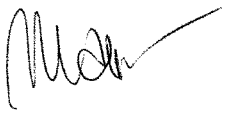
However, as the media swirled around recent events at Sandy Hook, on a campus in Texas, in New Mexico, I became increasingly aware that we seem to be unable, as a country, to have a sensible discussion about regulation and licensing of guns. People have become so polarized that more reasoned voices are required. I believe that a trauma surgeon with an interest in advocacy and a public health background could have just the unique combination of knowledge and experience to be an effective influence on health policy in this area. Like many surgeons, I am also concerned about issues like the Affordable Care Act, trauma systems funding, and critical funding for research; but this particular area exemplifies the gap between legislators and those in the trenches. I believe that it is mandatory that I use my voice as a surgeon, community advocate, and public health practitioner, for advocacy and change, and to help better understand the issues surrounding the gun violence debate; such as permit-to-purchase licensing, background checks, trafficking, assault weapons and high-capacity magazines, overturning the ban on gun violence research, and the relative effectiveness of gun laws in other countries. Restrictions on firearm access must necessarily be part of a public health approach to

violence prevention that includes an understanding of the social determinants of health such as poverty and disparities in our most distressed communities.

Please do not hesitate to contact me with any questions or for further information.

Thank you,

Marie Crandall



To Chairman Durbin & Senate Judiciary Subcommittee Members"

Feb 11th, 2013

Thank you for your difficult task of developing policies and legislation that will reduce senseless shootings, gun violence, and the agonies of grief we have suffered in the wake of the tragedy in Newtown and every day, being known by everyone thanks to the media or not...

I'm against violence of all kinds. I understand the peculiarities of the american society and I realize that there are no easy answers. But I do believe that it is far too easy for people to kill each other because of the easy diaponibility of firearms everywhere and for everybody in the US.

In a civilized society, the human freedom we so earnestly cherish must be tempered by the common good. In our twenty-first century society, guns fail again and again to provide personal protection. Survey after survey has concluded that the more guns there are in our homes and businesses and places we gather, the higher the homicide rate.

It's necessary you pass gun safety legislation in Connecticut and the whole country.

I wish for an assault weapons ban and more extended to include any firearm with a military style and any of those with a high capacity of shooting bullets per minute (being a handgun or any kind of firearm). I wish for strict requirements as to who cannot purchase and carry handguns (universal background check in any and all kind of firearms transactions).

In the wake of the Newtown shootings it's clear that additional legislation is required: to limit magazine capacity, to update the assault weapons ban, and to create a permitting process for long guns and ammunition. I wish we all legislators and citizens pledge to foster a culture of peace and safety for all our children and all the population.

In addition to strengthening our gun safety laws, a sound policy solution must also include measures to make our schools safer for those who learn and those who teach there.

Also, that solution must assure access to mental health care services for all citizens.

I wish for a society where we give treatment to those afflicted with mental illness, and to take our weapons and lay them aside.

Thank you,

Beatriz Delgado

106 chestnut hill road

Norwalk CT

www.facebook.com/SandyChildrenHelp

Sylvie Dessau

"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"
Senate Judiciary Committee

We live in a wonderful country, BUT more than 30,000 people die every year in the USA because of firearms, 11,000 of them in homicides. The USA has the highest rate of firearm ownership, the loosest gun control laws, and the highest rate of firearm deaths in all developed countries. We can try to reduce the number of these deaths, or we can do nothing.

Some people say "guns don't kill people, idiots (video game addicts, mentally ill persons, young men, children from broken families, ... fill the blanks) kill people". My take is that an idiot (video game addict, mentally ill etc.) with a knife, baseball bat, or anything else will do less harm than an idiot with a gun. Firearms kill more people faster and more efficiently, even in the hands of unskilled people, than any other object than can be used as a weapon. That what they are designed for. Firearms are used disproportionately in homicides (in 68% of homicides according to FBI Uniform Crime Report, for 13% by knives or cutting instruments, 13% by all other weapons, 6% by hands and fists).

The right to bear arms is a constitutional right. But I do not think it includes the right to own assault weapons, or large capacity magazines, or ammunition that explodes in the body. The rights in the Constitution are not absolute, especially

when weighed against the public safety and the rights of others. The right to stay alive has to be considered as well.

Inside the country, states with stricter gun control laws tend to have a lower rate of gun deaths than others. In many states (including South Carolina where I live), background checks are limited to sales of firearms by licenced dealers. In these states, felons and people with a history of domestic violence can legally buy firearms from an individual. Universal background checks will make it illegal. Of course, some will still buy firearms illegally. No law or regulation will eliminate all violence and all crime, but it can reduce it. Let's do what ever is possible, if one life is spared it will be worth it.

Although most gun users are law abiding, abuse happens. A system that makes abuse more difficult would be an improvement. Buying Sudafed does not indicate criminal intent. Nevertheless because a few people use it for wrong ends, we all submit to checks and are inconvenienced by it. Buying ammunition may not indicate criminal intent. Nevertheless,... see above. We also put up with a lot of paperwork when buying a car, for our safety and that of others, even when we buy it from an individual and not a dealer. It would be logical to do the same for guns.

For many, Newtown was the last straw. We are the people who are concerned about gun violence in this country. We are the mothers and fathers of 6 year old kids, who are now afraid when we drop them at their school in the morning. We are the classmates of Zephania Griego, killed by her brother with her

father's guns. We are the widows of the Webster firefighters. We are the families of all the firefighters , who are always afraid when their father, husband, son is called, but do not expect them to be killed by a firearm. We are the people who are sick and tired of burying the dead, sick and tired of gun owners hiding before their understanding of the Second Amendment, sick and tired of the NRA's , a mouthpiece for gun manufacturers, power in congress. We are the people living in the same country you do, and we demand action.

Proposals:

- universal background checks for firearm purchases

- ban on the manufacturing and sales of magazines with more than 10 rounds

- training required for all purchases of firearms

- license to use a firearm (similar to license to drive a car)

- insurance required for firearms (similar to car insurance)

- push for improvement of "smart gun" technology, particularly biometrics

- any firearm seized by law enforcement to be destroyed, not resold

- support the UN Small Arms Treaty

February 11, 2013

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

Statement from:
Donnette Dolzall
13 Ridge Rd.
Newtown, CT

Dear Chairman Durbin and Senate Judiciary Subcommittee Members,

The tragic events at Sandy Hook Elementary School on December 14 mandate that the nation once and for all confront the issue of gun control. It is paramount that the untimely deaths of the children killed that day be given meaning, and that the bravery of the educators of Sandy Hook Elementary be recognized, with the enactment of vigorous laws that begin to address gun violence. These educators were able to stand up to a crazed gunman hell-bent on mass destruction. Now our legislators must stand up to opponents of any change in gun laws and say, "Enough."

As a long-time Newtown resident who writes this with a broken heart, I urge Congress to ban the sale of high-powered, semiautomatic weapons and high-capacity magazines/clips nationwide. I further ask that all loopholes in previous legislation blocking the sale of assault weapons be closed, and that the Tiahrt Amendment be repealed in order to enable law enforcement to investigate gun-trafficking patterns. And finally, I plead that in formulating any legislation, priority be given to the voices of those most affected by tragedies such as occurred in Newtown – law enforcement, first responders, doctors and nurses, mayors and other town officials, and, first and foremost, teachers and members of families that have been affected by gun violence. The voices against any meaningful change have dominated U.S. policy for too long at the exclusion of others, and their policies have failed in the most grotesque way.

A violent media culture, etc., certainly must all be addressed as well. But citizens of all the civilized nations of the world watch American-made movies and TV shows and play video games, and have mentally ill citizens. What alone separates us from them is the widespread availability of firearms, including semiautomatic weapons.

Once we begin to address the gun violence there will still be more to do. But the time to enact stringent gun control measures with teeth has come, and they must be implemented quickly. I refuse to accept that America is powerless to stop a lone madman from murdering a classroom full of small children. If we are, to paraphrase our president, not much else matters. I urge lawmakers to enact vigorous gun control measures that begin to turn the tide on gun violence and help prevent a horror like Sandy Hook from happening again.

Sincerely,

Donnette Dolzall

FAITHS UNITED
TO PREVENT GUN VIOLENCE
100 Maryland Avenue NE • Washington DC 20002

January 15, 2013

Dear Member of Congress:

On Martin Luther King Day, January 17, 2011, 24 national faith groups announced the formation of "Faiths United to Prevent Gun Violence," a diverse coalition of denominations and faith-based organizations united by the call of our faiths to confront America's gun violence epidemic and to rally support for policies that reduce death and injury from gunfire. Two years later, we have grown to more than 40 groups representing tens of millions of Americans in faith communities across the nation – and our call to confront this epidemic has grown ever more urgent and imperative.

The recent loss in Connecticut of 20 innocent young children, of the teachers and administrators that cared for them, and of a desperately troubled young man and his mother, tears our hearts and minds to the core. Faith leaders in Newtown have been on the front line of responding to the grief and pain of the families whose loss is unimaginable, and of the entire community there. Across the country, we grieve with our own congregants and communities, and we share their determination to do all within our power to ensure that this never happens again.

In light of the tragedy in Newtown – and in Aurora, Tucson, Fort Hood, Virginia Tech, Columbine, Oak Creek, and so many more – we know that no more time can be wasted. Gun violence is taking an unacceptable toll on our society, in mass killings and in the constant day-to-day of senseless death. While we continue to pray for the families and friends of those who died, we must also support our prayers with action. We should do everything possible to keep guns out of the hands of people who may harm themselves or others. We should not allow firepower to kill large numbers of people in seconds anywhere in our civil society. And we should ensure that law enforcement has the tools it needs to stop the virtually unrestrained trafficking of guns.

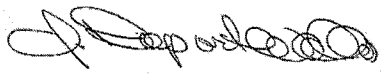
Faiths United to Prevent Gun Violence member organizations, representing millions of people across the country, urge you to respond to this crisis in our nation. With each day that goes by, dozens more of our children, parents, brothers, and sisters are lost to gun violence. We support immediate legislative action to accomplish the following:

- **Every person who buys a gun should pass a criminal background check.** Preventing dangerous people from getting firearms has to be a top priority. Universal background checks via the National Instant Criminal Background Check System (NICS) should be utilized in every gun sale, including guns sold online, at gun shows, and through private sales.
- **High-capacity weapons and ammunition magazines should not be available to civilians.** There is no legitimate self-defense or sporting purpose for these military-style, high-capacity weapons and magazines. They are, however, the weapons of choice for those who want to shoot and kill a large amount of people quickly. It's time to build off of the federal assault weapons ban that expired in 2004 and draft an updated law that will take these weapons off our streets.
- **Gun trafficking should be made a federal crime.** Currently, prosecutions only happen through a law that prohibits selling guns without a federal license, which carries the same punishment as trafficking chicken or livestock. We must empower law enforcement to investigate and prosecute straw purchasers, gun traffickers, and their entire criminal networks.

In recent weeks, the American people have come together in a national outpouring of grief and sympathy for the families of victims slain in the mass shooting in Newtown. We share in that grief, but will not let it substitute for action. We look forward to working with you to enact these common-sense measures to reduce gun violence. Should you or your staff have questions or need additional information, please visit our website at www.faithsagainstgunviolence.org or contact our National Coordinator, Vincent DeMarco, by email at demarco@mdinitiative.org or by phone at 410-591-9162.

Sincerely,

James Winkler
Chair, Faiths United To Prevent Gun Violence
General Secretary, General Board of Church and Society
United Methodist Church



Jacquelyn Dupont-Walker, Director, Social Action Commission
African Methodist Episcopal Church

Carol Blythe, President
Alliance of Baptists

Dr. Walter L. Parrish, II, Executive Minister
American Baptist Churches of the South

Dr. Aidsand F. Wright-Riggins III, Executive Director
American Baptist Home Mission Societies

Shan Cretin, General Secretary
American Friends Service Committee

Rev. LeDayne McLeese Polaski, Program Coordinator
Baptist Peace Fellowship of North America

Father Larry Snyder, CEO
Catholic Charities USA

Sister Carol Keehan, D.C., President and CEO
Catholic Health Association

Kevin E. Lofton, President and CEO
Catholic Health Initiatives

Fred Rotondaro, Chairman of the Board
Catholics in Alliance for the Common Good

James Salt, Executive Director
Catholics United

Stanley J. Noffsinger, General Secretary
Church of the Brethren

Djamillah Samad, National Executive
Church Women United, Inc.

Very Rev. John Edmunds ST, President
Conference of Major Superiors of Men

Rev. Ronald J. Degges
Disciples Home Missions, Christian Church (Disciples of Christ)

Sr. Margaret Ormond, O.P. and the Leadership Team
Dominican Sisters of Peace

Patrick Carolan, Executive Director
Franciscan Action Network

Diane Randall, Executive Secretary
Friends Committee on National Legislation

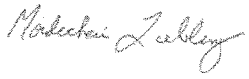
Marlene Feagan, President
Health Ministries Association

Bryan Miller, Executive Director
Heeding God's Call

Suhag Shukla
Executive Director and Legal Counsel
Hindu American Foundation

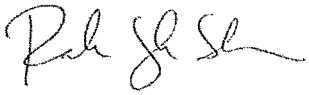
Dr. Sayyid M. Syeed, National Director for Interfaith and Community Alliances
Islamic Society of North America

Rabbi Steve Gutow, President,
Jewish Council for Public Affairs



Rabbi Mordecai Leibling,
Jewish Reconstructionist Movement

Janet Mock, CSJ, Executive Director
Leadership Conference of Women Religious



Rachelle Lyndaker Schlabach, Director
Mennonite Central Committee, Washington Office

Sister Gayle Lwanga,
National Advocacy Center of the Sisters of the Good Shepherd

Peg Birk, Transitional General Secretary
National Council of Churches

Matthew Ellis, Executive Director
National Episcopal Health Ministries

Simone Campbell, SSS, Executive Director
NETWORK, A National Catholic Social Justice Lobby

Patricia Chappell, SNDdeN, Executive Director
Pax Christi USA

Pastor Michael McBride, M.Div.,
PICO Network Lifelines to Healing

Reverend J. Herbert Nelson, II, Director for Public Witness
Presbyterian Church (U.S.A.) Office of Public Witness

Dr. Carroll Baltimore, President
Progressive National Baptist Convention

Rabbi Gerald Skolnik,
Rabbinical Assembly

Rabbi David Saperstein, Director and Counsel
Religious Action Center of Reform Judaism

Sister Patricia McDermott, RSM, President
Sisters of Mercy of the Americas

Dr. Rajwant Singh, Chairman
Sikh Council on Religion and Education, USA

Rev. Jim Wallis, President and CEO
Sojourners

Rev. Craig C. Roshaven, Witness Ministries Director
Unitarian Universalist Association of Congregations

Rev. Geoffrey A. Black, General Minister and President
United Church of Christ

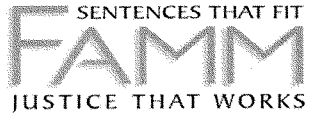
Harriett Jane Olson, CEO and General Secretary
United Methodist Women

Most Reverend Stephen E. Blaire
Bishop of Stockton, Chairman
United States Conference of Catholic Bishops Committee on Domestic Justice and Human Development

Rabbi Steven Wernick, Executive Vice President and CEO
United Synagogue of Conservative Judaism

The Very Rev. Gary Hall,
Washington National Cathedral

Rabbi Marla Feldman, Executive Director
Women of Reform Judaism



Statement of Julie Stewart, President
Families Against Mandatory Minimums
Submitted to the Senate Judiciary's Subcommittee on the
Constitution, Civil Rights, and Human Rights for a hearing titled
"Proposals to Reduce Gun Violence: Protecting Our Communities
While Respecting the Second Amendment"
February 12, 2013

Chairman Durbin, Ranking Member Cruz, and members of the subcommittee, on behalf of the staff, board, and over 25,000 members of Families Against Mandatory Minimums (FAMM), I appreciate the opportunity to submit our views on the topic of new federal gun proposals. We also appreciate the fact that the chairman of the full committee, Senator Leahy, is committed to approaching the issue of gun violence in a deliberate and thoughtful way. While we do not seek to slow down legislation aimed at addressing tragedies like Newtown, we know from experience that hasty legislative responses to such tragedies often result in harmful public policy.

FAMM is a national sentencing reform organization whose membership includes lawyers, judges, criminal justice advocates, and, above all, state and federal prisoners and their families. We concentrate our advocacy on reforming laws so that courts have discretion to fashion sentences that are individualized, proportionate, and no greater than necessary to achieve the purposes of sentencing.

We understand that there is no easy solution to reducing gun violence in our country. We expect that Congress is likely to consider a variety of reforms, including the new measure to address straw gun purchases that was introduced by you, Chairman Durbin and Chairman Leahy. FAMM does not have a position on what gun law reforms Congress should pass, but we have very strong feelings about what Congress should not pass: new mandatory minimum sentencing laws for gun-related offenses.

Proposals to create new mandatory minimums or to make existing minimum prison terms even longer might initially sound like attractive options to some. Yet, even a cursory review of existing federal gun laws should make clear that such proposals are unwise and unnecessary. The main gun statute (18 U.S.C. sec. 924(c)) currently forces judges to impose a mandatory five-year sentence on anyone who possesses a gun when committing a violent (or drug) crime. This five-year bump - which turns to seven years if the gun is brandished, 10 years if discharged - is added on top of the sentence the individual receives for the underlying violent or drug crime. If the individual even carries a gun during a second offense, he faces a mandatory 25 years on top of the penalty he earns for the underlying crime.

This law is applied so broadly that many low-level, non-violent offenders have been sent to prison for decades or life. The case of Weldon Angelos best demonstrates how excessive and

disproportionate existing gun penalties are. By the age of 23, Angelos had launched a successful music career that was quickly bringing him nationwide recognition. He had established his own record label and was working with some of the biggest and best-known artists in rap music.

Between May and June 2002, Salt Lake City police set up a series of controlled buys from Angelos, whom they suspected was a member of a street gang. Police arranged for an acquaintance of Weldon's to act as a confidential informant, hoping to prove Weldon's involvement in trafficking large amounts of marijuana. The informant purchased a half-pound of marijuana from Angelos on two separate occasions. According to the informant, a firearm was visible in Angelos's car during the first buy. During the second controlled buy, the informant alleged that Angelos was wearing an ankle holster holding a firearm. Police searched Angelos's home in November 2003 and found additional guns, drug paraphernalia, and other evidence that officers claimed indicated his involvement in drug trafficking and money laundering.

Angelos was indicted and eventually convicted of 13 drug, firearm, and money laundering charges, as well as three counts of possession of a firearm in furtherance of a drug trafficking crime. Two of the three counts of possession of a firearm resulted from the gun he allegedly carried during the buys with the informant. The third count stemmed from a handgun found in a bag in Weldon's home. Although one charge was dismissed and he was acquitted of three others - and though he never fired or even brandished a gun at any time - Weldon was sentenced to 55 years in federal prison. This unconscionable sentence was reached by applying the mandatory minimum law that required stacking the five-year mandatory sentence for the first charge of possession of a firearm in furtherance of a drug trafficking crime on top of a consecutive 25-year sentence for the second charge, and another consecutive 25-year sentence for the third charge.

Angelos's sentencing provoked unprecedented public outcry. Twenty-nine former judges and prosecutors filed a "friend of the court" brief beseeching Weldon's sentencing judge to declare the sentence unconstitutional. At sentencing, Judge Paul G. Cassell called Weldon's punishment "unjust, cruel, and even irrational," comparing it to the much shorter federal sentences given to repeat child rapists and airplane hijackers. Judge Cassell wrote a 67-page opinion urging then-President George W. Bush, who appointed Cassell to the bench, to commute Angelos's sentence to 18 years or less. None of these efforts worked.

Federal gun mandatory minimums nearly produced an even more outrageous result last month in the case of Montana medical marijuana seller Chris Williams. Williams operated a marijuana dispensary in Montana after voters in that state legalized the medical use of marijuana in 2004. Because federal law still prohibits marijuana distribution, Williams and his partners were indicted in 2011. Williams wanted to exercise his constitutional right to a trial because he thought Montana's law protected his activity. But on September 27, 2012, a federal jury convicted Williams not only of drug crimes, but also of four counts of possessing firearms "in furtherance of" those crimes. Williams carried a gun in a holster while he worked, and his co-workers kept legally registered pistols and shotguns. As with Weldon Angelos, Williams did not use or even wield his gun.

Those facts did not matter. When he was convicted, Williams faced, in addition to any penalty for drug trafficking, a five-year mandatory prison sentence for the first gun charge and 25 years

in prison for each of the three subsequent offenses, for a total mandatory minimum sentence of 80 years. Fortunately for Williams, the public outrage grew so great that the prosecutor took the unprecedented step of offering Williams a deal of five years after the jury had already voted to convict him. Williams took the deal and was sentenced on February 1, 2013, to five years in prison. The federal judge said at sentencing that mandatory minimums produce "unfair" and "absurd" results. That Williams was spared from spending the rest of his life in jail only because the federal prosecutor offered a post-trial deal to effectively negate the jury's conviction is frightening and raises serious questions that this subcommittee should explore about excessive federal sentencing laws and guidelines and the burden they impose on an individual's constitutional right to trial.

In its 2011 report to Congress on mandatory minimums, the U.S. Sentencing Commission recommended a few specific reforms to 18 USC sec. 924(c) and the Armed Career Criminal Act at 18 USC sec. 924(e), to eliminate the egregious results produced by these laws. FAMM supports the Commission's recommendations and has other, bolder ideas and proposals for reform. We look forward to working with Congress to enact these common-sense reforms.

For now, we respectfully urge the members of the subcommittee to leave mandatory minimum sentencing provisions out of any new gun laws. The gun-related mandatory minimums already on the books are quite severe and, as the examples above and many others demonstrate, frequently result in excessive and irrational punishments. Further, we are aware of no evidence that federal judges are not sentencing violent, gun-carrying criminals to appropriate sentences. In the future, we hope to work with this subcommittee and others to reform our mandatory minimum sentences for gun crimes and for all crimes.

Thank you again for the opportunity to share our views with the subcommittee.

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 12, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. I support the 2nd Amendment, however I do not believe it is limitless and that with every right comes responsibility. It is important that individual rights are balanced with the rights of all, not just those that choose to bear arms. In my home state of Virginia, existing legislation is so riddled with loopholes that it might as well not exist. For those reasons I ask you to enact the following laws on the federal level:

1) Re-institute the Assault Weapons Ban as proposed by Senator Feinstein in its revised & improved form. About 1 in 5 law enforcement officials are killed with Assault Weapons. This is simply unacceptable. Christopher Bryan Speight was able to bring down a VA state police helicopter with an AR-15 in 2010. An independent study of the previous AWB showed that it resulted in a 6.7% reduction of total gun murders. Given an average of 11,000 annual gun homicides in the United States this is certainly not an insignificant number.

Semi-Automatic Weapons have proven the "tool" of choice for mass killers. With mass killings on the rise it is important that we act to at least make it harder for perpetrators to kill so easily. 40% of mass shootings since 1982 have occurred after the Assault Weapons Ban expired in 2004.

A few more notes regarding the proposed Assault Weapons Ban. The AWB does not ban firearms solely based on cosmetic features. These features do clearly affect performance. Here is a description of a Partisan Avenger .45 Assault Pistol: "The swiveling front grip makes for easy and comfortable control of the recoil. The forward pistol grip extension not only helps point it instinctively at the target but also goes a long way to controlling the effects of recoil." When evaluating the effectiveness of the AWB it is important to also consider the arsenals of weapons and ammunition already owned by citizens prior to the ban.

2. Ban High Capacity Magazines. Throughout the late 1990s when the AWB was still in effect we experienced a rise in the use of other guns equipped with large capacity magazines in large urban cities, like Baltimore, Milwaukee, etc. This was likely due to the immense stock that was already owned in the general population. We will experience this again should the new Assault Weapons Ban pass, however it is important that we stop producing and adding to that immense stock. Semiautomatic weapons equipped with high/large capacity magazines result in more shots fired, more persons hit, and more wounds inflicted per victim

than do attacks with other firearms. Overall violent crime could decrease faster if High Capacity Magazines were outlawed and would result in fewer lives lost.

3. Implement Universal Background Checks. It is simply unacceptable that 40% of all firearms sale take place without a background check. In no other area will the government skip verification and operate on the honor system, not at the airport and not at the IRS. We must allow background check records to be kept, instead of being destroyed within 24h per the Tiahrt amendments. It is imperative for law enforcement to have information about someone's intent to acquire firearms should they receive information that the person is behaving suspiciously.

4) Make gun trafficking a Federal Crime and institute the one gun a month law. Gun trafficking is a major contributor to our nation's staggering rate of gun violence. A misdemeanor is very unlikely to be prosecuted in federal court. How can the ATF enforce the laws if there are no real fines imposed on the perpetrators?

Federal law does not require a person to register as a firearms dealer for occasional private gun sales. The word "Occasional" needs to be defined more clearly and one gun a month laws need to be implemented to prevent individuals from purchasing an unlimited number of firearms only to resell them later in other areas of the country that may not allow them. This is how illegal guns get into cities like Chicago.

5) Improve Mental Health Reporting. While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. It is important to also address members of the household that live with a person that has a mental illness.

These are my suggestions to strengthen the current gun legislation and avoid so many unnecessary deaths. There is much more that we can do, however the above measures would have an immediate impact on the rate of gun violence in this country. We have a right that Congress puts the safety of The People ahead of the interests of the gun lobby. It is your obligation.

Most respectfully,

Andrea Filkins
Alexandria, VA

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. I am a member of One Million Moms for Gun Control. We are united in our belief that there is much that can be done legislatively to make our country a safer place that will not infringe upon Second Amendment rights. We are powerful

1) Require Universal Background Checks on both Guns and Ammunition

Every purchaser of a firearm should be subject to a background check through the FBI's National Instant Criminal Background Check System (NICS). Currently, an estimated 40 percent of guns sales are made by private individuals (at gun shows, over the Internet, through classified advertisements, etc.) who have no legal duty to subject purchasers to background checks or maintain records of sale. What is the purpose of having a NICS database with millions of disqualifying records if prohibited purchasers can simply circumvent the system? It would be the equivalent of having optional security screening at our airports, with a second line for folks who simply wish to bypass the scanners. In this Information Age, NICS checks are typically completed in a matter of minutes, and they can be administered by any one of the nation's more than 50,000 federally licensed firearm dealers. Background checks should also be required on all ammunition purchases.

2) Institute an Assault Weapons & High Capacity Magazine Ban

Renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Mass shootings have increased in frequency since the ban expired in 2004. That is reason enough to reinstate the ban. There is no need for a weapon designed for battlefield use and easily outfitted with magazines holding up to 100 rounds of ammunition to be legally available to civilians but there is a very compelling reason to ban these weapons – it will save lives.

3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime

The Tiahrt Amendment should be repealed as it restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the ATF the authority to require gun dealers to inventory lost and stolen guns and requires that NICS background check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime so there can be tougher enforcement. We should be doing everything we can to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

4) Improve Mental Health Reporting

While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. Under current law, only individuals who have been involuntarily committed to a psychiatric institution or formally adjudicated as "mental defectives" (the law was written in 1968) are prohibited from buying firearms. This standard tells us little about who might be dangerous and allows people to acquire firearms who should never get close to a gun.

There are many other issues that need to be addressed, such as violent video games, the glorification of gun violence in the movies and TV and the effect this has on our youth. But these issues will take time to tackle and resolve and will require a cultural shift. The suggestions I have made above are all simple and immediate steps that would help bring an end to gun violence.

The American people are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

Public safety should not be a politically charged issue. Legislators on both sides of the aisle have an obligation to protect and safeguard the welfare of Americans. Hiding behind the Second Amendment as an excuse for inaction is not acceptable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus. Every right has limits and the Second Amendment is no exception. No one outside of the military needs an assault weapon or a 50-caliber sniper rifle that can penetrate a police officer's bullet-proof vest. Everyone from city cops who agreed with us when we 'marched' in Denver on 26 Jan to John Elway agree - no one needs these weapons. They didn't have them 10 years ago and they don't need them to be so readily available now. No one needs a high-capacity magazine capable of turning an ordinary handgun into a killing machine. No one should be able to purchase a gun of any sort without having to undergo a background check. Loopholes need to be closed. Bans need to be reinstated. Let's get this done; for our country and for our children; and let's get this done now.

Most respectfully,

Laura Fronckiewicz
One Million Moms for Gun Control
Denver, CO

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin and Members of the Senate Judiciary Subcommittee:

Thank you for the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. We are members of the Unitarian Universalist Congregation of Fairfax. Ron is a Vietnam Army veteran, a former high school teacher, and a retired consultant to the Army Headquarters. Marsha is a former elementary school teacher and currently teaches piano.

We are committed to the pursuit of laws that will help reduce the level of gun-related violence in our country. In addition to those who are killed or wounded, the effects of gun violence ripple throughout the victims' families, friends, and communities.

While we support registration of guns owned by private citizens, we realize that at this time such a proposal would not be supported by Senate or the House of Representatives or by a majority of Americans.

We believe that the proposals to curb gun-related violence that are listed below are doable now and do not infringe on the rights of the Second Amendment, which we believe is not an absolute right. We ask that the Senate Judiciary Committee adopt the following and work to pass laws that will:

1. Require universal background checks on both guns and ammunition.
2. Institute an assault weapons & high capacity magazine ban: rather than banning specific makes and models of assault weapons though, we would prefer banning weapons based on functionality.
3. Repeal the Tiahrt amendment and make gun trafficking and straw purchases federal crimes.
4. Improve mental health reporting and mental health treatment.

We are under no illusions that even if all of the above proposals are adopted that gun-related violence in America would be eradicated. However we strongly believe that they would be a significant start toward a solution to the problem and would significantly reduce the level of gun violence.

We urge the Senate Judiciary Committee to support and work for passage of these proposals.

Most respectfully,

/s/
Ron and Marsha Giusti
5306 Weymouth Dr.
Springfield, VA 22151

Written Testimony Submitted for the Record
By Virginia Tech Injured Survivor Elilta Habtu, M.S.

For the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment" hearing on February 12, 2013

Thank you Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee for the opportunity to submit written testimony for its "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment" hearing.

My name is Elilta Habtu and I was severely injured in the German classroom in the Virginia Tech shootings. As a gun violence survivor, I'm a witness to the devastation that gun violence causes and the impact it has on one's family, loved ones and community. I should not have been injured that day in my classroom; I was where I needed to be as well as my fellow classmates and professors. My parents left their war-torn homeland so that I may have more opportunities in America, but they never envisioned that I would end up in a warzone of my own, in the sanctity of a school classroom. This is not the American Dream.

The Real Impact of Gun Violence

I was shot in the wrist, where all 8 wrist bones were shattered because of the hollow-point bullets that the shooter used for maximum destruction. I was shot in my jaw, where the bullet still remains lodged 1 mm from my brainstem because removing it is too dangerous. The doctors told me if the bullet had moved 1 mm more I would be paralyzed or dead. A bullet ricocheted and deeply wounded the top of my head, where I now have a well-hidden scar. Because of my severe and extremely painful injuries I was in the hospital for one month, where merely walking was exhausting. Please find attached hospital photos dated 4/19/2007- 4/25/2007. The first photo attached is on 4/19/2007 where my head was so swollen people were surprised that I could see them through my squinted eyes. I suffered excruciating pain despite being heavily dosed under morphine. I required embarrassing assistance from a nurse to help me use the bathroom and to help me take showers. I have had several reconstruction surgeries to my jaw and wrist and I will have future reconstruction surgeries. I am still healing from this trauma physically and psychologically 5 years later. I still see a therapist because I suffer from PTSD. I automatically note where all the exits are whenever I enter a room, I never sit with my back to the door -- I sit where I can see the exit so I know how to escape in case of an emergency.

I share this extremely personal private experience in my testimony because the truth must be known about the real damage and destruction caused by gun violence.

Policy Proposal to Reduce Gun Violence

We can reduce gun violence in our communities by taking early preventative measures, by focusing on school safety and mental health care that's accessible and affordable to all Americans, not only to the dangerously ill. I support proposed legislation such as Mental Health

First Aid Act and Mental Health Parity and Addiction Equity Act. (For more information on my policy proposal to reduce gun violence please view here).

But we also need to reduce gun violence by having reasonable national, uniform laws on gun safety – which will not remove gun rights. I support the President's plan to reduce gun violence including banning assault weapons, requiring universal background checks and limiting high-capacity magazines. I support these measures because I've witnessed a private sale without ID and just cash at a gun show. I've obtained my concealed carry permit by taking an online course and online firearms safety training -- without ever touching a gun. I did this to test the current system's efficacy and ease of access to firearms. The permit I obtained was valid for 5 years in Virginia, and in any other states that allow out of state permit holders such as Pennsylvania or Texas. As someone who has been "under fire", I think limiting magazine capacity to 10 rounds is sensible legislation.

We should not dismiss one proposed legislation over another, we should support all sensible proposed legislation. Sometimes we overlook simple solutions, such as having an automatic door lock. My classmates were able to stop the shooter from returning to our classroom. Kate Carney bodily barricaded herself against a door whilst shots were still fired through the door. She was joined by Trey Perkins, Derek O' Dell and Erin Sheehan and they prevented the shooter from re-entering our classroom. Their bravery and quick-thinking actions helped save my life and kept the death count low in our German class. A few classrooms were able to successfully barricade doors and the shooter did not enter their rooms. Imagine if we then had a school safety training program to be prepared in cases of emergency. Since then, a few K-12 schools in VA have installed automatic door locks for their classrooms, as well as updating emergency communication systems in case of security lockdown. These are all solutions that should be holistically implemented and that address how to reduce gun violence, but should not be in substitution in place of other gun safety laws that are just as important.

Could having a gun or using high-capacity magazines helped protect us that day? We could discuss and debate this, but I do know that high-capacity magazines allowed the Virginia Tech shooter to shoot over 100 bullets within 9 minutes: killing 33 individuals including himself, and physically and psychologically injuring many survivors. Let's not forget the friends and families of the survivors or their communities that relive the pain with every new tragedy. High-capacity magazines have the sole purpose to cause more destruction in a short amount of time – limiting the number of bullets is a reasonable solution to reducing gun violence. High-capacity magazines in the hands of dangerous individuals makes it a weapon of mass destruction, and makes carnage possible like in our classrooms at Virginia Tech, as well as Columbine and Sandy Hook elementary school.

We do not need high-capacity magazines of up to 100 bullets to defend ourselves and our families. If a person needs a magazine with up to 100 bullets to disarm a potential attacker, they may need to spend more time at the gun range to improve their shooting high-capacity accuracy.

The argument that an individual needs a magazine with up to 100 bullets to disarm a potential attacker does not hold. I am not aware of any evidence where a civilian required up to hundreds of bullets to repel a potential attacker. I am, however, aware of civilians who have used hundreds of bullets to murder dozens of innocent individuals in single incidents. Yes, we have the constitutional right to defend ourselves and our families – and it is a right that is never going to be taken away. **There will never be abolition of guns; the American people do not want it.** With this right comes the responsibility and accountability for safely owning and storing a gun – just like our 1st amendment for free speech.

Is there research that shows limiting magazines to 10 bullets hinder our ability for self-defense with guns? How would passing sensible legislation take away gun rights? I understand there is contestation in limiting bullets – whether there is significant statistical difference in reducing gun violence by 10 bullets versus 15 bullets? This is an example of where we may need to compromise on good proposed legislation such as the Assault Weapons Ban 2013, and should be closely evaluated and monitored over time. But hitting these challenges shouldn't stop us from passing good legislation because it's not completely perfect.

Time for Action

Yes, we must be careful to not pass "feel good" legislation when they do not adequately address the problem as a whole, but we should not be too cautious. We should be careful to not dismiss nor hinder good legislation that sufficiently addresses most of the problem. We should be part of the solution, and we should bring forth proposed solutions and proposed legislation and together discuss how to overcome these challenges or propose alternatives.

We must not simply philosophize or talk rhetoric; we've had talking and debating for years. **We need action from our congressional leaders, and after Sandy Hook we must not remain inert. We all must dare to do the right thing, which may mean differently to different folks, but it still requires action.** We don't have a crystal ball to tell the future, whether passing legislation today will cause "real change" to occur. We do know with certainty that no action from our Congress will result in no change. We can pass sensible legislation and then evaluate its impact and change over time – and re-address its efficacy appropriately at a later time. **Inaction is unacceptable.**

This is a very complex problem; there will be no perfect single bill or perfect series of legislations to address these issues. But we do know how to alleviate some of these problems and proposed actions to reduce gun violence. We know this from data and empirical evidence collected from past shootings and tragedies, from law enforcement officials and the prosecutors, from the victims and survivors, from the felons convicted of shootings, from the doctors and public health experts and the many multi-disciplinary experts and Americans.

Our Congressional leaders' laudable attempts to strive for "best practices" and their good intentions cannot result in rhetoric and inaction from Congress. We cannot hinder

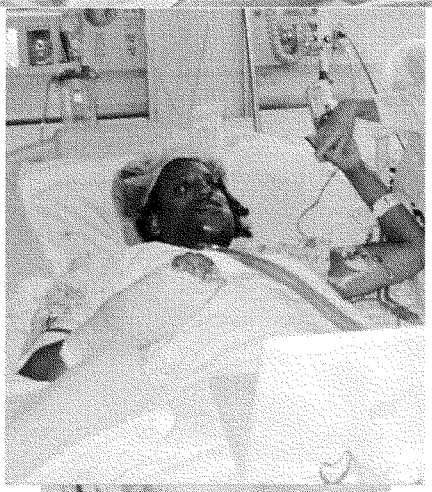
legislation from being passed because of fear for extreme, hypothetical situations that are statistically rare or nonexistent. We must pass sensible legislation based on empirical evidence from real incidents and living eyewitnesses. It's sensible to base policy on reality rather than imaginary fears, likewise to support the statistics that are in the general ball park rather than the outliers. To do otherwise is neither logical, nor pragmatic. It's not good policymaking, and it's not safe for us Americans. I did not act to improve gun violence in our country until I was a victim -- we must not wait to be victims of gun violence in order to support or pass sensible gun legislation!

Thank you Senators for your study of this national problem of gun violence that will never completely be eradicated but must be, and can be, reduced. Some action that addresses the problem is better than no action at all, and we know that there is no such thing as the perfect bill so let's not stall waiting for it to magically appear. Thank you Senators for your leadership and I trust our Congress will pass sensible public safety and public health legislation to protect Americans. Thank you for your time and for your consideration of my testimony and proposal to reduce gun violence in our communities.

Most Sincerely,
Elilta "Lily" Habtu

Virginia Tech Injured Survivor
M.S. in Conflict Analysis and Resolution, George Mason University
B.S. in Psychology, Virginia Tech

Appendix - Hospital Photos (Dated 04/19/2007-04/25/2007)



The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for providing us the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. In our opinion, there can be no circumstances where it is more important for a person to own an assault weapon than to try to save the life of a child...NONE.

We respectfully ask that you consider the following:

1) Require Universal Background Checks on both Guns and Ammunition

2) Institute an Assault Weapons & High Capacity Magazine Ban

3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime

4) Improve Mental Health Screening and Reporting

We hope and pray that these changes will help prevent further gun deaths.

The American people are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

In the words of David Wheeler (father to Benjamin Wheeler who was killed in Newtown) who invoked Thomas Jefferson's inalienable rights of "life, liberty, and the pursuit of happiness" from the Declaration of Independence:
"I do not think the composition of that foundational phrase was an accident," he said. "I do not think the order of those important words was haphazard or casual. The liberty of any person to own a military-style assault weapon and a high-capacity magazine and keep them in their home is second to the right of my son to his life."

SECOND.

Sincerely,
Suzanne & Daniel Hagmann
Wilton, CT

To Chairman Durbin & Senate Judiciary Subcommittee Members,
I wanted to reach out to you, as a mom of two children in the Newtown School System.

December 14th was a day that changed my family, my friends and my town forever. On that day, I was shopping at the local mall and received an automated
voice message from the Newtown School District telling me that all Newtown schools were in lockdown due to reports of an "unconfirmed shooting". My heart sank. My fingers trembled as I tried to find the phone numbers to call my children's schools. One of the schools did not pick up. I thought that was a bad sign. I quickly dialed the other school and someone in the front office answered. She told me the school was OK, but her voice told me something was terribly wrong. My voice shook as I screamed "I have another son in a different school!" and in a hushed voice she told me "it's Sandy Hook." Although my kids did not go to Sandy Hook, I have lots of friends who have kids that do. I know people who teach there.

The next few minutes were frantic phone calls, voicemails, Facebook postings as I tried to reach everyone I knew. I did all of this while driving in my car to head back to Newtown towards the schools. At that point there was information that has been circulated that there was more than one shooter. My kids were safe in their schools, in lockdown and parents had to wait. It was a long terrfiying wait and process in which we could finally retreive our scared kids from their schools.

Later, Connor, my 5th grader told me he watched his teacher crawl across the classroom and tape a piece of white posterboard to the classroom window.

Liam, my 3rd grader told me his teacher "quietly read books while in lockdown but was crying even though the book she was reading wasn't sad."

Hours later I learned the fate of several friend's children who did not make it out of the classroom. They were shot between 4 and 11 times each. Other friends had kids that did but no have long lasting after effects. My friend's son managed to escape and was one of the 6 who was found at the bottom of a driveway at a house located next to Sandy Hook Elementary. Another friend's son was in an adjoining classroom. His mom reports he still has nightmares, and can't get the killer's voice out of his head. He still smells the gun powder. Even last night his father told me they made microwave popcorn, and by mistake it burnt. Their son was terrified as the smell reminded him of the gun powder from that horrible day.

There are a hundred more stories I could share. Stories that would shatter your heart and bring tears to your eyes. What happened in Newtown should never have happened. What happened in Newtown happened because of one sick person with access to guns he had no business having access to. He had access to military style weapons and high capacity magazines which sole purpose is mass, quick killing. These guns have no business being in open circulation in our towns and in our cities despite the warped misinterpretation of our 2nd Amendment. I urge you to ban these weapons in an effort to help prevent a future tragedy like Newtown. I urge you to help pass new laws that make mandatory registration of all guns, with no loopholes for gun shows.

I ask for this, as a mom, and as a citizen of Newtown, CT. Please, do everything you can to show Newtown and the world that these 26 angels did not die in vain.

Respectfully,
Kim Haywood
6 Daniels Hill Road
Newtown, CT 06470

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 10, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

My name is Heather Borden Herve and I am from Wilton, CT. We live about 20 minutes from Newtown, CT. Thank you for allowing me to submit testimony.

This is a picture of my daughter, Poppy. She was born on May 10, 2006. Just yesterday she went to a friend's birthday party and then attended her Girl Scout Daisies meeting, where she earned her first petal badge.

This next image is a picture of Jessica Rekos. She was also born on May 10, 2006, the same exact day as my daughter Poppy. I think they look quite similar. But the major difference is that Jessica Rekos was killed on Dec. 14, just about two months ago, in Newtown.

Like so many other parents, we all have been trying to make sense of the senseless, to understand the unfathomable. We send our children off to school now with a different kind of reality, like the axis of the earth has shifted and our planet will forever turn in a different way.

Like all parents, our priority is to keep our children safe—in school of course, but all the time. So as a parent, and as a citizen of the United States, I beseech you: please do not be swayed by the loud voices of those who ask you to put their right to collect, own, amass, carry and use firearms above the rights of ALL of our children to run, play, learn and **LIVE** safely. I want to emphasize ALL our children—not just those from leafy, safe suburban, predominantly white towns, like Wilton or Newtown. But also those less safe, more urban, more diverse, less wealthy cities and towns.

For this isn't just a question of how to prevent deaths from mass gun killings. It's a matter of preventing gun violence from claiming lives like 14 year old Justin Thompson of Bridgeport, CT who was shot and killed while walking home from attending a sweet 16 party, or 17-year-old Gary Gullap, who was shot down in the middle of an August afternoon six months ago.

Doesn't LIFE trump LIBERTY just a little bit?

There are legislative changes that are sensible as well as possible to institute without infringing on Second Amendment rights. I ask you to consider the following:

1) Enact tougher laws requiring more stringent background checks for ALL sales and transfers of guns, including long guns—even at gun shows and for private gun sales.

   Every purchaser of a firearm should be subject to a background check through the FBI's National Instant Criminal Background Check System (NICS). Currently, an estimated 40 percent of guns sales are made by private individuals (at gun shows, over the Internet, through classified advertisements, etc.) who have no legal duty to subject purchasers to background checks or maintain records of sale. What is the purpose of having a NICS database with millions of disqualifying records if prohibited purchasers can simply circumvent the system? It would be the equivalent of having optional security screening at our airports, with a second line for folks who simply wish to bypass the scanners. In this Information Age, NICS checks are typically completed in a matter of minutes, and they can be administered by any one of the nation's more than 50,000 federally licensed firearm dealers. Background checks should also be required on all ammunition purchases.

2) Renew the federal ban on assault weapons and high-capacity ammunition magazines (with NO grandfathering)and close all of the loopholes that existed in the earlier assault weapons ban. Mass shootings have increased in frequency since the ban expired in 2004. That is reason enough to reinstate the ban. There is no need for a weapon designed for battlefield use and easily outfitted with magazines holding up to 100

rounds of ammunition to be legally available to civilians but there is a very compelling reason to ban these weapons – it will save lives. Even law-enforcement officers agree that such ammunition and weaponry in the hands of laypeople is counter to every sensible effort to maintain public safety, let alone the safety of our public safety officers.

3) 3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime

   The Tiahrt Amendment should be repealed as it restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the ATF the authority to require gun dealers to inventory lost and stolen guns and requires that NICS background check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime so there can be tougher enforcement. We should be doing everything we can to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

4) Require yearly registration and renewals for all gun owners.
5) Raise the gun purchasing age.
6) Tighten liability laws to make gun owners more responsible for negligent storage, self-injury or injury to another person or damage to property.
7) Help states finance state-sponsored gun buy-back program.
8) Improve Mental Health Reporting: While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. Under current law, only individuals who have been involuntarily committed to a psychiatric institution or formally adjudicated as "mental defectives" (the law was written in 1968) are prohibited from buying firearms. This standard tells us little about who might be dangerous and allows people to acquire firearms who should never get close to a gun.

I beseech you to remember who it is exactly who you represent. Not the lobbyists, not the corporations and gun manufacturers, but the families, the mothers and fathers and children and people of this country, who are asking you to make sensible changes to make it a safer place to live.

I ask you that on behalf of two little girls who share a birthday of May 10, 2006—one whose life is in my hands and the other whose life I can no longer defend but whose memory I will always honor, and hope you will too.

Sincerely and respectfully yours,

Heather Borden Herve
Wilton, CT

To whom it may concern

I am writing to express my support for the position that Connecticut Against Gun violence has proposed.

My children attend school in Newtown and I am simply done with the violence that semi-automatic weapons have wrought on our country.
Please act today in favor of limiting people's access to the weapons and ammunition that caused Newtown.

Dee Hodson
True Benefit
cell: 203 673 9760

Dear Chairman Durbin, Ranking Member Cruz, and Members of the Subcommittee on the Constitution, Civil Rights, and Human Rights:

I am 15 years old and I went to a Newtown school for seven years. This must not happen again.

-Sophia

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin and Senate Judiciary Subcommittee Members.

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. As a private citizen, licensed clinical psychologist, and gun owner I am convinced that there is much that can and should be done to make our country a safer place within which to live. Additionally, the things that *can* and *should* be done would fall within the limits of the Second Amendment of the United States Constitution -- at least as itemized in the majority decision written by Antonin Scalia in the District of Columbia v. Heller. Or as my father would have said, "Your rights end where my nose begins."

Not even the grisly images of the Twin Towers massacre brought me the grief triggered by the photographs of those beautiful children at Newtown. The slaughter at Newtown has gotten into my soul, and I know I'll never get over it. I can't imagine the blackness of the world in which their parents must be living. I even felt grief for Adam Lanza. The demons that drove him to shoot his own mother, those children and then himself must have been ghastly. I don't even want to try to imagine what must have been going on in his mind.

But Senators, not even Adam's mother, who knew him better than anyone did, could have predicted that on that day at that time he was going to grab her gun (*Why* was that weapon of mass destruction available to him?) and commit mayhem? As a Clinical Psychologist who worked for seven years on an admitting ward at St. Elizabeths Hospital in Washington, D.C., I can tell you that that kind of violence is unpredictable. Again, even Adam's mother didn't know. You know, guns are more usually used for suicide than homicide. And sometimes the murder is just accidental. For the general public there is no screening tool for violence and nobody expects there will be -- especially because not everyone who kills is mentally ill.

If it had not be for the availability of that nightmarish weapon of mass destruction, maybe Adam would have used a knife or a scissors or a bat or a rolling pin. Maybe he'd have just beaten his mother. Awful! Frightening! But the number of deaths could have been zero. Forgive me, but *It's the guns, Stupid!* It's the guns!

We don't need to get rid of them, though. As Adam Gopnik said when summarizing Franklin Zimring's findings1[1]

*...the central insight of the modern study of criminal violence is that all crime...is at some level opportunistic. Building a low annoying wall against it is almost as effective as building a high impenetrable one. Those who hold themselves together enough to be capable of killing anyone are subject to the same rules of opportunity as sane people. Even madmen need opportunities to display their madness and behave in different ways depending on the possibilities at hand.2**[2]***

So, here's my list: 1) Require universal background checks on both guns and ammunition. 2) There should be a ban on assault weapons and high capacity magazines. 3) Please repeal Tiahrt and make gun trafficking a federal crime. 4) And another thing I'd like is to make everyone responsible civilly and/or criminally responsible for anything done with his gun. Every gun should

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1[1] Zimring, Franklin. The City That Became Safe. New York's Lessons for Urban Crime and Its Control. Oxford Press., 2012. ISBN 978-0-19-984442-5.

2[2] http://www.newyorker.com/online/blogs/comment/2012/12/the-simple-truth-about-gun-control.html#ixzz2FsxeHPvN

have an owner. And even if the owner didn't commit the murder, if it was his gun that committed the crime, then the owner must be held liable as well.

That's all for now. I don't need to remind you that it is the job of the federal government to protect its citizens...

Sally Singer Horwatt, Ph.D.
Licensed Clinical Psychologist

February 10, 2013

Chairman Durbin & Senate Judiciary Subcommittee Members,

After the Sandy Hook shootings, a senator from Missouri said in a radio sound bite that he would vote against any bill that infringed on our constitutional right to bear arms. This type of blanket statement concerns me.

I live in Newtown, Connecticut, just up the hill from Sandy Hook School. The Sandy Hook first graders were scheduled to spend the afternoon of their deaths making gingerbread houses with their dads. Newtown's main street was clogged by a never-ending series of gut-wrenching wakes and funeral processions. The families of those who died are certain to suffer from pain and sorrow forever. My four children attended Newtown schools from kindergarteh through high school graduation. My children did not miss being at their dad's side in their classroom for holiday gatherings. We did not see our six year old's body laid out in a coffin.

While mental illness was clearly a proximate cause of this tragedy, the massacre could not have occurred without the ready availability of advanced weaponry. Is the federal government powerless when it comes to preventing the mother of a mentally deranged young man from amassing an arsenal?

When the Second Amendment was enacted, muskets and flintlock pistols were the state of the art. Our Founding Fathers never envisioned a firearm capable of killing twenty-six innocents in less than five minutes.

When the Senate takes up the issue of gun control, I urge you to set aside the persuasion of the gun lobby and let your conscience guide you.

Respectfully,

Margaret Hull

6 Old Castle Drive

Newtown, Connecticut

Written Testimony from Members of the Injury and Violence Prevention Network to the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights for Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment

On behalf of the members Injury and Violence Prevention Network (IVPN), a group of national organizations that support injury and violence prevention policies at the national level, we thank you for the opportunity to provide our recommendations for public health approaches to reducing gun violence.

Given the December tragedy at Sandy Hook Elementary School in Newtown, Connecticut – as well as the many tragic events that have occurred across the nation in places like Blacksburg, Virginia, Aurora, Colorado and Taft, California – Americans are struggling to understand what caused these incredibly violent events to happen and how they could have been prevented. Yet these acts of mass violence are only the tip of the iceberg. More than 31,000 people die each year from gun violence at a cost of more than $40 billion per year. The undersigned organizations support the following public health strategies to address this issue.

First, sufficient resources must be provided for the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH) to conduct research on guns and gun-related violent deaths and injuries, including closed traumatic brain injuries (TBI). Inadequate resources at both CDC and NIH have had the effect of curbing significant federally funded research on firearm violence. There are many policies and practices that need to be researched, including the effectiveness of consumer product regulations and other legislative safety measures. It is imperative for CDC and NIH to have the opportunity to conduct research that will help inform common sense violence prevention efforts.

Second, strengthen surveillance of violence-related deaths by increasing funding for CDC's National Violent Death Reporting System (NVDRS) for all states. There are 18 states currently funded by the Centers for Disease Control and Prevention to conduct surveillance of violent deaths through NVDRS. This data system links information from public health agencies, law enforcement, medical examiners and social service agencies to create a more complete picture of the circumstances surrounding violent deaths. This detailed data provides critical information to the state and local violence prevention practitioners to guide their prevention programs, policies and practices, including: identifying common circumstances associated with violent deaths of a specific type (e.g., gang violence) or specific area (e.g., a cluster of suicides); assisting government agencies, tasks forces and community coalitions with identifying appropriate violence prevention efforts; supporting evaluations of violence prevention activities; and improving the public's access to in-depth information on violent deaths.

Third, expand the public health role in violence prevention efforts and increase understanding of violence as a "public health issue." Because of the multiple and complex factors that contribute to the development of violent attitudes and behaviors, there is not one approach or one group that can effectively prevent violence. The "public health approach" involves using data to identify populations at greatest risk and implementing evidence-based programs that address violence at the individual, family, community and societal levels.

To effectively and sustainably prevent violence in our communities, we need a coordinated effort that involves public health, education, justice, public safety, social services, community leaders, businesses and faith-based organizations. Scaling up the implementation of effective interventions as well as developing new prevention efforts and partnerships are critical for creating a culture of gun safety and violence prevention. Effective violence prevention programs and strategies include, but are not limited to: universal school-based programs for the prevention of violent behavior, intensive family and community-based approaches for high-risk

youth, parenting programs for the promotion of parenting skills and health family relationships, home visitation and street outreach and interruption strategies. As an example, the Community Preventive Services Task Force recommends universal, school-based programs as effective in preventing violent behavior through a systematic review of research studies. The Task Force describes universal school-based violence prevention programs as those that are "designed to teach all students in a given school or grade about the problem of violence and its prevention or about one or more of the following topics or skills intended to reduce aggressive or violent behavior: emotional self-awareness, emotional control, self-esteem, positive social skills, social problem solving, conflict resolution, or team work."

Fourth, ensure clinical providers, including pediatricians, have the ability to gather information on the availability of firearms in patient history forms and to counsel patients. Clinical providers have a role in counseling patients on gun storage and safe handling of firearms and have long captured other public health behavioral data, such as smoking, alcohol use and seat-belt use. Patient-provider discussions and information about firearms should be included as a critical area that may impact health. The members of the Injury and Violence Prevention Network appreciate your consideration of this testimony. Thank you.

American College of Preventive Medicine
Brain Injury Association of America
Council of State and Territorial Epidemiologists
National Association of State Head Injury Administrators
National Center on Domestic and Sexual Violence
National Violence Prevention Network
Prevent Child Abuse America
Prevention Institute
Safe States Alliance
Society for Prevention Research
Society for Public Health Education

February11, 2013

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

The NRA is right that "people kill people" but they do it so much more effectively with guns than with other instruments of violence. As a result, the US has 20 times higher gun death rates than other industrialized countries. It is less surprising that the general public was morally outraged at the mass shooting of 6 and 7 year olds in Sandy Hook Elementary School two months ago, than that the US public has been so tolerant of gun violence in our society.

Caught between gun rights advocates like the NRA which blames mentally ill persons and the culture of violence for the mass shootings at Sandy Hook Elementary School, and the gun control advocates like the Brady Campaign which blames assault weapons and loop holes in background checks, the Senate Judiciary Committee held an important hearing on gun violence on January 30, 2013 to explore options for reducing gun violence in the US.

Predictably, the NRA recommended armed guards in every school, while the gun control advocates urged a renewal of an assault weapons ban, recognizing the political constraints of the 2nd Amendment, even though assault weapons account for less than 1% of gun deaths in the US. President Obama split the difference by proposing an assault weapons ban and suggesting that schools be eligible for federal funding that could either be used for armed guards or guidance counselors in the schools. The debate will likely shift to whether background checks should be required for all gun purchases as the gun control advocates propose, or whether private sales should remain exempt from background checks which the NRA currently supports even though 80% of guns utilized in crimes are purchased through private sales. The NRA recognizes that background checks required for federally-licensed gun dealers only account for 60% of gun sales, but the NRA claims that criminals will avoid background checks whenever possible.

Recognizing that background checks are largely inadequate when many states do not report persons who are potentially dangerous to the data base for the National Instant Criminal Background Check System (NICS) which is run by the FBI, gun control advocates are also demanding that states are held accountable for reporting dangerous persons to the NICS data base. This raises important questions about how it's even possible to predict who is potentially dangerous when many persons responsible for gun deaths do not have a history of mental illness, and most mentally ill persons are not violent.

Absent from the gun violence debate is any recognition that tax policy could be very useful for making gun owners accountable for the costs of gun violence in our society. If guns were subject to a property tax based on the cost of gun violence in our society, then gun owners would be obligated to identify their gun ownership on an annual basis as a fulfillment of their responsible citizenship. The property tax would also create an incentive for gun owners to reduce the size of their arsenals to one or a few firearms they think they need for hunting, target practice, and self-defense. The revenue from the property tax could then be used to pay for the cost of gun violence by compensating victims of gun violence and first responders, funding the state collection and reporting of data to the NICS, and even paying for an effective gun "buy-

back" program to reduce the supply of firearms. Because this tax would be purely based on the cost of gun violence, rather than to punish gun owners, it would surely pass any 2nd Amendment challenge easily.

The property tax on guns could also be complemented by a requirement that gun owners take out gun liability insurance for each gun they own to compensate victims of gun violence attributable to a specific gun. The cost of the liability insurance could depend on the characteristics of the gun (e.g. level of lethality, presence of trigger safety locks which could prevent it from being fired accidentally or by anyone other than the licensed owner), and certified gun safety training of the gun owner. The size of the property tax on guns could be based on gun violence after payment by liability insurance.

A sales tax on guns and ammunition could also be used to generate funds for protecting the public from bearing the cost of gun violence while creating a system for tracking gun use. The NRA has backed federal legislation including the Tiahrt Amendment to restrict access of law enforcement to gun trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It has also denied the Alcohol Tobacco and Firearms (ATF) the authority to require gun dealers to inventory lost and stolen guns, and requires that NICS background check records be destroyed within 24 hours. When coupled with federal prohibitions on research by the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH) on the causes of gun violence, it is clearer to understand why the US has 20 times higher gun death rates than other countries. It is important that taxation policies are designed in a way that is compatible with the 2nd Amendment and yet emphasizes the responsibility of the gun owner to contribute to the cost of gun violence in our society.

A taxation proposal is being developed by the Institute of Social Medicine and Community Health for sharing with consumer groups and public interest advocates which promises to be an effective way to reduce gun violence in our society. Given the resistance from the NRA to gun bans based on the current interpretation of the 2nd Amendment, a taxation approach changes the rationale from the individual's right to own a gun unconnected to participation in a well-regulated (state) militia, to the responsibility of gun owners to contribute to the costs of gun violence in our society by reducing the number of guns, incentivizing their safe use, and generating an information system that can be used for researching and regulating the causes of gun violence.

I hope the Senate Judiciary Committee will use its public platform to broaden the policy options for addressing the unacceptable causes of gun violence in our country and recognize the potential role of taxation policy to reduce gun violence.

Sincerely,

Bob Griss, Director of Health Care Policy
Institute of Social Medicine and Community Health
7035 Green Oak Drive
McLean, VA 22101
Telephone: (703) 639-0437

Written Testimony of Rev. Dr. C. Welton Gaddy, President of Interfaith Alliance
Submitted to
The Senate Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights and Human Rights
for the Hearing Record on "Proposals for Reducing Gun Violence: Protecting our Communities While Respecting the Second Amendment"
February 12, 2013

As a Baptist minister, a patriotic American and the President of Interfaith Alliance, I submit this testimony to the Senate Judiciary Committee hearing on "Proposals for Reducing Gun Violence: Protecting our Communities While Respecting the Second Amendment." A national, non-partisan organization, Interfaith Alliance celebrates religious freedom and is dedicated to protecting faith and freedom with members nationwide who belong to 75 faith traditions as well as those without a faith tradition.

Interfaith Alliance, an organization that focuses not only on religious freedom but also on uniting diverse voices to challenge extremism, is engaging in the fight to prevent gun violence because our deeply divided nation could experience a modicum of healing by finding common ground on which legislation could be structured to make our nation a safer and healthier place. The support for immediate action to end gun violence coming from religious leaders from diverse religious traditions is thrilling to me. It's also indicative to the moral value that all religions place on protecting all people, especially children.

While cognizant of the rights afforded by our Second Amendment, we as a nation must also be done forever with the thought that guns, that killing, settles anything—whatever our disagreements, be they substantive policy arguments, misguided bigotry, or petty misunderstandings. Rather than disrespecting people because they hold ideas with which we disagree and turning on them with violence, we must find our way back to civility. And guns should not be readily available to those who cannot embrace civility. Otherwise, as a nation, we will lose both our democracy and our moral compass. What then?

As members of this distinguished committee well know, the reforms necessary to prevent gun violence cut across numerous issues that must be addressed—from the impact of concealed-carry laws on houses of worship to anti-bullying measures—all of which affect all our nation's citizens, including worshipers in churches, synagogues, mosques, and gurdwaras, as well as children in schools.

For years now, I have been an outspoken opponent of legislation that would permit concealed firearms to be carried in houses of worship in states such as my home state of Louisiana, also the home of the congregation in which I serve. This is a congregation that I have led to support a policy of no guns in our worship center despite a civil law passed to the contrary. Our houses of worship should be places where people find comfort and solace, not where they fear for their lives. Amidst consideration of policies such as prohibiting concealed-carry of firearms, as well as a renewed assault weapons ban and universal background checks, I hope this Subcommittee and Congress as a whole will not lose sight of policies which can prevent individuals from seeking dangerous weapons in the first place—namely, improved mental health services and anti-

bullying initiatives. However, these policies cannot be a substitute for policies related to the ownership of weapons. We need both stricter gun laws and government-based initiatives to deal with mental health issues and bullying. Let me assure you that many of us who lead houses of worship are already hard at work on mental health matters and anti-bullying tactics.

The year 2012 will forever stand out as a particularly tragic year for gun violence in America: a movie theater in Aurora, Colorado; a Sikh gurdwara in Oak Creek, Wisconsin; an elementary school in Newtown, Connecticut. And then there are the countless other victims whose deaths did not draw national media attention. I offered commentary on the memorial ceremonies from two of these tragedies on the set of a national television broadcast. I felt the pain I saw on the faces of the people. I hurt with those who could not stop weeping or those who were two emotionally frozen to cry. These tragedies do not just come and go as life moves on; for many, life is never the same after one of these events. As a nation, surely it is time for us to act in a manner that prohibits us from arriving at the end of 2013 only to see the trail of violence extended.

More often than not, when we find ourselves faced with unimaginable tragedy, we struggle against the feeling of helplessness—but presently we are in a situation in which to grieve for those whose lives have been lost to gun violence is to imagine what we can do to stop needless grieving, needless deaths in the future. With the ancient Hebrew prophet, I find myself repeatedly asking, "How long, O God, how long?" What will it take to stop these needless deaths?

SUSAN J. KASSIRER
6 Still Hill Road
Sandy Hook, CT 06482
(203) 426-4608

February 11, 2013

Dear Chairman Durbin and Senate Judiciary Subcommittee Members:

Thank you for affording us, the residents of Newtown, CT, the opportunity to add our voices to tomorrow's Senate Judiciary Committee Meeting on Gun Violence. For me, there is no issue of more importance right now in this country.

My husband and I live in Sandy Hook, 3.2 miles from where the December 14, 2012 massacre occurred. We are parents. Sandy Hook School is our local elementary school. This tragedy should never have happened, and it could have been prevented if military-style assault weapons such as that used by the gunman were not permitted in the United States. Twenty 6-7 year old children were brutally massacred. You cannot even begin to imagine what it is like here, in our beautiful little community . . . the devastating sadness . . . the tears . . . the disbelief. Is this the kind of society we want to live in? Is this the kind of society *you* want to live in?

As our legislators, you are in a unique position to make change. They eyes of the country—of the world, in fact—are on you right now. How can you not do the right thing, the moral thing?

There is no question that reforms in the gun industry will make all of us safer. This includes universal background checks on all gun purchases and ammunition, the elimination of high capacity

magazines and armor piercing ammunition, and removing military grade weapons from civilian life.

The NRA and some gun owners and sellers are shamelessly trying to use the wording of the Second Amendment to defend their right to not only own high capacity assault weapons but to profit from the sale of them. As you know, this amendment reads: "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." This amendment was written in 1791, more than 200 years ago, in an era when surely one could not even imagine the existence of high capacity assault weapons that can kill 20 children and six adults within minutes. Furthermore, we are not talking about a well-regulated militia here. I have more respect for and faith in the intelligence and moral fiber of our founding fathers than to even imagine that for one moment they intended Adam Lanza to be allowed to have such access to the high capacity assault weapon with which he brutally murdered my neighbors' children.

After a mass shooting in Australia in 1996 the Prime Minister passed legislation prohibiting the ownership, possession and sale of all automatic and semiautomatic weapons and banning the importation of such weapons. Australia also put in place a federally financed gun buyback scheme. Almost 700,000 guns were bought back and destroyed — the equivalent of 40 million guns in the United States. In the 18 years *before* the 1996 reforms, Australia suffered 13 gun massacres — each with more than four victims — causing a total of 102 deaths. But since the gun control legislation was passed in 1996, *there has not been a single massacre in that category.*

Can we not learn something from the Australian example? Just think. If we had passed the same legislation after Columbine or after Virginia Tech or after Aurora, CO, these twenty 6-7 year old children would still be alive today, as would the six heroic women who died with them. (And depending on when we passed it, many of the earlier victims would still be alive today as well.)

We all know why such sensible, ethical laws have not been passed in this country. We all know the only reason is pure and shameless greed and selfishness on the part of the gun industry and their ability, through monetary means, to influence our legislators.

My husband and I have become involved with Newtown Action Alliance, a Newtown-based grassroots organization working tirelessly to take and accelerate ethical actions, legislatively or otherwise, which reduce gun violence and death, both short and long term.

What happened here in Newtown has got to be remembered as the tipping point, and we fully expect that you will join us in acting to ensure that our 26 did not die in vain. We will continue to act, and will not rest until the epidemic of gun violence in America is reversed.

We know many special interests exert pressure on you. But please know that I am now a single-issue voter, as are all my friends and acquaintances not only in Newtown, but throughout the country. The movement is growing. We have had enough. And you know what our single issue is.

The recent tragedy at Sandy Hook Elementary must never be allowed to happen again. I am writing to demand that you vote to change our current gun laws. I fully support the 2nd amendment right to bear arms and I am not asking you to do anything that is

inconsistent with that. What I am asking is that you put the safety of our children and communities first and not vote to protect the self-serving interests of the NRA, NSSF, gun manufacturers and the rest of the gun lobby. Up until now, that may have been relatively easy to do, but I will be watching and holding you accountable along with many thousands of my fellow citizens. We are watching what you do and trust that you will put us, the American people, first and do the right thing.

Other industries have resisted rules to improve public safety—the auto industry, the tobacco industry, the drug industry, and even the food industry. Thankfully, they are all now regulated to a certain degree: We now have seatbelts, airbags, and child seats and limits on tobacco and drug marketing tactics, including restricting marketing to children, or providing samples to children. And many of these industries whose products place a financial burden on society are taxed to help offset those costs. Why doesn't any of this apply to the gun industry?

The answer comes down to money, as it did with all these other industries. If laws can be passed to regulate them, then laws can—*and must*—be passed to regulate this, the deadliest industry of all. The formerly silent majority—many of whom are now single-issue voters, are watching. You need to be bold. You need to make a statement and set an example for any of the lawmakers—and there are many—whose careers have been funded by the gun lobby. The people of Newtown will not rest until, together with the silent majority in our country, we neutralize the special interests to bring about reasonable regulations that require manufacturers of lethal products to act responsibly.

We are at a turning point in this country when it comes to gun control. Please stand up to the self-serving gun lobby. At this point, your jobs depend on it. More importantly, our lives and the lives of our children depend on it.

I am counting on you. Thank you for examining your consciences and for doing the right thing.

Sincerely,

Susan Kassirer

February 11, 2013

Thank you for considering this testimony.

I have grown up with a heritage of guns. Though I have never shot a gun in my home state of CT, from the age of 10, my father taught my brothers, sister and me the use of his pistols and rifles on our family property in rural Vermont. We shot tin cans and paper target bulls eyes, and always relished this exciting and fun activity.

I now understand that part of this ritual had to do with the second amendment, and our right to bear arms. This was my conservative dad's way of responsibly indoctrinating us as well as educating us in the proper use of firearms.

In the wake of Columbine, the nation got a glimpse of the dark side of this freedom. Those who irresponsibly wield this right can cause horrible damage to innocents. Certainly, the use of these automatic weapons was nothing like what we did with my dad in the back yard. At that point, I had hoped that things would change with gun laws, and that we could protect our citizens from such atrocities.

Fourteen years later, it is clear that we have failed. I don't care what our well funded and loud opponents including the NRA think. The Newtown Disaster has patently illustrated that stricter gun laws need to be enforced. If a citizen wants a gun, he/she should be force to reload after 1-6 shots. If he/she wants a semi-automatic or automatic weapon, he/she should join the military. This is where the weapons belong. I am fully aware of the spirit of the second amendment and founders intent for the populace to be able to defend against tyranny, but the populace has not proven worthy of being trusted with anything near military grade weapons. We as citizens should be content with non-automatic weapons and trust that Providence will give us the defense we need if the circumstances arise.

The Founders also made it clear that in order for a self government to work, the citizens need to be guided by virtue. They also have to give up certain rights to receive the benefits of living in an organized community. These ideas are all part of our Constitution as well.

Please support the Newtown Action Alliance and other measures to prevent gun violence in our state and nation.

Thank you,
Anne Kelly
32 Old Middle St.
Goshen, CT 0676
860-491-3866

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Just an ordinary citizen. That's all I am. I have spent all my life believing that, even if I don't agree with our elected officials 100% of the time, they have our best interests at heart, that they want to do right by their constituents. Therefore, I have voted as is my privilege and obligation, but I have rarely gotten involved in any other political process.

Sandy Hook and other similar events have changed all that for me and, I believe, for many ordinary citizens. We are the silent majority who no longer have the luxury of being silent. Now I see that it's possible that our political and legislative process is being unduly influenced by special interest groups, that our legislators truly may be more concerned about reelection and money than voting their conscience and representing their constituents. Because I can see no way that anyone can argue that reforming gun laws is NOT in the best interest of the majority of the American public. There is no compelling or logical argument in support of an individual's right to own assault style weapons or high capacity magazines that are only used to rip human flesh from bone.

Let me be clear: I understand that there are people who are gun enthusiasts and who enjoy shooting. I understand there are people who feel more safe and secure with guns in their homes for self protection. I don't agree with them, but I understand them and I believe the second amendment allows for them to exercise those rights *within reason*. The nation has a history of recognizing the need to change and amend the constitution to better fit the modern world (women's right to vote is a pretty decent example). The second amendment was written during a time when the type of weapons that are openly available today were not even considered. Now is the time to change our laws to protect the majority of citizens from a few who would hurt them by removing the possibility of those few from obtaining the power to inflict pain and destruction so quickly and easily.

The fact that we have gun laws beyond the second amendment is proof enough that there was a problem, and recent tragic events prove that the problem is worsening. It is time to reform our current gun laws. I urge you to support the agenda of Connecticut against Gun Violence which outlines common sense legislation, including: elimination of assault style weapons and high capacity magazines; requirements for people to register weapons and renew those registrations just as we do our motor vehicles; thorough background checks and the closing of dangerous loopholes; and limitations that will prevent traffickers from getting weapons out on the streets.

Ordinary citizens like me should be able to send our children to school, go to the movies, shop at the mall, attend a political speech, walk down the street without the fear of being shot. I am not naive. I know that these laws will not eliminate all gun violence, and that those people who are determined to kill or inflict pain may still obtain weapons to do so. But we should not make it easy for them. And we should not provide unfettered access to overly powerful weapons for disturbed

or angry persons to do so in a moment of passion. Common sense reform. *Meaningful reform*. The time is now. Ordinary citizens demand it.

Most respectfully,

Veronica Kenausis
Bethel, CT

To Chairman Durbin and Senate Judiciary Subcommittee Members:

I write to you today not only as a Newtown resident, Newtown Volunteer EMT, and Treadwell Lifeguard, but as a college student, a sorority girl, a student leader, sister, cousin, friend, and daughter. I have grown up fearing guns, violence, and hate. I have always believed that guns are unnecessary tools and that no person should have the ability to take the life of another. However, I never really cared about gun control laws. They didn't affect me; my family doesn't own guns nor do we want them. But now it does and now I care.

I am a junior at Miami University in Oxford, OH. Returning to school this spring semester I realized that, while I am not alone, I represent a very small margin of Miami students against guns. Rather than argue or debate with my peers, I chose to learn, to ask questions, and to maybe even adapt. After a very long, very interesting, and quite amazing discussion with one of my closest friends, born and raised in Dallas, Texas, I came to a conclusion, a conclusion that I'd like to propose to you, to our lawmakers.

In Texas, people are raised around guns. My friend took her first gun safety class at age 9. Over the next 7 years, she continued to learn how to properly handle firearms, how to clean, load, unload, and disassemble them. By the time she was old enough to apply for a conceal-to-carry license, she could shoot 249/250 shots directly on target. Needless to say, she knew her stuff.

Kids know guns. They see them in videogames, in the news, in movies, and in TV shows. I propose we take this moment as an opportunity to reverse the desensitization and properly educate and inform our children. The media has glorified mankinds' most dangerous weapons and substances. I propose that we make gun safety education a requirement just as we have made alcohol, drug, and sex education mandatory in our schools. I propose that in order to purchase a gun, you must first have a license, regardless of the location in which you make your purchase (gun shows, etc) and that all gun licenses cannot be obtained without the successful completion of a safety and proper use course, as is now required for a conceal to carry license. I propose that we hold our gun owners to the same standards as our car owners. In order to get your driver's license, you must be of a certain physical capacity, age, and ability. I propose logical measures to be implemented to guarantee my safety, my brother's safety, my family's safety.

Most importantly I propose the absolute and total ban of all assault weapons, including the semiautomatic kind used to kill my students, my campers, and my swimmers. By definition, assault is a crime, so why should anyone be entitled, be allowed, a weapon that allows them to commit such an act?

Sincerely, Passionately, and with Strength,
Samantha Kent, age 20
3 Westwood Terrace
Newtown, CT 06470

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. As a parent of first-grade children in Newtown, CT this issue has taken on increased importance for me. I believe that there is much that can be done legislatively to make our country a safer place while not infringing upon Second Amendment rights.

1) Require Universal Background Checks on both Guns and Ammunition
Every purchaser of a firearm should be subject to a background check through the FBI's National Instant Criminal Background Check System (NICS). Currently, an estimated 40 percent of guns sales are made by private individuals (at gun shows, over the Internet, through classified advertisements, etc.) who have no legal duty to subject purchasers to background checks or maintain records of sale. What is the purpose of having a NICS database with millions of disqualifying records if prohibited purchasers can simply circumvent the system? It would be the equivalent of having optional security screening at our airports, with a second line for folks who simply wish to bypass the scanners. In this Information Age, NICS checks are typically completed in a matter of minutes, and they can be administered by any one of the nation's more than 50,000 federally licensed firearm dealers. Background checks should also be required on all ammunition purchases.

2) Institute an Assault Weapons & High Capacity Magazine Ban
Renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Mass shootings have increased in frequency since the ban expired in 2004. That is reason enough to reinstate the ban. There is no need for a weapon designed for battlefield use and easily outfitted with magazines holding up to 100 rounds of ammunition to be legally available to civilians but there is a very compelling reason to ban these weapons – it will save lives.

3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime
The Tiahrt Amendment should be repealed as it restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the ATF the authority to require gun dealers to inventory lost and stolen guns and requires that NICS background check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime so there can be tougher enforcement. We should be doing everything we can to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

4) Improve Mental Health Reporting
While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. Under current law, only individuals who have been involuntarily committed to a psychiatric institution or formally adjudicated as "mental defectives" (the law was written in 1968) are prohibited from buying firearms. This standard tells us little about who might be dangerous and allows people to acquire firearms who should never get close to a gun.
There are many other issues that need to be addressed, such as violent video games, the glorification of gun violence in the movies and TV and the effect this has on our youth. But these issues will take time to tackle and resolve and will require a cultural shift. The suggestions I have made above are all simple and immediate steps that would help bring an end to gun violence. The American people are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

5) Support the Adoption of "Smart Gun" Technology, and Remove Product Liability Immunity for Gun Manufacturers
It seems ridiculous that the technology that most American's already carry in their pockets to protect their phones cannot be reasonably adapted to the far more dangerous product of firearms. Password protection, fingerprint identification, GPS tracking for hijacked items, and other ways to engage security "lock outs" are all readily available, proven technologies that could have a massive impact on gun violence in this country. And they can all be done without impact on Second Amendment rights or raising privacy concerns any different from those faced by drivers and cell phone users. Industry should pursue, and Congress should reward, all such innovation and adaptation. No doubt there will be intransigence on the part of individuals and industry, but the same was true of seatbelt usage and speed limit policy. Combined with the removal of product liability immunity, this will incentivize the creation of better, safer guns and subject the gun industry to the same standards of negligence we apply to every other product, even dangerous ones.

In closing, we need new laws and restrictions to curb gun violence in this country. Every right has limits and the Second Amendment is no exception. To have perpetrated, in 1783, the kind of massacre witnessed in Sandy Hook Elementary on December 14, 2012 would have required the firepower of hundreds of men. And yet now it takes only one. Our current suite of half-measure laws means that today's gun owners have 21st century firepower but only 18th century responsibilities. It is your job to redress that imbalance.

Most respectfully,

Hugh E. (Tripp) Killin III
Newtown, CT

Dear Chairman Durbin and Senate Judiciary Subcommittee Members,

I am writing to voice my concerns over the epidemic of gun violence in our country, to support President Obama's initiatives, and to make further suggestions as to how we may successfully reduce gun violence nationwide.

First I would like to introduce myself. I am a mom of two first graders who attend public school in Newtown, CT. I grew up in CT, but for 12 years I lived in Albuquerque, NM, where another mass shooting recently occurred. I share an alma mater with Hilary Clinton and Madeleine Albright. I have traveled to six continents, and I have a graduate degree. I am also one of the founding members of Newtown Action Alliance (www.NewtownAction.org). I tell you these things not to attempt to impress you, but to impress upon you that I am *not* a "knee-jerk reactionary" who knows nothing outside of my white-bread world. I am someone who has spent many, many hours considering all the facets of gun violence. James Mattioli, one of the little boys murdered here on December 14, was on my son's baseball team when they were 5. This is an extremely personal issue for me, and has consumed me for two months. I attended the March on Washington last month, one of the hearings in Hartford, and the hearing here at Newtown High. I have read everything I could get my hands on about gun violence and guns. I feel that I am fairly well educated on the issues.

Here in Newtown we are inclined, understandably, to focus our thoughts on how to prevent future mass shootings in America. However, constructing new legislation with only that type of gun violence in mind would be a mistake. I am keenly aware that the vast majority of the 83 Americans that are killed by guns daily are not victims of mass shootings, nor are they victims of "modern sporting rifles" (as the NSSF has recently rebranded assault rifles). Most Americans killed by guns are murdered by someone they know, killed in accidental shootings, or commit suicide. It is critical that new legislation address all of these in order to be effective.

My suggestions are as follows:

1) Universal background checks for all gun AND ammunition purchases. It is critical to include ammunition purchases because it will prevent criminals already in possession of guns from legally acquiring ammunition. Contrary to what the gun lobby likes to say, background checks that went into effect in the wake of the Brady Bill successfully prevented hundreds of thousands of firearm purchases and led to the apprehension of tens of thousands of felons. Criminals are largely a lazy group, and studies have found that increasing the difficulty of committing a crime, even marginally, reduces the incidences of such crimes substantially. Background checks work. Expanding them will work better. The gun lobby doesn't want this, even though their members overwhelmingly support background checks, because it means less money in their pockets from manufacturers.

2) Mandatory waiting period of at least 24 hours for all gun purchases, with exceptions for those classified as antiques. Guns should not be impulse buys! Any responsible gun owner should be able to plan at least 24 hours in advance for the purchase of a gun for sport or defense. Hopefully this will prevent John Doe from offing his cheating wife in a jealous rage, or from taking revenge on his employer for sacking him.

3) An aggressive buyback program. No use banning a weapon when there are thousands or more already in civilian hands. Groceries for Guns has been very successful in L.A., New York, Lansing, and San Diego, to name a few. The firearms that are turned in should be re-issued to law enforcement or, if appropriate, to the military. They can also be recycled.

4) I support the Second Amendment, and believe Americans are entitled to defend themselves. However, why does self-defense automatically translate to lethal force? I am confident that there are methods of effective self-defense (tasers and rubber bullets come to mind) that are non-lethal in nature. I have a friend who has been threatened by gun-wielding muggers 7 times, but due to his quick-thinking, there was never a shot fired, no one was ever hurt, and he never gave up his wallet. I have no doubt that, had he been armed any of those times, either he or the mugger would be dead. I read an account of someone repelling a home invader with rubber buckshot, and it was instantly effective. These technologies need to be developed further and marketed. Gun manufacturers need not lose money because Americans are purchasing fewer firearms. They simply must adapt to demand. That demand can and should come in the form of legislation. Countless lives would be saved, particularly those shot due to misunderstanding (Trayvon Martin, the teenager shot and killed late last year when his father mistook him for a burglar...) or accident (most of the 8 American children killed daily by guns).

5) It is time that guns are subject to at least as many safety standards as teddy bears are! (That would be four.) How can it be that strollers, cribs, car seats, toys, washing machines, automobiles, and every other American consumer product can be recalled (at the manufacturers' expense) due to defects or design flaws that endanger the public, but guns, which are inherently dangerous, cannot? We must hold manufacturers accountable and force them to produce firearms that are as safe as they possibly can be. Defective guns will not be tolerated. Guns lacking safety mechanisms are not acceptable. Smith & Wesson was researching "smart" gun technology whereby guns would only operate via fingerprint or password recognition, **but the gun lobby forced them to stop!** This is another area into which manufacturers must branch out in order to expand business.

6) Gun owners must also be held accountable. Owning a gun is a 24/7 responsibility, and should be treated more as a privilege than a right. That privilege should be revoked, permanently, by any gun owner demonstrating

irresponsibility with a firearm *one time*. The woman who brandished a handgun at a Chuck E. Cheese in CT recently comes to mind. Someone who would bring a handgun into a gun-free zone filled with children, who would threaten another patron, in my mind has waived her right to ever own another gun. That type of behavior cannot be tolerated. We cannot risk giving people second chances. If you are a responsible gun owner, you must be responsible 100% of the time.

7) Mandatory licensing and annual registration for all firearms. Not just for firearms purchased after the law goes into effect: all firearms owned by Americans. No exceptions. Failing to comply should lead to confiscation (if a background check is subsequently failed) or heavy fines. This information should not be subject to FOIA, however. We are required to register our cars and be licensed to drive them, and cars are not designed for the sole purpose of killing. Every new gun purchase must include registration for gun safety and training classes, unless the purchaser can provide proof of a course taken.

8) Ban on armor-piercing bullets, as well as those designed to inflict significant tissue damage. These types of rounds are never necessary for hunting, target- and sport-shooting, or self-defense.

9) Ban on large-capacity magazines AND clips. There is a difference. If the magazine ban is not retroactive, and large-capacity clips are still sold, then those already in possession of large-capacity magazines will still be able to fit them with large-capacity clips.

I believe that all of these suggestions are reasonable, many are proven, and none will punish law-abiding, responsible gun owners. They may be inconvenienced by these new laws, but they will not be made "instant criminals" and neither will their guns be confiscated.

The United States has the highest rate of gun ownership in the world, and the highest rate of gun violence. States with higher rates of gun ownership also have higher rates of gun violence. Gun owners are more likely to be shot than those who do not own guns. Australia has not had one mass shooting since implementing new, much stricter gun laws in 1996. Britain, while suffering high rates of violent crime, has a very low rate of gun-related crime, and British children are almost NEVER shot. These are indisputable facts. We have a gun violence epidemic in this country. If 83 Americans were killed daily by foreign terrorists, we would declare war before the second day ended. If 83 Americans were killed daily by curling irons... actually that would never happen, because curling irons would be recalled after the 5th death. We can no longer tolerate this massive loss of life we are experiencing! We cannot wait another moment to make every possible effort to stop it! **We have lost more Americans to gun violence by other Americans than have been killed in**

every war in which America has ever participated! Does this not blow your mind?! Billions of dollars are spent every year due to gun violence! This. Must. Stop.

I am a Newtown Mom. I vote. And I am going to hold you accountable. Be bold.

Thank you for your attention.

Sincerely,

Jennifer Killin
Newtown, CT
Newtown Action Alliance
www.NewtownAction.org

Statement for the Record

La Rabida Children's Hospital is a specialty hospital located on the south side of Chicago. La Rabida serves approximately 9,000 children annually who require primary and specialty care, as well as rehabilitation, to address complex and challenging medical conditions. In addition, La Rabida specializes in the treatment of children who have been abused, neglected or experienced trauma.

At the hospital, we are witness to the *psychological* impact that gun violence has on our children and their families. We provide counseling to children and their families who experience or witness violence in their communities. This violence is often gun-related and creates serious long-term psychological effects in children—ongoing nightmares, school behavioral problems and post traumatic stress disorder—to name a few. These experiences create lasting emotional scars and can impact normal development.

There is also the obvious *medical* and *financial* impact that gun violence has on children and their families. A recent patient admission and the child's ongoing rehabilitation needs illustrate this fact:

On Christmas morning of 2011, a seven year old boy was shot in the head when his house was sprayed with gunfire in a mistaken identity drive-by shooting. The boy was airlifted to Chicago from the family's home in Gary, IN, where he remained in critical condition at Comer Children's Hospital for weeks. The bullet was lodged in an inoperable area of his brain. Later diagnosis showed paralysis on his right side and he had no speech or motor skills and had to use a feeding tube.

Once he was stable, he was transferred to La Rabida Children's Hospital for intensive inpatient rehabilitation. A medical team provided more than three hours of therapies each day:

- Physical therapy to regain strength, balance and range of motion
- Occupational therapy to relearn important routine tasks
- Speech language pathology therapy to regain language and feeding skills
- Psychological/behavioral therapy to guide him from a disoriented, amnesic state to helping him deal with the trauma of remembering Christmas Day.

Happily, this boy walked out of La Rabida alert, smiling and eager to start living like a 7 year old again. Tragically, most cases do not have such a positive outcome. At our hospital, we see the immense psychic, physical and financial toll of gun violence and urge support for proposals to reduce it.

LAW CENTER TO
PREVENT GUN VIOLENCE
BECAUSE SMART GUN LAWS SAVE LIVES

Written Testimony of the Law Center to Prevent Gun Violence

Senate Committee on the Judiciary

Subcommittee on the Constitution, Civil Rights and Human Rights

"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

February 12, 2013

The Law Center to Prevent Gun Violence ("the Law Center") is pleased to provide this written testimony to the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights for its February 12, 2013 hearing, "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment."

The Law Center was formed by lawyers, originally as Legal Community Against Violence, in response to a horrific assault weapons massacre at a law firm at 101 California Street in San Francisco in 1993. After mobilizing the Bay Area legal community to support enactment of the 1994 federal assault weapons ban, the Law Center concentrated its efforts on state and local gun laws. The Law Center currently provides free assistance to state and local governments seeking to adopt or defend laws to reduce the more than 100,000 gun-related deaths and injuries that devastate American communities each year. We track Second Amendment challenges to such laws and regularly file amicus ("friend of the court") briefs in support of state and local governments nationwide.

The Law Center strongly supports the types of laws proposed by President Obama in the wake of the Newtown tragedy, including those requiring universal background checks on all gun buyers, banning military-style assault weapons and large capacity ammunition magazines, and punishing gun traffickers. As discussed below, those common sense laws are entirely consistent with the Second Amendment.

The Supreme Court Has Held That the Second Amendment is Consistent with a Variety of Common Sense Gun Laws, Including Those Proposed by President Obama

In 2008, in *District of Columbia v. Heller*, the U.S. Supreme Court held for the first time that the Second Amendment protects the right of a law-abiding, responsible citizen to possess a handgun in the home for self-defense. The Court made very clear, however, that the right is

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not absolute, and does not protect the right to "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." 554 U.S. 570, 626-27 (2008).

In addition, the Supreme Court identified several examples of gun laws it considered "presumptively lawful," including those prohibiting firearm possession by felons and the mentally ill, and laws regulating the commercial sale of guns. The Court also noted that the Second Amendment is consistent with laws banning "dangerous and unusual weapons," such as those most useful in military service.

Nothing in the *Heller* decision suggests that President Obama's proposals to reduce gun violence would violate the Second Amendment. On the contrary, the decision supports the constitutionality of those proposals because they fall within the scope of the "presumptively lawful" regulations identified by the Supreme Court. Assault weapons and large capacity ammunition magazines, for example, are "dangerous and unusual weapons" that are most useful in military service. Universal background checks, which typically require all firearm sales to be conducted by a licensed firearms dealer, are: 1) regulations on the commercial sale of firearms; and 2) necessary to enforce existing laws prohibiting firearm possession by felons and the mentally ill. Laws punishing gun traffickers (including "straw purchasers" who buy guns on behalf of prohibited persons) also qualify as regulations on the commercial sale of firearms.

Even more fundamentally, the laws proposed by President Obama do not violate the Second Amendment because they in no way interfere with the narrow right established in *Heller*, i.e., the right of a law-abiding, responsible citizen to possess a handgun in the home for self-defense.

Lower Courts Interpreting *Heller* Have Overwhelmingly Rejected Challenges to Our Nation's Gun Laws and Upheld Bans on Assault Weapons and Large Capacity Ammunition Magazines

Although the *Heller* opinion opened the floodgates to lawsuits challenging federal, state and local gun laws in America, decisions of lower courts across the country have overwhelmingly rejected those challenges. The Law Center is aware of more than 650 such decisions.

Moreover, lower courts that have specifically considered Second Amendment challenges to laws banning assault weapons and large capacity ammunition magazines have upheld those laws. In *Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244, 1262 the court rejected a Second Amendment challenge to Washington D.C.'s assault weapons and large capacity ammunition ban, finding that the prohibition "does not effectively disarm individuals or substantially affect their ability to defend themselves."

In *People v. James*, 94 Cal. Rptr. 3d 576, 586 (Cal. Ct. App. 2009), the court upheld California's assault weapons ban, finding that it did not violate the Second Amendment because assault weapons are not in common use by law-abiding citizens for lawful purposes and therefore fall within the category of "dangerous and unusual" weapons that the government may prohibit for individual use under *Heller*.

The Second Amendment is Also Not an Obstacle to Laws Requiring Universal Background Checks or Punishing Gun Traffickers

Significantly, the Law Center is unaware of *any* challenges to federal, state or local laws requiring background checks. As noted previously, however, any such challenges would inevitably fail under *Heller* because: 1) background checks qualify as regulations on the commercial sale of firearms; 2) they are necessary to enforce laws prohibiting the possession of firearms by felons and the mentally ill; and 3) they in no way hamper the ability of a law-abiding, responsible citizen to possess a handgun in the home for self-defense.

We are also unaware of any challenges to laws criminalizing gun trafficking. Courts would certainly reject any such challenges because those laws, too, fail to interfere with the ability of a law-abiding, responsible person to possess a handgun in the home for self-defense.

In sum, those who would argue that the Second Amendment guarantees the right to possess assault weapons and large capacity magazines – like those used to slaughter first graders at Newtown, moviegoers at Aurora, teenagers at Columbine and lawyers at 101 California Street – cannot point to any precedent in the Supreme Court or lower courts to support their claims, and ignore precedents that clearly contradict their claims. Any assertions that laws requiring universal background checks and penalizing gun traffickers violate the Second Amendment are equally without legal support.

Members of Congress should rest assured that the common sense laws proposed by President Obama are – in addition to being vitally important to public safety and widely supported by the American public – constitutionally sound.

LEAGUE OF WOMEN VOTERS®
OF THE UNITED STATES

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Statement by Elisabeth MacNamara, President
League of Women Voters of the United States
Hearing on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"
Subcommittee on the Constitution, Civil Rights and Human Rights
Senate Judiciary Committee
February 12, 2013

The League of Women Voters of the United States has a long-standing position, reached by consensus of our members, in support of gun control. On behalf of our 140,000 members and supporters, we urge you to pass common sense solutions to the gun violence that is plaguing our nation. It is time for Congress to adopt legislation that will close the gun show loophole, ban assault weapons, place limits on high capacity ammunition magazine size, increase penalties for straw purchases of guns, and fund research and reporting on gun violence in America. Curbing gun violence is a matter of public safety and public health.

Along with the majority of American citizens, the League supports closing the gun show loophole and providing for universal background checks. Currently, background checks are required only for sales by the nation's 55,000 federally licensed gun dealers. These checks are not required for the 40 percent of gun sales that take place at gun shows, person-to-person

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sales or other private transactions. A recent Quinnipiac poll found that 92 percent of voters, including 91 percent of gun owners, support background checks on all gun purchasers.

We believe that universal background checks throughout the country could have a significant impact on public safety. In addition, Congress should pass legislation to increase the penalties for straw purchases in which individuals who do not have criminal records buy guns and pass them on to individuals who are not eligible to purchase a firearm, including felons and domestic abusers.

The League believes that the 113th Congress should pass legislation to ban all military-style semi-automatic assault weapons along with high capacity ammunition magazines. The Quinnipiac poll also found that 56 percent of registered voters nationwide support a ban on the sale of assault weapons. Placing limits on magazine size is a common sense solution to shootings that kill many people at once. This limit should include large-capacity magazines and other ammunition feeding devices that hold more than 10 rounds of ammunition. These devices allow shooters to fire numerous rounds in rapid succession without having to stop and reload.

In order to confront the public health impact of gun violence, we support efforts, including the recent Executive Order by President Obama, to have federal agencies research the impact of guns on public health. Federal agencies are well positioned to study and share statistical information on gun violence. We agree with the scholars and researchers who wrote to Vice-President Biden's Task Force on January 10, 2013 that, "The tragedy of gun violence is compounded by the fact that the usual methods for addressing a public health and safety threat of

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this magnitude—collection of basic data, scientific inquiry, policy formation, policy analysis and rigorous evaluation—are, because of politically-motivated constraints, extremely difficult in the area of firearm research."

Throughout the country, local and state Leagues have been holding meetings with their fellow citizens to discuss the crisis of gun violence. They have testified before state legislatures and met with their neighbors in community meetings to come together, air their differences and work together to find common ground and solve some of the difficult problems presented in the gun debate, including mental health issues and the problem of domestic violence. This issue is too important to be ignored any longer. Congress should start to act on common sense solutions to curb gun violence.

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Dear Chairman Durbin and Senate Judiciary Subcommittee Members,

Thank you for taking on the difficult task of considering the issue of gun violence in our country. I would like to briefly share my thoughts with you on this topic.

I am concerned that there is more importance given to the 2nd Amendment than to the basic right to life in the United States. It would appear that people's right to buy whatever kind of gun they want, and as many of them as they wish, is thought by some to be more sacred than my right to be at a public gathering, a mall, a movie theater or my child's school without having to worry about someone shooting me or those I love. After the mass killing that occurred in my beautiful town, I now understand that this can happen anywhere.
The idea that at any given time, anywhere my children or I go, someone could pull out a semi-automatic weapon and start randomly killing people is a reality. It is a reality and it is a form of terrorism that should not be allowed to continue.

I am terrified that the people who are fighting so fervently against any and all gun safety regulations, are people who appear to believe that someday they may need to take up arms against the US government. These same people are against a law stating that a person can only buy one gun a month. Who needs to purchase more than one gun a month?
Are there actually people who need to buy weapons monthly? Do their rights matter more than mine? It is frightening to me that these people, many of whom have stockpiles of guns and ammunition, may be delusional, paranoid or otherwise mentally ill.

While I believe in the right to hunt or to protect our homes, I honestly do not understand why everyday citizens should be allowed to carry weapons outside their homes, unless hunting or visiting a shooting range. We are simply more likely to experience gun violence when guns are present. We have seen how even well-trained police and military personnel experience the tragedy of accidentally killing an innocent by-stander.

Lastly, I will never understand why anyone other than military personnel need weapons designed for killing as many people as possible, as quickly as possible. We do not need weapons capable of tearing apart human bodies in order to protect our homes.

You cannot begin to understand the profound sadness that remains in Newtown. Tears are still shed daily. People are experiencing anxiety and depression. Twenty-seven families are forever changed, and so is Newtown. It would be one thing if this were a fluke, but sadly, it is not. Gun violence is a part of our daily life in the United States of America. I am begging you to be courageous and do everything in your power to make this country a safer one. Stand up to the radical elements and stand up for our children. You have an opportunity to be a profile in courage.

Wendy Leon-Gambetta
Newtown, CT

Dear Chairman Durbin and Senate Judiciary Sub-commitee Members,

My name is Michelle Levinson. I am a Connecticut resident with 2 young children who lives only minutes from Newtown.
I , like every other mother would do anything to protect my babies. Sadly, there is only so much I can do with respect to protecting my children against gun violence. My testimony is on behalf of many parents, friends and family members who strongly share the same beliefs as I and DEMAND common sense gun laws to protect ALL of our CHILDREN as well as to honor the 26 beautiful lives of those innocent children and courageous adults who became victims of a "matrix of breakdowns" in our society with regards to gun regulations as well as the mental health care system.

In response to those who vehemently oppose gun regulations claiming their second amendment rights are being violated I say this:

Yes, you have the right to own guns for sport and hunting and ,yes, you do have the right to protect yourself but RIGHTS demand RESPONSIBILITIES and REGULATIONS. PERIOD.

These Regulations MUST be as follows to protect the citizens of the United States- COMPREHENSIVE background checks. These MUST include closing the gun show loopholes where some 40% of gun sales are made without background checks. The INSANITY of this loophole truly defies logic and shame on us for allowing this to occur for so long.

There must be a Ban on all Assault Weapons. They have NO place in a civilized society. These are meant for combat like situations NOT homes, schools, movie theaters outside of grocery stores etc. These weapons are ONLY meant for the battlefield and a public safety environment ONLY to be used by law enforcement. These killing machines are an ASSAULT on our right to be safe in public places.

There MUST be a Ban on high capacity magazines- in Mark Kelly's testimony in front of the Senate Judiciary Committee he stated that if the Tucson shooter had a smaller clip the 9 year old little girl who was shot with the 11th bullet would be alive today. The Aurora shooter had a 100 round clip with the EXPLICIT INTENTION of killing as many people possible. There is NO LOGICAL REASONING that these high capacity magazines should be in the hands of any gun owner Period.

With the sheer amount of guns that exist in this country without these proposed regulations there is a gross public safety threat to everyone including our innocent children who RELY on us to PROTECT them. Their psyche following the Newtown tragedy as well as every adults psyche cannot absorb the cost of another senseless act of mass murder.

As parents we teach our children to learn from their mistakes- as a society we paid the price ....sadly, some paid the ultimate price of previous flawed gun laws. So, with that said we MUST reexamine, rewrite and redo what we failed to before. Just like these gun issues are complicated life is complicated as well. We will never be able to completely rid the world of horrific acts of violence- BUT we sure as hell can do everything in our power to minimize/limit the opportunity for yet another horrific tradegy that occurred only miles away from my home. It's just one step closer in the right direction facing this issue as well as mental health -all these issues we've neglected far too long. This will be a long road but trust me we MOTHERS will never back down on this issue.

A few nights following the Sandy Hook tragedy I had to reassure my 8 year old daughter that all the adults in her life will do everything humanly possible to make sure what happened in Newtown won't happen again. Will you please do EVERYTHING in your legislative power to PROTECT her and ALL of our children.

We talk a lot about how to honor the victims of Newtown and other victims of senseless acts of gun violence. We wear ribbons. We wear T-shirts. We pray and we say we will never forget. But what do we call honor absent of ACTION? We call it illusion. And the illusion of honor is nothing short a of betrayal. A betrayal to the victims. A betrayal to all the future victims. And a betrayal to those late night reassurances between a mother and daughter, when we say we'll do everything we can to protect them. At what point does this not become a question of political will, but a moral imperative?

Sincerely,
Michelle Levinson

Dear Honorable Members of Senate Judiciary Committee,

Thank you for giving me this opportunity to submit written testimony for the hearing: "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment." As a person whose life was changed irrevocably by gun violence, your time, care, and attention to this important issue means more to me than you can possibly imagine.

My name is Uma Loganathan. I am the daughter of Dr. G.V. Loganathan. He was killed in the Virginia Tech Massacre on April 16, 2007.

The day my father went to teach the last class he would ever teach, he was sick. He was running a fever, and even though it was April, he felt cold. My mother didn't want him to go in, but he went anyway. That was the type of man he was—he believed in his duty, and he always did it. He was right where he was supposed to be—the right place at the right time. And yet, he never came home.

Somehow, the impact of gun violence and what it means to lose someone is something that we don't talk about in this country. It's as if the subject is taboo, or a dirty secret to be shoved under the carpet. We don't talk about how my mother, who was devastated, had to tell her two daughters that their father wasn't coming home ever again. We don't talk about the frantic race back home, or how our lives were turned upside down that day. We don't talk about the insomnia that strikes for the first few months, or the nightmares we have later. We don't talk about our dreams, where our loved ones are still alive—or the crippling heartbreak of waking up, and realizing they are still dead. We don't talk about the sadness, the horror of reliving that nightmare again. We don't talk about how food turns to chalk in my mouth. We don't talk about how a family of four is now, irrevocably, a family of three. We don't talk about how my sister, who was 13 at the time, essentially raised herself because her father was dead, her mother had to work all the time, and her sister was away at school to finish her degree. We don't talk about our counseling sessions and how our counselors dread talking to us because they don't know how to relate to such a god-awful hell.

We don't talk about the gaping hole of what it means when a father can't see his child, or a child can't see her father. We don't talk about the three brothers who can no longer see their older brother, or the older brother who can no longer be there for his younger siblings. We don't talk about how a wife who, following Hindu tradition, promised herself to her husband for seven lifetimes. We don't talk about her utter devastation, or how she now has to wait until she dies to see him in the next lifetime. We don't talk about how he now has to wait to see her.

We don't talk about these things.

Here's what we *do* talk about: we talk about the right of the second amendment. We talk about the right to bear arms and the right to protect ourselves. We talk about the right to carry our weapons in the street, our right to have them on our person at all times. We talk about the right to arm our children, our parents, our country.

It's ironic to me that we talk about these things because I remember my father encouraging me to learn how to shoot a gun. I remember going to my high school and seeing all the empty classrooms because it was the first day of hunting season. I remember my friends talking about their parents taking them to the shooting range, teaching them how to shoot guns and how store them. I remember these things.

And I remember that my father was killed with a gun.

People like to tell me that if my father had a gun, he could have defended himself. I'd like to tell you a secret: he couldn't have. When my father was shot he was facing the blackboard, writing up the steps to a hydraulics problem. That's why he was shot in the back of the head at least twice. He didn't even have time to turn around and figure out what was going on, much less turn around and defend a classroom. Even if he had, I'm pretty sure he wouldn't have hit his target. If a trained policeman can only hit his target 1/10 times, what chance did my dad have? He was a man who played cricket, soccer, and chess, who occasionally practiced archery and never shot a gun. I'm sure, if he'd known what was going on, he would have tried to defend his students-- he was never one to go down without a fight. But in this case, even with training, I suspect he would have accidentally shot a student, rather than the shooter. In fight-or-flight situations, the body never responds the way you want it to. Of course, people don't like to hear it when I tell them this. They prefer to think that we can all be heroes, that a person can have the time and concentration to fire the bullets that will save the day. I wish that were reality. I wish that were true. Unfortunately, my experience has taught me that this is not the case. I live with that every minute of every day.

I'd now like to tell you something about the shooter. His name was Seung-Hui Cho. He was somebody's child and somebody's brother. He was a student at Virginia Tech. He was mentally ill. He was adjudicated—directed to outpatient treatment, but still adjudicated. He slipped through the cracks because no one followed up. He then bought a few semi-automatics, some high capacity magazines, waltzed into Norris Hall, killed 32 people he didn't know and injured several more, before finally killing himself.

If he'd been entered into the NICS system, he never would have passed a background check. But of course, being mentally ill is no reflection of intelligence or ability to plan, and evidence shows that Cho planned this meticulously. He likely would have gone to private sellers or a gun show if the background check failed, because private sales don't need background checks at all. His

use of high-capacity magazines—a "mere" 15 rounds per magazine—was devastating. In the space of ten minutes, he fired more than 158 bullets, murdering 32 individuals and injuring many more. If Cho did not have access to high-capacity magazines, he never would have been able to fire off so many shots so quickly. He never would have killed so many people. There would have been more opportunities to stop him, to tackle him, something. Some kind of action. *Any* kind of action.

There would be less grief.

They say that you can always play the "what-if" game and second-guess your actions after the fact. I would like for us as Americans to not second-guess ourselves. I would like us to move forward with confidence and conviction. I believe that we as Americans are better than this and that we care about ourselves and each other. So with this belief in my heart, I hope that Congress will:

1. Support universal background checks so that guns stay out of the hands of criminals or adjudicated mentally ill.
2. Ban high capacity magazines.
3. Ban assault rifles and guns that belong on battlefields in general.
4. Make gun trafficking a federal crime.

These are the measures that our law enforcement officials, men and women who put their lives on the line defending us every day, propose. These are the measures that our doctors, who see first-hand the trauma and devastation of such violence in their ER rooms, propose. These are the measures that we as gun violence victims propose.

Of course, there are always two sides to an argument, and this is no exception. I've heard arguments that these measures are inconvenient. I've heard arguments that this won't stop all incidents of gun violence, that people will still be injured or killed. I've heard arguments that if a shooter is really determined, he will circumvent these measures.

All these arguments are true. These measures are "inconvenient." A shooter who is really determined will find a way to circumvent the system. This won't stop all incidents of gun violence. And yet, I endorse these measures. I endorse these measures because inconvenience isn't waiting ten minutes, or a week, or even a month to get your firearm. Inconvenience is when you wait for hours to find out whether or not your father is alive because the authorities don't even know where he is. Inconvenience is calling to find out who is alive, heart crashing in your chest, and hearing that hellish busy signal—not because the phone is actually busy, but because the signal and telephone networks are so crowded that no one can get through. Inconvenience is when your mother calls you to say: *I don't know how to tell you this, but your father... he's never*

coming home again. Inconvenience is you and the rest of your family trying to make do without the person you love most for the rest of your lives, knowing that you must wait until you die before you can see him again. *That* is inconvenience. And if we can prevent even *one* instance of inconvenience, we will have done something worthwhile. Just because we cannot prevent every instance of gun violence doesn't mean that we as a people don't have a responsibility. On the contrary, that means we have every responsibility. We have a responsibility to do the best we can to make it hard for criminals and adjudicated mentally ill to get their hands on guns. For us to be inactive, to remain stubborn about enacting further safety measures, to be unwilling to change—that smacks of selfishness and a lack of caring. It implies that we are too wrapped up in our own lives, our own concerns to do anything to protect those around us. It implies that we care more about the ten minutes in our day than we do about the life of our child, our spouse, our brother, our sister, our parent, our neighbor.

I am hopeful for us as a country because I know that this is not the case—that we do care and that we are not selfish. I am hopeful that we can come together to implement better safeguards for our firearms and our people. I believe that we can take action to prevent more unnecessary heartache and save more lives.

This is an issue that deserves our vote. This is an issue that deserves *your* vote. For this issue, whether we realize it or not, is deeply personal—it affects us all, and each of us has a massive stake in it. We the American people deserve to know where our Congressmen stand on this issue. We deserve to know what you think of us, your constituents, and the children of your constituents. We deserve to know what you think of our dead. We deserve to know what you think of our injured. We deserve to know your stance. Our injured, our dead deserve to know your stance. I am not asking that you vote for the measures proposed above (although I would very much like you to). If there are better measures to be had, I would love to see them. It would thrill me beyond belief to see them—and see you vote on them. But make no mistake—there can be no action without a vote. Please act. Please vote.

Thank you so much for your time, your attention, and your consideration.

Most Sincerely,

Uma M. Loganathan
Daughter of Professor G.V. Loganathan
Survivor of Virginia Tech

Joan Hubbard Lucia
36 Hunitingtown Rd
Newtown, CT 06470
February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members-

I am writing to add my voice (and vote) to those calling for a sane gun policy in the United States.

Please consider universal background checks for all gun purchases, mandatory safe keeping for guns in the home, mandatory minimum training requirements for gun owners and annual registration, COMPLETE responsibility for stolen guns by the owner (reporting mandates), banning assault weapons , high capacity magazines and armor piercing bullets, funding gun/violence studies and funding mental health care.

Are you bringing the gun industry into the conversation? If I heard correctly 500,000 guns a year are stolen. (which does not speak of responsible gun ownership to me). We put microchips in a lot of possessions so we can track them if they get stolen – why not require them in guns. Can the industry develop technology so that a stolen gun is a disabled gun?. Can guns contain a metal (or some type of substance) that sets alarms off in gun free zones? Are you pressing the manufactirers to develop "safer" guns?

If the second amendment rules, can we regulate the citizen militia? Can we require gun owners to turn out at local armories once a month for gun inspection and training? I am serious -you don't get ALL the rights and none of the inconvenient responsibilities.

I am trying very hard to understand the gun advocates. My Dad was a Marine in World War II and was awarded a silver and bronze star for service in Guadacanal – he did not allow guns in our house.

Both sides are fearful and the more time I spend with gun advocates who feel they have a God given right to stockpile the more fearful I become (mostly because they are men, they are loud and aggressive AND they have guns).

I know this is a very complex issue but to me sane gun control is the easy part.

One last thing, please become knowledgeable on how many women die from gun violence in the home. The current pitch to women to keep guns is more of a death warrant than any type of security.

Thank you,.

Joan H. Lucia

February 11, 2013

The Honorable John Boehner
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

Rep. Nancy Pelosi
Democratic Leader
United States House of Representatives
Washington, DC 20515

Sen. Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

RE: U.S. Mayors Call on Congress to Support Assault Weapons Ban

Dear Speaker Boehner, Majority Leader Reid, Leader Pelosi, and Leader McConnell:

Military-style assault weapons and high-capacity ammunition magazines have been at the center of some of our country's deadliest mass shootings. Just since July, we have watched in horror as they have been used to gun down moviegoers in an Aurora theater, Sikh worshippers in an Oak Creek temple, and even young children in a Newtown elementary school. In order to prevent the next rampage and help save American lives, our nation needs clear and enforceable legislation that will take these weapons and magazines off our streets.

As the men and women who are responsible for protecting those streets, we write to urge your support for the **Assault Weapons Ban of 2013 (S. 150 / H.R. 437)**, introduced by Senator Dianne Feinstein and Congresswoman Carolyn McCarthy. Our bipartisan coalition of more than 850 U.S. mayors stands firmly behind this bill, which would ban the importation, sale, manufacture, transfer, and possession of assault weapons and high-capacity magazines – with some exceptions, including for law enforcement and military use, as well as for those weapons lawfully owned at the time of enactment.

In an effort to strengthen the now-expired 1994 version of the ban, this legislation would broaden the definition of "assault weapon" to prevent manufacturers from remodeling their weapons to circumvent the law. The new ban would be permanent and would require background checks for grandfathered weapons that are sold or transferred after the enactment date, including those sold or transferred by private sellers. It would also prohibit the sale and transfer of grandfathered high-capacity ammunition magazines.

These measures would go a long way toward ensuring the safety of our communities, and they enjoy the backing of a majority of Americans – including gun owners.

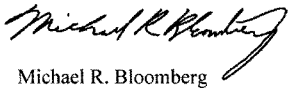
While military-style assault weapons and high-capacity magazines often play a prominent role in mass shootings, they are also a common threat in everyday incidents of gun violence that don't always make national headlines. According to the Department of Justice, high-capacity magazines are used in 14 to 26 percent of all gun crimes and in 31 to 41 percent of fatal police shootings. As Oklahoma City Police Chief Bill Citty said in January 2011 after one of his officers was fatally ambushed by a teenager with a semiautomatic AR-15: "There are just more and more assault rifles out there, and it is becoming a bigger threat to law enforcement each day. They are outgunned."

It's no wonder law enforcement groups across the country support a ban on these military-style weapons and high-capacity magazines, including the International Association of Chiefs of Police (IACP), the Major Cities Chiefs Association (MCC), and the Police Executive Research Forum (PERF).

We hope you will stand up for our communities, our law enforcement officials, and our children by supporting this common-sense proposal to curb gun violence. Far too many Americans are being killed with deadly assault weapons – it's up to you to act.

Sincerely,

Thomas M. Menino
Coalition Co-Chair
Mayor of Boston



Michael R. Bloomberg
Coalition Co-Chair
Mayor of New York City

Signed by Members of Mayors Against Illegal Guns:

Mayor Samuel L. Jones, Mobile, Alabama
Mayor Satish I. Hiremath, Oro Valley, Arizona
Mayor Scott LeMarr, Paradise Valley, Arizona
Mayor Greg Stanton, Phoenix, Arizona
Mayor Jennifer Eckstrom, South Tucson, Arizona
Mayor Bill Rappaport, Star Valley, Arizona
Mayor Mark W. Mitchell, Tempe, Arizona
Mayor Jonathan Rothschild, Tucson, Arizona
Mayor Larry S. Bryant, Forrest City, Arkansas
Mayor Arnell Willis, Helena, Arkansas
Mayor Lawrence Owens, Hughes, Arkansas
Mayor McKinzie Riley, Wrightsville, Arkansas
Mayor Marie L. Gilmore, Alameda, California
Mayor Wade Harper, Antioch, California
Mayor Elizabeth Patterson, Benicia, California
Mayor Tom Bates, Berkeley, California
Mayor Cheryl Cox, Chula Vista, California
Mayor Eugene Montanez, Corona, California
Mayor Diane Furst, Corte Madera, California
Mayor Joseph Krosova, Davis, California
Mayor Jennifer West, Emeryville, California
Mayor Teresa Arballo Barth, Encinitas, California
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Mayor Maria Orozco, Gonzales, California
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Mayor Bob Foster, Long Beach, California
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Mayor Lou La Monte, Malibu, California
Mayor Rob Schroder, Martinez, California
Mayor Mary Ann Lutz, Monrovia, California
Mayor Paul Eaton, Montclair, California
Mayor R. Michael Kasperzak, Jr., Mountain View, California

Mayor Alan L. Nagy, Newark, California
Mayor Pat Eklund, Novato, California
Mayor Jean Quan, Oakland, California
Mayor Amy R. Worth, Orinda, California
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Mayor Bill Bogaard, Pasadena, California
Mayor Luis I. Molina, Patterson, California
Mayor David Glass, Petaluma, California
Mayor L. Dennis Michael, Rancho Cucamonga, California
Mayor Pete Aguilar, Redlands, California
Mayor Gayle McLaughlin, Richmond, California
Mayor Kevin Johnson, Sacramento, California
Mayor Kay Coleman, San Anselmo, California
Mayor Patrick J. Morris, San Bernardino, California
Mayor Edwin M. Lee, San Francisco, California
Mayor Chuck Reed, San Jose, California
Mayor Stephen H. Cassidy, San Leandro, California
Mayor Jan Marx, San Luis Obispo, California
Mayor Gary O. Phillips, San Rafael, California
Mayor Miguel Pulido, Santa Ana, California
Mayor Helene Schneider, Santa Barbara, California
Mayor Don Lane, Santa Cruz, California
Mayor Jill Hunter, Saratoga, California
Mayor Larry Forester, Signal Hill, California
Mayor Emmet O'Donnel, Tiburon, California
Mayor Osby Davis, Vallejo, California
Mayor Jeffrey Prang, West Hollywood, California
Mayor Christopher Cabaldon, West Sacramento, California
Mayor Matthew Appelbaum, Boulder, Colorado
Mayor Michael B. Hancock, Denver, Colorado
Mayor Randy P. Penn, Englewood, Colorado
Mayor Marjorie Sloan, Golden, Colorado
Mayor Carolyn Cutler, Lafayette, Colorado
Mayor Bob Murphy, Lakewood, Colorado
Mayor Robert Muckle, Louisville, Colorado
Mayor Marc A. Snyder, Manitou Springs, Colorado
Mayor Joe Gierlach, Nederland, Colorado
Mayor Joyce Downing, Northglenn, Colorado
Mayor Don Stephens, Salida, Colorado
Mayor Andrew Muckle, Superior, Colorado
Mayor Stuart Fraser, Telluride, Colorado
Mayor Adam Salina, Berlin, Connecticut
Mayor Bill Finch, Bridgeport, Connecticut
Mayor Mark Boughton, Danbury, Connecticut
Mayor Scott D. Jackson, Hamden, Connecticut
Mayor Pedro E. Segarra, Hartford, Connecticut
Mayor Daniel Drew, Middletown, Connecticut
Mayor John DeStefano, New Haven, Connecticut
Mayor Daryl Justin Finizio, New London, Connecticut
Mayor Patricia A. Murphy, New Milford, Connecticut
Mayor Richard A. Moccia, Norwalk, Connecticut
Mayor Michael A. Pavia, Stamford, Connecticut
Mayor Ryan Bingham, Torrington, Connecticut
Mayor Neil M. O'Leary, Waterbury, Connecticut
Mayor Scott Slifka, West Hartford, Connecticut
Mayor John M. Picard, West Haven, Connecticut
Mayor Michael J. Smith, Blades, Delaware
Mayor John P. Buchheit, III, Delaware City, Delaware
Mayor Diane C. Hanson, Dewey Beach, Delaware
Mayor James L. Ford, III, Lewes, Delaware
Mayor Kenneth Branner, Middletown, Delaware
Mayor Dennis P. Williams, Wilmington, Delaware
Mayor Susan Gottlieb, Aventura, Florida
Mayor Jean Rosenfield, Bal Harbour, Florida
Mayor Noah S. Jacobs, Biscayne Park, Florida
Mayor Woodrow L. Hay, Boynton Beach, Florida
Mayor Kristin Jacobs, Broward County, Florida
Mayor Marilyn Gerber, Coconut Creek, Florida
Mayor James C. Cason, Coral Gables, Florida
Mayor Judy Paul, Davie, Florida
Mayor Peggy Noland, Deerfield Beach, Florida
Mayor Bruce B. Mount, Eatonville, Florida
Mayor Craig Lowe, Gainesville, Florida
Mayor Glenn Singer, Golden Beach, Florida
Mayor Charles Sanders, Greenwood, Florida
Mayor Joy Cooper, Hallandale Beach, Florida
Mayor Peter J. M. Bober, Hollywood, Florida
Mayor Kenneth M. Schultz, Hypoluxo, Florida
Mayor Gow B. Fields, Lakeland, Florida
Mayor Patricia Gerard, Largo, Florida
Mayor Barrington Russell, Lauderdale Lakes, Florida
Mayor Richard J. Kaplan, Lauderhill, Florida
Mayor Howard A. Schieferdecker, Maitland, Florida
Mayor Tomas Regalado, Miami, Florida
Mayor Matti H. Bower, Miami Beach, Florida
Mayor Lori C. Moseley, Miramar, Florida
Mayor Connie Leon Kreps, North Bay Village, Florida
Mayor John Brady, North Lauderdale, Florida
Mayor Andre Pierre, North Miami, Florida
Mayor Myra L. Taylor, Opa-Locka, Florida
Mayor Buddy Dyer, Orlando, Florida
Mayor Dominic Persampiere, Oviedo, Florida
Mayor James P. Sasser, Pahokee, Florida
Mayor Frank C. Ortis, Pembroke Pines, Florida
Mayor Cindy Lerner, Pinecrest, Florida
Mayor Diane Veltri Bendekovic, Plantation, Florida
Mayor Thomas A. Masters, Riviera Beach, Florida
Mayor Norman S. Edelcup, Sunny Isles Beach, Florida
Mayor Michael J. Ryan, Sunrise, Florida
Mayor Daniel Dietch, Surfside, Florida
Mayor John Marks, III, Tallahassee, Florida
Mayor Beth Talabisco, Tamarac, Florida
Mayor Jeri Muoio, West Palm Beach, Florida
Mayor Eric Jones, West Park, Florida
Mayor Daniel J. Stermer, Weston, Florida
Mayor Gary Resnick, Wilton Manors, Florida
Mayor Kasim Reed, Atlanta, Georgia
Mayor Deke Copehauer, Augusta, Georgia
Mayor Donna Pittman, Doraville, Georgia
Mayor Earnestine D. Pittman, East Point, Georgia
Mayor James Thomas, Jr., Hinesville, Georgia
Mayor Robert A. B. Reichert, Macon, Georgia

Mayor June D. Bradfield, McRae, Georgia
Mayor Jim Still, Jr., Mountain Park, Georgia
Mayor Kathie deNobriga, Pine Lake, Georgia
Mayor Jere Wood, Roswell, Georgia
Mayor Patricia Wheeler, Stone Mountain, Georgia
Mayor Ralph Moore, Union City, Georgia
Mayor William P. Kenoi, Hilo, Hawaii
Mayor Bernard P. Carvalho, Jr., Kauai, Hawaii
Mayor Larry Hartwig, Addison, Illinois
Mayor Arlene J. Mulder, Arlington Heights, Illinois
Mayor Joel Fritzler, Carbondale, Illinois
Mayor Rahm Emanuel, Chicago, Illinois
Mayor Harriet Rosenthal, Deerfield, Illinois
Mayor Kris Povlsen, DeKalb, Illinois
Mayor Teresa Kerne, Diamond, Illinois
Mayor Thomas A. Brown, East Hazel Crest, Illinois
Mayor Alvin L. Parks, Jr., East St. Louis, Illinois
Mayor David L. Anderson, Elburn, Illinois
Mayor David J. Kaptain, Elgin, Illinois
Mayor Elizabeth Tisdahl, Evanston, Illinois
Mayor James J. Sexton, Evergreen Park, Illinois
Mayor Michael Howley, Hickory Hills, Illinois
Mayor Joseph T. Tamburino, Hillside, Illinois
Mayor Gerald C. Turry, Lincolnwood, Illinois
Mayor Joseph J. Broda, Lisle, Illinois
Mayor Eugene Williams, Lynwood, Illinois
Mayor Henderson Yarbrough, Sr., Maywood, Illinois
Mayor Christopher Koos, Normal, Illinois
Mayor Leon Rockingham, Jr., North Chicago, Illinois
Mayor Kyle R. Hastings, Orland Hills, Illinois
Mayor Robert S. Straz, Palos Heights, Illinois
Mayor Gerald R. Bennett, Palos Hills, Illinois
Mayor Greg Marston, Pingree Grove, Illinois
Mayor Lawrence J. Morrissey, Rockford, Illinois
Mayor George Van Dusen, Skokie, Illinois
Mayor Don A. DeGraff, South Holland, Illinois
Mayor Beniamino Mazzulla, Stone Park, Illinois
Mayor Laurel Prussing, Urbana, Illinois
Mayor Robert Sabonjian, Waukegan, Illinois
Mayor Sam D. Pulia, Westchester, Illinois
Mayor Richard Hickman, Angola, Indiana
Mayor Mark Kruzan, Bloomington, Indiana
Mayor Tom C. Henry, Fort Wayne, Indiana
Mayor Karen Freeman-Wilson, Gary, Indiana
Mayor Dennis Tyler, Muncie, Indiana
Mayor Peter Buttigieg, South Bend, Indiana
Mayor William E. Gluba, Davenport, Iowa
Mayor T. M. Franklin Cownie, Des Moines, Iowa
Mayor Ray D. Buol, Dubuque, Iowa
Mayor Matt Hayek, Iowa City, Iowa
Mayor Robert E. Scott, Sioux City, Iowa
Mayor Buck Clark, Waterloo, Iowa
Mayor Crosby Gernon, Hiawatha, Kansas
Mayor Carl Brewer, Wichita, Kansas
Mayor Gene McMurry, Carrollton, Kentucky
Mayor Greg Fischer, Louisville, Kentucky
Mayor Kip "Kip" Holden, Baton Rouge, Louisiana
Mayor Mitchell J. Landrieu, New Orleans, Louisiana
Mayor Rodney A. Grogan, Patterson, Louisiana
Mayor Cedric B. Glover, Shreveport, Louisiana
Mayor William R. Stokes, Augusta, Maine
Mayor Charlotte M. Warren, Hallowell, Maine
Mayor Michael Brennan, Portland, Maine
Mayor Joshua J. Cohen, Annapolis, Maryland
Mayor Stephanie Rawlings-Blake, Baltimore, Maryland
Mayor Victoria Jackson-Stanley, Cambridge, Maryland
Mayor Margo G. Bailey, Chestertown, Maryland
Mayor Michael H. Callahan, Cheverly, Maryland
Mayor Andrew M. Fellows, College Park, Maryland
Mayor Brian K. Grim, Cumberland, Maryland
Mayor Robert C. Willey, Easton, Maryland
Mayor Sidney A. Katz, Gaithersburg, Maryland
Mayor Peter Benjamin, Garrett Park, Maryland
Mayor Dennis J. Scheessele, Indian Head, Maryland
Mayor Craig A. Moe, Laurel, Maryland
Mayor Phyllis Marcuccio, Rockville, Maryland
Mayor James Ireton, Jr., Salisbury, Maryland
Mayor Jeffrey Slavin, Somerset, Maryland
Mayor Bruce R. Williams, Takoma Park, Maryland
Mayor Thatcher W. Kezer, III, Amesbury, Massachusetts
Mayor Kevin J. Dumas, Attleboro, Massachusetts
Mayor William F. Scanlon, Jr., Beverly, Massachusetts
Mayor Thomas Menino, Boston, Massachusetts
Mayor Joseph C. Sullivan, Braintree, Massachusetts
Mayor Linda M. Balzotti, Brockton, Massachusetts
Mayor Henrietta Davis, Cambridge, Massachusetts
Mayor Carlo DeMaria, Jr., Everett, Massachusetts
Mayor Lisa A. Wong, Fitchburg, Massachusetts
Mayor Alex Morse, Holyoke, Massachusetts
Mayor Patrick O. Murphy, Lowell, Massachusetts
Mayor Gary Christenson, Malden, Massachusetts
Mayor Michael J. McGlynn, Medford, Massachusetts
Mayor Robert J. J. Dolan, Melrose, Massachusetts
Mayor Jonathan F. Mitchell, New Bedford, Massachusetts
Mayor Donna D. Holaday, Newburyport, Massachusetts
Mayor Setti D. Warren, Newton, Massachusetts
Mayor David J. Narkewicz, Northampton, Massachusetts
Mayor Edward A. Bettencourt, Jr., Peabody, Massachusetts
Mayor Thomas Koch, Quincy, Massachusetts
Mayor Daniel Rizzo, Revere, Massachusetts
Mayor Kimberley Driscoll, Salem, Massachusetts
Mayor Joseph A. Curtatone, Somerville, Massachusetts
Mayor Domenic Sarno, Springfield, Massachusetts
Mayor Thomas Hoye, Taunton, Massachusetts
Mayor Susan M. Kay, Weymouth, Massachusetts
Mayor Scott Galvin, Woburn, Massachusetts
Mayor John Hieftje, Ann Arbor, Michigan
Mayor Phil O'Dwyer, Berkley, Michigan
Mayor John B. O'Reilly, Jr., Dearborn, Michigan
Mayor Dave Bing, Detroit, Michigan
Mayor Diane Goddeeris, East Lansing, Michigan
Mayor Dayne Walling, Flint, Michigan

Mayor George Heartwell, Grand Rapids, Michigan
Mayor Karen Majewski, Hamtramck, Michigan
Mayor Bobby J. Hopewell, Kalamazoo, Michigan
Mayor Virg Bernero, Lansing, Michigan
Mayor Brenda L. Lawrence, Southfield, Michigan
Mayor Paul T. Schreiber, Ypsilanti, Michigan
Mayor Don Ness, Duluth, Minnesota
Mayor Peter Lindstrom, Falcon Heights, Minnesota
Mayor R.T. Rybak, Minneapolis, Minnesota
Mayor Chris Coleman, St. Paul, Minnesota
Mayor Wardell Walton, Belzoni, Mississippi
Mayor Johnny DuPree, Hattiesburg, Mississippi
Mayor Harvey Johnson, Jackson, Mississippi
Mayor McArthur Straughter, Yazoo City, Mississippi
Mayor Linda Goldstein, Clayton, Missouri
Mayor Sylvester "Sly" James, Kansas City, Missouri
Mayor Randall L. Rhoads, Lee's Summit, Missouri
Mayor Francis Slay, St. Louis, Missouri
Mayor Shelley Welsch, University City, Missouri
Mayor Jim Suttle, Omaha, Nebraska
Mayor Donald A. Groesser, Ralston, Nebraska
Mayor Dean Trefethen, Dover, New Hampshire
Mayor Fred Tagliarini, Aberdeen, New Jersey
Mayor Ed Johnson, Asbury Park, New Jersey
Mayor Lorenzo T. Langford, Atlantic City, New Jersey
Mayor Mark Smith, Bayonne, New Jersey
Mayor Timothy J. Driscoll, Bergenfield, New Jersey
Mayor Patrick H. McHale, Bogota, New Jersey
Mayor Albert B. Kelly, Bridgeton, New Jersey
Mayor Dana L. Redd, Camden, New Jersey
Mayor Chuck Cahn, Cherry Hill, New Jersey
Mayor Janice Kovach, Clinton, New Jersey
Mayor Sophie Heymann, Closter, New Jersey
Mayor M. James Maley, Jr., Collingswood, New Jersey
Mayor Thomas Hannen, Jr., Cranford, New Jersey
Mayor Joseph R. Smith, East Newark, New Jersey
Mayor Robert L. Bowser, East Orange, New Jersey
Mayor Antonia Ricigliano, Edison, New Jersey
Mayor J. Christian Bollwage, Elizabeth, New Jersey
Mayor Carlos Colina, Emerson, New Jersey
Mayor Colleen Mahr, Fanwood, New Jersey
Mayor Warren Cooper, Frenchtown, New Jersey
Mayor Joseph Delaney, Garfield, New Jersey
Mayor Gerald R. Drasheff, Guttenberg, New Jersey
Mayor Maria DiGiovanni, Hackettstown, New Jersey
Mayor Domenick Stampone, Haledon, New Jersey
Mayor Raymond J. McDonough, Harrison, New Jersey
Mayor Richard S. Goldberg, Hawthorne, New Jersey
Mayor Gary Minkoff, Highland Park, New Jersey
Mayor Dawn Zimmer, Hoboken, New Jersey
Mayor Paul Anzano, Hopewell, New Jersey
Mayor Wayne Smith, Irvington, New Jersey
Mayor Jerramiah Healy, Jersey City, New Jersey
Mayor Michael B. Ryan, Lake Como, New Jersey
Mayor David M. DelVecchio, Lambertville, New Jersey
Mayor Richard J. Gerbounka, Linden, New Jersey
Mayor Mauro D. Raguseo, Little Ferry, New Jersey
Mayor Frank W. Minor, Logan Township, New Jersey
Mayor Nicholas Russo, Longport, New Jersey
Mayor Michael E. Beck, Lower Township, New Jersey
Mayor William Laforet, Mahwah, New Jersey
Mayor Michael Fressola, Manchester Township, New Jersey
Mayor Victor DeLuca, Maplewood, New Jersey
Mayor Frank M. North, Merchantville, New Jersey
Mayor Patrick O'Hagan, Midland Park, New Jersey
Mayor James A. Gallos, Milford, New Jersey
Mayor Sandra Haimoff, Millburn, New Jersey
Mayor Robert D. Jackson, Montclair, New Jersey
Mayor Dennis Vaccaro, Moonachie, New Jersey
Mayor Timothy Dougherty, Morristown, New Jersey
Mayor J. Brooke Hern, New Providence, New Jersey
Mayor Cory Booker, Newark, New Jersey
Mayor Peter C. Massa, North Arlington, New Jersey
Mayor Francis M. Womack, III, North Brunswick, New Jersey
Mayor Randy George, North Haledon, New Jersey
Mayor Owen Henry, Old Bridge, New Jersey
Mayor James R. Barberio, Parsippany-Troy Hills, New Jersey
Mayor Alex D. Blanco, Passaic, New Jersey
Mayor Jeffrey Jones, Paterson, New Jersey
Mayor Wilda Diaz, Perth Amboy, New Jersey
Mayor Harry L. Wyant, Phillipsburg, New Jersey
Mayor Sharon M. Robinson-Briggs, Plainfield, New Jersey
Mayor Jesse L. Tweedle, Sr., Pleasantville, New Jersey
Mayor Liz Lempert, Princeton, New Jersey
Mayor Pasquale Menna, Red Bank, New Jersey
Mayor Paul Aronsohn, Ridgewood, New Jersey
Mayor Sandy Moscaritolo, River Edge, New Jersey
Mayor Jamel C. Holley, Roselle, New Jersey
Mayor Joe Accardi, Roselle Park, New Jersey
Mayor Kevin Glover, Scotch Plains, New Jersey
Mayor Michael J. Gonnelli, Secaucus, New Jersey
Mayor Alex Torpey, South Orange, New Jersey
Mayor Nicholas Poliseno, Spotswood, New Jersey
Mayor Peter S. Rustin, Tenafly, New Jersey
Mayor Clifton People, Jr., Union, New Jersey
Mayor Brian P. Stack, Union City, New Jersey
Mayor Robert Romano, Vineland, New Jersey
Mayor Robert D. Parisi, West Orange, New Jersey
Mayor Shing-Fu Hsueh, West Windsor, New Jersey
Mayor John Birkner, Jr., Westwood, New Jersey
Mayor Julia C. Andrews, Whitehouse Station, New Jersey
Mayor John E. McCormac, Woodbridge, New Jersey
Mayor Jeffrey R. Goldsmith, Woodcliff Lake, New Jersey
Mayor Keith Kazmark, Woodland Park, New Jersey
Mayor Joe Murrieta, Grants, New Mexico
Mayor Kenneth D. Miyagishima, Las Cruces, New Mexico
Mayor Ray Alborn, Ruidoso, New Mexico
Mayor David Coss, Santa Fe, New Mexico
Mayor Albert Campos, Jr., Santa Rosa, New Mexico

Mayor Gloria J. Chavez, Tijeras, New Mexico
Mayor Gerald Jennings, Albany, New York
Mayor James Gaughan, Altamont, New York
Mayor Ann Thane, Amsterdam, New York
Mayor Peter R. Porcino, Ardsley, New York
Mayor Andrea Smallwood, Athens, New York
Mayor Randy Casale, Beacon, New York
Mayor Matthew T. Ryan, Binghamton, New York
Mayor James J. Schoenig, Brewster, New York
Mayor Eugene Christopher, Broadalbin, New York
Mayor Byron Brown, Buffalo, New York
Mayor G. Wayne McIlroy, Carthage, New York
Mayor Joseph Keegan, Castleton, New York
Mayor Jerome Kobre, Chestnut Ridge, New York
Mayor John A. Lane, Clinton, New York
Mayor John McDonald, Cohoes, New York
Mayor Jeff Katz, Cooperstown, New York
Mayor Mark Evans, Coxsackie, New York
Mayor Robert J. Foster, Deferiet, New York
Mayor Sally E. Burns, Delanson, New York
Mayor Steven P. Hoffman, Depew, New York
Mayor Randy Sterling, Dryden, New York
Mayor Allan A. Kasprzak, East Aurora, New York
Mayor Paul Rickenbach, East Hampton, New York
Mayor Mitchell Levinn, East Nassau, New York
Mayor Henry Doerr, Elbridge, New York
Mayor Jeffrey Kaplan, Ellenville, New York
Mayor James Matthews, Ellisburg, New York
Mayor Stephen G. Sommers, Fabius, New York
Mayor Mark Olson, Fayetteville, New York
Mayor James J. Miccio, Fishkill, New York
Mayor Andrew Hardwick, Freeport, New York
Mayor John Diamond, Glens Falls, New York
Mayor Dayton J. King, Gloversville, New York
Mayor Jean A. Celender, Great Neck Plaza, New York
Mayor Ralph J. Kreitzman, Great Neck Village, New York
Mayor Barbara Moore, Greenwood Lake, New York
Mayor Martin Natoli, Hagaman, New York
Mayor Emery Cummings, Jr., Hammondsport, New York
Mayor Ronald Belmont, Harrison, New York
Mayor Peter Swiderski, Hastings-on-Hudson, New York
Mayor Michael Kohut, Haverstraw, New York
Mayor Natale J. Tartamella, Head of the Harbor, New York
Mayor Wayne J. Hall, Sr., Hempstead, New York
Mayor Richard Beirman, Sr., Herrings, New York
Mayor Bernard Jackson, Hillburn, New York
Mayor Joseph M. Lee, Hilton, New York
Mayor Shawn Hogan, Hornell, New York
Mayor Brian C. Smith, Irvington, New York
Mayor Svante L. Myrick, Ithaca, New York
Mayor Samuel Teresi, Jamestown, New York
Mayor Susan Lopatkin, Kensington, New York
Mayor Shayne R. Gallo, Kingston, New York
Mayor Robert Blais, Lake George, New York
Mayor Ronald S. Cooper, Lake Success, New York
Mayor Anne H. McAndrews, Larchmont, New York
Mayor Martin Oliner, Lawrence, New York
Mayor Carl Luft, Lima, New York
Mayor Norman L. Marsh, Little Valley, New York
Mayor Corrine Kleisle, Lyons, New York
Mayor Barbara Clark, Madison, New York
Mayor Patricia McDonald, Malverne, New York
Mayor Mark-Paul Serafin, Manlius Village, New York
Mayor James F. Hidy, Massena, New York
Mayor Dennis Leahy, Maybrook, New York
Mayor Anthony Sylvester, Mechanicville, New York
Mayor Terry Grimshaw, Mexico, New York
Mayor Richard J. Donovan, Minoa, New York
Mayor James C. Purcell, Monroe, New York
Mayor Jeffrey Oppenheim, Montebello, New York
Mayor Gordon Jenkins, Monticello, New York
Mayor Ernest D. Davis, Mount Vernon, New York
Mayor Noam Bramson, New Rochelle, New York
Mayor Mike Bloomberg, New York, New York
Mayor Peter M. Blandino, Newark, New York
Mayor Judith L. Kennedy, Newburgh, New York
Mayor Paul A. Dyster, Niagara Falls, New York
Mayor Laura Nolan, North Haven, New York
Mayor Marvin Natiss, North Hills, New York
Mayor Joseph Maiurano, Norwich, New York
Mayor Linda L. Witte, Olean, New York
Mayor Richard P. Miller, Jr., Oneonta, New York
Mayor William R. Hanauer, Ossining, New York
Mayor Brian Wona, Otisville, New York
Mayor Paul Pontieri, Patchogue, New York
Mayor Mary Foster, Peekskill, New York
Mayor Anthony Fratto, Phoenix, New York
Mayor Christopher Sanders, Piermont, New York
Mayor Donald M. Kasprzak, Plattsburgh, New York
Mayor Peter Scherer, Pleasantville, New York
Mayor Robert Weitzner, Port Washington, New York
Mayor John Bruno, Ravena, New York
Mayor Daniel J. Dwyer, Rensselaer, New York
Mayor Kevin Neary, Richmondville, New York
Mayor Thomas Richards, Rochester, New York
Mayor John Durkin, Roslyn, New York
Mayor Matthew Bloomfield, Russell Gardens, New York
Mayor Grant Rohrmoser, Sandy Creek, New York
Mayor Clyde Rabideau, Saranac Lake, New York
Mayor Scott Johnson, Saratoga Springs, New York
Mayor Gregge Harrian, Savona, New York
Mayor Gary R. McCarthy, Schenectady, New York
Mayor Paul F. Gee, Scottsville, New York
Mayor Omer Cousineau, Sharon Springs, New York
Mayor John Patterson, Sherman, New York
Mayor Ken Wray, Sleepy Hollow, New York
Mayor Leonard Szymanski, Sloan, New York
Mayor Karen Strickland, South Dayton, New York
Mayor Geoffrey N. Prime, South Floral Park, New York
Mayor Patricia DuBow, South Nyack, New York
Mayor Mark Epley, Southampton, New York
Mayor Letty J. Rudes, Speculator, New York

Mayor Joyce Lobene, Spencerport, New York
Mayor Noramie F. Jasmin, Spring Valley, New York
Mayor Dagan LaCorte, Suffern, New York
Mayor Edward Stewart, III, Sylvan Beach, New York
Mayor Stephanie A. Miner, Syracuse, New York
Mayor Drew Fixell, Tarrytown, New York
Mayor Ronald Pilozzi, Tonawanda, New York
Mayor Louis A. Rosamilia, Troy, New York
Mayor A. Martin Petrovic, Trumansburg, New York
Mayor Beth Greenwood, Tully, New York
Mayor Michael Esmay, Upper Nyack, New York
Mayor Theodore H. Young, Waterloo, New York
Mayor Michael P. Manning, Watervliet, New York
Mayor Brian D. McCoy, Wayland, New York
Mayor David Goldsmith, Wesley Hills, New York
Mayor Scott M. Burto, West Carthage, New York
Mayor John Ramundo, Jr., West Haverstraw, New York
Mayor David Carr, Westfield, New York
Mayor Thomas M. Roach, White Plains, New York
Mayor Mike Spano, Yonkers, New York
Mayor Anthony C. Leone, Jr., Yorkville, New York
Mayor Walter B. Goodenough, Carolina Shores, North Carolina
Mayor Mark Chilton, Carrboro, North Carolina
Mayor Mark Kleinschmidt, Chapel Hill, North Carolina
Mayor Darryl D. Moss, Creedmoor, North Carolina
Mayor Bill Bell, Durham, North Carolina
Mayor Jackie Holcombe, Morrisville, North Carolina
Mayor Jaqueline vdH Sergent, Oxford, North Carolina
Mayor Nancy McFarlane, Raleigh, North Carolina
Mayor Victor Varela, Ronda, North Carolina
Mayor J. Allen Joines, Winston-Salem, North Carolina
Mayor Dennis Walaker, Fargo, North Dakota
Mayor Dan Pillow, Addyston, Ohio
Mayor Donald Plusquellic, Akron, Ohio
Mayor Bernard Baronowski, Andover, Ohio
Mayor Ronald A. Bischof, Barnesville, Ohio
Mayor Deborah L. Sutherland, Bay Village, Ohio
Mayor Merle S. Gorden, Beachwood, Ohio
Mayor Daniel S. Pocek, Bedford, Ohio
Mayor Fletcher Berger, Bedford Heights, Ohio
Mayor Cyril Kleem, Berea, Ohio
Mayor John M. Licastro, Bratenahl, Ohio
Mayor Samuel J. Alai, Broadview Heights, Ohio
Mayor David Seagraves, Brookville, Ohio
Mayor Lowell E. Anderson, Caldwell, Ohio
Mayor William J. Healy, II, Canton, Ohio
Mayor Tammy D. Drobina, Carroll, Ohio
Mayor Diana Stockmaster, Centerburg, Ohio
Mayor Mark Mallory, Cincinnati, Ohio
Mayor Frank Jackson, Cleveland, Ohio
Mayor Edward J. Kelley, Cleveland Heights, Ohio
Mayor Danny Stacy, Cleves, Ohio
Mayor Michael Coleman, Columbus, Ohio
Mayor William Armentrout, Creston, Ohio
Mayor Gary D. Leitzell, Dayton, Ohio
Mayor Gary L. Comer, De Graff, Ohio
Mayor Terry L. Lindeman, Doylestown, Ohio
Mayor Gary Norton, East Cleveland, Ohio
Mayor Ted Andrzejewski, East Lake, Ohio
Mayor James P. Swoger, East Liverpool, Ohio
Mayor Patricia Burnside, Englewood, Ohio
Mayor Bill Cervenick, Euclid, Ohio
Mayor Thomas H. Nagel, Fairborn, Ohio
Mayor Charles H. Johnson, Forest Park, Ohio
Mayor Gary Middlemus, Frazeysburg, Ohio
Mayor Kirk Emmert, Gambier, Ohio
Mayor Dave Nelson, Geneva-on-the-Lake, Ohio
Mayor Mark Williams, Genoa, Ohio
Mayor Alan Zaffiro, Golf Manor, Ohio
Mayor Ray E. DeGraw, Grandview Heights, Ohio
Mayor Gary Lee Young, Greenville, Ohio
Mayor Lance Westcamp, Groveport, Ohio
Mayor Richard L. Verga, Harveysburg, Ohio
Mayor Clifford Mason, Hebron, Ohio
Mayor Lou Bertrand, Hiram, Ohio
Mayor Susan J. Pelkowski, Holloway, Ohio
Mayor William A. Currin, Hudson, Ohio
Mayor Rich Blankenship, Ironton, Ohio
Mayor Jerry Fiala, Kent, Ohio
Mayor Deborah L. Neale, Lakeline, Ohio
Mayor David J. Berger, Lima, Ohio
Mayor Jo Ann Toczek, Linndale, Ohio
Mayor Patricia A. Fallot, Louisville, Ohio
Mayor Joseph M. Cicero, Jr., Lyndhurst, Ohio
Mayor Donald Kuchta, Macedonia, Ohio
Mayor Steve Adams, Malvern, Ohio
Mayor Jeffrey A. Lansky, Maple Heights, Ohio
Mayor Joe A. Matthews, Marietta, Ohio
Mayor Bruce G. Rinker, Mayfield Village, Ohio
Mayor Robert Schwab, McComb, Ohio
Mayor Glenn W. Holmes, McDonald, Ohio
Mayor Richard Cain, Mineral City, Ohio
Mayor James B. Waller, Minerva, Ohio
Mayor Susan C. Renda, Moreland Hills, Ohio
Mayor Mike Porter, Mount Gilead, Ohio
Mayor Charles Neff, Mount Sterling, Ohio
Mayor Jeffrey C. Wherley, Nellie, Ohio
Mayor James A. Friel, Newcomerstown, Ohio
Mayor Daniel R. Brooks, North College Hill, Ohio
Mayor Terrance J. McConnell, North Kingsville, Ohio
Mayor Ed Klco, North Perry, Ohio
Mayor Kathy Mulcahy, Orange Village, Ohio
Mayor Richard M. Bain, Pepper Pike, Ohio
Mayor Billy R. Spencer, Piketon, Ohio
Mayor Timothy Redden, Plymouth, Ohio
Mayor Timothy Sicafuse, Poland, Ohio
Mayor David A. Malone, Portsmouth, Ohio
Mayor Daniel J. Ursu, Richmond Heights, Ohio
Mayor William Nibert, Richwood, Ohio
Mayor William R. Flaute, Riverside, Ohio
Mayor Earl M. Leiken, Shaker Heights, Ohio

Mayor Patrick C. Monahan, Shawnee Hills, Ohio
Mayor John Smith, Silverton, Ohio
Mayor Georgine Welo, South Euclid, Ohio
Mayor Matthew Brett, South Russell, Ohio
Mayor Warren R. Copeland, Springfield, Ohio
Mayor William C. Burkhardt, St. Bernard, Ohio
Mayor Domenick Mucci, Jr., Steubenville, Ohio
Mayor Clayton Weller, Sugarcreek, Ohio
Mayor Michael P. Bell, Toledo, Ohio
Mayor Mary Myers, Verona, Ohio
Mayor Daniel V. Wilczynski, Walbridge, Ohio
Mayor Doug Franklin, Warren, Ohio
Mayor Allen Patchin, West Farmington, Ohio
Mayor Ann Schreiner, West Millgrove, Ohio
Mayor Kim Maggard, Whitehall, Ohio
Mayor William A. Margalis, Wickliffe, Ohio
Mayor Richard J. Bonde, Willowick, Ohio
Mayor Susan Upton Farley, Woodlawn, Ohio
Mayor Charles Sammarone, Youngstown, Ohio
Mayor Jeff Tilton, Zanesville, Ohio
Mayor Kitty Piercy, Eugene, Oregon
Mayor Charlie Hales, Portland, Oregon
Mayor James Hopely, Aldan, Pennsylvania
Mayor Ed Pawlowski, Allentown, Pennsylvania
Mayor Charles T. Wahl, Ambler, Pennsylvania
Mayor Gretchen Dosch, Applewold, Pennsylvania
Mayor Bernard Killian, Aspinwall, Pennsylvania
Mayor Doris E. Howell, Avondale, Pennsylvania
Mayor Alexander Bennett, Jr., Baldwin, Pennsylvania
Mayor Phillip Ferrizzi, Bally, Pennsylvania
Mayor John Arthur Brown, Bangor, Pennsylvania
Mayor Donald L. Wunderler, Bath, Pennsylvania
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Mayor Josh Maxwell, Downingtown, Pennsylvania
Mayor Libby White, Doylestown, Pennsylvania
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Mayor Anthony J. Court, Ellwood City, Pennsylvania
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Mayor Joseph Sinnott, Erie, Pennsylvania
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Mayor Charles Moore, Falls Creek, Pennsylvania
Mayor Olive McKeithan, Farrell, Pennsylvania
Mayor Gary McBrien, Felton, Pennsylvania
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Mayor Jose Rosado, Fountain Hill, Pennsylvania
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Mayor Edward F. Burns, Girardville, Pennsylvania
Mayor Arnie Bowser, Greensboro, Pennsylvania
Mayor Roy Del Rosario, Hamburg, Pennsylvania
Mayor Linda Thompson, Harrisburg, Pennsylvania
Mayor Norm Hawkes, Hatboro, Pennsylvania
Mayor Ronald Cyphert, Hawthorn, Pennsylvania
Mayor John Hoerner, Highspire, Pennsylvania
Mayor Joseph R. Dodson, Hollidaysburg, Pennsylvania
Mayor Betty Esper, Homestead, Pennsylvania
Mayor Tim McGuire, Homewood Borough, Pennsylvania
Mayor Dee Dee Brown, Huntingdon Borough, Pennsylvania
Mayor John J. Zanoff, Hyde Park, Pennsylvania

Mayor George E. Hood, Indiana, Pennsylvania
Mayor Nicholas Yanosich, Industry, Pennsylvania
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Mayor Ed Foley, Jenkintown, Pennsylvania
Mayor Donald Bosh, Knoxville, Pennsylvania
Mayor Sandra Green, Kutztown, Pennsylvania
Mayor Dorothy Shea Yazurlo, Laflin, Pennsylvania
Mayor Joseph Legnasky, Lake City, Pennsylvania
Mayor Rick Gray, Lancaster, Pennsylvania
Mayor Christopher Blaydon, Langhorne, Pennsylvania
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Mayor Randy Schlegel, Lyons, Pennsylvania
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Mayor Eric B. Phillips, Manheim, Pennsylvania
Mayor David Sturgess, Manor, Pennsylvania
Mayor Alexander J. Chelik, Mayfield, Pennsylvania
Mayor Terry S. Bennett, McDonald, Pennsylvania
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Mayor John Christopher Soff, Meadville, Pennsylvania
Mayor Bob McMahon, Media, Pennsylvania
Mayor Ethel I. Kellerman, Milesburg, Pennsylvania
Mayor Thomas S. Kramer, Millbourne, Pennsylvania
Mayor Richard Trostle, Mohnton, Pennsylvania
Mayor John P. Antoline, Monaca, Pennsylvania
Mayor Mary Jo Smith, Monessen, Pennsylvania
Mayor John Dorin, Montoursville, Pennsylvania
Mayor Maureen A. Piselli, Morton, Pennsylvania
Mayor Timothy M. Allison, Mount Union, Pennsylvania
Mayor Raymond Bodnar, Munhall, Pennsylvania
Mayor Stephen Szymusiak, Nanty-Glo, Pennsylvania
Mayor Joseph Taylor, New Milford, Pennsylvania
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Mayor Mary M. Hetrick, Newport, Pennsylvania
Mayor Lee I. Hall, North Charleroi, Pennsylvania
Mayor Thomas Reenock, Northhampton, Pennsylvania
Mayor George F. McCloskey, Norwood, Pennsylvania
Mayor Michele Petrini Avvisato, Old Forge, Pennsylvania
Mayor Austin Scandiber, Orwigsburg, Pennsylvania
Mayor Lewis Paul Cowher, Osceola Mills, Pennsylvania
Mayor Geoffrey L. Henry, Oxford, Pennsylvania
Mayor Fred Carpenter, Palmyra, Pennsylvania
Mayor William McCall, Parker, Pennsylvania
Mayor Ardele R. Gordon, Parkside, Pennsylvania
Mayor Robert Winkler, Penndel, Pennsylvania
Mayor Michael Nutter, Philadelphia, Pennsylvania
Mayor Kimberly D. Brown-Zerbe, Pine Grove, Pennsylvania
Mayor Luke Ravenstahl, Pittsburgh, Pennsylvania
Mayor Bonnie Heath, Pottstown, Pennsylvania
Mayor John D.W. Reiley, Pottsville, Pennsylvania
Mayor Vaughn D. Spencer, Reading, Pennsylvania
Mayor Dr. Guillermo Udarbe, Ridgway, Pennsylvania
Mayor Desiree D. DeNicola, Roseto, Pennsylvania
Mayor Edwin W. Rosenberry, Saxton, Pennsylvania
Mayor Thomas C. Hufnagle, Sellersville, Pennsylvania
Mayor Anthony Hajjar, Seward, Pennsylvania
Mayor Joseph A. McGranaghan, Shamokin Dam, Pennsylvania
Mayor Robert O'Neill, Sharon Hill, Pennsylvania
Mayor Richard Panza, Sharpsburg, Pennsylvania
Mayor Bruce Hockersmith, Shippensburg, Pennsylvania
Mayor Boyd E. Paul, Snow Shoe, Pennsylvania
Mayor William Meyer, Somerset, Pennsylvania
Mayor John Reynolds, Souderton, Pennsylvania
Mayor James C. Kennedy, South Coatesville, Pennsylvania
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Mayor Elizabeth A. Goreham, State College, Pennsylvania
Mayor Thomas F. Acri, Steelton, Pennsylvania
Mayor Sherman Metzgar, Stockertown, Pennsylvania
Mayor William A. Boyd, Stoystown, Pennsylvania
Mayor Harold Randy Davis, Strattenville, Pennsylvania
Mayor Charles Baughman, Stroudsburg, Pennsylvania
Mayor William A. Davis, Sugar Notch, Pennsylvania
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Mayor Richard H. Lowe, Swarthmore, Pennsylvania
Mayor Luke Duignam, Tatamy, Pennsylvania
Mayor Jay R. Stover, Telford, Pennsylvania
Mayor Charles Harper, Three Springs, Pennsylvania
Mayor Kenneth Danser, Timblin, Pennsylvania
Mayor Francis B. Zalewski, Trainer, Pennsylvania
Mayor William Allar, Tremont, Pennsylvania
Mayor J. David Cutchineal, Tullytown, Pennsylvania
Mayor LeAnn Hritz, Tunnelhill, Pennsylvania
Mayor Adam R. Forgie, Turtle Creek, Pennsylvania
Mayor Thomas Micozzie, Upper Darby, Pennsylvania
Mayor Jeffrey Steffler, Wampum, Pennsylvania
Mayor Esther Cotner, Washingtonville, Pennsylvania
Mayor Richard A. Starliper, Waynesboro, Pennsylvania
Mayor Carolyn T. Comitta, West Chester, Pennsylvania
Mayor Gerald W. Gross, West Easton, Pennsylvania
Mayor Ralph Harrington, West Elizabeth, Pennsylvania
Mayor Frank Schmidt, West Hazleton, Pennsylvania
Mayor John W. Dindak, West Homestead, Pennsylvania
Mayor Mary E. Popovich, West Newton, Pennsylvania
Mayor John Henry, West View, Pennsylvania
Mayor Dick Vargeson, Westfield, Pennsylvania
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Mayor Edward D. Hozza, Jr., Whitehall Township, Pennsylvania
Mayor Thomas M. Leighton, Wilkes-Barre, Pennsylvania

Mayor John A. Thompson, Wilkinsburg, Pennsylvania
Mayor David Perruso, Wilson, Pennsylvania
Mayor Larry Markel, Windsor, Pennsylvania
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Mayor John Sanford, Yoe, Pennsylvania
Mayor C. Kim Bracey, York, Pennsylvania
Mayor Alford Shull, York Springs, Pennsylvania
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Mayor Donald Grebien, Pawtucket, Rhode Island
Mayor Angel Taveras, Providence, Rhode Island
Mayor Scott Aredisian, Warwick, Rhode Island
Mayor Joseph Riley, Charleston, South Carolina
Mayor Joseph T. McElveen, Jr., Sumter, South Carolina
Mayor Darrick Jackson, Timmonsville, South Carolina
Mayor Ron Littlefield, Chattanooga, Tennessee
Mayor Jerry Gist, Jackson, Tennessee
Mayor Thomas W. Taylor, Maryville, Tennessee
Mayor A C Wharton, Memphis, Tennessee
Mayor Tom Beehan, Oak Ridge, Tennessee
Mayor Bill Lusk, Signal Mountain, Tennessee
Mayor Lee Leffingwell, Austin, Texas
Mayor Tony Martinez, Brownsville, Texas
Mayor Carl D. Sherman, DeSoto, Texas
Mayor Annise D. Parker, Houston, Texas
Mayor Richard Ward, Hurst, Texas
Mayor Dave Claunch, West Lake Hills, Texas
Mayor Dana Williams, Park City, Utah
Mayor John Hollar, Montpelier, Vermont
Mayor Christopher C. Louras, Rutland City, Vermont
Mayor William B. Euille, Alexandria, Virginia
Mayor Faye Prichard, Ashland, Virginia
Mayor Satyendra Singh Huja, Charlottesville, Virginia
Mayor McKinley Price, Newport News, Virginia
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Mayor H. Clarence Bauman, Chewelah, Washington
Mayor Garland D. Walton, Connell, Washington
Mayor Will Ibershof, Duvall, Washington
Mayor Liz Reynolds, Enumclaw, Washington
Mayor Gary S. Jensen, Ferndale, Washington
Mayor Ava Frisinger, Issaquah, Washington
Mayor Ron Poulson, Kalama, Washington
Mayor David M. Ferguson, Mesa, Washington
Mayor Daniel N. Mork, Millwood, Washington
Mayor James F. Gerwig, Morton, Washington
Mayor Dennis Palmer, Oakesdale, Washington
Mayor Spencer Nichols, Pe Ell, Washington
Mayor Paul Warden, Prosser, Washington
Mayor John Marchione, Redmond, Washington
Mayor Terry Anderson, SeaTac, Washington
Mayor Mike McGinn, Seattle, Washington
Mayor Matthew Larson, Snoqualmie, Washington
Mayor Dianne W. White, Stanwood, Washington
Mayor Marilyn Strickland, Tacoma, Washington
Mayor Soo Ing-Moody, Twisp, Washington
Mayor Richard F. Turner, Mayor, Weehawken
Mayor Harrold H. Howell, Jr., Madison, West Virginia
Mayor William C. Whalen, Ashand, Wisconsin
Mayor Larry MacDonald, Bayfield, Wisconsin
Mayor Keith G. Bosman, Kenosha, Wisconsin
Mayor Paul R. Soglin, Madison, Wisconsin
Mayor Justin M. Nickels, Manitowoc, Wisconsin
Mayor Chris L. Meyer, Marshfield, Wisconsin
Mayor Kurt Sonnentag, Middleton, Wisconsin
Mayor Tom Barrett, Milwaukee, Wisconsin
Mayor Steve Scaffidi, Oak Creek, Wisconsin
Mayor John T. Dickert, Racine, Wisconsin
Mayor James E. Tipple, Wausau, Wisconsin
Mayor Vincent C. Gray, Washington, D.C.

February 11, 2013

Rep. John Boehner
Speaker of the House
U.S. House of Representatives
1011 Longworth House Office Building
Washington, DC 20515

Sen. Harry Reid
Majority Leader
U.S. Senate
522 Hart Senate Office Building
Washington, DC 20510

Rep. Nancy Pelosi
Minority Leader
U.S. House of Representatives
235 Cannon House Office Building
Washington, DC 20515

Sen. Mitch McConnell
Minority Leader
U.S. Senate
361A Russell Senate Office Building
Washington, DC 20510

Re: America's Mayors Urge Congress to Support Making Gun Trafficking a Crime as Part of a Larger Legislative Package to Reduce Gun Violence

Dear Majority Leader Reid, Minority Leader McConnell, Speaker Boehner and Minority Leader Pelosi:

We write on behalf of more than 850 members of the bipartisan coalition of Mayors Against Illegal Guns to urge Congress to help law enforcement fight firearms trafficking by passing legislation that would criminalize gun trafficking. We believe that this policy recommendation, along with legislation requiring background checks for all gun sales, would go a long way toward reducing gun violence. The coalition supports bi-partisan legislation introduced by Senators Gillibrand and Kirk (S.179), Senators Leahy and Durbin (S.54) and Representatives Maloney, Cummings, Meehan and Rigell (H.R.452). Each bill would give law enforcement a badly needed tool to interdict and prosecute the criminals who are flooding our streets with illegal guns.

Today, there is no clear and effective statute making gun trafficking a crime. Prosecutors have instead been forced to rely on weak laws that prohibit engaging in the business of selling guns without a federal license. Legislation passed in 1986 defines "engaged in the business" as repeatedly selling guns for profit, but includes several exceptions for "occasional sales" and selling from a "personal collection."[1]

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has called this definition and its exceptions "needlessly complex" and has said the legal standard "often frustrates the prosecution of people who supply guns to felons and other prohibited

[1] 18 U.S.C. § 922(a)(1)(A); 18 U.S.C. § 921(a)(21)(C)

persons."[2] As a result, according to the Justice Department's Inspector General, U.S. Attorneys decline 25 percent of all ATF cases based on "engaging in a firearms business without a license" while declining only 9 percent of drug conspiracy cases.

Moreover, penalties for the crime are not commensurate with the severity of the offense. Dealing guns without a license carries a prison sentence of only 0 to 5 years, the same as trafficking chicken or livestock. By comparison, sanctions for trafficking stolen goods or drugs are substantially higher; the penalty for trafficking a kilogram of heroin is ten years to life. According to ATF, lenient penalties make it harder to obtain cooperation from defendants when they are arrested, denying law enforcement a critical tool in investigating firearms trafficking.

In addition, Congress needs to strengthen the laws against "straw purchasing" guns. A straw purchaser buys a gun from a licensed dealer and falsely states on the required paperwork that he or she is the actual buyer of the gun, when in fact the purchase is made on behalf of a prohibited purchaser or a gun trafficker who does not want his name on the background check form. Federal law currently regulates straw purchases by prohibiting "lying and buying" on the required paperwork.[3] The penalty for committing a straw purchase is up to 10 years in prison,[4] but, according to ATF officials, the "typical" straw purchase prosecution results only in probation.[5] Forty percent of defendants charged and convicted of "lying and buying" received probation.[6]

Because illegal guns are trafficked across state and international lines, gun trafficking is a federal problem that requires a federal solution. According to the data provided by ATF, 30 percent of traced guns cross state lines after their initial purchase and before they are recovered in crimes. The gun trafficking bills introduced in this Congress, including S.179, S.54 and H.R.452 would provide that federal solution.

S.179 makes it a crime punishable by up to 20 years to transfer or receive guns when the transfer would reasonably result in any serious crime, and H.R.452 makes it a crime punishable by up to 20 years to transfer or purchase a gun for the purpose of giving it to a prohibited person. In both bills, kingpins who supervise at least five other people in a gun-trafficking ring could be punished by up to 25 years in prison. S. 54 would raise the penalties on straw purchasing, making it a crime punishable by up to 20 years for a person to purchase a gun with the intent to transfer it to another person. If the straw purchaser has reason to believe the person will use the gun in a violent crime, the penalty goes up to 30 years.

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[2] Department of Justice, National Integrated Firearms Violence Reduction Strategy (2001) (available at http://www.usdoj.gov/archive/opd/gunviolence.htm); U.S. Departments of Justice and Treasury, Gun Shows: Brady Checks and Crime Gun Traces, at 24 (January 1999).

[3] 18 U.S.C. § 922(a)(6).

[4] 18 U.S.C. § 922(a)(6); 18 U.S.C. § 924(a)(2).

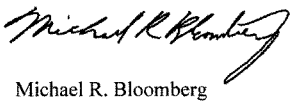
[5] Committee on Oversight and Government Reform, Minority Staff Report, "Outgunned: Law Enforcement Agents Warn Congress They Lack Adequate Tools to Counter Illegal Firearms Trafficking," June 2011, at 8.

[6] U.S. Department of Justice, Office of Inspector General, "Review of ATF's Project Gunrunner," November 2010, *available at* http://*www.justice.gov/oig/reports/ATF/e1101.pdf.*

Congress's failure to address the flood of illegal guns into our communities continues to fuel violence. Together with proposals to require universal background checks, we believe these federal gun trafficking bills will reduce gun violence. Our Mayors urge you to pass this legislation to give our federal law enforcement the tools they need to punish the gunrunners who endanger our communities.

Sincerely,

Thomas M. Menino
Coalition Co-Chair
Mayor of Boston



Michael R. Bloomberg
Coalition Co-Chair
Mayor of New York City

SIGNED BY MEMBERS OF MAYORS AGAINST ILLEGAL GUNS:

Mayor Samuel L. Jones, Mobile, Alabama
Mayor Satish I. Hiremath, Oro Valley, Arizona
Mayor Scott LeMarr, Paradise Valley, Arizona
Mayor Greg Stanton, Phoenix, Arizona
Mayor Jennifer Eckstrom, South Tucson, Arizona
Mayor Bill Rappaport, Star Valley, Arizona
Mayor Mark W. Mitchell, Tempe, Arizona
Mayor Jonathan Rothschild, Tucson, Arizona
Mayor Larry S. Bryant, Forrest City, Arkansas
Mayor Arnell Willis, Helena, Arkansas
Mayor Lawrence Owens, Hughes, Arkansas
Mayor McKinzie Riley, Wrightsville, Arkansas
Mayor Marie L. Gilmore, Alameda, California
Mayor Wade Harper, Antioch, California
Mayor Elizabeth Patterson, Benicia, California
Mayor Tom Bates, Berkeley, California
Mayor Cheryl Cox, Chula Vista, California
Mayor Eugene Montanez, Corona, California
Mayor Diane Furst, Corte Madera, California
Mayor Joseph Krosova, Davis, California
Mayor Jennifer West, Emeryville, California
Mayor Teresa Arballo Barth, Encinitas, California
Mayor John Reed, Fairfax, California
Mayor Bill Harrison, Fremont, California
Mayor Maria Orozco, Gonzales, California
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Mayor Bob Foster, Long Beach, California
Mayor Antonio Villaraigosa, Los Angeles, California
Mayor Lou La Monte, Malibu, California
Mayor Rob Schroder, Martinez, California
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Mayor R. Michael Kasperzak, Jr., Mountain View, California
Mayor Alan L. Nagy, Newark, California
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Mayor Jean Quan, Oakland, California
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Mayor Bill Bogaard, Pasadena, California
Mayor Luis I. Molina, Patterson, California
Mayor David Glass, Petaluma, California
Mayor L. Dennis Michael, Rancho Cucamonga, California
Mayor Pete Aguilar, Redlands, California
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Mayor Kay Coleman, San Anselmo, California
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Mayor Jan Marx, San Luis Obispo, California
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Mayor Don Lane, Santa Cruz, California
Mayor Jill Hunter, Saratoga, California
Mayor Larry Forester, Signal Hill, California
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Mayor Michael B. Hancock, Denver, Colorado
Mayor Randy P. Penn, Englewood, Colorado
Mayor Marjorie Sloan, Golden, Colorado
Mayor Carolyn Cutler, Lafayette, Colorado
Mayor Bob Murphy, Lakewood, Colorado
Mayor Robert Muckle, Louisville, Colorado
Mayor Marc A. Snyder, Manitou Springs, Colorado
Mayor Joe Gierlach, Nederland, Colorado
Mayor Joyce Downing, Northglenn, Colorado
Mayor Don Stephens, Salida, Colorado
Mayor Andrew Muckle, Superior, Colorado
Mayor Stuart Fraser, Telluride, Colorado
Mayor Adam Salina, Berlin, Connecticut
Mayor Bill Finch, Bridgeport, Connecticut
Mayor Mark Boughton, Danbury, Connecticut
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Mayor Diane C. Hanson, Dewey Beach, Delaware
Mayor James L. Ford, III, Lewes, Delaware
Mayor Kenneth Branner, Middletown, Delaware
Mayor Dennis P. Williams, Wilmington, Delaware
Mayor Susan Gottlieb, Aventura, Florida
Mayor Jean Rosenfield, Bal Harbour, Florida
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Mayor Woodrow L. Hay, Boynton Beach, Florida
Mayor Kristin Jacobs, Broward County, Florida
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Mayor Glenn Singer, Golden Beach, Florida
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Mayor Connie Leon Kreps, North Bay Village, Florida
Mayor John Brady, North Lauderdale, Florida
Mayor Andre Pierre, North Miami, Florida
Mayor Myra L. Taylor, Opa-Locka, Florida
Mayor Buddy Dyer, Orlando, Florida
Mayor Dominic Persampiere, Oviedo, Florida
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Mayor Robert A. B. Reichert, Macon, Georgia
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Mayor Jim Still, Jr., Mountain Park, Georgia

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Mayor Jere Wood, Roswell, Georgia
Mayor Patricia Wheeler, Stone Mountain, Georgia
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Mayor Rahm Emanuel, Chicago, Illinois
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Mayor Kris Povlsen, DeKalb, Illinois
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Mayor Gene McMurry, Carrollton, Kentucky
Mayor Greg Fischer, Louisville, Kentucky
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Mayor Mitchell J. Landrieu, New Orleans, Louisiana
Mayor Rodney A. Grogan, Patterson, Louisiana
Mayor Cedric B. Glover, Shreveport, Louisiana
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Mayor Charlotte M. Warren, Hallowell, Maine
Mayor Michael Brennan, Portland, Maine
Mayor Joshua J. Cohen, Annapolis, Maryland
Mayor Stephanie Rawlings-Blake, Baltimore, Maryland
Mayor Victoria Jackson-Stanley, Cambridge, Maryland
Mayor Margo G. Bailey, Chestertown, Maryland
Mayor Michael H. Callahan, Cheverly, Maryland
Mayor Andrew M. Fellows, College Park, Maryland
Mayor Brian K. Grim, Cumberland, Maryland
Mayor Robert C. Willey, Easton, Maryland
Mayor Sidney A. Katz, Gaithersburg, Maryland
Mayor Peter Benjamin, Garrett Park, Maryland
Mayor Dennis J. Scheessele, Indian Head, Maryland
Mayor Craig A. Moe, Laurel, Maryland
Mayor Phyllis Marcuccio, Rockville, Maryland
Mayor James Ireton, Jr., Salisbury, Maryland
Mayor Jeffrey Slavin, Somerset, Maryland
Mayor Bruce R. Williams, Takoma Park, Maryland
Mayor Thatcher W. Kezer, III, Amesbury, Massachusetts
Mayor Kevin J. Dumas, Attleboro, Massachusetts
Mayor William F. Scanlon, Jr., Beverly, Massachusetts
Mayor Thomas Menino, Boston, Massachusetts
Mayor Joseph C. Sullivan, Braintree, Massachusetts
Mayor Linda M. Balzotti, Brockton, Massachusetts
Mayor Henrietta Davis, Cambridge, Massachusetts
Mayor Carlo DeMaria, Jr., Everett, Massachusetts
Mayor Lisa A. Wong, Fitchburg, Massachusetts
Mayor Alex Morse, Holyoke, Massachusetts
Mayor Patrick O. Murphy, Lowell, Massachusetts
Mayor Gary Christenson, Malden, Massachusetts
Mayor Michael J. McGlynn, Medford, Massachusetts
Mayor Robert J. J. Dolan, Melrose, Massachusetts
Mayor Jonathan F. Mitchell, New Bedford, Massachusetts
Mayor Donna D. Holaday, Newburyport, Massachusetts
Mayor Setti D. Warren, Newton, Massachusetts
Mayor David J. Narkewicz, Northampton, Massachusetts
Mayor Edward A. Bettencourt, Jr., Peabody, Massachusetts
Mayor Thomas Koch, Quincy, Massachusetts

Mayor Daniel Rizzo, Revere, Massachusetts
Mayor Kimberley Driscoll, Salem, Massachusetts
Mayor Joseph A. Curtatone, Somerville, Massachusetts
Mayor Domenic Sarno, Springfield, Massachusetts
Mayor Thomas Hoye, Taunton, Massachusetts
Mayor Susan M. Kay, Weymouth, Massachusetts
Mayor Scott Galvin, Woburn, Massachusetts
Mayor John Hieftje, Ann Arbor, Michigan
Mayor Phil O'Dwyer, Berkley, Michigan
Mayor John B. O'Reilly, Jr., Dearborn, Michigan
Mayor Dave Bing, Detroit, Michigan
Mayor Diane Goddeeris, East Lansing, Michigan
Mayor Dayne Walling, Flint, Michigan
Mayor George Heartwell, Grand Rapids, Michigan
Mayor Karen Majewski, Hamtramck, Michigan
Mayor Bobby J. Hopewell, Kalamazoo, Michigan
Mayor Virg Bernero, Lansing, Michigan
Mayor Brenda L. Lawrence, Southfield, Michigan
Mayor Paul T. Schreiber, Ypsilanti, Michigan
Mayor Don Ness, Duluth, Minnesota
Mayor Peter Lindstrom, Falcon Heights, Minnesota
Mayor R.T. Rybak, Minneapolis, Minnesota
Mayor Chris Coleman, St. Paul, Minnesota
Mayor Wardell Walton, Belzoni, Mississippi
Mayor Johnny DuPree, Hattiesburg, Mississippi
Mayor Harvey Johnson, Jackson, Mississippi
Mayor McArthur Straughter, Yazoo City, Mississippi
Mayor Linda Goldstein, Clayton, Missouri
Mayor Sylvester "Sly" James, Kansas City, Missouri
Mayor Randall L. Rhoads, Lee's Summit, Missouri
Mayor Francis Slay, St. Louis, Missouri
Mayor Shelley Welsch, University City, Missouri
Mayor Jim Suttle, Omaha, Nebraska
Mayor Donald A. Groesser, Ralston, Nebraska
Mayor Dean Trefethen, Dover, New Hampshire
Mayor Fred Tagliarini, Aberdeen, New Jersey
Mayor Ed Johnson, Asbury Park, New Jersey
Mayor Lorenzo T. Langford, Atlantic City, New Jersey
Mayor Mark Smith, Bayonne, New Jersey
Mayor Timothy J. Driscoll, Bergenfield, New Jersey
Mayor Patrick H. McHale, Bogota, New Jersey
Mayor Albert B. Kelly, Bridgeton, New Jersey
Mayor Dana L. Redd, Camden, New Jersey
Mayor Chuck Cahn, Cherry Hill, New Jersey
Mayor Janice Kovach, Clinton, New Jersey
Mayor Sophie Heymann, Closter, New Jersey
Mayor M. James Maley, Jr., Collingswood, New Jersey
Mayor Thomas Hannen, Jr., Cranford, New Jersey
Mayor Joseph R. Smith, East Newark, New Jersey
Mayor Robert L. Bowser, East Orange, New Jersey
Mayor Antonia Ricigliano, Edison, New Jersey
Mayor J. Christian Bollwage, Elizabeth, New Jersey
Mayor Carlos Colina, Emerson, New Jersey
Mayor Colleen Mahr, Fanwood, New Jersey
Mayor Warren Cooper, Frenchtown, New Jersey
Mayor Joseph Delaney, Garfield, New Jersey
Mayor Gerald R. Drasheff, Guttenberg, New Jersey
Mayor Maria DiGiovanni, Hackettstown, New Jersey
Mayor Domenick Stampone, Haledon, New Jersey
Mayor Raymond J. McDonough, Harrison, New Jersey
Mayor Richard S. Goldberg, Hawthorne, New Jersey
Mayor Gary Minkoff, Highland Park, New Jersey
Mayor Dawn Zimmer, Hoboken, New Jersey
Mayor Paul Anzano, Hopewell, New Jersey
Mayor Wayne Smith, Irvington, New Jersey
Mayor Jerramiah Healy, Jersey City, New Jersey
Mayor Michael B. Ryan, Lake Como, New Jersey
Mayor David M. DelVecchio, Lambertville, New Jersey
Mayor Richard J. Gerbounka, Linden, New Jersey
Mayor Mauro D. Raguseo, Little Ferry, New Jersey
Mayor Frank W. Minor, Logan Township, New Jersey
Mayor Nicholas Russo, Longport, New Jersey
Mayor Michael E. Beck, Lower Township, New Jersey
Mayor William Laforet, Mahwah, New Jersey
Mayor Michael Fressola, Manchester Township, New Jersey
Mayor Victor DeLuca, Maplewood, New Jersey
Mayor Frank M. North, Merchantville, New Jersey
Mayor Patrick O'Hagan, Midland Park, New Jersey
Mayor James A. Gallos, Milford, New Jersey
Mayor Sandra Haimoff, Millburn, New Jersey
Mayor Robert D. Jackson, Montclair, New Jersey
Mayor Dennis Vaccaro, Moonachie, New Jersey
Mayor Timothy Dougherty, Morristown, New Jersey
Mayor J. Brooke Hern, New Providence, New Jersey
Mayor Cory Booker, Newark, New Jersey
Mayor Peter C. Massa, North Arlington, New Jersey
Mayor Francis M. Womack, III, North Brunswick, New Jersey
Mayor Randy George, North Haledon, New Jersey
Mayor Owen Henry, Old Bridge, New Jersey
Mayor James R. Barberio, Parsippany-Troy Hills, New Jersey
Mayor Alex D. Blanco, Passaic, New Jersey
Mayor Jeffrey Jones, Paterson, New Jersey
Mayor Wilda Diaz, Perth Amboy, New Jersey
Mayor Harry L. Wyant, Phillipsburg, New Jersey

Mayor Sharon M. Robinson-Briggs, Plainfield, New Jersey
Mayor Jesse L. Tweedle, Sr., Pleasantville, New Jersey
Mayor Liz Lempert, Princeton, New Jersey
Mayor Pasquale Menna, Red Bank, New Jersey
Mayor Paul Aronsohn, Ridgewood, New Jersey
Mayor Sandy Moscaritolo, River Edge, New Jersey
Mayor Jamel C. Holley, Roselle, New Jersey
Mayor Joe Accardi, Roselle Park, New Jersey
Mayor Kevin Glover, Scotch Plains, New Jersey
Mayor Michael J. Gonnelli, Secaucus, New Jersey
Mayor Alex Torpey, South Orange, New Jersey
Mayor Nicholas Poliseno, Spotswood, New Jersey
Mayor Peter S. Rustin, Tenafly, New Jersey
Mayor Clifton People, Jr., Union, New Jersey
Mayor Brian P. Stack, Union City, New Jersey
Mayor Robert Romano, Vineland, New Jersey
Mayor Robert D. Parisi, West Orange, New Jersey
Mayor Shing-Fu Hsueh, West Windsor, New Jersey
Mayor John Birkner, Jr., Westwood, New Jersey
Mayor Julia C. Andrews, Whitehouse Station, New Jersey
Mayor John E. McCormac, Woodbridge, New Jersey
Mayor Jeffrey R. Goldsmith, Woodcliff Lake, New Jersey
Mayor Keith Kazmark, Woodland Park, New Jersey
Mayor Joe Murrieta, Grants, New Mexico
Mayor Kenneth D. Miyagishima, Las Cruces, New Mexico
Mayor Ray Alborn, Ruidoso, New Mexico
Mayor David Coss, Santa Fe, New Mexico
Mayor Albert Campos, Jr., Santa Rosa, New Mexico
Mayor Gloria J. Chavez, Tijeras, New Mexico
Mayor Gerald Jennings, Albany, New York
Mayor James Gaughan, Altamont, New York
Mayor Ann Thane, Amsterdam, New York
Mayor Peter R. Porcino, Ardsley, New York
Mayor Andrea Smallwood, Athens, New York
Mayor Randy Casale, Beacon, New York
Mayor Matthew T. Ryan, Binghamton, New York
Mayor James J. Schoenig, Brewster, New York
Mayor Eugene Christopher, Broadalbin, New York
Mayor Byron Brown, Buffalo, New York
Mayor G. Wayne McIlroy, Carthage, New York
Mayor Joseph Keegan, Castleton, New York
Mayor Jerome Kobre, Chestnut Ridge, New York
Mayor John A. Lane, Clinton, New York
Mayor John McDonald, Cohoes, New York
Mayor Jeff Katz, Cooperstown, New York
Mayor Mark Evans, Coxsackie, New York
Mayor Robert J. Foster, Deferiet, New York
Mayor Sally E. Burns, Delanson, New York
Mayor Steven P. Hoffman, Depew, New York
Mayor Randy Sterling, Dryden, New York
Mayor Allan A. Kasprzak, East Aurora, New York
Mayor Paul Rickenbach, East Hampton, New York
Mayor Mitchell Levinn, East Nassau, New York
Mayor Henry Doerr, Elbridge, New York
Mayor Jeffrey Kaplan, Ellenville, New York
Mayor James Matthews, Ellisburg, New York
Mayor Stephen G. Sommers, Fabius, New York
Mayor Mark Olson, Fayetteville, New York
Mayor James J. Miccio, Fishkill, New York
Mayor Andrew Hardwick, Freeport, New York
Mayor John Diamond, Glens Falls, New York
Mayor Dayton J. King, Gloversville, New York
Mayor Jean A. Celender, Great Neck Plaza, New York
Mayor Ralph J. Kreitzman, Great Neck Village, New York
Mayor Barbara Moore, Greenwood Lake, New York
Mayor Martin Natoli, Hagaman, New York
Mayor Emery Cummings, Jr., Hammondsport, New York
Mayor Ronald Belmont, Harrison, New York
Mayor Peter Swiderski, Hastings-on-Hudson, New York
Mayor Michael Kohut, Haverstraw, New York
Mayor Natale J. Tartamella, Head of the Harbor, New York
Mayor Wayne J. Hall, Sr., Hempstead, New York
Mayor Richard Beirman, Sr., Herrings, New York
Mayor Bernard Jackson, Hillburn, New York
Mayor Joseph M. Lee, Hilton, New York
Mayor Richard B. Milne, Honeoye Falls, New York
Mayor Shawn Hogan, Hornell, New York
Mayor Brian C. Smith, Irvington, New York
Mayor Svante L. Myrick, Ithaca, New York
Mayor Samuel Teresi, Jamestown, New York
Mayor Susan Lopatkin, Kensington, New York
Mayor Shayne R. Gallo, Kingston, New York
Mayor Robert Blais, Lake George, New York
Mayor Ronald S. Cooper, Lake Success, New York
Mayor Anne H. McAndrews, Larchmont, New York
Mayor Martin Oliner, Lawrence, New York
Mayor Carl Luft, Lima, New York
Mayor Norman L. Marsh, Little Valley, New York
Mayor Corrine Kleisle, Lyons, New York
Mayor Barbara Clark, Madison, New York
Mayor Patricia McDonald, Malverne, New York
Mayor Mark-Paul Serafin, Manlius Village, New York
Mayor James F. Hidy, Massena, New York
Mayor Dennis Leahy, Maybrook, New York

Mayor Anthony Sylvester, Mechanicville, New York
Mayor Terry Grimshaw, Mexico, New York
Mayor Richard J. Donovan, Minoa, New York
Mayor James C. Purcell, Monroe, New York
Mayor Jeffrey Oppenheim, Montebello, New York
Mayor Gordon Jenkins, Monticello, New York
Mayor Ernest D. Davis, Mount Vernon, New York
Mayor Noam Bramson, New Rochelle, New York
Mayor Mike Bloomberg, New York, New York
Mayor Peter M. Blandino, Newark, New York
Mayor Judith L. Kennedy, Newburgh, New York
Mayor Paul A. Dyster, Niagara Falls, New York
Mayor Laura Nolan, North Haven, New York
Mayor Marvin Natiss, North Hills, New York
Mayor Joseph Maiurano, Norwich, New York
Mayor Linda L. Witte, Olean, New York
Mayor Richard P. Miller, Jr., Oneonta, New York
Mayor William R. Hanauer, Ossining, New York
Mayor Brian Wona, Otisville, New York
Mayor Paul Pontieri, Patchogue, New York
Mayor Mary Foster, Peekskill, New York
Mayor Anthony Fratto, Phoenix, New York
Mayor Christopher Sanders, Piermont, New York
Mayor Donald M. Kasprzak, Plattsburgh, New York
Mayor Peter Scherer, Pleasantville, New York
Mayor Robert Weitzner, Port Washington, New York
Mayor John Bruno, Ravena, New York
Mayor Daniel J. Dwyer, Rensselaer, New York
Mayor Kevin Neary, Richmondville, New York
Mayor Thomas Richards, Rochester, New York
Mayor John Durkin, Roslyn, New York
Mayor Matthew Bloomfield, Russell Gardens, New York
Mayor Grant Rohrmoser, Sandy Creek, New York
Mayor Clyde Rabideau, Saranac Lake, New York
Mayor Scott Johnson, Saratoga Springs, New York
Mayor Gregge Harrian, Savona, New York
Mayor Gary R. McCarthy, Schenectady, New York
Mayor Paul F. Gee, Scottsville, New York
Mayor Omer Cousineau, Sharon Springs, New York
Mayor John Patterson, Sherman, New York
Mayor Ken Wray, Sleepy Hollow, New York
Mayor Leonard Szymanski, Sloan, New York
Mayor Karen Strickland, South Dayton, New York
Mayor Geoffrey N. Prime, South Floral Park, New York
Mayor Patricia DuBow, South Nyack, New York
Mayor Mark Epley, Southampton, New York
Mayor Letty J. Rudes, Speculator, New York
Mayor Joyce Lobene, Spencerport, New York
Mayor Noramie F. Jasmin, Spring Valley, New York
Mayor Dagan LaCorte, Suffern, New York
Mayor Edward Stewart, III, Sylvan Beach, New York
Mayor Stephanie A. Miner, Syracuse, New York
Mayor Drew Fixell, Tarrytown, New York
Mayor Ronald Pilozzi, Tonawanda, New York
Mayor Louis A. Rosamilia, Troy, New York
Mayor A. Martin Petrovic, Trumansburg, New York
Mayor Beth Greenwood, Tully, New York
Mayor Michael Esmay, Upper Nyack, New York
Mayor Theodore H. Young, Waterloo, New York
Mayor Michael P. Manning, Watervliet, New York
Mayor Brian D. McCoy, Wayland, New York
Mayor David Goldsmith, Wesley Hills, New York
Mayor Scott M. Burto, West Carthage, New York
Mayor John Ramundo, Jr., West Haverstraw, New York
Mayor David Carr, Westfield, New York
Mayor Thomas M. Roach, White Plains, New York
Mayor Mike Spano, Yonkers, New York
Mayor Anthony C. Leone, Jr., Yorkville, New York
Mayor Walter B. Goodenough, Carolina Shores, North Carolina
Mayor Mark Chilton, Carrboro, North Carolina
Mayor Mark Kleinschmidt, Chapel Hill, North Carolina
Mayor Darryl D. Moss, Creedmoor, North Carolina
Mayor Bill Bell, Durham, North Carolina
Mayor Jackie Holcombe, Morrisville, North Carolina
Mayor Jaqueline vdH Sergent, Oxford, North Carolina
Mayor Nancy McFarlane, Raleigh, North Carolina
Mayor Victor Varela, Ronda, North Carolina
Mayor J. Allen Joines, Winston-Salem, North Carolina
Mayor Dennis Walaker, Fargo, North Dakota
Mayor Dan Pillow, Addyston, Ohio
Mayor Donald Plusquellic, Akron, Ohio
Mayor Bernard Baronowski, Andover, Ohio
Mayor Ronald A. Bischof, Barnesville, Ohio
Mayor Deborah L. Sutherland, Bay Village, Ohio
Mayor Merle S. Gorden, Beachwood, Ohio
Mayor Daniel S. Pocek, Bedford, Ohio
Mayor Fletcher Berger, Bedford Heights, Ohio
Mayor Cyril Kleem, Berea, Ohio
Mayor John M. Licastro, Bratenahl, Ohio
Mayor Samuel J. Alai, Broadview Heights, Ohio
Mayor David Seagraves, Brookville, Ohio
Mayor Lowell E. Anderson, Caldwell, Ohio
Mayor William J. Healy, II, Canton, Ohio
Mayor Tammy D. Drobina, Carroll, Ohio
Mayor Diana Stockmaster, Centerburg, Ohio
Mayor Mark Mallory, Cincinnati, Ohio
Mayor Frank Jackson, Cleveland, Ohio

Mayor Edward J. Kelley, Cleveland Heights, Ohio
Mayor Danny Stacy, Cleves, Ohio
Mayor Michael Coleman, Columbus, Ohio
Mayor William Armentrout, Creston, Ohio
Mayor Gary D. Leitzell, Dayton, Ohio
Mayor Gary L. Comer, De Graff, Ohio
Mayor Terry L. Lindeman, Doylestown, Ohio
Mayor Gary Norton, East Cleveland, Ohio
Mayor Ted Andrzejewski, East Lake, Ohio
Mayor James P. Swoger, East Liverpool, Ohio
Mayor Patricia Burnside, Englewood, Ohio
Mayor Bill Cervenick, Euclid, Ohio
Mayor Thomas H. Nagel, Fairborn, Ohio
Mayor Charles H. Johnson, Forest Park, Ohio
Mayor Gary Middlemus, Frazeysburg, Ohio
Mayor Kirk Emmert, Gambier, Ohio
Mayor Dave Nelson, Geneva-on-the-Lake, Ohio
Mayor Mark Williams, Genoa, Ohio
Mayor Alan Zaffiro, Golf Manor, Ohio
Mayor Ray E. DeGraw, Grandview Heights, Ohio
Mayor Gary Lee Young, Greenville, Ohio
Mayor Lance Westcamp, Groveport, Ohio
Mayor Richard L. Verga, Harveysburg, Ohio
Mayor Clifford Mason, Hebron, Ohio
Mayor Lou Bertrand, Hiram, Ohio
Mayor Susan J. Pelkowski, Holloway, Ohio
Mayor William A. Currin, Hudson, Ohio
Mayor Rich Blankenship, Ironton, Ohio
Mayor Jerry Fiala, Kent, Ohio
Mayor Deborah L. Neale, Lakeline, Ohio
Mayor David J. Berger, Lima, Ohio
Mayor Jo Ann Toczek, Linndale, Ohio
Mayor Patricia A. Fallot, Louisville, Ohio
Mayor Joseph M. Cicero, Jr., Lyndhurst, Ohio
Mayor Donald Kuchta, Macedonia, Ohio
Mayor Steve Adams, Malvern, Ohio
Mayor Jeffrey A. Lansky, Maple Heights, Ohio
Mayor Joe A. Matthews, Marietta, Ohio
Mayor Bruce G. Rinker, Mayfield Village, Ohio
Mayor Robert Schwab, McComb, Ohio
Mayor Glenn W. Holmes, McDonald, Ohio
Mayor Richard Cain, Mineral City, Ohio
Mayor James B. Waller, Minerva, Ohio
Mayor Susan C. Renda, Moreland Hills, Ohio
Mayor Mike Porter, Mount Gilead, Ohio
Mayor Charles Neff, Mount Sterling, Ohio
Mayor Jeffrey C. Wherley, Nellie, Ohio
Mayor James A. Friel, Newcomerstown, Ohio
Mayor Daniel R. Brooks, North College Hill, Ohio
Mayor Terrance J. McConnell, North Kingsville, Ohio
Mayor Ed Klco, North Perry, Ohio
Mayor Kathy Mulcahy, Orange Village, Ohio
Mayor Richard M. Bain, Pepper Pike, Ohio
Mayor Billy R. Spencer, Piketon, Ohio
Mayor Timothy Redden, Plymouth, Ohio
Mayor Timothy Sicafuse, Poland, Ohio
Mayor David A. Malone, Portsmouth, Ohio
Mayor Daniel J. Ursu, Richmond Heights, Ohio
Mayor William Nibert, Richwood, Ohio
Mayor William R. Flaute, Riverside, Ohio
Mayor Earl M. Leiken, Shaker Heights, Ohio
Mayor Patrick C. Monahan, Shawnee Hills, Ohio
Mayor John Smith, Silverton, Ohio
Mayor Georgine Welo, South Euclid, Ohio
Mayor Matthew Brett, South Russell, Ohio
Mayor Warren R. Copeland, Springfield, Ohio
Mayor William C. Burkhardt, St. Bernard, Ohio
Mayor Domenick Mucci, Jr., Steubenville, Ohio
Mayor Clayton Weller, Sugarcreek, Ohio
Mayor Michael P. Bell, Toledo, Ohio
Mayor Mary Myers, Verona, Ohio
Mayor Daniel V. Wilczynski, Walbridge, Ohio
Mayor Doug Franklin, Warren, Ohio
Mayor Allen Patchin, West Farmington, Ohio
Mayor Ann Schreiner, West Millgrove, Ohio
Mayor Kim Maggard, Whitehall, Ohio
Mayor William A. Margalis, Wickliffe, Ohio
Mayor Richard J. Bonde, Willowick, Ohio
Mayor Susan Upton Farley, Woodlawn, Ohio
Mayor Charles Sammarone, Youngstown, Ohio
Mayor Jeff Tilton, Zanesville, Ohio
Mayor Kitty Piercy, Eugene, Oregon
Mayor Charlie Hales, Portland, Oregon
Mayor James Hopely, Aldan, Pennsylvania
Mayor Ed Pawlowski, Allentown, Pennsylvania
Mayor Charles T. Wahl, Ambler, Pennsylvania
Mayor Gretchen Dosch, Applewold, Pennsylvania
Mayor Bernard Killian, Aspinwall, Pennsylvania
Mayor Doris E. Howell, Avondale, Pennsylvania
Mayor Alexander Bennett, Jr., Baldwin, Pennsylvania
Mayor Phillip Ferrizzi, Bally, Pennsylvania
Mayor John Arthur Brown, Bangor, Pennsylvania
Mayor Donald L. Wunderler, Bath, Pennsylvania
Mayor Cloyd W. Wagner, Beavertown, Pennsylvania
Mayor Stanley Goldman, Bellefonte, Pennsylvania
Mayor Robin J. Gochenauer, Bendersville, Pennsylvania
Mayor Gail Stoudt, Bernville, Pennsylvania
Mayor John B. Callahan, Bethlehem, Pennsylvania

Mayor Robert M. Myers, Birdsboro, Pennsylvania
Mayor Everett W. Saxton, Bolivar, Pennsylvania
Mayor Vincent H. Liebel, Boswell, Pennsylvania
Mayor Marianne Deery, Boyertown, Pennsylvania
Mayor Kenneth Lockhart, Brentwood, Pennsylvania
Mayor Verncel L. Creveling, Briar Creek, Pennsylvania
Mayor David Wonderling, Brookville, Pennsylvania
Mayor Lester J. Ward, Brownsville, Pennsylvania
Mayor Anna Marie Quader, Burgettstown, Pennsylvania
Mayor Loyce Harpster, Burnham, Pennsylvania
Mayor Margaret Stock, Butler, Pennsylvania
Mayor David H. Rhome, Canonsburg, Pennsylvania
Mayor Justin M. Taylor, Carbondale, Pennsylvania
Mayor Donald Baumgarten, Castle Shannon, Pennsylvania
Mayor Barbara A. Schlegel, Catasauqua, Pennsylvania
Mayor James S. Perry, Chalfant, Pennsylvania
Mayor Marilyn J. Becker, Chalfont, Pennsylvania
Mayor Peter Lagiovane, Chambersburg, Pennsylvania
Mayor Ronald W. Lockwood, Cherry Valley, Pennsylvania
Mayor John A. Linder, Chester, Pennsylvania
Mayor Paul H. McKenna, Churchill, Pennsylvania
Mayor Richard L. Lattanzi, Clairton, Pennsylvania
Mayor Andrea J. Estadt, Clarion, Pennsylvania
Mayor Harry Kelly, Clarks Summit, Pennsylvania
Mayor James P. Schell, Clearfield, Pennsylvania
Mayor John Hartman, Cleona, Pennsylvania
Mayor Frank C. Kelly, Collingdale, Pennsylvania
Mayor Daniel Rutland, Colwyn, Pennsylvania
Mayor Allen Gyorko, Confluence, Pennsylvania
Mayor Joseph Carrelli, Conyngham, Pennsylvania
Mayor Anthony G. Celeste, Coraopolis, Pennsylvania
Mayor Mark J. Thomas, Cornwall, Pennsylvania
Mayor Gail E. Knauf, Cressona, Pennsylvania
Mayor Timothy J. Carroll, Dallas, Pennsylvania
Mayor Helen R. Thomas, Darby, Pennsylvania
Mayor John Lignelli, Donora, Pennsylvania
Mayor Thomas R. Lloyd, Dormont, Pennsylvania
Mayor Richard A. Pope, Dover, Pennsylvania
Mayor Josh Maxwell, Downingtown, Pennsylvania
Mayor Libby White, Doylestown, Pennsylvania
Mayor Philip Krivacek, Duquesne, Pennsylvania
Mayor Betty M. Hays, Eagles Mere, Pennsylvania
Mayor Louis J. Payne, East Pittsburgh, Pennsylvania
Mayor Mark A. Pacilla, East Washington, Pennsylvania
Mayor Salvatore J. Panto, Jr., Easton, Pennsylvania
Mayor J. Edward Cook, Edgewood, Pennsylvania
Mayor Wayne T. Murphy, Edgeworth, Pennsylvania
Mayor Ray Plummer, Ehrenfeld, Pennsylvania
Mayor Joseph J. Cisco, Ellport, Pennsylvania
Mayor Anthony J. Court, Ellwood City, Pennsylvania
Mayor Winfield Iobst, Emmaus, Pennsylvania
Mayor Dorothy H. Quinn, Emsworth, Pennsylvania
Mayor Joseph Sinnott, Erie, Pennsylvania
Mayor Gary Foster, Evans City, Pennsylvania
Mayor D. Gary Evans, Factoryville, Pennsylvania
Mayor Charles Moore, Falls Creek, Pennsylvania
Mayor Olive McKeithan, Farrell, Pennsylvania
Mayor Gary McBrien, Felton, Pennsylvania
Mayor Robert P. Frey, Folcroft, Pennsylvania
Mayor Jose Rosado, Fountain Hill, Pennsylvania
Mayor Kim Phillips, Frackville, Pennsylvania
Mayor Fred C. Moyer, Jr., Freeburg, Pennsylvania
Mayor Gerald C. Yob, Freemansburg, Pennsylvania
Mayor James E. Swartz, Jr., Freeport, Pennsylvania
Mayor Edward F. Burns, Girardville, Pennsylvania
Mayor Arnie Bowser, Greensboro, Pennsylvania
Mayor Roy Del Rosario, Hamburg, Pennsylvania
Mayor Linda Thompson, Harrisburg, Pennsylvania
Mayor Norm Hawkes, Hatboro, Pennsylvania
Mayor Ronald Cyphert, Hawthorn, Pennsylvania
Mayor John Hoerner, Highspire, Pennsylvania
Mayor Joseph R. Dodson, Hollidaysburg, Pennsylvania
Mayor Betty Esper, Homestead, Pennsylvania
Mayor Tim McGuire, Homewood Borough, Pennsylvania
Mayor Dee Dee Brown, Huntingdon Borough, Pennsylvania
Mayor John J. Zanoff, Hyde Park, Pennsylvania
Mayor George E. Hood, Indiana, Pennsylvania
Mayor Nicholas Yanosich, Industry, Pennsylvania
Mayor Gerald C. Croushore, Ingram, Pennsylvania
Mayor James C. Sanders, Jefferson, Pennsylvania
Mayor Ed Foley, Jenkintown, Pennsylvania
Mayor Donald Bosh, Knoxville, Pennsylvania
Mayor Sandra Green, Kutztown, Pennsylvania
Mayor Dorothy Shea Yazurlo, Laflin, Pennsylvania
Mayor Joseph Legnasky, Lake City, Pennsylvania
Mayor Rick Gray, Lancaster, Pennsylvania
Mayor Christopher Blaydon, Langhorne, Pennsylvania
Mayor Jayne C. Young, Lansdowne, Pennsylvania
Mayor Fred Feltenberger, Laureldale, Pennsylvania
Mayor Peter Poninsky, Leetsdale, Pennsylvania
Mayor Donald L. Rehrig, Lehighton, Pennsylvania
Mayor Deborah A. Bargo, Lewistown, Pennsylvania
Mayor Nick Vay, Lincoln, Pennsylvania
Mayor John L. Mark, Liverpool, Pennsylvania
Mayor William D. Hart, Lykens, Pennsylvania

Mayor Randy Schlegel, Lyons, Pennsylvania
Mayor Thomas A. Bell, Mahaffey, Pennsylvania
Mayor Gerard J. McGlone, Jr., Malvern, Pennsylvania
Mayor Eric B. Phillips, Manheim, Pennsylvania
Mayor David Sturgess, Manor, Pennsylvania
Mayor Jeremy A. Berardinelli, Marianna, Pennsylvania
Mayor Alexander J. Chelik, Mayfield, Pennsylvania
Mayor Terry S. Bennett, McDonald, Pennsylvania
Mayor Weslee A. Clapper-Krepps, McKean, Pennsylvania
Mayor John Christopher Soff, Meadville, Pennsylvania
Mayor Bob McMahon, Media, Pennsylvania
Mayor Ethel I. Kellerman, Milesburg, Pennsylvania
Mayor Thomas S. Kramer, Millbourne, Pennsylvania
Mayor Richard Trostle, Mohnton, Pennsylvania
Mayor John P. Antoline, Monaca, Pennsylvania
Mayor Mary Jo Smith, Monessen, Pennsylvania
Mayor John Dorin, Montoursville, Pennsylvania
Mayor Maureen A. Piselli, Morton, Pennsylvania
Mayor Timothy M. Allison, Mount Union, Pennsylvania
Mayor Raymond Bodnar, Munhall, Pennsylvania
Mayor Stephen Szymusiak, Nanty-Glo, Pennsylvania
Mayor Joseph Taylor, New Milford, Pennsylvania
Mayor Frances Tkach, New Philadelphia, Pennsylvania
Mayor Nicholas W. DeSantis, New Stanton, Pennsylvania
Mayor Mary M. Hetrick, Newport, Pennsylvania
Mayor Lee I. Hall, North Charleroi, Pennsylvania
Mayor Thomas Reenock, Northhampton, Pennsylvania
Mayor George F. McCloskey, Norwood, Pennsylvania
Mayor Michele Petrini Avvisato, Old Forge, Pennsylvania
Mayor Austin Scandiber, Orwigsburg, Pennsylvania
Mayor Lewis Paul Cowher, Osceola Mills, Pennsylvania
Mayor Geoffrey L. Henry, Oxford, Pennsylvania
Mayor Fred Carpenter, Palmyra, Pennsylvania
Mayor William McCall, Parker, Pennsylvania
Mayor Ardele R. Gordon, Parkside, Pennsylvania
Mayor Robert Winkler, Penndel, Pennsylvania
Mayor Michael Nutter, Philadelphia, Pennsylvania
Mayor Kimberly D. Brown-Zerbe, Pine Grove, Pennsylvania
Mayor Luke Ravenstahl, Pittsburgh, Pennsylvania
Mayor Bonnie Heath, Pottstown, Pennsylvania
Mayor John D.W. Reiley, Pottsville, Pennsylvania
Mayor Vaughn D. Spencer, Reading, Pennsylvania
Mayor Dr. Guillermo Udarbe, Ridgway, Pennsylvania
Mayor Desiree D. DeNicola, Roseto, Pennsylvania
Mayor Edwin W. Rosenberry, Saxton, Pennsylvania
Mayor Thomas C. Hufnagle, Sellersville, Pennsylvania
Mayor Anthony Hajjar, Seward, Pennsylvania
Mayor Joseph A. McGranaghan, Shamokin Dam, Pennsylvania
Mayor Robert O'Neill, Sharon Hill, Pennsylvania
Mayor Richard Panza, Sharpsburg, Pennsylvania
Mayor Bruce Hockersmith, Shippensburg, Pennsylvania
Mayor Boyd E. Paul, Snow Shoe, Pennsylvania
Mayor William Meyer, Somerset, Pennsylvania
Mayor John Reynolds, Souderton, Pennsylvania
Mayor James C. Kennedy, South Coatesville, Pennsylvania
Mayor Clyde R. Wadsworth, South Fork, Pennsylvania
Mayor Elizabeth A. Goreham, State College, Pennsylvania
Mayor Thomas F. Acri, Steelton, Pennsylvania
Mayor Sherman Metzgar, Stockertown, Pennsylvania
Mayor William A. Boyd, Stoystown, Pennsylvania
Mayor Harold Randy Davis, Strattenville, Pennsylvania
Mayor Charles Baughman, Stroudsburg, Pennsylvania
Mayor William A. Davis, Sugar Notch, Pennsylvania
Mayor Paul R. McArdle, Summit Hill, Pennsylvania
Mayor David L. Persing, Sunbury, Pennsylvania
Mayor Richard H. Lowe, Swarthmore, Pennsylvania
Mayor Luke Duignam, Tatamy, Pennsylvania
Mayor Jay R. Stover, Telford, Pennsylvania
Mayor Charles Harper, Three Springs, Pennsylvania
Mayor Kenneth Danser, Timblin, Pennsylvania
Mayor Francis B. Zalewski, Trainer, Pennsylvania
Mayor William Allar, Tremont, Pennsylvania
Mayor J. David Cutchineal, Tullytown, Pennsylvania
Mayor LeAnn Hritz, Tunnelhill, Pennsylvania
Mayor Adam R. Forgie, Turtle Creek, Pennsylvania
Mayor Thomas Micozzie, Upper Darby, Pennsylvania
Mayor Jeffrey Steffler, Wampum, Pennsylvania
Mayor Esther Cotner, Washingtonville, Pennsylvania
Mayor Richard A. Starliper, Waynesboro, Pennsylvania
Mayor Carolyn T. Comitta, West Chester, Pennsylvania
Mayor Gerald W. Gross, West Easton, Pennsylvania
Mayor Ralph Harrington, West Elizabeth, Pennsylvania
Mayor Frank Schmidt, West Hazleton, Pennsylvania
Mayor John W. Dindak, West Homestead, Pennsylvania
Mayor Mary E. Popovich, West Newton, Pennsylvania
Mayor John Henry, West View, Pennsylvania
Mayor Dick Vargeson, Westfield, Pennsylvania
Mayor James F. Nowalk, Whitehall Borough, Pennsylvania
Mayor Edward D. Hozza, Jr., Whitehall Township, Pennsylvania
Mayor Thomas M. Leighton, Wilkes-Barre, Pennsylvania
Mayor John A. Thompson, Wilkinsburg, Pennsylvania

Mayor David Perruso, Wilson, Pennsylvania
Mayor Larry Markel, Windsor, Pennsylvania
Mayor Dolores Jones-Butler, Yeadon, Pennsylvania
Mayor John Sanford, Yoe, Pennsylvania
Mayor C. Kim Bracey, York, Pennsylvania
Mayor Alford Shull, York Springs, Pennsylvania
Mayor Joan Derco, Youngwood, Pennsylvania
Mayor Charles Lombardi, North Providence, Rhode Island
Mayor Donald Grebien, Pawtucket, Rhode Island
Mayor Angel Taveras, Providence, Rhode Island
Mayor Scott Aredisian, Warwick, Rhode Island
Mayor Joseph Riley, Charleston, South Carolina
Mayor Joseph T. McElveen, Jr., Sumter, South Carolina
Mayor Darrick Jackson, Timmonsville, South Carolina
Mayor Ron Littlefield, Chattanooga, Tennessee
Mayor Jerry Gist, Jackson, Tennessee
Mayor Thomas W. Taylor, Maryville, Tennessee
Mayor A C Wharton, Memphis, Tennessee
Mayor Tom Beehan, Oak Ridge, Tennessee
Mayor Bill Lusk, Signal Mountain, Tennessee
Mayor Lee Leffingwell, Austin, Texas
Mayor Tony Martinez, Brownsville, Texas
Mayor Carl D. Sherman, DeSoto, Texas
Mayor Annise D. Parker, Houston, Texas
Mayor Richard Ward, Hurst, Texas
Mayor Dave Claunch, West Lake Hills, Texas
Mayor Dana Williams, Park City, Utah
Mayor Thom Lauzon, Barre, Vermont
Mayor Miro Weinberger, Burlington, Vermont
Mayor John Hollar, Montpelier, Vermont
Mayor Christopher C. Louras, Rutland City, Vermont
Mayor William B. Euille, Alexandria, Virginia
Mayor Faye Prichard, Ashland, Virginia
Mayor Ron Rordam, Blacksburg, Virginia
Mayor Satyendra Singh Huja, Charlottesville, Virginia
Mayor McKinley Price, DDS, Newport News, Virginia
Mayor Paul D. Fraim, Norfolk, Virginia
Mayor Brian A. Moore, Petersburg, Virginia
Mayor Robert W. Lazaro, Jr., Purcellville, Virginia
Mayor Dwight C. Jones, Richmond, Virginia
Mayor David A. Bowers, Roanoke, Virginia
Mayor William D. Sessoms, Jr., Virginia Beach, Virginia
Mayor Kelli Linville, Bellingham, Washington
Mayor H. Clarence Bauman, Chewelah, Washington
Mayor Garland D. Walton, Connell, Washington
Mayor Will Ibershof, Duvall, Washington
Mayor Liz Reynolds, Enumclaw, Washington
Mayor Gary S. Jensen, Ferndale, Washington
Mayor Ava Frisinger, Issaquah, Washington
Mayor Ron Poulson, Kalama, Washington
Mayor David M. Ferguson, Mesa, Washington
Mayor Daniel N. Mork, Millwood, Washington
Mayor James F. Gerwig, Morton, Washington
Mayor Dennis Palmer, Oakesdale, Washington
Mayor Spencer Nichols, Pe Ell, Washington
Mayor Paul Warden, Prosser, Washington
Mayor John Marchione, Redmond, Washington
Mayor Terry Anderson, SeaTac, Washington
Mayor Mike McGinn, Seattle, Washington
Mayor Matthew Larson, Snoqualmie, Washington
Mayor Dianne W. White, Stanwood, Washington
Mayor Marilyn Strickland, Tacoma, Washington
Mayor Soo Ing-Moody, Twisp, Washington
Mayor Richard F. Turner, Mayor, Weehawken
Mayor Harrold H. Howell, Jr., Madison, West Virginia
Mayor William C. Whalen, Ashand, Wisconsin
Mayor Larry MacDonald, Bayfield, Wisconsin
Mayor Keith G. Bosman, Kenosha, Wisconsin
Mayor Paul R. Soglin, Madison, Wisconsin
Mayor Justin M. Nickels, Manitowoc, Wisconsin
Mayor Chris L. Meyer, Marshfield, Wisconsin
Mayor Kurt Sonnentag, Middleton, Wisconsin
Mayor Tom Barrett, Milwaukee, Wisconsin
Mayor Steve Scaffidi, Oak Creek, Wisconsin
Mayor John T. Dickert, Racine, Wisconsin
Mayor James E. Tipple, Wausau, Wisconsin
Mayor Vincent C. Gray, Washington, D.C.

I'm a single Mom from Wilton, CT and I have two children, ages 7 & 3.
This isn't just about Sandy Hook. This is about a culture that has snowballed in the wrong direction while we all weren't paying attention. This is about the many many victims of gun violence every single day, especially those who can no longer speak for themselves.
I come from a long line of responsible gun owners. They agree that they don't need a high capacity magazine in order to shoot a quail or a deer or to practice clay shooting. I fully support Connecticut Against Gun Violence (CAGV) and their excellent work to get common-sense solutions enacted to reduce the number of senseless tragedies. I also support Mayors Against Illegal Guns and President Obama's proposal.
I was personally touched by this terrible tragedy and I am still haunted daily. My son's little camp friend for the last 3 years was a victim of the Sandy Hook Massacre. He always reminded me of my son with his adorable round head of brown hair and his slender build. In fact, one day I accidentally grabbed him and hugged him from the back when I arrived to pick my son up from camp. To this day, every day I get my kids undressed for a bath, I hug their little bodies and kiss them and wonder how someone could put so many bullets into this and pray to God that they stay safe always. I will do what I can to make sure that happens until that happens.
This Thursday, February 14th, Valentine's Day, I will be marching at the rally in Hartford called March for Change. Thousands of us are giving up a day to show our support for common-sense, rational gun laws. As David Wheeler's Dad said, **"The liberty of any person to own a military-style assault weapon and a high-capacity magazine and keep them in their home is second to the right of my son to his life."**
We aren't just a bunch of Moms who feel the pain of the parents and loved ones of the 26 victims of SES. We are a grass roots uprising of people who will not rest until big changes are made.
Thank you.

Giselle Mazier

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin and Members of the Senate Judiciary Subcommittee:

Thank you for allowing citizens to present testimony prior to your Subcommittee meeting tomorrow on gun violence.

On April 16, 2007, my family lost a close and dear friend, Reema Samaha. Reema was only 18 when she was gunned down in her French classroom at Virginia Tech. Also gunned down in that classroom was another graduate of our high school, Erin Peterson. Erin was an only child. Indeed, four of the 32 who died that day were only children.

I cannot begin to tell this committee the devastating impact Reema's death had on her family, our family, relatives, neighbors and our community. Erin's death had the same rippling effect. Even more difficult for this community was that the killer, Seung Hui Cho, was a 2005 graduate of our high school. The year prior to the Virginia Tech tragedy, another fellow graduate, Michael Kennedy, struggling with schizophrenia, gunned down two police officers, Vicki Armel and Michael Garbarino, at Sully District Police Station.

The common theme for Columbine, Aurora, Tucson, Chardon High School, Virginia Tech and now Newtowm is a young man, struggling with a mental illness, gains access to weapons and guns down innocent children, teens, and adults. Gun violence is a complex issue: it is not just about the guns, nor is it just about mental illness. It is an interweaving of both and both must be studied carefully and addressed. Neither should be ignored.

For too long, Congress has listened to and bowed to the will of the NRA. It has allowed guns to be treated differently than other consumer products, disallowing regulations and lawsuits by victims. It has blocked funding for basic scientific research and gathering factual data about deaths and accidents by guns. It has blocked any type of commonsense law that would stem gun violence. All of this in the name of the Second Amendment

The Supreme Court has clearly stated that the Second Amendment is not inviolate and that governments may enact regulations to govern the purchase and transfer of guns, what type of weapons may be allowed for sale, where and when guns may be prohibited and more importantly, who may or may not be allowed to purchase them.

Universal background checks, except possibly familial transfer, seems to be one of the most reasonable, least intrusive and inexpensive means to determining whether a purchaser is a law-abiding citizen and not a terrorist, felon, subject to a court or protective order, has a history of violence or is deemed mentally incapacitated. As for familial transfer, given that both Michael Kennedy and Adam Lanza obtained their weapons from their parents' homes, this body should seriously study the accountability

and responsibility of family members should they allow easy access to weapons to an individual who is exhibiting troubling behavior.

The argument that background checks inhibits the purchase of a weapon, is time-consuming, expensive and is an inconvenience should be balanced by the deafening silence in the homes of those who have lost someone to gun violence, the inability of fathers to walk daughters down the aisle, the empty chair at the holiday table.

Given how effective background checks have been, since the enactment of the 1994 Brady law – 1.9 million denied a purchase – it seems sensible. Congress should also ensure that all states submit names to the database to make sure the system is effective.

I recognize the difficulty of determining which weapons constitute assault weapons and how many rounds should be deemed acceptable but your Committee can certainly conduct the research necessary to determine how best to prevent the mass carnage that we have seen at Columbine, Virginia Tech and Newtown and all the other deaths by guns each and every day. Again, the Supreme Court was clear that governments have the right to determine what type of weapons fall within the protection of the 2nd Amendment and which do not. Surely, our founding fathers did not envision the complex weaponry and multiple rounds that exist today.

I urge this Committee to review the President's plan carefully. There are many excellent suggestions, particularly on school safety and mental health. We have long ignored mental health needs in this country and have woefully failed to fund research into mental illness and provide adequate resources to assist patients and families. I understand the budgetary constraints with which this Congress is facing, but the cost of gun violence to this country has been huge, including survivors facing life-long debilitating physical and psychological injuries, lost lives, and family members left in their wake.

My question has been, and continues to be, Why have our leaders not had the courage to represent the dead and survivors of gun violence, to understand that the Second Amendment, like the rights spelled out in the First Amendment, is not inviolate and can have limitations and stand up to the NRA and other gun rights organizations and say enough is enough. Because ladies and gentlemen, it is enough and has been for a very long time. On behalf of all the families and friends and communities who have lost loved ones to gun violence, I respectfully ask that this committee support the President and implement his recommendations. I never want to have to look my family in the eye again and tell them that someone we loved was gunned down. Our sadness is great enough.

Sincerely,

Lu Ann Maciulla McNabb
15022 Starry Night Lane
Centreville, Virginia 20120
l.mcnabb@cox.net
703-631-2238

Our entire family, including members in Ohio. Florida and California fully support the urgency of getting gun violence under control in the USA. We are all gun owners and my brother and cousins in Ohio are hunters. THEY, TOO, support regulations. My husband attended a gun show at Dulles Building where the various specialty shows are often held, including craft shows, antique displays, etc. He was horrified and astounded to see the men OUTSIDE the gun show, NO RESTRICTIONS OR QUESTIONS, selling all types of gun weaponry to WHOMEVER came along and wanted to purchase the items. The inclusion of background checks must be part of the legislation. None of us in our family want to sound as if we are shaking our fingers at legislators or proselytizing but we sense and understand that this country cannot continue in this same vein of guns everywhere and the culture of ho-hum toward gun violence. Thank you. Sally and Paul Misencik at 11514 Catalpa Court, Reston, VA 20191 and Nora Neuber 27345 Golden Meadow Drive, Wesley Chapel, Florida and John Mottl, 6055 Waldo-Norton Road, Waldo, Ohio, 43356.

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

I have been in favor of stricter regulation of guns in our country for a long time but I was never politically active. I am not anti-gun. My father had guns and enjoyed hunting and target practice. My brother owns guns. However, the tragedy at Newtown, CT has made me a newly minted activist. I cannot tell you how many people have been motivated by Newtown to take action but there are a lot of us. Sandy Hook is our Salem. I am in the process of mobilizing my church congregation. And I have met many others these past few weeks mobilizing in their churches, neighborhoods, and schools. The NRA leadership does not represent the vast majority of Americans on this issue and I pray that Congress starts listening to us. I would like to see Congress:

1) Require Universal Background Checks on both Guns and Ammunition

It is simply common sense that purchasing something as lethal as a gun and ammunition should require, at minimum, proving you are not a danger to the community, for whatever reason.

2) Institute an Assault Weapons & High Capacity Magazine Ban

I simply feel that weapons of war have no place in the community. If someone wants to shoot these weapons for the fun of it, let them go to a special target range to do so. If the Tucson shooter had not had to stop to reload, he would have killed more people. My brother, a gun owner, says limiting high capacity magazines would help curb gun violence.

3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime

The Tiahrt Amendment should be repealed. Since when did we start tying the hands of our law enforcement agencies as they combat the use of guns in crimes and gun trafficking? I am incredulous at some of the laws Congress has passed in deference to the NRA. We, meaning Congress, used to listen to our law enforcement agencies on matters such as this. Why aren't we listening now? Congress needs to confirm a leader for the ATF and give the agency the resources it needs to combat gun trafficking. Penalties for gun trafficking need to be very severe.

4) Improve Mental Health Reporting

This is a complicated issue but one that must be addressed. As a society we have to decrease the stigma associated with mental illness and provide the help those with mental illness need, before they reach for a gun. We also have to keep guns out of the hands of the mentally ill.

This is a time for reflection. There needs to be a cultural shift in our country. Violence is popularized in video games and in movies. This change will take time but I believe we are taking our first steps.

There are others who will write to you with more details about specific legislation so I left a lot of that stuff out of my letter. I think the bottom line is, there are reasonable, common sense, things we can do to help prevent gun violence in our country. It is time to take a stand.

Respectfully yours,

Linda J Miwa
9416 Goldfield Ln
Burke, VA 22015

I live in Sandy Hook, CT and have one son who attends Newtown High School and one son who attends Newtown Middle School. I am also a teacher.

I grew up in Australia and lived there in 1996 when strict guns laws including the banning of all semiautomatic weapons were introduced after 13 mass shootings in 18 years. Since 1996 there have been no mass incidents in Australia and gun deaths have been reduced by around half. So I know that gun control laws work in reducing gun related deaths.

When it came time for us to settle in the US my first concern was gun violence in US schools. Yes, that was the first thing that entered my mind. I was we'll aware of Columbine and that the US had one of the highest incidence of gun related deaths in the world. So I spent six months researching and looking for a town with the lowest crime rate possible and the best schools. I found that town in Newtown, CT. I believed that here my children would be safe in school, and in the community, and for five years that proved to be true. I had found a quintessential New England town with a Norman Rockwell quality, a strong sense of community and a rich culture. It felt like home immediately and we felt safe in this corner of America.

That is, until that fateful day when we received an alert that all Newtown schools were in lockdown due to a shooter in one of our schools. At that moment we did not know which school was in danger. You can only imagine how we felt. After what seemed like an eternity we received news that the high school and middle school were currently safe. A rush of relief for our sons was mixed with the awful realization that a whole school of parents was not so lucky. Then we received frantic text and email messages from my son at the high school who was watching the whole thing unfold on his tablet telling us he was scared that a second shooter could be coming to Newtown High, since it was less than a mile away. To read a text message from your son telling you he is lockdown due to a school shooter and he is scared for his life is one of the most horrifying experiences you can imagine.

Senate legislators, lead the nation! If this could happen in the safest town in America it could happen anywhere. This is an epidemic of violence that is increasing in frequency. The worst mass incidents in US history have occurred in the last six years. Time is of the essence. Ban all semiautomatic weapons, including existing ones, institute a buy back program and destroy all the guns that come in, ban all ammunition magazines with over 6 rounds, introduce stricter background checks, and 28 day waiting periods. The US is at a crossroads and the nation's eyes are on you. Show America the way!

Georgia Monaghan
67 High Rock Rd
Sandy Hook CT
203 304 1239

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention.

I am a Newtown resident and the father of two daughters, one in the first grade and the other in fourth. I am also the Public Works Director in Bethel, Connecticut. My first grade daughter knew four of the children (Ben, Charlotte, Catherine and Caroline) who were slain on December 14 at Sandy Hook Elementary School either through dance class, soccer or church. My neighbor directly across the street lost his niece, Jessica. My first grader has asked me countless questions since December 14 about guns and the children who died. She has had nightmares about a gunman in her school. There is so much sorrow here in Newtown among all the families who were affected by this senseless and, to a degree, preventable tragedy.

We are united in our belief that there is much that can be done legislatively to make our country a safer place that will not infringe upon Second Amendment rights.

1) Require Universal Background Checks on both Guns and Ammunition

Every purchaser of a firearm should be subject to a background check through the FBI's National Instant Criminal Background Check System (NICS). Currently, an estimated 40 percent of guns sales are made by private individuals (at gun shows, over the Internet, through classified advertisements, etc.) who have no legal duty to subject purchasers to background checks or maintain records of sale. What is the purpose of having a NICS database with millions of disqualifying records if prohibited purchasers can simply circumvent the system? It would be the equivalent of having optional security screening at our airports, with a second line for folks who simply wish to bypass the scanners. In this Information Age, NICS checks are typically completed in a matter of minutes, and they can be administered by any one of the nation's more than 50,000 federally licensed firearm dealers. Background checks should also be required on all ammunition purchases.

2) Institute an Assault Weapons & High Capacity Magazine Ban

Renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Mass shootings have increased in frequency since the ban expired in 2004. That is reason enough to reinstate the ban. There is no need for a weapon designed for battlefield use and easily outfitted with magazines holding up to 100 rounds of ammunition to be legally available to civilians but there is a very compelling reason to ban these weapons – it will save lives.

3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime

The Tiahrt Amendment should be repealed as it restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the ATF the authority to require gun dealers to inventory lost and stolen guns and requires that NICS background check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime so there can be tougher enforcement. We should be doing everything we can to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

4) Improve Mental Health Reporting

While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. Under current law, only individuals who have been involuntarily committed to a psychiatric institution or formally adjudicated as "mental defectives" (the law was written in 1968) are prohibited from buying firearms. This standard tells us little about who might be dangerous and allows people to acquire firearms who should never get close to a gun.

There are many other issues that need to be addressed, such as violent video games, the glorification of gun violence

in the movies and TV and the effect this has on our youth. But these issues will take time to tackle and resolve and will require a cultural shift. The suggestions I have made above are all simple and immediate steps that would help bring an end to gun violence.

The American people are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

I applaud the members of the NRA who have come forward to denounce the NRA itself with respect to their stance on assault weapons, large capacity magazines and super-lethal ammunition. I applaud the members of our military and veterans who testified in Hartford and Newtown that these weapons have no place in civil society. I remind you that Ronald Reagan stated that semi-automatic weapons are not needed to defend a home, to hunt or to shoot targets. The tragedy and trauma we are experiencing in Newtown makes it so clear to me that we need to ban access to assault rifles, large capacity magazines, and armor piercing bullets that rip bodies apart. If Adam Lanza did not have access to the guns his mother purchased, or if he had a weapon that he needed to reload more often, more of our precious children would be alive.

Please, look into your heart and find the courage to enact common sense legislation. Please give children, educators and families in Connecticut and across our country a brighter future than the dark legacy my child and the children of Newtown now have to bear.

Andrew M. Morosky
11 The Boulevard
Newtown, CT 06470

I am a Newtown, CT resident and the mother of six and nine-year-old daughters. I am also a teacher at Wilton High School in Connecticut.
I am writing to urge members of the Senate Judiciary Committee to lead the United States Congress in enacting common sense violence reduction measures.
I consider myself a political moderate. I care about families, education and the safety of my own daughters and my students. The tragedy and trauma we are experiencing in Newtown makes it so clear to me that our nation needs to limit access to high powered guns, high capacity magazines, and bullets that rip bodies apart. If Adam Lanza had not had the guns his mother purchased, if he had a weapon that he needed to reload, more of our precious children would be alive. My daughter played on a soccer team with two victims, Caroline Previdi and Catherine Hubbard. If assault weapons were not legal, maybe my daughter would have been able to play another game with her friends. Maybe she would not wake up during the night, screaming from nightmares about her own class being killed. Maybe I would also sleep more peacefully, unburdened by nightmares about myself trying to protect my high school students from a shooter.
Please Senators, look into your hearts and find the courage to enact common sense legislation. Please give children, teachers, and families across our country a brighter future than the dark legacy my child and the children of Newtown now have to bear.
Please respond to this message,
Katherine Morosky
Newtown, Connecticut

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

I am a mother of four children who have graduated from Sandy Hook Elementary School. I have lived in Sandy Hook for 13 years in a wonderful neighborhood. Regrettably, the shooter's home is in my neighborhood. We lost our neighbors, our friends of friends, our teachers, and our principal on that dreadful day.

My heart is broken! I made a promise to take action. I am one of the 17 co-founders of Sandy Hook Promise and I fully support its long-term mission to change the culture of violence but I have made a decision to work with a grassroots group which was formed out of necessity to take action after the tragic event in our precious town on December 14, 2012. A group of one hundred heartbroken residents took immediate action out of the realization that action speaks louder than words. They got on a bus on January 26th to lead the march to prevent gun violence in the nation's capital. This was the first major organized demonstration after the shooting. It quickly became evident there were many people with a strong desire to take more action, people who believed that Newtown must lead with a strong voice to fight for sensible gun legislation in honor of the 26 lives lost on that tragic day.

The Newtown Action Alliance was formed two weeks ago. This grassroots organization is Newtown-based and we are working tirelessly to take and accelerate ethical actions, legislatively or otherwise, which reduce gun violence and death, both near and long term.

The Newtown Action Alliance is a 100% local, grassroots, ACTION-based organization. In fact, our initial funding came from the activists who organized, funded, and attended the march in Washington DC, and we are committed to using these resources to grow our movement. Newtown Action Alliance is collaboratively and actively working with partners such as Connecticut Against Gun Violence, March for Change, One Million Moms For Gun Control, and Greater Danbury Chapter of Brady Campaign. I have been charged with leading the efforts to form alliances with other groups and communities around the nation, lending our voice to help organize and amplify the gun violence prevention movement.

Locally, we are organizing and funding buses so our community can attend important events and demonstrations such as March for Change on Valentine's Day. We have initiated a significant ongoing legislator outreach program by facilitating communication between residents and the lawmakers. As an organization, we hope to open direct lines of communication with the lawmakers. We are also working tirelessly to organize and disseminate educational resources and information to the community. We are planning town hall meetings to bring our lawmakers and experts to our community and we are encouraging and helping our residents attend hearings, key meetings, and events nationally.

Since December 14th, I have not been able to stop thinking about the 26 lives lost and their families. My Facebook friends could tell you that I spend my days and nights reading everything I can about gun violence/gun control/gun legislation. I have learned a few things:

1. The issue of gun violence is complex and it will require comprehensive solutions to reduce the escalation of gun violence.
2. Over 11,000 people have been shot so far this year. This is unacceptable!
3. According to the recent John Hopkins' national survey, "A sizable 89 percent of all respondents, and 75 percent of those identified as NRA members, support universal background checks for gun sales"
4. "About 70 percent of respondents supported bans on military-style semiautomatic weapons and high capacity ammunition magazines"

The polls demonstrate that gun owners and non-gun owners are very much aligned in their support for strengthening the gun laws.

I believe the great divide exists between the politicians who are influenced by the gun lobby and the people of this nation (including sensible gun owners) who do not have an amendment that specifically protects them from gun violence.

The gun lobby and the politicians are not the only ones culpable for the epidemic of gun violence in this country. I am just as culpable. I have failed to take any type of action after witnessing Columbine, Virginia Tech, Tucson, Aurora and other mass shootings. I have never sent a letter, an e-mail or made a phone call to our representatives in the past. My inaction has allowed the gun lobby to continue with gun proliferation. I have not paid any attention to which politicians cater to them. I vow to change that because I am heartbroken. Inaction is unacceptable. Many of us are paying close attention to the response of our elected State and Federal officials. Many of us are becoming single issue voters.

We are working tirelessly to demand sensible legislations to prevent gun violence in the State of Connecticut. We are hoping that Connecticut will pass the most substantial sensible laws to lead this nation in an effort to change the culture of violence. We recognize that state legislations alone will not solve the problem of escalating gun violence in our nation. I strongly urge the Congress to act by supporting the common sense solutions being proposed by President Obama to strengthen the legislation to ensure that 12-14-12 never happens again.

- Require background checks for all gun sales

The single most important thing we can do to prevent gun violence and mass shootings is to make sure those who would commit acts of violence cannot get access to guns. Right now, federally licensed firearms dealers are required to run background checks on those buying guns, but studies estimate that nearly 40 percent of all gun sales are made by private sellers who are exempt from this requirement. A national survey of inmates found that only 12 percent of those who used a handgun in a crime acquired it from a retail store or pawn shop, where a background

check should have been run.

Congress should pass legislation that goes beyond closing the "gun show loophole" to require background checks for all firearm sales, with limited, common-sense exceptions for cases like certain transfers between family members and temporary transfers for hunting and sporting purposes.

- Strengthen the background check system for gun sales
  The background check system is highly efficient and effective; during its 14 years in existence, the system has helped keep more than 1.5 million guns out of the wrong hands. But we must do a better job ensuring the background check system has access to complete data about potentially dangerous individuals.

  For example, although the number of mental health records available to the system has increased by 800 percent since 2004, a recent report by the Government Accountability Office found that there are still 17 states that have made fewer than 10 mental health records available to the background check system. We need to make sure states and federal agencies are making available reliable information on those prohibited from having guns to the background check system.
- Pass a new, stronger ban on assault weapons
  The shooters in Aurora and Newtown used the type of semiautomatic rifles that were the target of the assault weapons ban that was in place from 1994 to 2004. That ban was an important step, but manufacturers were able to circumvent the prohibition with cosmetic modifications to their weapons. Congress must reinstate and strengthen the prohibition on assault weapons.
- Limit ammunition magazines to 10 rounds
  The case for prohibiting high-capacity magazines has been proven over and over; the shooters at Virginia Tech, Tucson, Aurora, Oak Creek, and Newtown all used magazines holding more than 10 rounds, which would have been prohibited under the 1994 law. These magazines enable any semiautomatic weapon to be used as an instrument of mass violence, yet they are once again legal and now come standard with many handguns and rifles. Congress needs to reinstate the prohibition on magazines holding more than 10 rounds.
- Finish the job of getting armor-piercing bullets off the streets
  It is already illegal to manufacture and import armor-piercing ammunition except for military or law enforcement use. But it is generally still not illegal to possess or transfer this dangerous ammunition. Congress should finish the job of protecting law enforcement and the public by banning the possession of armor-piercing ammunition by, and its transfer to, anyone other than the military and law enforcement.
- Give law enforcement additional tools to prevent and prosecute gun crime
  In order to prevent and respond to gun violence, we must give law enforcement every tool they need to keep us safe. That includes passing stronger laws to stop those who would put guns into

the hands of criminals, keeping 15,000 cops on the street, and eliminating restrictions that keep federal law enforcement from doing its job.

- End the freeze on gun violence research
  There are approximately 30,000 firearm-related homicides and suicides a year, a number large enough to make clear this is a public health crisis. But for years, the Centers for Disease Control and other scientific agencies have been barred by Congress from using funds to "advocate or promote gun control," and some members of Congress have claimed this prohibition also bans the CDC from conducting any research on the causes of gun violence. However, research on gun violence is not advocacy. The President is directing the CDC and other research agencies to conduct research into the causes and prevention of gun violence, and the CDC is announcing that they will begin this research.
- Make our schools safer with new resource officers and counselors, better emergency response plans, and more nurturing school climates
  The Administration is calling on Congress to help schools hire up to 1,000 more school resource officers, school psychologists, social workers, and counselors, as well as make other investments in school safety. We also need to make sure every school has a comprehensive emergency management plan so they are prepared to respond to situations like mass shootings. In addition, the Administration is proposing to help 8,000 schools put in place proven strategies to prevent violence and improve school climate by reducing bullying, drug abuse, violence, and other problem behaviors.
- Ensure quality coverage of mental health treatment, particularly for young people

Thank you for your consideration and please contact me if you have any questions regarding our efforts to build alliances. Please do not let Sandy Hook be remembered for the tragedy. We want to be remembered for the change that resulted in decline of gun violence in our towns, our cities, our states in our nation.

Sincerely,
Po Murray
Newtown Action Alliance
Alliance Outreach Team Leader
38 Charter Ridge Drive
Sandy Hook, CT 06482
203-270-8774

Facebook: https://www.facebook.com/NewtownActionAlliance
Sign up for e-mail action alerts: https://tinyletter.com/NewtownAction
Twitter: @newtownaction
Website: http://newtownaction.org/

Dear Chairman Durbin & Senate Judiciary Subcommittee Members,

Thank you for giving me the opportunity to submit testimony for your consideration in advance of your hearing on gun violence prevention. My name is Tom Murray and I live in Sandy Hook, Connecticut with my wife and four children (all of my children are graduates of Sandy Hook Elementary). I am writing to you to express my concern about the unacceptable gun violence in our Nation. The recent tragedy at Sandy Hook Elementary was a tipping point. If the events of that tragic day do not open the eyes of our Nation to the consequences of insufficient gun laws then I am doubtful that anything ever will. I am writing to demand that you do the right thing and vote to change our current gun laws. I applaud President Obama for taking a bold stance in the wake of this tragedy and proposing common-sense steps to reduce gun violence in order to protect our children and our communities. As a Nation we cannot let these mass shootings continue - ENOUGH IS ENOUGH!

To be clear, I am in full support of the 2nd amendment right to bear arms and I am not asking you to do anything that is inconsistent with it. What I am asking is that you put the safety of our children and communities first and not vote to protect the self-serving interests of the NRA, NSSF, gun manufacturers and the rest of the gun proliferation lobby.

I strongly urge you to support the legislative changes being recommended by President Obama which are set forth in "The President's plan to protect our children and our communities by reducing gun violence" dated January 16, 2013, specifically legislation that:

1. Requires background checks for all gun sales;
2. Strengthens the background check system for gun sales;
3. Reinstates and strengthens the ban on assault weapons;
4. Limits ammunition magazines to 10 rounds;
5. Finishes the job of getting armor-piercing bullets off the streets;
6. Gives law enforcement additional tools to prevent and prosecute gun crime;
7. Ends the freeze on gun violence research;
8. Preserves the rights of health care providers to protect their patients and communities from gun violence;
9. Encourages gun owners to live up to their responsibility to store guns safely;
10. Makes our schools safer with new resource officers and counselors, better emergency response plans, and more nurturing school climates; and
11. Ensures quality coverage of mental health treatment, particularly for young people.

For obvious reasons, I am extremely passionate about this issue and I will be closely watching your actions throughout this process. I realize that the task before you is a difficult one, but I ask that you have the boldness and moral courage to do the right thing and protect our children and our communities. This is a rare moment in the history of our Nation. Everyone is watching to see what our legislatures will do. I

trust that you will rise to the occassion and help make our Nation and our World a safer place.

Thank you for your consideration.

Sincerely,

Tom Murray
38 Charter Ridge Drive
Sandy Hook, CT 06482

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. I am a retired social worker with experience in the areas of domestic violence and working with emotionally and behaviorally challenged teens. I have seen the tragic results when violent, controlling and substance abusing individuals (primarily men) who have guns use them against their intimate partners, whether or not the abusers are under a restraining order or have been convicted of domestic violence. I have seen the tragic results when impulsive, emotionally upset teens have access to guns they use against themselves.

We are a gun-glorifying society as evidenced by the wanton, excessive gun violence perpetrated by both "good guys" and "bad guys" on our TV shows, movies and video games for entertainment. Certainly a cultural change is needed to reduce violence, but that will take time. However, I believe that appropriate legislation now can make our country safer without infringing on Second Amendment rights. Such legislation would:
1) Require universal background checks on both guns and ammunition
2) Institute a ban on assault weapons and high capacity magazines
3) Repeal Tiahrt and making gun trafficking a federal crime
4) Improve mental health reporting

Please stand up for the safety of members of the public. This shouldn't be a partisan issue. The Second Amendment doesn't guarantee that people can own any type of weapon, including "killing machines" designed for military use. Second Amendment rights should have reasonable limits to protect the safety of the general public.

I join with the many voices of people calling for measures to prevent gun violence. I urge you to start reducing the shameful number of gun-related deaths and injuries in our country as soon as possible.

Most respectfully,

Sandra Myles
11001 Kilkeel Ct.
Oakton, VA 22124

February 10, 2013

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

Dear Chairman Durbin and Members of the Senate Judiciary Subcommittee:

Thank you for the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. Let me start off by saying that I respect the second amendment and believe that Americans should have the ability to own weapons to defend their property. However, those weapons cannot include handguns or weapons designed for the battlefield. Handguns cause the vast majority of gun related injuries in this country and have infringed on my right and privacy as a citizen. I must submit to searches before entering public buildings like libraries, court houses, and museums as well as undergo personal searches when I attend athletic events and other large gatherings of people. That is what America has become primarily because of hidden handguns.

Now I realize that banning handguns is perhaps too big of a step in a culture steeped in glorifying the wild west and gunfights at the OK Corral, so I urge you and the members of the Senate Judiciary Subcommittee to do something smaller to start the ball rolling in the direction of reducing the availability of guns by:

1. Requiring Universal Background Checks on both Guns and Ammunition
2. Instituting an Assault Weapons & High Capacity Magazine Ban
3. Repealing the Tiahrt Amendment and Make Gun Trafficking a Federal Crime
4. Improving Mental Health Reporting
5. Removing all legislation that restricts the reporting of gun incidents, the funding for studying of the causes of gun violence, and the questioning of gun availability by the medical profession as currently in place in the Affordable Care Act.

Now is not the time for political partisanship, fear mongering, or to appease an industry that hides behind a ridiculously loose interpretation of the Second Amendment. Now is the time for action. I expect members of Congress (from both parties) to start enacting laws that will protect our children and bring to an end our culture of gun glorification and violence. Public Safety must be the first priority.

Most respectfully,

/s/
Steven J. Myles
Citizen
11001 Kilkeel Court
Oakton, Va 22124

Statement of the

NAACP Legal Defense and Educational Fund, Inc.

United States Senate
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

Hart Senate Office Building
Room 216

February 12, 2013

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is pleased to submit this statement to the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights with respect to the hearing on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment." We wish to thank Chairman Richard Durbin, Ranking Member Lindsey Graham, and members of the Subcommittee for continuing this essential dialog.

As Americans still mourn the senseless killings at Sandy Hook Elementary School in Newtown, Connecticut, even more recent gun-related incidents remind us of the scope of the problem. These ongoing tragedies have brought the issue of gun violence to the fore of the nation's conscience. It is our hope that these conversations lead to meaningful Congressional action that reduces and prevents gun violence by addressing its root causes and also by implementing common sense measures to limit the lethality of these incidents when they do occur.

While gun violence affects all corners of our nation, it has a particularly acute impact on the African-American community.[1] For example, last year, Chicago suffered 500 homicides; nearly 90% of them were gun-related. Although African Americans comprise only 33% of the city's population, they are 70% of the murder victims.[2] The senseless death of one of the most recent victims, fifteen year-old Hadiyah Pendleton, serves as one of the most heartbreaking individual examples.[3]

For these reasons, LDF supports Congressional action to ban assault weapons and reduce the availability of high-capacity ammunition magazines. While we believe these measures will help ensure the removal of military-style weapons and high-capacity magazines from our streets, we are also keenly aware that young men of color, African Americans in particular, are typically the victims of racially disproportionate enforcement of criminal laws. African Americans are arrested for weapons offenses at nearly four times the rate as white Americans. And the U.S. Sentencing Commission found "notable differences in prosecutorial decisions to seek sentence enhancements for certain federal offenses involving a firearm depending on the race of the defendant."[4] These patterns, and other racial disparities in the criminal justice system, demonstrate the importance of having some mechanism to ensure that people of color are not disproportionately prosecuted under new laws crafted to implement a ban on assault weapons. Developing and implementing ways to address and prevent racial disparities must be an integral part of any new law related to banning or restricting the use of dangerous weapons. Federal prosecutors should be required to complete a racial impact statement, through which they would examine any disparate impact of their prosecutions under new laws.

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[1] David Cole, *Who Pays for the Right to Bear Arms?*, N.Y. Times, Jan. 1, 2013, at A19 (noting that "young black men die of gun homicide at a rate eight times that of young white men").

[2] *Id.*

[3] Monica Davey and Steven Yaccino, *Washington Officials Join in Mourning a Young Shooting Victim in Chicago*, N.Y. Times, Feb. 9, 2013, at A18.

[4] Brennan Center for Justice, *Racial Disparities in Federal Prosecutions* 10 (2010). One study has found "black and Hispanic offenders convicted of weapons charges" to be "especially unlikely to receive charge reductions from U.S. Attorneys." Lauren O'Neill Shermer & Brian D. Johnson, *Criminal Prosecution: Examining Prosecutorial Discretion and Charge Reductions in U.S. Federal District Courts*, 27 Just. Q. 394, 424 (2010).

"Policing" Schools is Not the Answer

While this hearing is focused on the constitutionality of common sense gun control measures, we are mindful of the potential consequences of the measures under consideration for students and schools. Immediately prior to the Sandy Hook tragedy, this Subcommittee held an extraordinary hearing, entitled "*Ending the School-to-Prison Pipeline,*" that examined the alarming increase in the number of young people sent into the juvenile delinquency system as result of minor, non-violent school discipline issues. The hearing marked the first time Congress has looked into this longstanding issue; hundreds of people from around the nation attended the hearing and submitted statements for the record. The hearing explored the large racial disparities that have been caused by such policies and practices. The hearing included a discussion of the role which police officers on school campuses play in furthering the criminalization of our students. Officials from the Department of Education and Justice offered testimony that illustrated the cost and resource burdens placed on courts and school systems as a result of these harmful patterns.

Last month, the Senate Judiciary Committee conducted a hearing in the wake of the Sandy Hook tragedy, "*What Should America Do about Gun Violence*?" At the hearing, Wayne LaPierre of the National Rifle Association (NRA) called for police presence in every school. Others have recently offered similar proposals, under the misguided assumption that police presence will necessarily keep schools safe. For example, Sheriff Joe Arpaio in Arizona's Maricopa County has stationed 500 armed, uniformed volunteers outside county schools.[5] Only a year after defunding its school counseling program, the Fontana Unified School District Police in California purchased 14 semiautomatic assault rifles to arm its school police.[6] And just outside the nation's capital, school leaders in Prince George's County, Maryland, proposed the creation of a new school police force while leaders in Montgomery County, Maryland, aim to double the number of School Resource Officers in the district.[7]

While we all seek meaningful ways to ensure the safety of all schoolchildren, proposals like those from the NRA distract us from the meaningful conversation this Subcommittee is having today. And they threaten to exacerbate the harms the Subcommittee examined so diligently in its hearing on *Ending the School-to-Prison Pipeline*.

Unfortunately, this is not the first time we have heard calls for police presence after a tragic incident at a school. In the search for policy solutions after well-publicized shootings at schools in West Paducah, Kentucky; Littleton, Colorado; and Blacksburg, Virginia, many states and school districts adopted "zero tolerance" disciplinary policies and drastically expanded the use of security equipment and deployment of police in schools.[8] But experience has shown that these

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[5] Nirvi Shah, *Nations, Districts Step Up Safety*, Education Week, Jan. 23, 2013, at 1.

[6] Gillian Flaccus, *Fontana, Calif., Schools Get High Powered Rifles*, Assoc. Press, Jan. 24, 2013.

[7] Donna St. George & Ovetta Wiggins, *Schools Taking Serious Look at Putting Armed Police in Schools after Massacre*, Wash. Post, Feb. 7, 2013, at A1.

[8] Russell Skiba et al., *Are Zero Tolerance Policies Effective in the Schools? A Report by the American Psychological Association Task Force* 23-25 (2006), *available at* http://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf.

approaches, while well-intended, failed to address the root causes of gun violence and negatively impacted our students and schools.[9]

While those who called for more law enforcement officers stationed at schools assumed the officers would focus on matters of school safety, school-based police are often used to discipline students for age-appropriate behavior and missteps that should be handled by educators and parents.[10] As a result, students in communities nationwide are confronted with citations, summonses, and even arrest for non-criminal behavior.[11] In Florida, for example, 45 students per day, almost 17,000 in the 2010-2011 school year, were referred to juvenile courts by law enforcement officers based at schools.[12] The overwhelming majority of these students were referred for misdemeanors, such as minor schoolyard fights, disrupting a school function, or disorderly conduct.[13]

Reliance on criminal sanctions to address traditional student misbehavior has devastating consequences. A first-time arrest doubles the odds that a student will drop out of school, and a first court appearance quadruples those odds.[14] Similarly, the "zero tolerance" discipline policies that often accompany police deployment in schools come with their own consequences. Out-of-school suspension predicts grade retention, school dropout, and involvement in the juvenile and criminal justice systems.[15]

The harms of this "get tough" approach impact not only the students being arrested or suspended, but the school as a whole. Schools with higher discipline rates score lower on standardized tests than other schools, even when accounting for demographic differences.[16] According to the American Psychological Association, zero tolerance policies and reliance on out-of-school punishments like suspension and expulsion do not lead to improvements in school safety.[17] Worse still, when schools involve police in disciplinary measures, schools can create an environment of alienation and distrust that actually undermines order and safety.[18] As Colorado

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[9] *See* Amanda Petteruti, Justice Policy Institute, *Education Under Arrest: the Case against Police in Schools* (2011).

[10] *Id.* at 13-16.

[11] *Id.*

[12] Florida Department of Juvenile Justice, *Delinquency in Florida's Schools: A Seven Year Study* 3 (2011), *available at* http://www.djj.state.fl.us/docs/research2/2010-11-delinquency-in-schools-analysis.pdf?sfvrsn=0.

[13] *Id.* at 8-9; ACLU of Florida, Advancement Project, & Florida State Conference of the NAACP, *Still Haven't Shut Down the School-to-Prison Pipeline* 6-8 (2011).

[14] Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 Just. Q. 462, 473-477 (2006).

[15] Skiba et al, *supra* note 8 at 44-48; Tony Fabelo et al., *Breaking Schools' rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* x, 40-46, (2011).

[16] Skiba et al, *supra* note 8 at 44-48.

[17] *Id.* at 71-79.

[18] Matthew J. Meyer & Peter E. Leone, *A Structural Analysis of School Violence and Disruption: Implications for Creating Safer Schools*, 22 Education and Treatment of Children 333, 352 (1999) (finding highly-restrictive efforts to control students by involving police in school disciplinary matters cause higher levels of school disorder by diminishing students' belief in the legitimacy of school staff authority); Randall R. Beger, *The Worst of Both Worlds*, 28 Crim. Just. Rev. 336, 340 (2003) (finding that aggressive security measures produce alienation and

State Senator Linda Newell of Littleton, Colorado noted, "As a result of our zero tolerance policies, nearly 100,000 students have been referred to law enforcement over the past decade, and who benefits from that?"[19]

The unintended consequences of police deployment in schools are troubling from a racial equity perspective, as students of color often bear the brunt of these harmful approaches. According to the Department of Education, African-American students are suspended and expelled at a rate three and a half times greater than white students.[20] State-level data suggests similarly stark racial disparities in students' contact with police. For example, African-American students were three and half times more likely to be arrested in school than White students in Delaware in 2010-2011.[21] That same year, African Americans comprised only 21% of Florida school enrollment, but accounted for 46% of all school-related referrals to law enforcement.[22]

Thankfully, there are safe, proven approaches to preventing violence targeted at schools. In the aftermath of the Columbine shootings, the Department of Education and the Secret Service cited trust between students and educators as an essential aspect of school safety.[23] It is clear that schools need students to feel comfortable sharing their concerns, particularly about school safety, so that educators can act responsibly in addressing them.[24] There are a host of best practices for improving trust between students and educators, and a number of states and districts that have revised their disciplinary policies and practices in favor of such proven, preventative ways to maintain school order and safety. Within the last two years alone, states like California and Colorado, and cities like New York and Los Angeles, have revised policies related to school policing, while a number of other states and districts eschewed zero tolerance approaches for more holistic, preventative approaches to discipline.[25] The Departments of Education and Justice have created the "Supportive School Discipline Initiative" – an inter-agency collaboration tasked

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mistrust among students which, in turn, can disrupt the learning environment and create an adversarial relationship between school officials and students).

[19] Senate Committee Passes Bipartisan Bill by Senators Newell and Hudak to Ensure Student Safety and Success Today, March 1, 2012, http://coloradosenate.org/home/features/senate-committee-passes-bipartisan-bill-by-senators-newell-and-hudak-to-ensure-student-safety-and-success-today.

[20] Office for Civil Rights, U.S. Department of Education, *Civil Rights Data Collection Summary* 2 (2012).

[21] Chief Judge Chandlee Johnson Kuhn, Family Court of the State of Delaware & Kerrin C. Wolf, *Fightin' and Fussin': An Examination of School Arrests, Adjudications, and Dispositions in Delaware* (presentation on file with the authors).

[22] Florida Department of Juvenile Justice, *supra* note 12 at 3.

[23] U.S. Secret Service and U.S. Department of Education, *The Final Report and Findings of the Safe Schools Initiative: Implications for the Prevention of School Attacks in the United States* (May 2002), *available at* http://www.secretservice.gov/ntac/ssi_final_report.pdf.

[24] *Id.*; Dewey G. Cornell et al. *A Call for More Effective Prevention of Violence* (Dec. 19 2012), *available at* http://curry.virginia.edu/articles/sandyhookshooting.

[25] *See* A.B. 2616 (Cal. 2012) (prioritizing the adoption of student attendance plans over school referral to police for truancy-related matters); H.B. 1345, 68th Gen. Assem. (Colo. 2012) (requiring school districts to develop and enforce discipline codes in a manner designed to reduce referrals to law enforcement and minimize students' exposure to the juvenile and criminal justice system); Los Angeles Mun. Code 45.04 (2012) (significantly revising the city's truancy ticketing policy); Local Law No. 6, N.Y.C. (2011) (codified as amended at N.Y.C. Admin. Code §§ 8-1101–1103) (requiring quarterly, racially disaggregated reporting of school-based arrests and court summonses).

to "address the 'School-to-Prison Pipeline' and the disciplinary policies and practices that can push students out of school and into the justice system."[26] Finally, this Subcommittee's *Ending the School-to-Prison Pipeline* hearing stands as a pivotal moment in the national school discipline reform effort and has truly helped to turn national attention to the great need to improve the way discipline is addressed in our schools.

Conclusion

We commend the Subcommittee for examining the constitutionality of gun control. As it considers the spectrum of issues in formulating a strong legislative response to the Sandy Hook tragedy, we urge the Subcommittee to maintain its focus on the root causes of gun violence and to promote only those methods which have proven to be effective in ensuring school safety. Specifically, we ask the Subcommittee to be mindful of the painful lessons we have learned from responses to previous shootings in schools. The recommendations from the NRA and others to place more police in schools – whether armed or unarmed – are bound to be harmful and ineffective. We urge that any Congressional proposals addressing school safety draw from, and not jeopardize the momentum of, the recent local, state, and federal reforms mentioned above. Thank you for the opportunity to submit this statement.

[26] Press Release, Department of Justice Office of Public Affairs, Attorney General Holder, Secretary Duncan Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices (Jul. 21, 2011), *available at* http://www.justice.gov/opa/pr/2011/July/11-ag-951.html.

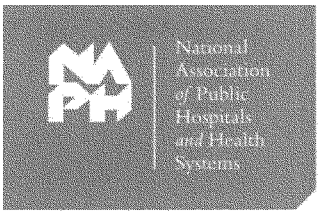
Dear Stephanie,

I am writing as a concerned citizen who wants the gun laws to change in our country. It is too easy for anyone to purchase and use a military style weapon that has no reason to be in a civilian's home. I respect a person's right to be a responsible gun owner but I do not believe anyone has the right to a military style assault weapon unless they are engaged in military warfare on the front lines.

I would like to see a ban on Military-style assault weapons
A ban on high capacity ammunition magazines
Registration for all guns
Mandatory Background checks on all gun and ammunition purchases
A ban on bullets designed to explode in the body to all civilians

We can make a difference. This is not about the second amendment but it is about insuring a more peaceful enviroment for
our communities and especially for our children.

Sincerely,
Sarah Naphen
14Taunton Lake Road
Newtown, CT 06470



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Written Statement of the National Association of Hospitals and Health Systems Before the United States Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing on

Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment

Tuesday, February 12, 2013
at 10:00 a.m.

The National Association of Public Hospitals and Health Systems (NAPH) welcomes this opportunity to submit testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights for its hearing on *"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment,"* and urges the Subcommittee to secure adequate funding for mental health resources as it works towards preventing and reducing gun violence in America.

NAPH represents over 200 major safety net hospitals across-the-country. NAPH member hospitals are dedicated to serving all patients in their communities, regardless of their socioeconomic background or ability to pay. Because of their unique role in the health care delivery system, safety net hospitals have significant experience dealing with issues directly and indirectly linked to the prevalence of gun violence. In particular, safety net hospitals function as a key link in the mental health safety net, providing emergency outpatient and inpatient mental health services to all who need them. When gun violence does unfortunately occur, our hospitals are often the source of care for victims. Trauma care is among the most important services safety net hospitals offer, as they are the only source of level I trauma care (or trauma care at all) in many communities across the country.

I. Federal Violence Prevention Efforts

NAPH recognizes the importance of legislative and regulatory efforts to limit access to highly dangerous weapons among those who would use them to harm others. We also recognize the need to bolster access to mental health services for all patients. In particular, we support efforts to ensure state Medicaid plans comply with statutory mental health parity requirements. By boosting the quality of mental health coverage at the state level, these efforts will go far in increasing access to care for our nation's most vulnerable.

On Jan. 16, President Barack Obama announced a comprehensive set of legislative proposals and executive orders, which includes enhanced federal support for mental health services – $155 million annually, by our count. While we welcome any additional federal support in this area, this amount will not come close to meeting our mental health system's needs. We strongly encourage the president and Congress to consider substantially greater investment in future legislative proposals given the severe lack of funding we see today.

II. NAPH Member Mental Health Services

Recently, NAPH reached out to our membership with a series of questions and are pleased to share with you their successes and challenges.

Patients in communities across the country are struggling to gain access to mental health services. Factors including budget cuts and mental health practitioner shortages have forced many people to wait weeks for – or even go without – the crucial mental health care they need. Both adults and children are suffering for lack of these services, and minorities in particular are not receiving needed care.

However, even under these circumstances, NAPH members are continuing to provide mental health services for all patients, filling the void left by providers that have reduced or eliminated this care. Many of our members report successfully maintaining their psychiatric capacity despite strained resources, and some are even increasing capacity to make up for other closures or consolidations in their area.

While our members' ability to shoulder much of the mental health care in their communities is remarkable, they too face significant challenges. Budget constraints have forced some bed reductions in emergency department (ED) extension programs that provide a quiet, more controlled environment for ED patients with mental health needs. Other members have had to curb community-based clinic and day treatment services.

What's more, the pressure put on safety net hospitals by state and local funding cuts is causing capacity and service level issues. One NAPH member offers the following example:

> *There were cuts made to both the local mental health clinic and mental health hospital. The cuts have adversely affected the patients in our region with decreased availability of much needed resources. These patients have no other choice but to come to EDs to try and get assistance. Frequently, patients are kept in ED beds while on transfer to an appropriate facility. We have seen an increase in the number of patients presenting to our ED needing mental health services and [have had] increased difficulty placing these patients in both inpatient and outpatient services. This increase has caused a burden on the existing resources in our ED as well as delaying mental health treatment for patients in need. This issue is recurring through our EDs in our area.*

III. NAPH Member Violence Prevention Efforts

NAPH members are always looking for solutions. Being on the front lines of trauma care for so many victims of violent crime has prompted many members to reach far into their communities and work toward reducing violence and improving the lives of those at risk for violent behavior.

The following are just a few examples of the violence prevention activities at NAPH member hospitals:

- Several members lead CeaseFire programs in their hospitals. Modeled on CeaseFire Chicago, these programs use violence interrupters, who are outreach workers from the same, hotspot communities as many of the victims, which enable them to have credibility with high-risk youth. The programs link victims and their families to supportive services to reduce the likelihood of future violence.

- A Florida member has created a Crisis Intervention Training Program to help "law enforcement and first responders to identify early signs of mental illness and develop a

jail diversion program for individuals with mental illness within the criminal justice system."

- A California member takes part in a robust variety of violence prevention programs. One unique example is a program to remove gang-related tattoos from ex-gang members as part of an effort to assist them in gaining meaningful employment.

- A member in the Northeast created the Violence Intervention Advocacy Program. This program aims to prevent future violence stemming from prior assaults and to improve the quality of life for victims of violence.

IV. Recommendations

NAPH hospitals are preventing violence in their communities and remain committed to serving patients with mental and behavioral health challenges, despite inadequate funding. However, sufficient federal funding – beyond what the president has already proposed – will be instrumental in keeping the mental health safety net intact. We urge the committee to keep this in mind while crafting policies aimed to prevent and reduce gun violence.

We commend Chairman Durbin and the Subcommittee for convening this important hearing. NAPH and its members look forward to working with the committee to tackle these issues together in the coming months.

For additional information, please contact Shawn Gremminger, Assistant Vice President for Legislative Affairs, at sgremminger@naph.org or 202.585.0112.

Written Statement for the Record
National Association of School Nurses

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights

Hearing on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

Tuesday, February 12, 2013
216 Hart Senate Office Building

Chairman Durbin, Ranking Member Cruz and Members of the Committee:

On behalf of the National Association of School Nurses, we would like to thank you for holding this hearing today to explore and consider proposals that will help to better protect our children and our communities from gun violence.

As your Committee examines proposals to reduce gun violence, we urge you to consider taking a comprehensive approach, including policies that make schools safer, expand access to mental health services and implement common-sense gun safety measures. **Any proposal to reduce gun violence must include a sustainable, embedded, coordinated system that starts with focusing on prevention.** Prevention efforts must include basic components such as teaching skills and tools for handling anger, stress and coping with other related issues as part of a regular curriculum in school. This type of model should also incorporate the use of reliable and valid large-scale screening tools that identify children at risk for more targeted interventions.

A strategic, integrated system will also require investing in individualized supports. We encourage you to invest in our nation's school nurses who serve a critical role in advancing safe school environments by promoting the prevention and reduction of school violence.

- School nurses are members of school-based mental health teams, along with school counselors, psychologists and social workers.
- School nurses spend 32 percent of their time providing mental health services (Foster et al., 2005).
- School nurses provide a continuum of services ranging from mental health promotion through universal and targeted interventions; screenings to identify early warning signs and referral; and crisis planning and interventions.
- School nurses collaborate with healthcare providers, parents and community members to identify and implement evidence-based intervention, prevention and educational programs.
- School nurses possess the expertise to assist students in developing problem-solving and conflict resolution techniques, coping and anger management skills and positive self-images.
- School nurses are equipped with the knowledge to be active members of crisis intervention teams to address violent situations in the school setting.
- School nurses are often the front line of health and well-being in the school. This is critical because many times mental health issues mask themselves with physical symptoms. In addition, some children with chronic conditions are more at risk for suffering from mental health conditions.

We appreciate the Senate Judiciary Committee's renewed commitment to protecting our nation's children from gun violence. We look forward to engaging in a dialogue with you to promote and invest in evidence-based strategies that ensure our children have a safe, healthy and secure future.

National Association of School Psychologists
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Fax: 301-657-0275 · TTY: 301-657-4155
Web: www.nasponline.org

Enhancing the mental health and educational competence of all children.

February 8, 2013

Honorable Dick Durbin
Chairman, Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Lindsey Graham
Ranking Member, Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Proposals for Reducing Gun Violence: Protecting Our Communities While Respecting the Second Amendment

Dear Senators Durbin and Graham:

On behalf of the members of the National Association of School Psychologists (NASP), thank you for the opportunity to submit written testimony regarding ways to effectively reduce gun violence in our country. NASP represents over 25,000 school psychologists who work with students, families, educators, and administrators to support the academic achievement, positive behavior, and mental wellness of all students.

NASP does not currently have an official position on gun control. However, we did release in January 2013 a list of recommendations for comprehensive school safety policies. NASP's primary responsibility is to focus on issues that promote the safety, mental wellness and, successful learning of our children and youth. Our recommendations address issues related to gun violence in that they address the essential prevention policies and best practices that both minimize risk for dangerous behavior and promote the opportunity for early identification and early intervention for struggling students. With the right supports and services, schools can play a critical role in the collective effort to safeguard our children against violence. Access to guns by children and youth, and those who intend to cause harm to them, is clearly a problem the society needs to address. We believe that public policy decisions related to reducing such access should be made only after careful consideration of expert opinion and research that examines effective ways to reduce violence in our schools and communities. Consequently, we are also providing a Youth Violence Fact Sheet that includes research citations related to gun violence.

Thank you for your service to our country, and for your attention to this important matter. If you would like further information, please contact Kelly Vaillancourt, PhD, Director, Government Relations (kvaillancourt@naspweb.org).

With appreciation,

Susan Gorin, CAE
Executive Director

Enclosed:
NASP Recommendations for Comprehensive School Safety Policies
Youth Gun Violence Fact Sheet

NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS

NASP Recommendations for Comprehensive School Safety Policies January 2013

The United States of America has no greater responsibility than safeguarding the well-being of our children. Ensuring safe schools and communities is paramount to this responsibility.

The National Association of School Psychologists (NASP) has long been a leader in promoting safe, supportive learning environments that protect both the physical and psychological safety of students and staff. We applaud President Obama on committing to identifying concrete and comprehensive strategies to ensure that we meet this responsibility for every school, child, family, and community in the country. His charge to members of his cabinet and members of Congress to work with national safety experts to craft solutions will improve this process. We strongly agree that such strategies must include addressing mental health and believe they should reinforce collaborative efforts between schools, families, and communities. We also appreciate the President's acknowledgement that effective policies should be built upon known evidence-based strategies and practices.

With the President's announcement comes the urgency to not allow the light shed on this issue by the tragedy in Newtown, CT to dim without our leaders taking real, meaningful action. NASP is committed to helping guide policies that lead to increased physical and psychological safety in schools by providing the recommendations outlined below and endorsing the efforts of other allied organizations and experts, such as the *December 2012 Connecticut School Shooting Position Statement* released last month by the Interdisciplinary Group on Preventing School and Community Violence.

Our goal is to highlight common ground, of which there is a great deal among school safety experts. Further, we strive to ensure that our focus moves beyond the historical practice of primarily increasing school building safety measures (e.g., metal detectors, armed security guards, surveillance cameras) and instead focus on addressing the continuum of needs and services that lead to improved safety, well-being, and learning for children and youth. Effective school safety is a day-in, day-out commitment that infuses every aspect of school life. Our challenge is to not let increased anxiety over this horrible tragedy obscure the proven fundamentals of violence

prevention. Instead we must become more unified, vocal advocates for policies that support what schools *can* do effectively, which in turn supports our schools' primary mission of learning.

A Call to Action

NASP proposes the following policy and practice recommendations to most effectively address school safety:

1. **Increase access to mental health services and supports in schools.** Only a fraction of students in need actually receive mental health services, and among those that do, the majority access those services in school. Nevertheless, the availability of school-based mental health professionals remains inadequate to meet the mental health needs of our children and youth. Schools should be enabled to hire more school-based mental health professionals (e.g. school counselors, school psychologists and school social workers) and funds should be allocated specifically for hiring these professionals. The recommended ratio of students to school counselor is 250:1; the recommended ratio for school psychologists is 500-700:1(NASP Model for Comprehensive and Integrated School Psychological Services), and the recommended ratio for school social workers is 400:1. Schools and districts should be held accountable for making an effort to meet or at least work toward these ratios each year. Increased access to mental health services and supports in schools, including the infusion of social–emotional learning in our classrooms, is vital to improving the physical and psychological safety of our students and schools, as well as academic performance and problem-solving skills. Additionally, close collaboration between school-employed (e.g., school counselors, school psychologists, and school social workers) and community-employed mental health services providers (e.g., professional counselors, clinical psychologists, and clinical social workers) is critical to meeting the range of mental health needs. School psychologists play an integral role in providing direct services to students and teachers, while coordinating with community resources to ensure that all students receive the support they need to be successful.

2. **Develop safe and supportive schools.** Despite the horror that we all feel after the shooting in Newtown, CT, schools remain one of the safest places for children in the United States. We need to continue to focus on how we build and maintain safe school environments that promote learning, psychological health, and student success. We need to ensure that adequate learning supports and policies are present to provide a continuum of services that respond to the needs of *all* students. This requires treating learning and mental health supports as equally important as, and fully integrated with, school management and instruction. Schools should be required to include measures of school climate and availability of learning supports on par with student academic performance in accountability plans. It is critical to enhance school connectedness and trust between students and adults as well as reinforce open communication and the importance of reporting concerns about someone hurting themselves or others. School psychologists play an integral role

in working with administrators and teachers to ensure that building systems and policy are conducive to safe and supportive conditions for learning.

3. **Implement school safety initiatives that consider both psychological and physical safety.** Effective school safety efforts should utilize evidence-based practices to ensure the well-being of all students and well as their physical safety. Reasonable building security measures, such as secure doors, lighted and monitored hallways, and check in-check out systems for visitors, are important. Although there have been calls to increase the presence of armed guards at schools, the research regarding schools that utilize armed security generally demonstrate non-significant impacts on reducing violence while at the same time result in students feeling less safe. Students' perception of safety is not a trivial consideration given that simply feeling unsafe impedes learning and the ability to develop a nurturing, supportive, and welcoming school environment. An over-emphasis on extreme physical security measures alone, such as increasing armed security and/or arming school staff, will not improve school safety, and in fact may undermine the primary mission of schools to ensure learning while safeguarding our children. (See *NASP Cautions Against Increased Armed Security to Address School Safety*, www.nasponline.org/safety_armedsecurity.)

4. **Improve screening and threat assessment procedures to identify and meet the needs of individuals at risk for causing harm to themselves and others.** Schools must provide the infrastructure to develop and maintain active school safety and crisis teams that focus on efforts year-round to promote a safe, positive school culture while minimizing the impact of school crises when they occur. This entails a multitiered approach consistent with other school systems of support—which includes universal mental health screenings and interventions as well as more intensive approaches for students deemed at risk. In collaboration with school employed mental health professionals, each school should be required to develop a plan to identify those students at risk for violence to themselves others. In addition, schools should provide on-going professional development opportunities for educators about how to identify students who may be experiencing mental health difficulties, or who may be at risk for harming themselves or others. Critical to this process, is collaboration and communication with other education, health, mental health, and law enforcement agencies, and schools should have a clearly defined communication and information sharing plan.

5. **Establish trained school safety and crisis teams.** Schools and districts need trained school safety and crisis teams and plans that are consistently reviewed and practiced. Training should encompass ongoing prevention and early intervention as well as response and recovery in the event the unpreventable occurs. Plans and training should facilitate collaboration with first responders and community providers. Teams

should include key administrators, security personnel, school mental health professionals, and other relevant staff. A primary goal should be to reinforce learning as well as safety. (See NASP's PREPaRE School Crisis Prevention and Intervention Training Curriculum, www.nasponline.org/prepare.)

6. **Conduct a national campaign to reduce stigma around mental illness and to promote mental health on par with physical health.** Too much stigma about mental health exists in our country. This stigma reduces the likelihood that families and students will seek out and receive the mental health supports and services needed to learn and thrive in school and throughout life. With appropriate treatment, especially early intervention, people with mental illness can lead full and productive lives. Given the natural interaction between physical and mental health, the importance of caring for an individual's mental health needs must be on par with the importance of physical health. Schools should be encouraged to incorporate mental health education into existing health standards.

7. **Improve policies that limit exposure to media violence among children, youth, and vulnerable populations.** The negative effects of exposure to violence on children and youth are well documented and include increased risk of trauma and academic and behavior problems. While families, communities, educators, and law enforcement must continue to work together to reduce children's exposure to violence in their homes and neighborhoods, our society and the entertainment industry must also recognize and respond to the negative effects that media violence is having on individuals. To ensure the psychological safety of our children and youth, policies must regulate and limit exposure to media violence among children, youth, and other vulnerable populations.

8. **Review and revise as needed current policies and legislation addressing access to firearms by those who have the potential to cause harm to themselves or others.** We must prevent the misuse of weapons by people who are intent on causing harm to themselves or others. Experts on the research related to the prevention of violence, and specifically school violence, should be charged with offering substantive recommendations to our elected officials on how our current laws might be improved so that tragic events like the Sandy Hook Elementary School shooting do not ever occur again.

Responding effectively to these priorities will also require policies that promote education, training, and research. Effective approaches will take into account the mission and purpose of schools, and how schools and communities can work together to fulfill them. We must create and pass legislation and funding to reduce and prevent violence while also promoting the learning and well-being our children and youth.

About NASP: NASP represents more than 25,000 school psychologists in the United States and abroad. School psychologists work with families, educators, and community providers to create safe, supportive schools; promote students' academic success; and support students' healthy behavior and development. They also serve on school safety, crisis, and mental health teams and are often leaders in helping to develop comprehensive school safety plans. NASP's longstanding leadership in school safety and crisis prevention and response includes helping to build capacity at the local level through our PREPaRE School Crisis Prevention and Intervention Training Curriculum (www.nasponline.org/prepare) and providing direct support and resources for families and schools in the event of major crises through our website and our National Emergency Assistance Team (www.nasponline.org/safety_crisis). NASP allows provides guidance to school leaders through various resources such *A Framework for School-Wide Bullying Prevention and Safety*.

For more information and direct inquiries contact: NASP Director of Communications Kathy Cowan kcowan@naspweb.org (media); NASP Director of Government Relations Kelly Vaillancourt at kvaillancourt@naspweb.org (policy and legislation); or NASP Director of Professional Development and Standards Eric Rossen at erossen@naspweb.org (professional development and practice).

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NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS

Youth Gun Violence Fact Sheet

Gun violence poses a serious threat to America's children and youth. Existing data clearly point to the need for improved strategies for keeping guns out of the hands of children and youth and those who would harm them. Gun violence in schools is extremely rare, as are violent crimes committed by people with mental illness. However, the majority of youth murdered are killed with a firearm and nearly half of youth suicide deaths involve the use of a gun. Efforts to end youth gun violence must focus on accessibility and prevention. Additionally, federal safety and health agencies must be empowered to conduct comprehensive research into the causes of and solutions to this unacceptable source of harm to our children, families, and communities.

Firearm Deaths in the United States (CDC, 2012)

- In 2010, there were 2,711 infant, child, and teen firearm deaths. On average there were seven such fatalities daily and 52 weekly.
- Between 1981 and 2010, 112,375 infants, children, and teens were killed by firearms. This is 25,000 more deaths than the number of soldiers killed in Korea, Vietnam, Iraq, and Afghanistan, combined (Children's Defense Fund, 2013a).
- Of the 1,982 youth (age 10-19) murdered in 2010, 84% were killed by a firearm.
- Of the 1,659 teens (age 15-19) who committed suicide in 2010, 40% were by firearm.
- Of the 1,323 males (age 15-19) who committed suicide in 2010, 45% were by firearm.
- Of the 336 females (age 15-19) who committed suicide in 2010, 20% were by firearm.
- In 2010, across all age groups (and including adults), there were 31,672 individuals killed by firearms (with 61% of these deaths being suicide and 26% homicide).

Homicide and Suicide at School

- Less than 1% of student homicides and suicides take place at school, on the way to or from school, or at a school sponsored event (Robers, Zhang, & Truman, 2012).
- During the 2009/2010 school year the odds of a student (age 5-18) being the victim of a school-associated homicide was one in 2.5 million. In comparison, the odds of a 5 to 19 year old being killed in a motor vehicle accident in 2010 were 1 in 16,000. (CDC, 2012).
- Most school-associated student homicides involve a firearm and a single victim and offender (Modzeleski et al., 2008).
- In 80% of school-associated firearm-related homicides and suicides, the weapons used were obtained from the home or from a friend or relative (Reza et al., 2003).

Guns and Other Weapons at Home and in School (CDC, 2012; Eaton et al., 2011; Okoro et al., 2005)

- In 2011, 5% of high school students carried a gun on school property, and 7% were threatened or injured by a weapon (e.g., gun, knife, or club) on school property.
- Of the 50 states and the District of Columbia, Wyoming has the highest percentage of homes with guns (63%), the highest suicide rate (23 per 100,000), and the highest percentage of students carrying a gun to school (11%). Conversely, Massachusetts ranks 48th (out of 51) in terms of percentage of homes with firearms (13%), has one the lowest suicide rates (9 per 100,000), and the lowest reported percentage of students who acknowledged bringing a gun to school (2.5%).
- Among selected larger urban school districts Washington, DC, had the highest percentage of students carrying a gun to school (7.5%), and New York City had the lowest (2.3%).
- Overall, the prevalence of having carried a weapon on school property decreased during 1991–1999 (26%–17%) and did not change significantly during 1999–2011.

Factors Related to School Shootings

- Studies of school shootings in the 1990s suggested that: a) shooters often had multiple, non-automatic guns; b) killers shot deliberately at individual victims and took their time doing so; c) theft was the dominant method by which shooters obtained weapons; d) all shootings were planned in advance; e) most youth had told peers before committing the acts; f) most reported having a history of feeling bullied or threatened; g) shooters often had a history of mental health problems; and h) many had made suicidal gestures before the incidents (Fein et al., 2002; Kleck, 2009; Redding & Shelf, 2001).
- According to the U.S. Secret Service, there is no profile for a school shooter. However, since shootings tend to be planned in advance and oftentimes youth tell others of the plan, a threat assessment approach is recommended (Fein et al., 2002).

Youth Suicide and Firearms

The *Youth Suicide by Firearms Task Force* (1998), a group that included representatives from the American Medical Association; American Firearms Association; National Shooting Sports Foundation; National Center for Injury Control and Prevention Centers for Disease Control; and Children's Defense Fund reported the following:

- Firearms are the most common method of suicide by youth. This is true for males and females, younger and older adolescents, and for all races.
- The increase in the rate of youth suicide (and the number of deaths by suicide) over the past four decades is largely related to the use of firearms as a method.
- The most common location for the occurrence of firearm suicides by youth is the home.
- There is a positive association between the accessibility and availability of firearms in the home and the risk for youth suicide.
- The risk conferred by guns in the home is proportional to the number and accessibility (e.g., loaded and unsecured) of guns in the home.
- Guns in the home, particularly loaded guns, are associated with increased risk for suicide by youth, both with and without identifiable mental health problems or suicidal risk.
- If a gun is used to attempt suicide, a fatal outcome will result 78-90% of the time.
- Public policy initiatives that restrict access to guns (especially handguns) are associated with a reduction of firearm suicide and suicide overall, especially among youth.

Availability and Storage of Firearms in the United States and Association With Violence

- A significant percentage of adults who have minor children living in their homes report that their firearms are not safely stored (Figure 1; Johnson, Miller, Vriniotis, Azrael, & Hemenway, 2006).
- Keeping firearms locked and unloaded and storing ammunition in a separate locked location are feasible and protective strategies to reduce injuries (Grossman et al., 2005; Reza et al., 2003).
- Parents should discuss safe storage and handling of firearms with their children (Reza et al., 2003). However, children's reports often contradict parental reports about their children's access to firearms, with children reporting knowing the location of firearms and handling firearms when parents said they did not. This is true whether or not parents lock firearms and discuss firearm safety with their children (Baxley & Miller, 2006; Grossman et al., 2005).
- The number of suicide, homicide, and unintentional firearm deaths among youth (ages 5-14) is higher in states and regions where guns are more prevalent (Miller, Azrael, & Hemenway, 2002b).
- States with a higher percentage of homes with firearms (as estimated by Okoro et al., 2005), tend to have higher rates of suicide by firearm (CDC, 2012; $r = .78$).
- In the U.S., youth are disproportionally represented as victims and perpetrators of firearm homicide. Victimization is especially high among males, and African-American and Hispanic youth (Child Trends Data Bank, 2012; Dahlberg, 1998; Hepburn & Hemenway, 2004).
- One-quarter of adolescents in the U.S. reported having easy access to a gun in the home (Swahn, Hamming, & Ikeda, 2002).
- Increases in the overall homicide rate appear to be primarily attributable to an increase in firearm homicide by youth (Hepburn & Hemenway, 2004).
- There is a strong, significant relationship between gun availability and homicide; of all developed nations, the U.S. has the highest rate of civilian gun ownership, highest homicide rates, and weakest gun control laws (Hemenway & Miller, 2000; Hepburn & Hemenway, 2004).
- Cross-sectional studies have shown that areas with higher rates of possession of household firearms have disproportionately higher numbers of death by homicide (Miller, Azrael, & Hemenway, 2002a; Miller, Hemenway, & Azrael, 2007).

- The risks associated with a gun in the home (e.g., increased gun accidents, homicide, intimidation, completed suicide) are greater than their benefits, with no credible evidence showing that having a gun in the home assists in self-defense and reduced injury (Hemenway, 2011). Each time a home firearm is used in self-defense there are on average, eleven completed and attempted firearm suicides, seven assaults and homicides with a firearm, and four accidental firearm deaths or injuries (Kellermann et al., 1998).

Policy Issues Related to Curbing Gun Violence

- According to the Children's Defense Fund (2013b), loopholes in firearm safety laws have reduced their effectiveness. For example, the Brady Law, which required federal background checks for guns purchased from licensed retailers, did not require such checks for guns bought through private sales (and it is currently estimated that 40% of guns are bought from private sellers).
- States that conducted background checks for restraining orders and fugitive status had fewer homicide and suicide deaths. Firearm suicide deaths were lower for states with background checks for mental illness, fugitive status, and misdemeanors (Sen & Panjamapirom, 2012).
- Although development and evaluation is necessary, some have proposed that altering the design of firearms themselves will reduce accidental and intentional injury and/or death by firearm (Teret & Cluross, 2002).
- Most people with serious mental illness do not commit violent crimes, and the very few who do are unlikely to use a gun (Applebaum & Swanson, 2010).
- Among the general public, there is fear and stigma of people with mental illness when, in fact, people with mental illness are far more likely to be the victims than perpetrators of violent crime (Substance Abuse and Mental Health Services Administration, n.d).

Effectiveness of Initiatives to Curb Gun Violence

- Problem-oriented police initiatives (e.g., a focus on problem identification, analysis, response, and intervention) to reduce gun violence vs. "zero tolerance" policing initiatives (e.g., indiscriminant cracking down on all crimes) are associated with a statistically significant decrease in gun homicide, gun related assault, and youth homicide. These initiatives address the culture and community of gun violence in addition to providing sanctions (Braga et al., 2008; Braga & Weisburd, 2012; Kennedy et al., 1996).
- "Pulling levers" is an approach with growing research support that deters continued offending by providing varied responses to violent offenders including direct and repeated communication that stresses crime deterrence and coordination with social services and community resources (Braga et al., 2008; Braga & Weisburd, 2012).
- Among those with a felony arrest, denial of gun purchase requests is associated with lower rates of gun offenses and violent crimes, compared to those who are allowed to buy a gun (White, Wintenute, & Rivera, 1999).

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For additional information youth violence prevention and school safety, please visit www.nasponline.org/safety_crisis. © 2013, National Association of School Psychologists, 4340 East West Highway, Suite 402, Bethesda, MD 20814, (301) 657-0270 *www.nasponline.org*

Written Testimony of
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Chief Executive Officer, National Association of Social Workers
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United States Senate
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113th Congress

Proposals for Reducing Gun Violence: Protecting Our Communities While Respecting the Second Amendment

Chairman Durbin, Ranking Member Grassley, and the honorable members of the Subcommittee on the Constitution, Civil Rights, and Human Rights, we thank you for considering our statement during this hearing on reducing gun violence. The National Association of Social Workers (NASW) supports comprehensive efforts to reduce incidents of gun violence and commends the Subcommittee's focus on this important issue.

NASW is the largest membership organization of professional social workers in the country with 145,000 members. NASW works to enhance the professional growth and development of its members, to create and maintain standards for the profession, and to advance sound social policies. Social workers help individuals, families, and communities across the nation to improve their well-being and promote social change to enhance unfavorable living conditions.

The primary mission of the profession of social work is to enhance societal well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, or living in poverty. A historic and defining feature of social work is the profession's focus on individual wellbeing within the social context and the wellbeing of society[1]. Easy access to firearms, a dearth of mental health services, and our collective inaction threaten the ability of our clients, our communities, and our country to have an opportunity to live healthy, productive lives.

Acts of gun violence vary in their form and degree of devastation. Recently, attention has been paid to mass shootings such as those at Sandy Hook Elementary School in Newtown, Connecticut, a movie theater in Aurora, Colorado, a Sikh Temple in Oak Creek, Wisconsin, and a Congressional event in Tucson, Arizona. These shootings were indiscriminate and devastating for the communities involved, as well as our nation as a whole. As a result, well-designed plans for interventions for such events are essential.

Professional social workers are among the first responders to provide trauma care and counseling on the scene of mass shootings. Social workers know the tremendous emotional toll of such an event. NASW, and the 650,000 social workers across our nation, stand ready to work with the Obama Administration, Congress, and state governments to assist with this significant undertaking. Social workers across the nation continually volunteer mental health and first responder services in the wake of such tragedies.

According to the Law Center to Prevent Gun Violence and the U.S. Centers for Disease Control and Prevention, gun violence claims approximately 30,000 lives annually in the U.S and for every person who dies from a gunshot wound, two persons are injured.[ii] The alarmingly high numbers of gun-involved deaths and injuries are a public health crisis, particularly for persons of color and the most vulnerable populations. For example, African Americans comprise almost 13 percent of the U.S. population but they represented almost 24 percent of all firearm deaths in 2009.[iii] Death by gun is substantially more likely to occur in poorer, less advantaged places[iv].

Furthermore, the economic impact of gun violence on the nation is significant. As reported by the John Hopkins Center for Gun Policy and Research in 2005, U.S. firearm related deaths and injuries resulted in medical and lost productivity expenses of about $32 billion.[v] The economic impact combined with the emotional and societal consequences of gun violence cannot be tolerated and this issue must rise to the top of the domestic legislative and policy agenda.

Recommendations

Increase Access to Mental Health Services

NASW has been a longtime advocate for greater access to mental health services for all individuals. This is the most important component of the broader conversation regarding safety and gun violence. While mental illness is not a predictor of violence, these increasing incidents of deadly force indicate that mental health prevention and treatment for those that need it most is a critical investment possible. Despite this era of fiscal responsibility, such services are critical and could be lifesaving. According to the National Alliance on Mental Illness, approximately one in four adults experience mental illness in a given year and one in 17 lives with a serious mental illness such as schizophrenia, major depression or bipolar disorder, and one in 10 children live with a serious mental or emotional disorder[vi]. The President's New Freedom Commission on Mental Health notes that treatment is available to allow children and adults to be vital contributors to their communities, yet too many people remain unserved[vii]. We can improve our nation's productivity, reduce stigma attached to mental illness, and enhance overall health and wellbeing by investing in mental health.

This era of health and fiscal reform presents an opportunity to address these serious challenges and develop real solutions. President Obama notes that the Affordable Care Act will provide one of the largest expansions of mental health coverage in a generation by extending care to 30 million Americans, including an estimated 6 to 10 million people with mental illness[viii]. NASW supports the President's recommendations to identify mental illness early and refer individuals to treatment, finalize requirements for private health insurance plans to cover mental health services and ensure that Medicaid recipients receive quality mental health coverage.

Efforts to address mental illness must also include increased funding for public school and community-based mental and behavioral health services. Today, less than half of children and adults with diagnosable mental health problems receive the treatment they need[ix]. As such, NASW supports the *Excellence in Mental Health Act,* which was introduced by a bipartisan group of Senators including social worker Senator Debbie Stabenow. Senator Stabenow notes that the bill would put mental health centers on more equal footing with other health centers by improving quality standards and expanding access to ensure more people can get the mental health care they need[x]. The *Student Support Act,* which was introduced by social worker and Congresswoman Barbara Lee (CA-9), aims to improve student access to mental health services and would provide grants to states to hire school social workers and other mental health professionals in order to provide optimal care for this vulnerable population. Additionally, Senator Franken's bill, the *Mental Health in Schools Act,* would provide assistance to schools to train staff, volunteers, families, and other members of the community to recognize the signs of behavioral health problems in students and refer them for appropriate services[xi]. Further, we must treat mental health in the same manner that we treat physical health and develop a workforce capable of responding to increased need. NASW supports President Obama's proposal to train additional mental health professionals, including social workers, to serve students and young adults.

NASW also has growing concerns regarding the privacy of records for persons diagnosed with a mental illness. In the formulation of solutions and legislation, developing registries of those diagnosed with mental illness has been discussed as a possible strategy to reduce access to weapons, and as a result, reduce violence. This measure could have serious unintended consequences including those with treatable mental illness delaying or avoiding obtaining treatment because of privacy concerns or because they are unwilling to forfeit their right to use a firearm for legitimate purposes. This strategy is contradictory to an overall goal of reducing the stigma of mental illness and treatment.

Address Responsible Gun Ownership and Use

NASW is concerned about the proliferation of firearms in our nation. Studies show that regions and states with higher rates of gun ownership have significantly higher rates of homicide than states with lower rates of gun ownership and people are significantly more likely to die from unintentional firearm injuries when they live in states with guns[xii]. The United States has the highest rate of gun ownership of any country in the world and the highest per capita rate of firearm-related murders of all developed countries[xiii].

There are numerous ways to curb gun violence including a common sense approach to assault rifles, and magazines and clips capable of holding numerous rounds of ammunition. These were created to be lethal, and not created for the average citizen and should not be available for their purchase. As such, NASW recommends the banning of military-style assault weapons and high-capacity ammunition feeding devices. NASW supports the *Assault Weapons Regulatory Act of 2013,* which was introduced by Senator Dianne Feinstein (CA).

Further, although federal law requires criminal background checks for guns sold through licensed firearm dealers, the "gun show loophole" allows those not engaged in the business of selling firearms to do so without a license and without paperwork. These practices are not acceptable. We must change our overall approach to firearms and gun violence, and determine how we can work together with stakeholders in all sectors to limit access to these weapons and advocate for common sense policies.

Conclusion

Discussions regarding gun violence prevention and access to mental health care cannot occur only after tragedy. There must be a national conversation that ends with meaningful strategies and outcomes. President Obama vowed to launch such a conversation to increase understanding about mental health. This includes focusing on the sense of shame and secrecy associated with mental illness and the toll that takes on those that would otherwise seek care[xiv].

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[xiv] http://www.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf

Statement for the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Cassandra Carmichael
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National Council of Churches USA
February 11, 2013

In an average year, 100,000 people in the United States are shot or killed with a gun. The Centers for Disease Control reported that in 2009 more than 31,000 people died in the United States as a result of firearm injury, accounting for 18 percent of all deaths that year.[1] And, more than 73,505 people were treated in hospital emergency departments for non-fatal gunshot wounds in 2010.[2] The United States has become a national at war with ourselves and we have become numb to the sacredness of human life.

Responsible gun ownership can be consistent with our constitutional rights; however, it must be stressed that there are relatively few shootings by average citizens defending themselves. Rather, most fatal and non-fatal shootings result from abuse or misuse of guns.[3] Annually, there are 1.5 million crimes committed where firearms were used. Sixty-eight percent of murders are gun related and 55 percent of suicides are by using guns.[4] Even the non-fatal shootings still leave in their wake a trail of pain, suffering, disability and/or disfigurement, and anguish and grief for family and community.

It is also important to recognize that African Americans and Latinos are being murdered or harmed by gun use at significantly higher rates than the rest of our society. While African Americans compose roughly 12 percent of the U.S. population, they account for 27 percent of all gun-related deaths in this country. After African Americans, Latinos, who comprise approximately 15 percent of the population have the second highest rate of gun homicide rates and gun assaults.[5] The burden that gun violence imposes on women is also striking. Guns account for more murders of women by their intimate partners than all other methods of killing combined.[6]

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[2] Nat'l Ctr. for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Leading Causes of Death Reports, 1999-2010, for National, Regional, and States (RESTRICTED)*, at http://www.cdc.gov/injury/wisqars/leading_causes_death.html (last visited Nov. 30, 2012).
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[6] Rothman E. F., Hemenway D, Miller M, and Azael D. Batterers' Use of Guns to Threaten Intimate Partners. Journal of the American Medical Women's Association, 2005. 60 (1): p. 62- 68, http://www.wagv.org/gun-violence.php.

African In the decade following the Federal Assault Weapons Act of 1994 there was a 64 percent decline in assault weapon use.

The National Council of Churches of Christ in the USA (NCC) and many of its 37 member communions have taken action to not only curb gun violence through education and training, but have also developed social policies calling for action from policy makers to prevent gun violence. These policies and resolutions, combined with many examples of congregant and congregational action, provide ample evidence of the overwhelming concern for gun violence within the Christian community.

The Christian Call to Non-Violence

The Christian tradition counsels non-violence. A seminal text is the Sermon on the Mount, found in Matthew's gospel, where Jesus instructs his followers to bear violence rather than inflict it. The text states, "You have heard that it was said, 'An eye for an eye and a tooth for a tooth.' But I say to you, do not resist an evildoer. But if anyone strikes you on the right cheek, turn the other also. . . . You have heard that it was said, 'You shall love your neighbor and hate your enemy.' But I say to you, Love your enemies and pray for those who persecute you . . . (Matthew 5:38-39, 43-44).

Jesus modeled the redemptive power of non-violence and it is hard to image that Christ would look favorably on the violence in contemporary U.S. society.

Christians know, from both experience and scripture, that all humans are sinful, capable of acting with hostile aggression toward others. On those grounds, we argue for restricting access to guns which, in the wrong hands or without adequate supervision, can make violence ever more deadly. Christians can certainly contend that it is necessary for public authorities to take up arms in order to protect citizens from violence; but to allow assault weapons in the hands of the general public can scarcely be justified on Christian grounds. The stark reality is that such weapons end up taking more lives than they defend, and the reckless sale or use of these weapons refutes the gospel's prohibition against violence.

We therefor call for federal legislators to enact reforms that limit access to assault weapons and handguns, including closing the so-called federal "gun show loophole," which allows for the purchase of firearms from private sellers without submitting to a background check, or providing documentation of purchase.

Statement of the National Education Association
Submitted for the Record
Senate Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights
Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment
February 12, 2013

Thank you for the opportunity to submit comments in conjunction with the Subcommittee hearing on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment." We commend the Subcommittee for holding this very important hearing and hope you will use this opportunity to identify immediate steps to address the epidemic of gun violence in our nation.

From Paducah, Kentucky in 1997 to Newtown last year, to Midland, Alabama just this month, every member of the National Education Association grieves when students and educators are victims of horrific violence. We are a family, so we grieve for the parents who have lost children, and we grieve for the families of the educators who time and time again put themselves between bullets and their students.

Gun violence affects every community in this nation. Every day, promising young lives are cut short, leaving behind others who are permanently impacted by the violence around them. Now, more than ever, we stand ready to speak out and mobilize to protect our students and communities from further pain and needless violence.

Consider this story from an NEA member in Oregon:

"I remember a student who survived a shooting in his early teens. By the end of his high school career, he was still moving through the world like a ghost, quiet, withdrawn. He refused to write with a pen. He made the lines with a pencil only, as if he didn't believe he could make a permanent mark on the world. More than once, school has come to a halt after a teenager was killed. The "lesson" of the day became mortality, hope, sadness, and loss. It is part of the job, but it is not what is supposed to happen."

NEA devotes considerable resources to addressing school safety, including professional development for our members in school safety, bullying, bias/harassment, and cultural competence. We are running a "Bullyfree: It Starts with Me" campaign to ensure educators have the tools they need to identify and prevent bullying, which is frequently a source of isolation and depression for students and which can be a precursor to violent behavior. We have a world-class school crisis guide (http://crisisguide.neahin.org/crisisguide/) and several state affiliates have crisis response teams that are frequently deployed to help in tragic circumstances. But, preventing future tragedies requires more than this. It requires a comprehensive approach and a real commitment from our federal, state, and local elected officials to stand up and do what is necessary to protect our children.

NEA supports a multi-pronged approach to gun violence prevention. As President Obama said, there is "no single piece of legislation that will solve this problem." If Congress were to pass legislation requiring background checks for every gun purchase, the nation would still need enough mental health services and professionals making diagnoses about individuals (and states submitting those records to NICS) to make the background check system reliable and effective. Furthermore, since schools are often the places in which some of the first signs of mental health issues can be spotted and diagnosed, it is all the more important to ensure adequate numbers of qualified school personnel to make these diagnoses and/or spot warning signs of potentially problematic or violent behavior. Complicating matters, there is a huge shortage of these professionals in our public education system (from pre-k through higher education), which impedes the ability of school personnel to ensure a safe, secure, respectful, and nurturing learning environment.

We were very pleased by the recommendations of the House Gun Violence Prevention Task Force released last week. In our letter to Chair Mike Thompson, we commended the Task Force for recommending "an evidence-based approach to supporting a safe learning environment that is tailored to the unique needs of the students and local community." We also strongly support the Task Force recommendation that all school personnel must have resources and training to implement safety plans. Finally, we were very pleased that the Task Force recommended that safety policies "promote a positive school climate that meets both the learning and emotional needs of all students." Safer, more nurturing school climates that include positive student supports and anti-bullying initiatives will help students find non-violent alternatives to resolve conflicts and will allow staff to identify and address potential problems before they escalate.

NEA's specific recommendations for immediate federal action include:

- **Common-sense gun violence prevention.** We strongly support closing loopholes and requiring background checks for every gun purchase in America – be it retail, online, or at a gun show. In most states, convicted felons, domestic violence abusers, and those who are dangerously mentally ill can walk into any gun show, flea market, or even log on to the internet and buy weapons from unlicensed sellers, no questions asked. It is estimated that over forty percent of gun acquisitions occur in the secondary market. That means that they happen without a background check at a federally licensed dealer. Gun shows are a major trafficking channel according to the Bureau of Alcohol, Tobacco, and Firearms, with an average of 130 guns trafficked per investigation, and over 25,000 firearms trafficked in total over one 17-month period alone. Studies show that 67 percent of gun owners favor background checks for every sale, regardless of location. 84 percent of people who live in a house with a gun (but are not the owner of the gun) favor a background check for every sale, and 80 percent of non-gun owners support this policy.

  In addition, we support legislation introduced by Senator Feinstein (S.150) to reinstate the ban on assault weapons and high-capacity clips. We believe assault weapons and high-capacity magazines should be used by soldiers and police officers. These commonsense measures are very much in line with the views of NEA members. A new NEA member poll indicates overwhelming support for stronger gun violence prevention laws, including background checks and bans on assault weapons and high-capacity magazine clips. These

measures will rally broad community support, especially when coupled with a greater focus on mental health and safe, secure, and supportive school environments.

These measures are critical to stop the violence. Consider these reports from NEA activists:

Connecticut – "Our wonderful son was a student at the Catholic University of America in Washington, DC when he was robbed of $62 and murdered on his way home from work two and 1/2 years ago. The gun that killed him was unregistered and illegal. The teenager who murdered him will spend 42 years in a federal prison for this heinous crime. Our family is heartbroken and nothing can bring back the sunshine of our lives. We are very angry about the easy way in which anyone can acquire a gun. We would like to see this changed. How many more tragedies will it take to bring about needed legislation?"

Alabama -- "As a professor, it is devastating to experience the deaths of students as a result of gun violence. And there have been far too many. [One student] was gunned down outside a restaurant in Huntsville. [Two others] were also shot. A speech student in my class was shot outside a McDonalds for no apparent reason. On campus a student died after a gun accidentally discharged. It seems after a shooting, when we discuss the situation in class, that almost every student has been touched by gun violence, losing a family member or friend...And most recently, we lost a member who saved the lives of children on the bus in Midland, Alabama"

- **Greater emphasis on mental health.** We need a national focus on mental health, including development of better screening tools to identify, evaluate, and treat mental illness. In addition, we should provide more funding for School-Based Health Centers and providers to staff the centers. We also must address the current lack of parity in insurance for mental health services.

- **School safety and student support.** We must make our schools safer, not only by enhancing their physical security and making sure they are prepared to respond to emergencies like a shooting, but also by creating safer and more nurturing school climates that help prevent school violence.

  To do this, however, we must let communities decide for themselves what kind of personnel and assistance they need to ensure safety. To help schools, we should provide more resources for school counselors and school psychologists, as well as training for school personnel in not just school safety, but in diagnostic training to spot warning signs for mental health issues and/or potential for students to engage in high-risk or anti-social behavior. Funding for school security personnel, like school resource officers, could also be an option conditioned on local community support and appropriate training for officers and school personnel together, including on bullying, cultural competence, positive behavioral supports, and appropriate classroom management.

  The need for more counselors is great. An NEA member from Illinois reports,

"I've had four students or former students shot and killed in gun violence. All related to drugs and gangs in Springfield, Illinois. Although school instructors recognized these students were facing trouble, there was little in the way of counseling and/or social work assistance available to intervene in the students' lives. There are too few resources."

We can also support students, giving them access to programs that teach conflict management, an appreciation of diversity, and strategies for being a part of a school community. And, we can increase our focus on bullying prevention. We can make available resources and technical assistance from emergency preparedness experts to retro-fit or make school entrances and facilities safer.

Emergency plans and communications strategies are critical to ensuring schools and communities react effectively to potential and actual gun violence. Gun violence prevention is broader than what schools alone can do. Partnerships within the community are essential to ensure a comprehensive response. Consider these stories from an NEA member in Idaho –

"Here are two examples of gun violence that I experienced with very different outcomes. Monday, March 5, 2001, Santana High School, Santee, California. A freshman brought a weapon to school to retaliate against bullying. He talked about what he was going to do on Sunday night. But his friends didn't tell. The outcome: 2 dead, 13 wounded. Spring 2010, Coeur D'Alene High School, Idaho. A senior who had stolen weapons from a family member was missing. Schools in the area were notified. Law enforcement responded. The student was apprehended as he entered a school parking lot. The outcome: zero dead, zero wounded. The difference in the two stories was the ability to communicate the potential threat. We need communications systems that allow individuals to report potential acts of violence before they happen."

We must note that America's educators resoundingly reject the notion of arming school employees as a means of ensuring school safety. Only 22 percent of NEA members polled favor a proposal to allow teachers and other school employees to receive firearms training and allow them to carry firearms in schools, while 68 percent oppose this proposal (including 61 percent who strongly oppose it.)

We thank you for the opportunity to submit these comments. We look forward to working with the Subcommittee to ensure that we never again will have to grieve the loss of children and educators to senseless gun violence.

"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"
U.S. Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Baltimore County, MD, Chief Jim Johnson, Chair
National Law Enforcement Partnership To Prevent Gun Violence
February 12, 2013

Chairman Durbin, Ranking Member Cruz, and members of the Subcommittee, on behalf of the National Law Enforcement Partnership to Prevent Gun Violence, I want to thank you for the opportunity to provide testimony for your hearing, "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment."

The Partnership, founded in 2010, is an alliance of the nation's law enforcement leadership organizations concerned about the unacceptable level of gun violence in the United States. It includes the Commission on Accreditation of Law Enforcement Agencies; Hispanic American Police Command Officers Association; International Association of Campus Law Enforcement Administrators; International Association of Chiefs of Police; Major Cities Chiefs Association; National Association of Women Law Enforcement Executives; National Organization of Black Law Enforcement Executives; Police Executive Research Forum, and the Police Foundation.

The gun violence epidemic in our country is devastating. More than 30 homicides occur in America each day. Two thousand children, ages 18 and under, die of firearm-related deaths in the U.S. every year. Law enforcement officers, charged with protecting the public safety, are increasingly targets of gun violence. In 2011, for the first time in 14 years, firearms were the leading cause of death for police officers killed in the line of duty, according to the National Law Enforcement Officers Memorial Fund. This disturbing trend persists today. In just the two-week period after the Newtown massacre, six police officers were killed and 10 injured in 12 separate shootings.

The organizations in the Partnership are united in calling on Congress to:

- Require background checks for *all* firearm purchasers;
- Ensure that prohibited purchaser records in the National Instant Criminal Background Check System (NICS), are up-to-date and accurate; and
- Limit high-capacity ammunition feeding devices to ten rounds.

Seven of our nine groups, including the largest organizations among us, also support a ban on assault weapons and Senator Dianne Feinstein's assault

weapons legislation.

We strongly support these measures because we know they will save lives by preventing dangerous people from acquiring guns and keeping excessive firepower out of our communities.

These vital measures are constitutional.

These measures are crucial for public safety and do not infringe on an individual's constitutional right to possess firearms. In the 2008 case of District of Columbia v. Heller, 554 U.S. 570 (2008), the United States Supreme Court ruled that the Second Amendment protects an individual's right to possess a firearm. The ruling also recognized that "like most rights, the right secured by the Second Amendment is not unlimited," and listed several categories of restrictions that are presumptively constitutional, such as: laws prohibiting convicted felons or mentally ill from possessing firearms; laws prohibiting the carrying of firearms in government buildings or schools; and laws prohibiting possession of "dangerous and unusual" weapons that are not "in common use at the time."

Congress must enact legislation to require background checks for all firearms purchasers and ensure that prohibited purchaser records in NICS are up-to-date and accurate.

Background checks will prevent prohibited purchasers, such as convicted felons and those with mental health disqualifications, from purchasing firearms. They will not impede law-abiding citizens from purchasing guns.

While background checks are required for firearm purchases through federally licensed gun dealers, no check is required for private sales, such as those occurring through Internet postings, print ads or gun shows. Private transactions are estimated to account for up to 40 percent of firearm transactions. Allowing these transactions to occur without background checks is tantamount to permitting 40 percent of passengers to board an airplane without going through airline security.

Background checks work. They stopped nearly 2 million prohibited purchases between 1994, when the Brady Law went into effect, and 2009. We can only imagine how many lives have been saved and other tragedies averted because we require background checks through licensed gun dealers. We do not have to imagine, however, the real life impact of not having checks in place for private purchases. One example of a tragedy that could have been averted, if universal background checks were in place, occurred last October in Brookfield, Wisconsin. A prohibited purchaser who was under a domestic violence restraining order shot seven women in a salon, killing three. The shooter had answered an online advertisement and all too easily bought a gun without a

background check. Applying background checks to all sales will clearly save lives and prevent needless suffering.

Since we already have a national background check system in place, extending background checks to *all* firearm sales would be simple – and would not have an impact on anyone's ability to purchase a gun except prohibited purchasers.

A federal law requiring background checks is necessary as Interstate gun trafficking is a serious problem that states cannot combat alone. In 2009, the Bureau of Alcohol, Tobacco, Firearms and Explosives reported that 30 percent of crime guns crossed state borders. We know that in places like New York, Chicago, and even my jurisdiction of Baltimore County, a high percentage of crime guns are coming from states with weaker laws.

Congress must enact legislation to ban assault weapons and limit high-capacity ammunition magazines.

Assault weapons were originally designed for the battlefield, and have no place in our communities. These weapons were developed to enable a shooter to rapidly spray-fire multiple rounds at an enemy in combat, not for gunning down small children, moviegoers, firefighters or the law enforcement officers protecting them.

Law abiding citizens do not need semiautomatic assault weapons and have no need for high-capacity magazines holding more than ten rounds. This kind of firepower, however, has particular utility and has proven especially destructive in the hands of those intent on doing harm, as we have seen from Aurora to Newtown.

The carnage caused by these unusually dangerous weapons is devastating, including to our law enforcement officers, as criminals up the ante with firepower in excess of what even our police officers typically use. We do not typically supply law enforcement with 120-round drums, for example, yet in my own jurisdiction's evidence room we have several such drums that have been seized.

Banning high-capacity magazines would reduce the number of bullets a shooter can use before having to stop to reload, and reloading can provide a critical window of time in which to take down a shooter, as we saw in Tucson.

Studies show that the 1994 assault weapons ban was effective. In 1998, four years after the assault weapons and high-capacity ammunition magazine ban was enacted, the percentage of firearms with large-capacity magazines recovered by Virginia police decreased and continued to drop until it hit a low of 9 percent in 2004, the year the ban expired. It hit a high of 20 percent in 2010, according to a Washington Post analysis. After the 1994 law expired, 37 percent of police agencies saw increases in criminals' use of assault weapons, according

to a 2010 Police Executive Research Forum survey.

The actions we support are important for the safety and protection of both our citizens and our law enforcement officers. These common-sense measures would not infringe on Americans' Second Amendment rights, nor would they place an undue burden on law-abiding citizens' ability to buy firearms. The assault weapons ban would affect only a particularly dangerous class of weapons, and law-abiding citizens will continue to be able to acquire and choose from the vast array of firearm models on the market.

Congress must enact legislation to combat straw purchasing.

There is currently no federal law prohibiting an individual from purchasing a firearm for a prohibited purchaser. As a result, these straw purchasers can only be prosecuted for minor paperwork violations. We must do more to tackle the problem of straw purchasing and gun trafficking, which is why seven of the nine organizations in the Partnership are already on record in support of the Stop Illegal Trafficking in Firearms Act, sponsored by Senator Leahy, and the Gun Trafficking Prevention Act, sponsored by Senator Gillibrand.

As law enforcement professionals responsible for protecting the safety of our citizens and communities as well as our own officers, we urge you to support these sensible measures that will keep guns out of dangerous hands, and stem the excessive firepower that has caused massive destruction and needless suffering across our great nation.

Thank you.

Chief Jim Johnson
Chief of Police, Baltimore County, MD
Chair, National Law Enforcement Partnership to Prevent Gun Violence

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Testimony Submitted to the Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights and Human Rights

United States Senate

for the February 12, 2013 Hearing on Proposals to Reduce Gun Violence

by

Kim Gandy, President

National Network to End Domestic Violence

Firearms and domestic violence perpetrators are a lethal combination:
Targeted firearms restrictions and enforcement of existing legislation will save lives.

Chairman Durbin, Ranking Member Cruz and members of the Subcommittee, thank you for the opportunity to submit written testimony for this hearing on proposals to reduce gun violence. We are grateful for your leadership and your ongoing work to improve the safety and well-being of our nation.

The National Network to End Domestic Violence (NNEDV) is the national advocacy voice for the 56 state and territorial domestic violence and dual domestic violence/sexual assault coalitions, their more than 2,000 local domestic violence programs and the millions of victims they serve and on behalf of whom they advocate.

Domestic violence is a pervasive and insidious crime which undermines the very fabric of our society. More than one in three women will have experienced physical violence, rape and/or stalking by an intimate partner during her lifetime. Tragically, more than three women a day, on average, are killed by an intimate partner, and guns play a large role in the level of lethality. Access to firearms increases the risk of intimate

partner homicide more than five times, compared to instances where there are no weapons, according to a recent study. In addition, abusers who possess guns tend to inflict the most severe abuse on their partners.[1] NNEDV urges Congress to support targeted, effective policies that respond to the crisis of domestic violence homicide.

Nearly one-third of all women murdered in the United States in recent years were murdered by a current or former intimate partner. In 2010, 1,017 women, more than three a day, were killed by their intimate partners.[2] Of females killed with a firearm, almost two-thirds of were killed by an intimate partner.[3] Access to firearms increases the risk of intimate partner homicide more than five times, compared to instances where there are no weapons, according to a recent study. In addition, abusers who possess guns tend to inflict the most severe abuse on their partners.[4] In 2010, 52 percent of female homicide victims were shot and killed with a gun.[5] Handguns are more likely than rifles or shotguns to be used in homicides in which men kill women. In 2010, handguns were used in 70 percent of cases where men used firearms to kill women.[6]

Data collected at the state level also bears out these national statistics. For example, in the period of July 2010 through June 2011, 43 domestic violence homicide incidents took the lives of 49 victims in Illinois alone. Of these, 22 homicides involved a firearm.[7] In Texas, 64% of women killed by an intimate partner in 2011 (the last year for which we have a complete analysis) were killed with a firearm.[8]

Appropriately, the lifesaving *Domestic Violence Offender Gun Ban* prohibits gun possession by those convicted of domestic abuse or those who are subject to a domestic violence restraining order. One study showed this restriction as the second most common reason for denial of handgun purchase applications. Unfortunately current law allows otherwise prohibited individuals to purchase guns through private sale or donation, on the internet, or at a gun show, where background checks are not required. NNEDV urges you

to pass legislation that closes the private gun sale or transfer loophole, including both internet and gun show sales of firearms, and implement required universal background checks for all those seeking to acquire guns. This action will dramatically reduce batterers' access to firearms without infringing upon the rights of law abiding citizens.

There must also be increased federal support for consistent implementation of the *Domestic Violence Offender Gun Ban*. Limited resources at the state and local level have hampered the positive impact of this legislation, and federal resources and priority are needed to ensure that it is applied fully, consistently and effectively. Congress should support and fully fund the Violence Against Women Act (VAWA), which promotes domestic violence homicide reduction initiatives and lethality assessments and prioritizes best practices in the development of model policies and protocol for law enforcement agencies in responding to domestic violence homicides. These funding investments must be matched by investment in services, as victim service providers receive increased referrals as these positive initiatives are implemented.

Finally, Congress must also act promptly to lift restrictions that have been interpreted to prevent research on gun violence prevention by the Centers for Disease Control and the National Institutes of Health, and their grantees, as well as other agencies and partners.

Representing thousands of domestic violence advocates and service providers, we know the devastating, and too often deadly, impact that abuser access to guns can have on victims of domestic violence. Therefore, we urge Congress to consider the incidence of domestic violence homicide and strategies to address this when developing policies to reduce gun violence generally.

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[1] J. C. Campbell, D; Webster, J; Koziol-McLain, C. R; et al. 2003. Risk Factors for Femicide in Abusive Relationships: Results From A Multi-Site Case Control Study. *American Journal of Public Health*. 93(7).
[2] Rennison, Callie Marie and Sarah Welchans. 2003. *Intimate Partner Violence 1993-2001*. U.S. Department of Justice Bureau of Justice Statistics. Washington, DC; *When Men Murder Women: An Analysis of 2010 Homicide Data: Females Murdered by Males in Single Victim/Single Offender Incidents*. 2012. Violence Policy Center. Washington, DC. http://www.vpc.org/studies/wmmw2012.pdf.
[3] *When Men Murder Women: An Analysis of 2010 Homicide Data: Females Murdered by Males in Single Victim/Single Offender Incidents*. 2012. Violence Policy Center. Washington, DC. http://www.vpc.org/studies/wmmw2012.pdf.
[4] J. C. Campbell, D; Webster, J; Koziol-McLain, C. R; et al. 2003. Risk Factors for Femicide in Abusive Relationships: Results From A Multi-Site Case Control Study. *American Journal of Public Health*. 93(7).

[5] *When Men Murder Women: An Analysis of 2010 Homicide Data: Females Murdered by Males in Single Victim/Single Offender Incidents.* 2012. Violence Policy Center. Washington, DC. http://www.vpc.org/studies/wmmw2012.pdf.
[6] *When Men Murder Women: An Analysis of 2010 Homicide Data: Females Murdered by Males in Single Victim/Single Offender Incidents.* 2012. Violence Policy Center. Washington, DC. http://www.vpc.org/studies/wmmw2012.pdf.
[7] Illinois Domestic Violence Homicide Report, 2011. http://www.ilcadv.org/2011-HomicideReport-final.pdf
[8] Honoring Texas Victims: Family Violence Fatalities in 2011. http://www.tcfv.org/our-work/honoring-texas-victims

Statement for the Record

On behalf of the

National Parent Teacher Association (PTA)

Before the
Senate Committee on Judiciary
Subcommittee on the Constitution, Civil Rights, and Human Rights

February 12, 2013

By

Betsy Landers
President
National PTA

Chairman Durbin, Ranking Member Cruz, and subcommittee members, I am honored to have the opportunity to submit this statement, on behalf of the more than five million members of the National Parent Teacher Association (PTA) to discuss the importance and urgency of efforts to prevent gun violence. With more than 24,000 local units, PTA flourishes in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Department of Defense schools in Europe and the Pacific.

Founded in 1897, PTA has been working to improve the education, health, and overall well-being of our nation's children for more than 115 years. As the oldest and largest volunteer child advocacy association in the United States, PTA's legacy of influencing local, state, and federal policy has made an indelible impact in the lives of millions of children and families. This legacy includes the creation of kindergarten classes, a juvenile justice system, child labor laws, mandatory immunizations for school children, and continues today as PTA fights to ensure safe home, school, and community environments.

National PTA supports the Second Amendment and recognizes the right to bear arms. Other rights guaranteed by the Constitution, such as free speech and private property, are accompanied by reasonable restrictions to protect the freedom and safety of our fellow citizens. National PTA believes the same principle should apply to the Second Amendment. National PTA encourages Congress to enact gun violence prevention legislation while preserving the lawful use of firearms for sport and personal protection. As a nation, we must take actionable steps to prevent future tragedies like the massacre of innocent children and adults at Sandy Hook Elementary School. PTA believes the time to act is now, and the majority of Americans agree.[i]

While many complex factors contribute to tragedies like Sandy Hook, we believe Congress must take reasonable actions to address the fundamental issues of gun violence. National PTA, as outlined in national positions dating back more than two decades, supports comprehensive violence prevention and school safety measures. National PTA recommends the following immediate actions by Congress:

1) Strengthen the requirement on background checks for all gun purchases – 87 percent of Americans support background checks on private sales of guns, including sales at gun shows[ii]
2) Enact a federal ban on high-capacity ammunition magazines outside of military use.
3) Reinstate and strengthen the federal assault weapons ban – *82 percent of Americans support limiting the sales of military-style assault weapons*[iii]

I would like to again thank Chairman Durbin, Ranking Member Cruz, and members of the subcommittee for the opportunity to provide the PTA perspective on this timely issue. We urge swift action to keep children, families, schools, and communities safe from unnecessary, tragic, and preventable acts of gun violence.

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[i] Education Fund To Stop Gun Violence, *New Poll Finds American Voters Overwhelmingly Support Handgun Licensing and Registration, Criminal Background Checks*, June 12, 2001, at http://www.commondreams.org/news2001/0612-05.htm

[ii] Greenberg Quinlan Rosner Research & The Tarrance Group, *Americans Support Common Sense Measures to Cut Down on Illegal Guns*, Washington, DC, April 10, 2008

[iii] Smith, Tom W., *Public Attitudes Towards the Regulation of Firearms*, Chicago, IL: National Opinion Research Center, University of Chicago, March 2007

National
Urban League

Empowering Communities.
Changing Lives.

STATEMENT FOR THE HEARING RECORD OF

MARC H. MORIAL
PRESIDENT AND CEO
NATIONAL URBAN LEAGUE, INC.

Before the
SENATE JUDICIARY SUBCOMMITTEE ON THE
CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

On

Proposals to Reduce Gun Violence:
Protecting Our Communities While Respecting the Second Amendment

February 12, 2013

Mr. Chairman, as President and CEO of the National Urban League (NUL), and on behalf of our 97 Urban League affiliates in 36 states and the District of Columbia, we call upon this Congress to work with President Obama to act quickly to make commonsense gun reform a top priority. We strongly urge Congress to resist inaction and half-measures, as we have no time to waste when 33 Americans are murdered with guns each and every day.[i]

The National Urban League is a 102-year-old institution that works to provide economic empowerment, educational opportunities and the guarantee of civil rights for the underserved in America. In one year, we served over 2.6 million Americans in 300 communities throughout the country. We know first-hand that the impact of gun violence is counter-productive to the direct services work that we do every day in our local communities. In addition to the tragic loss of life, gun violence must also be viewed from the perspective of its societal costs. According to data compiled by the Pacific Institute for Research and Evaluation in Calverton, Maryland,[ii] the societal cost of just one gun homicide averages $5 million. This includes:

- $1.6 million in lost work;
- $29,000 in medical care;
- $11,000 on surviving families' mental health treatment;
- $397,000 in criminal-justice, incarceration and police expenses;
- $9,000 in employer losses; and
- $3 million in pain, suffering and lost quality of life.

According to data compiled by the CDC, in 2010, 30,470 people died from homicides or suicides using firearms.[iii] Taken together, they made up 57 percent of violent deaths.[iv] The CDC has found that when you combine the direct medical costs of treating fatal gun injuries with the economic damage of lost lives, firearms-related deaths cost the United States $37 billion in 2005, the most recent year for which an estimate is available. Moreover, the CDC found that non-fatal gun injuries cost an additional $3.7 billion that year.[v]

As a long-time advocate of sensible gun control measures, the National Urban League stands ready to work with the President, the Congress and others to end the epidemic of gun violence in America - *now* is the time. As a nation, we have been horrified by the tragedies in Columbine, Aurora, Oak Creek and Newtown. We must be equally horrified, heartbroken and outraged by the daily gun violence occurring in cities throughout the country. Americans have had enough. Recent national polls show that the American people believe sensible gun control measures are more important than protecting gun rights. And even the most ardent defenders of the Second Amendment want to find a way to keep military-style assault rifles out of the hands of violent criminals and the mentally unstable.

The National Urban League is calling for a comprehensive new approach to community safety and crime reduction. Such an approach must begin with:

1. A ban on military style assault weapons and ammunition
2. Closure of the gun show loophole
3. Universal background checks
4. Stronger enforcement of existing gun laws
5. A focus on violence prevention that includes investments in programs that create safe spaces for kids during out of school time
6. Investment in improving mental illness services and treatment

Finally, we believe that creating the safest environment for our children does not require placing armed guards in our schools. ***On this issue, the National Urban League is adamantly opposed to arming teachers and armed guards as we strongly believe that guns do not belong in schools – period.*** Of particular concern to us is their interaction with children of color, whose discipline issues are often dealt with as criminal matters – effectively fast-tracking them into the juvenile justice system.

Thank you for the opportunity to present our views and I ask that our statement be included in the hearing record.

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[i] Mayors Against Illegal Guns, see http://www.mayorsagainstillegalguns.org/html/home/demandaplan.html

[ii] Bloomberg, "Shootings Costing U.S. $174 Billion Show Burden of Gun Violence," by Henry Goldman, December 21, 2012, http://www.bloomberg.com/news/2012-12-21/shootings-costing-u-s-174-billion-show-burden-of-gun-violence.html

[iii] "Gun Deaths Cost U.S. Billions Each Year While Firearms Makers Thrive," Huffington Post, by Jeffrey Young, December 19, 2012, see http://www.huffingtonpost.com/2012/12/19/guns-deaths-sandy-hook-shooting_n_2325706.html
[iv]Ibid.
[v]Ibid.

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

I would like to encourage you to support the president's efforts to curb the kind of horrific gun violence that we have been witnessing in the past year. I am embarrassed that we are the only civilized nation that currently allows such weapons to be accessible to the general public that can kill 20 children in less than a minute. The second amendment was written when it took several minutes to reload a gun. It needs to be revisited and, at the least, reinterpreted for the 21st century. Australia is an excellent example of how sensible gun legislation can save lives. Their former president had an article on the editorial page of the NY Times recently. He shared that their stricter gun laws that were passed in 1996 have virtually eliminated the mass killings in that country. England is another good example of how restricting public access to pistols and assault weapons can save lives. Since passing such laws in 1996, England has virtually eliminated mass gun murders. Stricter gun laws are not the total answer. But let's get started!

Contrary to the feelings of some, the answer is not more guns in the hands of "good" people. Please do the right thing for our country and do not be swayed by the influence of gun manufacturers and others that advocate the escalation of gun use.

Sincerely,

Richard H. Neff, Ed.D
9920 Barnsbury Court
Fairfax, VA 22031
February 11, 2013

THIS IS A CALL TO ACTION!! CHANGE IN OUR CURRENT GUN LAWS IS ABSOLUTELY NECESSARY!
I have been a Newtown resident for the past year. Prior to this I lived in Sandy Hook for 9 ½ years (and again Newtown for 2 years prior to this!). The tragedy that occurred on December 14, 2012 must NEVER be allowed to happen again! There are far too many injuries and deaths due to gun violence in this country – the statistics speak for themselves. I realize that many of them are related to hand guns but we must start somewhere. Almost everyday, if not everyday, you can turn on the morning news and hear about another shooting locally and nationally!! We don't have to, and should NEVER, accept this as the new norm! We have the ability and the power to change this – YOU, our ELECTED officials, have the ability and the power to change this. It can no longer be acceptable for these acts of violence to be carried out by innocent people, be it children or adults! People talk about their second amendment rights....what about my, our, rights under Thomas Jefferson's quote of "LIFE, Liberty and the Pursuit of Happiness" in the Declaration of Independence. We are not asking for people to give up all of their guns but just military style assault weapons and guns with high capacity magazines. These weapons belong with law officials and military personnel only.
I am in FULL support of the following changes in our gun laws and support legislation proposed by CT Against Gun Violence:

1) A COMPLETE ban on all military style assault weapons and weapons of high ammunition capacity.
2) A COMPLETE ban on high capacity magazines. There should be an absolute limit of no more than 7 rounds of ammunition per magazine.
3) There should be a MANDATORY recall on all military style assault weapons and high capacity magazines. These assault weapons and magazines must be destroyed, turned in to law enforcement or removed from the state.
4) Permits and UNIVERSAL backround checks on ALL sales AND transfers of all guns, including long guns.
5) All hand guns should be required to be registered YEARLY with yearly renewal. We are required to register and reregister vehicles on a yearly basis – why should not weapons capable of killing someone hold the same requirements!
6) Increase the penalties for storage and/or safety violations for gun owners. Make gun owners liable if their weapons are stolen/lost and are the cause of injury to another person or property.
7) Require a license to purchase any gun or ammunition. Tax the sale of ammunition.
8) Restrict the sale of hand guns to one gun per month.

These changes to the current gun laws are just common sense. The mass shootings and murders of innocent people trying to live their lives in a CIVILIZED society are SENSE*LESS.* Take a stand and vote for, push for, legislation that is in the best interest of EVERYONE!!

Thank you very much for your time, consideration and humanity

Sincerely,
Robert T. Neff, Jr.

TESTIMONY FOR THE US SENATE SUBCOMMITTEE from

John Neuhoff
63 Lakeview Terrace
Sandy Hook, CT 06482

Dear Chairman Durbin & Senate Judiciary Members,

Thank you for reading this testimony. My name is John Neuhoff and I live in Sandy Hook, CT with my wife and 13 year old daughter. My daughter goes to school in town and was under lockdown on 12/14/12. We knew one of the victims and have a family four doors down that lost a child. The shooter lived around the corner from us. We are still deeply hurt by the Sandy Hook Elementary School shooting. Every day it is in our minds.

I would like to see semi automatic rifles and pistols that can accommodate large capacity magazines (the assault weapons) banned. I think the argument that because the "Bushmaster" is only a 22 caliber as the reason it should not be banned is not valid. If a 22 caliber can do the damage that was done in Sandy Hook Elementary then it is obviously a very dangerous weapon. It seems that every 22 caliber that can accommodate a high capacity magazine should be a candidate for banishment. I think that all of the grandfathered weapons should be put under strict and reasonable control.

I also believe that this banning would be contrary to the second amendment. To make a "well regulated militia" I think that all private citizens should have access to all weapons that this militia might need. To protect itself from hostile governments it should have access to the weapons that those governments would have. That would be weapons more powerful than the "Bushmaster". This would obviously create more danger to individuals and a chaos that would result in more unwarranted killing. It is something that will never happen in America. To prevent more bee stings I do not think it is wise to add more bees. At this moment in time individuals in America do not have access to all of the weapons that the Second Amendment entitles them to. It seems that we have already lost some of our Second Amendment rights. But the question is whether more should be taken away?

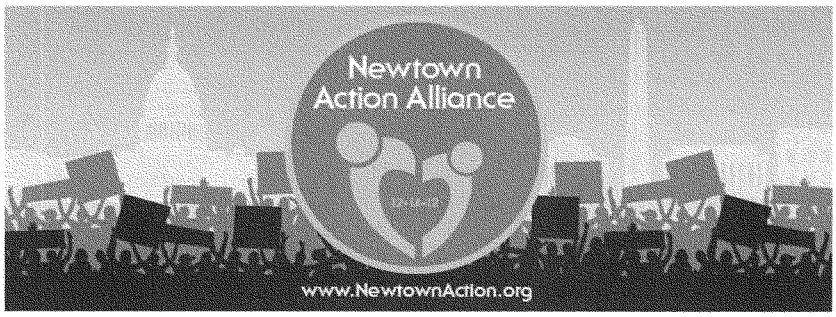
Because I live in Sandy Hook I would obviously prefer banishment but I think that Second Amendment freedom is also important. I think reasonable "gun" control is the way to go. Control is needed to fix this situation and it should be fair, firm and without burdens that might essentially force a ban on the weapons in question. The Senate should not force banishment in an underhanded way such as extensive taxing and fees or burdensome renewals and requirements. If you want to ban them then ban them. Otherwise control them in a fair and reasonable way. Here are my ten ideas.

1. I believe background checks are necessary. They should include a doctor's evaluation and should be housed by a neutral entity in an encrypted form. There should be no charge for this check.

2. I believe EVERY rifle and hand gun should be registered in our country. This info should also be kept encrypted by the neutral entity. There should be no charge for this registration.
3. EVERY transaction must have a background check and registration.
4. I believe ammunition and weapons should have permanent markings to track them if they are used in an illegal manner.
5. Any lost or stolen weapon must be reported.
6. All owners must be held accountable for what they own. "With great power comes great responsibility".
7. All semi automatic weapons that can accommodate high capacity magazines (the assault weapons), the high capacity magazine and armor piercing ammunition must be properly secured in a manner that only the owner can access them. When unlocked the owner must be with these items at all times. If these weapons, magazines and ammunition are kept in a communal gun safe they must have further security measures to prevent anyone but the owner having access to them.
8. Gun safes, locked gun boxes, trigger guards and all other options that would help secure weapons, magazines and ammunition should be offered at rock bottom prices to encourage their use. I would accept the government offering tax deductions and subsidies to help accomplish this.
9. It should be a crime with mandatory enforcement when people are caught with unregistered weapons or have been found to have lied on background checks. It should be a crime with mandatory enforcement when owners break the rules that are put into effect to keep the public safe while insuring that legal and responsible gun owners have every freedom.
10. Inexpensive Gun classes at all levels should be offered and encouraged across our country to train people how to shoot, maintain and secure the guns that they own or hope to own. Each time they pass a new level they should be issued an ID card showing this accomplishment (if they want it). This info should be added to their encrypted background check because it is positive. I believe that the better trained a gun owner is the better it is for everyone. I think that non gun owners should also be encouraged to take these classes. Maybe the government would offer some free training sessions with ex military vets.

These are my ten ideas that I believe would make us safer while protecting all of the rights of legal gun owners. I hope they will be helpful to your US Senate Subcommittee. Everyday I realize that I have no way to protect my family from a repeat of what happened here at Sandy Hook Elementary School. In reality we are no safer today than we were then. I believe that lightening never strikes the same place twice and that going forward we will be ok. I trust your group in the Senate to fix this dilemma in a more practical way. I would prefer to not depend on the whim of lightening.

John



February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for the opportunity to be heard. My name is Dave Ackert. I live in Sandy Hook, Connecticut and I am the founder of The Newtown Action Alliance, a Newtown-based grassroots organization working tirelessly to take and accelerate ethical actions, legislatively or otherwise, which reduce gun violence and death, both near and long term.

The Newtown Action Alliance was born out of necessity after the massacre of 20 precious children and their teachers in our town on December 14, 2012. Our action-based organization formed out of the realization that action often speaks just as loudly, if not more so, than words. Our first action was to organize 100 area residents to go to Washington DC on a moment's notice, to help lead The Gun Control March there on Jan. 26th. What happened in Newtown has got to be remembered as the tipping point, and we fully expect that you will join us in acting to ensure that our 26 did not die in vain. We will continue to act, and will not rest until the epidemic of gun violence in America is reversed.

On behalf of the people of Newtown, I say "**Enough!**" Especially to the fringe gun lobby who refuses to act responsibly and who has convinced our elected representatives that they shouldn't be held accountable for their actions, their products, or their rhetoric. Their summary dismissal of any new regulations is shameful, irresponsible and selfish. For example, they insist that limiting the size of magazines will not save lives. This is simply not true. At Sandy Hook Elementary School, six of our kids were able to escape without physical injury when the shooter ran out of bullets and had to change magazines! What other evidence do you need?

We believe that reforms in the gun industry will make all of us safer. This includes universal background checks on all gun purchases and ammo, the elimination of high capacity magazines and armor piercing ammunition, and removing military grade weapons from civilian life.

Some of us are gun owners. We all totally oppose interfering with responsible gun ownership for sport, for hunting or to protect life & property. However, we recognize that other industries are well-regulated to protect the public. But not the gun industry.

The Second Amendment reads: "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

***Reasonable licensing and regulation for public safety is not infringement, it is responsibility.* Your responsibility.**

Other industries have resisted rules to improve public safety.....the auto industry, the tobacco industry, the drug industry and even the food industry. Thankfully, they all have been regulated to a certain degree. We now have seatbelts, airbags and child seats. Liability insurance requirements. Limits on tobacco & drug marketing tactics, including restricting marketing to children, or providing samples to children. And many of these industries whose products place a financial burden on society are taxed to help offset those costs. Why doesn't any of this apply to the gun industry?

The answer comes down to money. The gun industry only cares about their profits. As you may know, the NRA earns a commission on gun sales....literally! So it is in their self interest that they fund the political campaigns of so many lawmakers. The eyes of the nation, of the world, are watching what happens in Washington on this issue. The formerly silent majority.....many of whom are now single issue voters, are watching. You need to be bold. You need to make a statement and set an example for any of the lawmakers whose careers have been funded by the gun lobby.

The people of Newtown will not rest, until together with the silent majority in our country, we neutralize the special interests to bring about reasonable regulations that require manufactures of lethal products to act responsibly.

Please stand up to the self-serving gun lobby. Your jobs depend on it. More importantly, our lives and the lives of our children depend on it.

Thank you in advance.

Dave Ackert

Founder, The Newtown Action Alliance
P.O Box 3325
Newtown, CT 06470

Date: February 12, 2013

To: Chairman Durbin & Senate Judiciary Subcommittee Members

My son, a third-grader at Sandy Hook Elementary went to school on Friday, December 14, like any normal day. At school that day, he was the classroom helper with another child and had the job of walking the attendance sheet to the principal's office.

Moments later, bullets almost ended his life.

He was in the hallway with his friend when the shooter entered the building and the terror began.

He describes his experience as hearing gunshots, seeing bullets come by them, when he turned toward the source of gunshots to see what's going on — thankfully — smoke clouded his view.

Our kids were so lucky. A heroic teacher, Abbey Clements, whom we can never sufficiently thank, saw them in the hallway and pulled him into her classroom... I have no way to describe how I feel about the wonderful kids, teachers and families that were not as lucky.

How hard I (and we all) wish we could "run the tape" back and prevent this tragedy.

Here's what I want to say to each and every one of you:

I used to be part of the silent majority of people around this beautiful country that saw how weaponized and unsafe our society became, but kept our silence.

I thought guns are a part of American history. That many people know how to handle them and keep them safe. That our politicians know what they are doing, care about us, and the situation will be corrected.

Columbine, Virginia Tech, Aurora, chipped at those beliefs, but I averted my eyes. On Friday, this belief has been shattered for me, my wife, my relatives and friends, and — most important — my kids.

It's been long overdue, but it's clear to me -- I have to speak up and make my voice heard in Hartford and in Washington.

So, now I ask every Legislator, because regardless of your district or party affiliation, you are my voice as an American and I need you to act:

- Why would we think that assault weapons and high-capacity magazines (more than 7 rounds) should ever be in hands of civilians? There is no sensible reason for that. I want legislators to ban and remove them.

- Why are modified M-16s and Kalashnikovs sold to civilians in this country? There is no sensible reason for that. I want legislators to implement a law that bans US-based companies from design, manufacture, and importation of any military or military-derived weapons intended for sale to civilians.

- What exactly is an appropriate civilian use for the hollow-point bullets that explode in your body on entry used in Sandy Hook Elementary shooting? They are barbaric weapons designed to incur the most possible damage on human body. I want legislators to ban and remove them from circulation.

- Why do we have age limits, written and practical tests to acquire a driver's license, but have nothing that would be at least as rigorous for acquiring a weapon that can take out countless lives? I want legislators to implement permits and universal background checks on ALL sales and transfer of firearms, an age limit on operation of firearms, and a firearm operation test modeled after the tests for operating a motor vehicle.

- Why do we have to periodically renew registration for cars, but do not have to do it for weapons? I want legislators to implement firearm registration for all firearms with annual renewal (also modeled after the registration for motor vehicles) with safety inspections every three years.

- Why there's no legal accountability for negligence in storage of something as dangerous as guns? It makes absolutely no sense. I want legislators to make negligent gun owners liable, if any person gains access to firearms and injures himself, other people, or causes damage to property.

- Why does the entire society has to pay such a high price in precious human lives and huge economic cost, while firearm manufacturers and dealers collect profits off of our grief. The Pacific Institute for Research and Evaluation* estimated the economic impact from gun violence cost our nation $175 BILLION just in 2010 or $564 per each of us… or about $35,000 per each gun sold in this country each year! Why does the society have to pay such a high price in grief and economic impact for someone to make profits? I ask legislators to implement taxes on firearm manufacturers and dealers to recoup those costs to our society fully.

Someone can say that you need a human to shoot a gun. What they are not saying is guns allow human feelings of malice and hate to be amplified. They amplify them in a way that's God-like, final and irreversible. It takes away someone's life with just a slight pull of an index finger while standing at a distance. Only the most responsible, trust-worthy, law-abiding, and well-trained individuals should ever have that power.

You see that people across the country are now demanding action. And you, as legislators, have to take action. You have to protect our children and our society. We don't want a repeat of 2011, when banning high-capacity magazines used in this shooting was not even brought to a vote!

Think of what you want this society to be for our children (assuming we can protect them to see adulthood). Please.

My son is going to be okay. But my heart goes out to all the families... and my hope is that we can pull together to help pass some laws to prevent a terrible tragedy like this from ever happening again.

It's enough talk. As responsible legislators, act now to keep all our children safe.

Sincerely,
Andrei Nikitchyuk
Sandy Hook, CT

Subject: Disarming the US **February 4, 2013**

Fortunately, there's beginning to be some gun control activity by our elected officials, nationally and in some states. Perhaps someday we will be able to reach the "Nirvana" described below, but any progress would hopefully help lessen the carnage.

Just a reminder that in 2010 there were about 31,000 gun deaths (11,000 murders, 19,000 suicides, and 600 unintentional fatalities) in the US, immensely more than in most other countries worldwide. For example, the US death rate from guns is 20 times that of the Netherlands. We average 85 gun deaths daily, or the equivalent of 3 Connecticut disasters each day! Per year, the Netherlands has only 78, the United Kingdom 140, and Japan 89! Although the odds of a single gun killing a person in a year are just 1 in 10,000, the average gun is associated with a annual cost of $580 in medical expenses, work lost, and criminal-justice expenditures.

The National Rifle Association has only 4 million members (less than 1.5% of the population) and an annual budget of only $300 million (half of what gun-opponent Mayor Michael Bloomberg of NYC himself donated to keep tobacco companies from cultivating children). Many point out that the NRA is actually not supported by the second amendment of our Constitution. In fact, the preamble of our Constitution states that the government must safeguard the well-being of the people ("insure domestic Tranquility" and "provide for the general Welfare"). It follows that allowing 31,000 gun deaths a year is clearly unconstitutional.

It would cost "only" about $240 billion (about 6% of the annual federal budget of $3.7 trillion) to buy back and destroy -- at an average cost of $800 each -- all of our country's 300 million guns and their ammunition, except for those belonging to active military personnel, police officers or licensed hunters. What a bargain as a one-time expense to eliminate most guns from our imperfect society!

Mental-health issues should also be addressed, but only if it can be done without distracting our lawmakers from the need to eliminate almost all of our country's guns. Perhaps it would be helpful if a national publication like the New York Times contained a page everyday for about 10 days of photographs and vignettes of the the 85 or so people killed by guns in a recent 24-hour period, similarly to what the NYT did with the approximately

3,000 victims of 9/11. Confronting over a 10-day period about 850 gun victims face-to-face and learning about all the lives shattered might have considerable impact on many people, including even members of the NRA.

John S. O'Shea, MD, FAAP: Vice-chair, Committee on Injury and Poison Prevention, GA Chapter AAP jsoshea1@gmail.com

My name is Miranda Pacchiana and I live in Sandy Hook. My husband and I have been residents of Newtown for twenty years and our three children all attended Sandy Hook School. I am here today because I feel that it is my obligation as a mother and a citizen of Newtown, and Connecticut, to urge you to pass the legislation proposed by Connecticut Against Gun Violence. It is especially important that you restrict gun sales to one a month in order to stop the sale of "straw purchases." I also want to see the sale and possession of all military style weapons banned, with no grandfathering of existing weapons. As sales of high capacity weapons and ammunition have steadily increased, so have the mass shootings around the country. Life has become vastly more violent since I went to school. It never occurred to me to be afraid of being murdered, but this is the world that my children are growing up in. The constitutional rights of all citizens to life, liberty and the pursuit of happiness is being seriously infringed upon when we cannot send our children to school without fearing that they might be shot.

I also believe that the mental health piece is equally important. I earned my Master's in Social Work about the same time that Fairfield Hills Hospital in Newtown was one of many mental health housing institutions that was shut down around the country. We have not sufficiently replaced the services that once addressed the needs of the mentally ill, whether or not they need to be separated from society. We absolutely have to stop looking the other way while desperate and angry people grow more and more dangerous. We need to see changes that make mental health care easily available to every citizen and every concerned parent whose child exhibits signs of dangerous behavior. This includes in-patient facilities, and not just prescription medications and brief counseling as oversight. A more comprehensive system must be put in place.

Please act on behalf of the best interest of all citizens and help us be an example to the rest of the country by passing this desperately needed legislation. Thank you for your attention to this important issue.

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin and Members of the Senate Judiciary Subcommittee:

Thank you for the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. I am a public health professional currently serving on Fairax County's Human Services Council. I also am a member of the Unitarian Universalist Congregation of Fairfax. I formerly directed International Programs and Public Health for the National Institute of Environmental Health Sciences.

I am committed to the pursuit of laws that will help reduce the level of gun-related violence in America, a developed nation with a shameful record of gun violence. In addition to those who are killed or wounded, the effects of gun violence ripple throughout the victims' families, friends, and communities.

While I support universal registration of guns owned by private citizens, I also realize that at this time such a proposal would not be supported by Senate or the House of Representatives.

The proposals to curb gun-related violence that are listed below are doable now and do not infringe on the rights of the Second Amendment, which I believe is not an absolute right.

I ask that the Senate Judiciary Committee adopt the following and work to pass laws that will:

1. Require universal background checks on both guns and ammunition. No loopholes. Ever. That means everyone, everytime.
2. Institute an assault weapons & high capacity magazine ban: rather than banning specific makes and models of assault weapons though, we would prefer banning weapons based on functionality. Weapons designed for warfare have no place on our streets.
3. Repeal the Tiahrt amendment and make gun trafficking and straw purchases federal crimes.
4. Improve mental health reporting and mental health treatment.

I harbor no illusions that even if all of the above proposals are adopted that gun-related violence in America would be eradicated. However they would be a significant start toward a solution to the problem and would significantly reduce the level of gun violence.

I urge the Senate Judiciary Committee to support and work for passage of these proposals.

Most respectfully,

/s/
Gerald V. Poje, Ph.D.
2530 Rambling Court
Vienna, VA 22181

"Proposal to Reduce Gun Violence: Protecting Our Communities
While Respecting the Second Amendment"
US Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Police Foundation, Jim Bueermann, President
February 12, 2013

I write to you in my capacity as both President of the Police Foundation and the former Chief of Police of the Redlands, CA Police Department. The Police Foundation, established in 1970 by the Ford Foundation, is a non-partisan, non-constituency research organization. Our mission is to advance policing through innovation and scientific research. The Foundation is committed to disseminating science and evidence-based practices to the field. My written testimony reflects these principles and my personal experience after 33 years as a police officer during which time I witnessed countless acts of violence. I urge the passage of the Assault Weapons Ban Act of 2013 and ask Congress to consider funding additional scientific research to help this country implement evidence-based approaches to reducing gun violence in our communities and schools.

The most recent available data reveal this alarming picture of America's experience with gun-related violence: in 2011, of the 32,163 deaths from firearms, 19,766 were suicides and 11,101 were homicides.[1] Additionally, there were 467,321 non-fatal violent crimes committed with a firearm.[2] These numbers all reflect the unique position of the United States in relation to other high-income nations: our homicide rate is 6.9 times higher than the combined homicide rate of 22 other high-income countries.[3] We all know that gun violence must be stemmed. The Police Foundation supports a comprehensive and holistic approach to preventing and reducing gun violence that includes:

- Legislation that bans assault weapons, requires universal background checks for all firearm purchases and limits high capacity ammunition feeding devices to ten rounds;
- Enhanced funding for research on the availability of firearms, the causes and prevention of gun violence and the connection between mental health and gun violence;
- Specific funding to replicate the 1996 US DOJ, National Institute of Justice study *Guns in America* that provided a comprehensive view of guns in our society;
- Increased funding to states for community-based mental health treatment; and,
- Sustained funding and support of the Justice and Mental Health Collaboration Program Act, which allows for collaborative efforts between law enforcement, criminal justice and mental health professionals.

Gun violence, especially violence that is mental health-related, is a complex social, cultural, health and safety issue. It is one that we do not know enough about. As the leader of a research organization that focuses on policing crime and disorder, I stress the need for scientific research

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[1] Ibid.

[2] Bureau of Justice Statistics. Number of violent victimizations by weapons category. Generated using the NCVS Victimization Analysis Tool at www.bjs.gov. 29-Jan-13.

[3] Richardson EG, Hemenway D. Homicide, suicide, and unintentional firearm mortality: comparing the United States with other high-income countries, 2003. Journal of Trauma 2011; 70:238-243.

and an evidence-based approach to understanding important societal issues. As a country, we need a robust and rigorous agenda on the causes of gun violence, effective, community-based prevention and intervention strategies and the link between mental illness and gun violence. Lifting the freeze on gun violence research at the Centers for Disease Control is heartening, and I hope Congress will support additional funding for interdisciplinary, scientific research and collaboration across government agencies, including the Department of Justice and the Department of Health and Human Services.

Mental health-related gun violence has been brought to the fore with the shootings in Newtown, CT, Aurora, CO and Tucson, AZ. While these tragic incidents are statistically rare, when combined with the number of gun-related suicides each year, the necessity of addressing the mental health needs of individuals, and the availability of firearms in our communities, is paramount.

We do not want to stigmatize individuals with mental illness nor solely focus the current dialogue on gun violence on the role of mental illness. The best available data on violence attributable to mental illness shows that 3-5% of violent acts are committed by individuals with mental illness[4] and most of these acts do not involve guns.[5] Yet, we cannot ignore the number of gun-involved suicides each year and the connection between mass shootings and mental illness. Increased scientific research across the fields of medicine, public health, criminal justice and law will help us understand how to prevent mental health-related gun violence. This requires both robust funding and time.

As a former chief of police, I recognize that local law enforcement agencies require immediate strategies to prevent another incident of mass violence. Earlier this month, the Police Foundation convened a roundtable meeting of expert researchers and practitioners from the fields of law enforcement, mental health, public health, criminal justice and policy. The group discussed how available interdisciplinary research might be used to develop practical strategies for law enforcement that prevent mental health-related gun violence. Existing research establishes the difficulty in predicting a violent act,[6] but the group committed to three strategies that law enforcement can adopt now. Based on innovative practices defined in the literature, the group proposed that law enforcement executives:

- Create local partnerships with mental health service providers, school officials and appropriate community groups to develop a mental health crisis response capacity;
- Advocate for increased mental health services in their communities. Law enforcement executives should convene local service providers and community members to assess

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[4] Swanson JW: Mental disorder, substance abuse, and community violence: an epidemiological approach; in Violence and Mental Disorder. Edited by Monahan J, Steadman H. Chicago, University of Chicago Press,1994. Cited in Appelbaum, PS and JW Swanson. Gun laws and mental illness: How sensible are current restrictions? Psychiatric Services 2010, 61: 652-654.

[5] Monahan J, Steadman H, Silver E, et al: Rethinking Risk Assessment: The MacArthur Study of Mental Disorder and Violence. New York, Oxford University Press, 2001. Cited in Appelbaum, PS and JW Swanson. Gun laws and mental illness: How sensible are current restrictions? Psychiatric Services 2010, 61: 652-654.

[6]

local mental health services and community needs and increase community members' knowledge of the exiting science on mental health and gun violence;

- Adopt specific policies and practices that reduce the availability of guns to people in mental health crisis, institutionalize mental health training for their officers and facilitate community-wide "mental health first aid" training for all community members.

Clearly, more work needs to be done in this area so police departments can effectively operationalize these ideas. With additional Congressional support, strategies like these can be supported by legislation such as the Justice and Mental Health Collaboration Act or through an enhancement of programs at the Department of Justice and the Departments of Health and Human Services and Education. The JMHC Act has bipartisan support across the House of Representatives and Senate, and I ask that Congress sustain funding for these important ideas as part of a targeted approach to specifically reducing gun violence.

Charting a path to respond to gun violence will not be easy, but I encourage Congress to rely on the police, community leaders and science to guide that path. The Police Foundation, along with law enforcement leaders across the country, support reducing the availability of assault weapons and high capacity ammunition feeding device as a first step to reducing gun violence. However, to effectively reduce gun violence, there must be more comprehensive action. Congress should prioritize funding to better understand guns in America, research on the causes and prevention of gun violence and the connection between mental illness and gun violence. It should also enhance the funding and availability of mental health services in communities, and support programs that increase local collaboration between law enforcement, criminal justice and mental health professionals.

Thank you for your consideration of this written testimony.

Testimony to Chairman Durbin & Senate Judiciary Subcommittee Members

Relevant to the Senate Judiciary Committee meeting on gun violence prevention (February 12, 2013)

by Eric Poupon, 23 Split Rock Rd, Newtown CT

My name is Eric Poupon and I have lived in Newtown, CT for 11 years. I have three children in the schools here in Newtown.

I would like to voice my support to the current proposals for tighter gun control in Connecticut including:

- A Ban on assault rifles
- A Ban on large capacity magazines which hold more than 7 rounds
- Universal background checks or a holding period before a gun can be purchased.
- Mental health checks for all gun owners and their families
- Funding of programs to provide more options for families who are affected by mental health issues.
- I also support legislation that will better regulate the use of guns by lawful gun owners on private property, preferably through defining gun range requirements and mandating inspections.

Today I wanted to talk about a dire situation in Newtown for myself, my neighborhood and all of our neighborhoods in Newtown. Practically every week, my family and I have to experience long periods of uncontrolled shooting by various gun owners who surround us on other properties. Sometimes this shooting can last up to 8 to 9 hours in a single day of non-stop shooting with semi-automatic weapons of various size and caliber. After filing complaints with the local police, what I have found is shocking. As a citizen I have absolutely no ability or no rights to affect the situation at the local, state or federal level.

On January 6th of this year our neighborhood experienced the inevitable. A person working on a neighbor's roof was actually hit with a bullet coming from "recreational" shooting occurring on the property near us.

This situation is a shocking reality that not only is the shooting creating continued mental health issues for our children in the wake of the events of December 14th, 2012, but I quickly realized this is a life or death situation on any given day. My children and the children of others in this town are in tremendous danger due to the lack of safety regulations in the use of firearms on private land. These are the same firearms which are now being questioned at a federal level whether they should even be owned by civilians. This situation must change.

I had thought that I had a right, as a tax-paying citizen, to complain about this potential hazard and that it would be taken seriously. Much to my dismay and astonishment, I have been told by members of the police force, including our chief, as well as high ranking members of our legislative council, that the current laws and regulations give me NO rights to prevent this situation from happening.

So I have to ask, are we really at the point where the rights of gun owners and the fear of losing ground on the second amendment allows for gun owners to do as they want, when and where they want, putting our children in danger at any time? I am certain about the fact that in Connecticut, I have more rights to call upon law enforcement to prevent someone from shooting fireworks near my home then I do to prevent someone from blasting away with a semi-automatic weapon 500 feet from my house. That is how the current legislation in Newtown is currently written.

Those that I have talked to on the police force and in our legislative councils are clear. They do not feel they have the capacity to change things on their own at a local level. Our leaders, our citizens and myself are looking to **all of you** to help with enacting a set of changes which will, in turn, give them the ability to enact the types of changes which can make our town safer. These changes can provide our police officers the ability to act in these situations and protect

every citizen in our town. Currently, our police officers seem to be only allowed to protect gun owners and that is simply not right. I know Newtown is not alone in this struggle.

I strongly believe these tighter gun controls will prevent future tragedies like the one in Newtown on December 14th, 2012. As like any other foundation of change it will take time for these laws to take hold and have long term effects as it did with other long term campaigns for change such as drunk driving, or health awareness. I do not consider any of these proposals to be knee jerk reactions. I consider them be a start to changing the mentality of this country and this community about how we perceive the need for guns, and these changes will absolutely prevent more violence over time.

I urge you to move forward with the proposed legislation proposed by CAGV. Doing so will give life to the many discussions and compromises that need to be made in Newtown and in communities across this state to make our own changes. Give our elected officials and law enforcement groups the chance to protect ALL of its citizens and the same time, prevent a tragedy like the one on December 14th, 2012 where we lost 20 beautiful children and 6 wonderful teachers.

Thank you.

Eric Poupon

The Senate Judiciary Committee
Chairman Patrick Leahy
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 10, 2013

Dear Chairman Leahy, Chairman Durbin, Senate Judiciary Committee & Senate Judiciary Subcommittee Members:

I appreciate deeply that the Judiciary Committee is convening and considering the true impact of the virtual unfettered access to weaponry in OUR United States. Thank you for allowing me to submit testimony in advance of your hearing on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment". While I, like many, support the Second Amendment and its intent, the meaning of it has been grossly distorted by those who would further mass proliferation of weaponry in OUR United States. Supreme Court Justice Scalia, an originalist for our Constitution, has clearly defined that regulation of guns does not equal infringement on the 'right to bear arms'. Clearly, reasonable gun control is consistent with the Second Amendment, and is in keeping with the rights of the People for 'Life, Liberty and the Pursuit of Happiness'. With each right comes responsibility, and a balance with the rights of all.

We simply must have Universal Background Checks, and improve the National Instant Criminal Background Check system so that it is a reliable tool to keep guns out of the hands of those whose intent is other than law abiding. I live in Florida, a state that is second in the nation for illegal guns trafficking – where guns are then migrated to states with more comprehensive gun control laws. The Bureau of Alcohol, Tobacco and Firearms has identified the two contributing factors to this trafficking are the lack of background checks from private sales, combined with 'straw man' purchases. Universal Background Checks simply MUST be nation wide and I urge you to also support recent bipartisan proposals to increase the penalty to 20 years, for 'straw man' purchases.

A 10 round limit on magazines is a reasonable measure that supports lawful use of guns, while also providing a window of opportunity to subdue a shooter, and limiting the amount of carnage that could be inflicted. With rights comes responsibilities and we are well aware the majority of mass shootings involved the use of 'high capacity' magazines. We are also aware that in the case of the Aurora theater shooting, the brief interruption, from a 100 round drum jamming resulted in the opportunity to subdue the shooter and limit the carnage. An experienced shooter can change magazine quickly, but not as quickly as that next round is fired. This is critical and I strongly urge you to support this magazine capacity limit.

There is much discussion on the banning of 'assault weapons', military style weapons.
In my many discussions with gun owners, I have learned of the extreme adaptability of the AR-15, where it may be easily modified to reach the capability of a fully automatic rifle. I have personally viewed video of this, where the shooter was able to fire 25 rounds in 5 seconds… 25 round in 5 seconds…! Shocking! Amazing! I can see no reason where other than military or law

enforcement personnel ought to have this level of capability. As we know, law enforcement personnel are now concerned about being 'out gunned' in our streets. Also, there exists a core group of gun zealots who are literally calling for a ' Civil War', and are amassing weaponry to carry that out, a refusal to consider the rightful balance of rights and responsibilities, a refusal to acknowledge legitimate authority of the Supreme Court of the United States and OUR legislators. I urge you to support a ban on assault style weapons.
The Tiahrt Amendment should be repealed as it restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the Bureau of Alcohol Tobacco and Firearms the authority to require gun dealers to inventory lost and stolen guns and requires that National Instant Criminal Background Check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime, which can substantially increase the sanctions, and enforcement of those sanctions, for offenders.

As a Licensed Therapist, specialized in Child Trauma, I see first hand the devastating and long term impact of trauma in all areas of a child's life. Exposure to gun violence deeply impacts a child's sense of safety in the world, with ensuing development of a 'survival' rather than 'thrive' skill set. This 'survival' skill set limits their ability to fully function in the areas of family and social relationships, academic and later career pursuits, and increases their risk of substance abuse, involvement in juvenile justice systems and puts them very much at risk for perpetuating a 'cycle of violence' and trauma as adults.

I urge you to support President Obama's comprehensive plan for reducing gun violence. President Obama's plan is comprehensive, incorporates the recommendations from the National Alliance for the Mentally Ill, the American Psychiatric Association, calls for research funding to the Center for Disease Control, removing barriers to improve the National Instant Criminal Background Check system, increased public education and more. Far too many mothers, fathers, sister and brothers have lost a child. Far too many gun accidents happen in our homes. Far too many are maimed, for life, through gun violence.

I urge you, to lead the way in truly being part of reducing the social epidemic of gun violence in OUR country. WE, The People, are counting on you.

Respectfully submitted,
Pamela S. Powers
M.Ed., MSW, LCSW, CAP
HMC, USN (RET)

"Nothing is so Strong as Gentleness and Nothing is so Gentle as Real Strength"
Ralph W. Sockman

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for giving all of us the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. There is a lot that can and must be done to prevent tragedies like Sandy Hook, Aurora, and Virginia Tech from happening again, but steps must be taken immediately to protect us and our children. The following short list is a starting point:

1. Universal Background Checks for both Guns and Ammunition

Every purchaser of a firearm should be subject to a full and comprehensive background check through the FBI's National Instant Criminal Background Check System (NICS). The fact that anyone can buy a gun in a private sale, without any check of any kind, is simply absurd. We must keep track of— regulate— the guns in our country. This is way overdue.

2. Institute an Assault Weapons & High Capacity Magazine Ban

All of the mass shootings we Americans have endured have had 1 thing in common: high capacity magazines that were used to kill as many people as possible in a short amount of time. These weapons and ammunition designed for massive slaughter have no place in civilian society, they are designed for a war zone. Have the courage to renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban.

3. Repeal Tiahrt and Upgrade Gun Trafficking to a Federal Crime

The Tiahrt Amendment must be repealed. You should be doing everything you can to move forward and pass legislation that will assist law enforcement and public safety organizations in tracking all firearms and any type of harm that comes from them-- be it suicide, accidents, murder or crime of any kind. This means the registration of every firearm purchase, and at the very least, annual physical verification of ownership. The data gathered from this tracking must be made available so it can be used to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively. Opponents of stringent registration claim that it's too cumbersome a process, yet all car owners must register and continually reregister their vehicles: local governments see that it happens and vehicle owners comply.

4. Reform Mental Health Reporting

5. Limit Gun Purchases to One Per Month.
Antique weapons could be exempt, out of consideration of collectors. Regular, non-collector citizens should have no reason to buy more than one firearm per month. If collectors agree to a set of stringent regulations regarding full and continual accountability of the weapons they purchase, collectors could receive an exception to this law.

I, and most other advocates of gun control, am not advocating for the abolition of the 2nd Amendment. There has to be some sort of common sense regulation for weapons that can kill so many in mere seconds. Think of all those precious children in Sandy Hook that had their tiny bodies torn apart, their parents cautioned not to look at them while identifying them so that wouldn't be the last image of their son/daughter. Many of have previously been silent on this issue, letting the NRA have all the power and influence over leaders in Congress who ultimately decide our gun laws. Please do not be intimidated by the NRA. The tide has shifted and the majority of Americans favor common sense gun control. The Second Amendment belongs to all of the American people and we demand change.

Sincerely

Melissa Prevey
Redding, CT

Statement of Professors of Constitutional Law: The Second Amendment and the Constitutionality of the Proposed Gun Violence Prevention Legislation

January 30, 2013

Several proposed reforms to the nation's gun laws, including universal background checks and restrictions on high-capacity ammunition magazines and assault weapons, are now pending before Congress. Concerns have been raised that these measures might violate the Second Amendment. We, the undersigned professors with expertise in constitutional law, write to address those concerns.

In 2008, the U.S. Supreme Court held that the Second Amendment, which provides, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed," guarantees an individual's right to have a functional firearm in the home for self-defense. The Court's decision in that case, *District of Columbia v. Heller*, struck down a D.C. law that effectively barred the use of any firearm for self-defense. The law is now clear that the government may not completely disarm law-abiding, responsible citizens. The Court also made clear, however, that many gun regulations remain constitutionally permissible. "Like most rights," the Court explained, "the right secured by the Second Amendment is not unlimited." Writing for the Court, Justice Antonin Scalia explained that restrictions on "dangerous and unusual" weapons are constitutional and that "nothing in our opinion should be taken to cast doubt" on laws that prohibit "the possession of firearms by felons or the mentally ill" or laws that impose "conditions and qualifications on the commercial sale of arms."

In this sense, Justice Scalia recognized in *Heller* that, like other constitutional rights, the Second Amendment is not an absolute. The First Amendment, for example, provides that "Congress shall make no law . . . abridging the freedom of speech," but the Supreme Court has long and consistently held that some types of speech – for example, defamation, obscenity and threats – can be regulated; that some people – for example, public employees, members of the military, students and prisoners – are subject to greater restrictions on their speech than others; and that the government can reasonably regulate the time, place and manner of speech. As Justice Scalia explained in *Heller*, the rights guaranteed by the Second Amendment are likewise subject to appropriate regulation in order to enhance public safety.

In acknowledging the presumptive constitutionality of laws designed to prevent gun violence, including restrictions on who has access to firearms and what types of

firearms they may have, *Heller* is consistent with the history of the right to keep and bear arms. The founding fathers who wrote and ratified the Second Amendment also had laws to keep guns out of the hands of people thought to be untrustworthy. Such laws were necessary to ensure that the citizen militia referenced in the Second Amendment was "well regulated." In the 1800s, many states restricted the sale or public possession of concealable firearms. In the early twentieth century, the federal government restricted access to unusually dangerous weapons, such as machine guns, and states barred people convicted of certain felonies from possessing firearms. Laws such as these were routinely upheld by the courts, which recognized the legitimacy of legislative efforts to keep the most dangerous weapons out of the hands of the most dangerous people.

While the permissibility of any particular reform depends on its details, the reforms currently being considered by Congress are clearly consistent with the Second Amendment. We express no view on the effectiveness or desirability of the policies reflected in the various proposals, but we all agree that none infringes the core right identified by the Court in *Heller*.

Universal background checks, especially those conducted instantaneously through the National Instant Background Check System, do not impose a significant burden on law-abiding citizens. Yet background checks may provide an important safeguard against easy access to guns by members of criminal street gangs, other felons, and the mentally ill. As with other rights that have eligibility criteria, such as the right to vote, the right to keep and bear arms is not offended by neutral measures designed to ensure that only eligible, law-abiding citizens exercise the right. Moreover, background checks imposed at the point of sale are typical of the "conditions and qualifications on the commercial sale of arms" recognized by the Supreme Court in *Heller*.

Restrictions on the manufacture and sale of high-capacity ammunition magazines and assault weapons are also consistent with the Second Amendment. In a recent opinion authored by Judge Douglas Ginsburg and joined by Judge Karen Henderson, the U.S. Court of Appeals for the District of Columbia Circuit held that such regulations are consistent with the Second Amendment and with the Supreme Court's decision in *Heller*. The court of appeals recognized such weapons and magazines are not necessary for individual self-defense—what *Heller* called the "core lawful purpose" of the Second Amendment. Restrictions on high-capacity magazines and assault weapons, the court of appeals held, do "not effectively disarm individuals or substantially affect their ability to defend themselves." The Second Amendment, like the First Amendment, does not prevent lawmakers from enacting reasonable regulations that do not seriously interfere with the core right guaranteed by the Constitution.

The Supreme Court has clearly held that the Second Amendment preserves the right of law-abiding citizens to have a firearm in the home for self-defense. As both the historical tradition of the right to bear arms and the Court's decision suggest,

reasonable and limited measures to enhance public safety that do not unduly burden that right are consistent with the Second Amendment.

Signed,

Bruce Ackerman
Sterling Professor of Law and Political Science, Yale Law School

Albert W. Alschuler
Julius Kreeger Professor Emeritus, The University of Chicago Law School

Mitchell N. Berman
Richard Dale Endowed Chair in Law, The University of Texas School of Law

Ashutosh Bhagwat, Professor of Law
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Joseph Blocher
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Dan T. Coenen
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Lawrence Lessig
Roy L. Furman Professor of Law, Harvard Law School

Sanford V. Levinson
W. St. John Garwood and W. St. John Garwood, Jr., Centennial Chair, University of Texas

William P. Marshall
William Rand Kenan, Jr. Distinguished Professor of Law, University of North Carolina

Frank I. Michelman
Robert Walmsley University Professor, Emeritus, Harvard Law School

Darrell Miller
Professor of Law, University of Cincinnati College of Law

Alan B. Morrison
Lerner Family Associate Dean, The George Washington University Law School

Gene R. Nichol
Boyd Tinsley Distinguished Professor of Law, UNC School of Law

Spencer A. Overton
Professor of Law, The George Washington University Law School

Eric Posner
Kirkland & Ellis Distinguished Service Professor, The University of Chicago Law School

Lawrence Rosenthal
Professor of Law, Chapman University School of Law

Theodore Ruger
Professor of Law, University of Pennsylvania Law School

Jane S. Schacter
William Nelson Cromwell Professor of Law, Stanford Law School

Stephen J. Schulhofer
Robert B. McKay Professor of Law, New York University School of Law

Neil S. Siegel
Professor of Law and Political Science, Duke Law School

Reva Siegel
Nicholas deB. Katzenbach Professor of Law, Yale Law School

Geoffrey R. Stone
Edward H. Levi Distinguished Service Professor and former Dean, The University of Chicago

David A. Strauss
Gerald Ratner Distinguished Service Professor of Law, The University of Chicago

Laurence H. Tribe
Carl M. Loeb University Professor and Professor of Constitutional Law, Harvard Law School

Mark Tushnet
William Nelson Cromwell Professor of Law, Harvard Law School

Jonathan D. Varat
Professor of Law and former Dean, UCLA School of Law

Keith Wehran
Ashton Phelps Chair of Constitutional Law, Tulane University School of Law

Adam Winkler
Professor of Law, UCLA School of Law

University affiliation provided for identification purposes only.

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention.

I am a businesswoman. I believe that the "system" we have in place for gun manufacture, sales, use and ownership seriously broken and needs reform. I am not a rabid liberal who wants to see all guns banned, or someone who believes that such a ban would even solve the deadly effects we see of the problem we have before of us. Mandated *responsibility and accountability* by everyone who participates in gun manufacture, sales, use and ownership is crucial to stopping this useless fingerpointing that has been going on for years now.

I suggest the following steps be put into place to create a new system of accountability for weapons, and to reduce the deadly impact of the inevitable (but less frequent) failure of the new system.

1) Require Universal Background Checks on both Guns and Ammunition
Every purchaser of a firearm should be subject to a background check through the FBI's National Instant Criminal Background Check System (NICS). Currently, an estimated 40 percent of guns sales are made by private individuals (at gun shows, over the Internet, through classified advertisements, etc.) who have no legal duty to subject purchasers to background checks or maintain records of sale. What is the purpose of having a NICS database with millions of disqualifying records if prohibited purchasers can simply circumvent the system? It would be the equivalent of having optional security screening at our airports, with a second line for folks who simply wish to bypass the scanners. In this Information Age, NICS checks are typically completed in a matter of minutes, and they can be administered by any one of the nation's more than 50,000 federally licensed firearm dealers. Background checks should also be required on all ammunition purchases.

2) Institute an Assault Weapons & High Capacity Magazine Ban
Renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Mass shootings have increased in frequency since the ban expired in 2004. That is reason enough to reinstate the ban. There is no need for a weapon designed for battlefield use and easily outfitted with magazines holding up to 100 rounds of ammunition to be legally available to civilians but there is a very compelling reason to ban these weapons – it will save lives.
3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime

The Tiahrt Amendment should be repealed as it restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the ATF the authority to require gun dealers to inventory lost and stolen guns and requires that NICS background check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime so there can be tougher enforcement. We should be doing everything we can to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

4) Improve Mental Health Reporting
While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. Under current law, only individuals who have been *involuntarily* committed to a psychiatric institution or formally adjudicated as "mental defectives" (the law was written in 1968) are prohibited from buying firearms. This standard tells us little about who might be dangerous and allows people to acquire firearms who should never get close to a gun. There are many other issues that need to be addressed, such as violent video games, the glorification of gun violence in the movies and TV and the effect this has on our youth. But these issues will take time to tackle and resolve and will require a cultural shift. The suggestions I have made above are all simple and immediate steps that would help bring an end to gun violence.

The American people are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

Public safety should not be a politically charged issue. Legislators on both sides of the aisle have an obligation to protect and safeguard the welfare of Americans. Hiding behind the Second Amendment as an excuse for inaction is not acceptable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus. Every right has limits and the Second Amendment is no exception. No one outside of the military needs an assault weapon or a 50-caliber sniper rifle that can penetrate a police officer's bullet-proof vest. No one needs a high-capacity magazine capable of turning an ordinary handgun into a killing machine. No one should be able to purchase a gun of any sort without having to undergo a background check. Loopholes need to be closed. Bans need to be reinstated. Let's get this done; for our country and for our children; and let's get this done now.

Most respectfully,

Maria C Pumilia
2000 Meadow View Drive NW
Albuquerque, NM 87104

Rehabilitation Institute *of* Chicago

345 East Superior Street
Chicago, Illinois 60611-2654
312-238-1000 telephone
www.ric.org

February 11, 2013

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
815 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Ted Cruz
Ranking Member
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
815 Hart Senate Office Building
Washington D.C. 20510

Dear Chairman Durbin and Ranking Member Cruz:

On behalf of the Rehabilitation Institute of Chicago ("RIC"), we wanted to thank you for convening the hearing scheduled for Tuesday, February 12, 2013, in order to begin the dialogue regarding how to reduce gun-related injuries and fatalities. As you may be aware, according to some estimates, more than 73,000 people each year are treated in hospital emergency rooms for non-fatal gunshot wounds. According to the Centers for Disease Control and Prevention ("CDC"), in 2010 there were 11,078 firearm homicides. In 2012, Chicago experienced more than 500 homicides, including gun slayings. RIC treats many individuals who have suffered severe and often life-changing injuries as a result of firearms.

As you know, RIC is one of the largest freestanding rehabilitation hospitals in the country and has been ranked the #1 Rehabilitation Hospital in America by *U.S. News and World Report* for the past twenty-two (22) years and running. RIC operates 52 sites of inpatient, outpatient, and day rehabilitation care throughout the Midwest, including its 182 bed flagship hospital located in downtown Chicago. Through its system of care, RIC serves more than 50,000 patients annually. RIC also runs the nation's largest rehabilitation research enterprise.

We are supportive of the open dialogue and highly commend you and your colleagues for your commitment to discuss this public health issue. We thank you for exploring new ideas and ways to help prevent gun-related injuries, disabilities, and fatalities. As always, RIC stands ready to be a resource to you and your staff regarding this and other health care matters. If you have any questions or if we can be of any assistance to you, please do not hesitate to contact me at 312.238.6208 or nparidy@ric.org.

Very truly yours,

Nancy E. Paridy

Nancy E. Paridy.
Senior Vice President, General Counsel &
Government Affairs

Chairman Durbin and Senate Judiciary Subcommittee Members,

My name is Barbara Richardson. I live in Sandy Hook Connecticut.

I am the parent of a son who attended our much-loved Sandy Hook Elementary School. In our neighborhood are families who lost children and also the Lanzas. I am a sister to someone with mental illness and depression who was narrowly averted from purchasing a gun. I am a registered nurse with long experience in the trauma caused by guns in suicides, accidents and crime, as well as the decades long effects on families and loved ones. One of my patients was a 19 year old accidently shot by his 13 year old brother using a gun owned by their "gun enthusiast" father. He died after a year in the hospital.

The causes of gun violence are complex, and solutions require rational, well-enforced laws as well as better care for mental illness and security. It will require of gun owners and sellers individual responsibility and limitation of some freedoms in the interest of public safety. The government does this with other potentially dangerous consumer products such as cars, ladders etc. I remember when the law was passed making seat belt wearing mandatory - how annoyed I was to be told what to do by the government. How silly that seems now with so many lives saved.

The popularization in recent years of military style rapid-fire semi-automatic rifles with large capacity magazines is a major factor in the Sandy Hook School massacre. We need to ban or restrict these types of weapons and high capacity ammunition magazines as well as establish universal background checks to better ensure that wrong people don't have guns. We need research and data as to the causes and effects of gun violence to implement the best policies. We need to empower law enforcement and the department of ATF to prevent and stop illegal guns and straw purchases. Unfortunately, the gun industry including the NRA and NSSF have for years used their money and political influence to undermine research into gun violence, weaken gun laws and undermine the ability of law enforcement to stem gun violence on the national, state and local level.

Wayne LaPierre said in a speech "The guys with the guns make the rules". I hope that with the wellbeing and safety of the public in mind, you prove him wrong.

Thank you

Barbara B Richardson

31 Osborne Hill Rd

Sandy Hook, CT 06482

Please add my comments to the ongoing testimony regarding gun control. I support the President's gun control policy. There is NO reason citizens should possess assault weapons. Period. NO reason.

In particular: Ban ALL assault weapons from the general public
Background checks for ALL gun purchases. No loop-holes. ALL guns: any time, anyplace.
Strengthen and enforce federal laws stopping gun trafficking.
Fund and demand the CDC and NIH resume research regarding violence and its motivators.

In addition, I support all 15 principles of the House Gun Violence Prevention Force's Comprehensive Common Sense Plan..

Thank you, Ethel-Anne Roome
599 Patriot Rd.
Southbury, CT 06488

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 12, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for giving all of us, We The People, the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. There is so much that can be done by Congress to make everyone safer and that is what we urge you and expect you to do.

Here is a short list of what you can do now to save American lives:

1. Universal Background Checks for both Guns and Ammunition
Every purchaser of a firearm should be subject to a full and comprehensive background check through the FBI's National Instant Criminal Background Check System (NICS). The fact that anyone can buy a gun in a private sale, without any check of any kind, is simply nonsensical. Since there are about 50,000 federally licensed firearm dealers in this country, let them adopt the role of administering all checks for all sales. As we all know, the Second Amendment clearly states, "well regulated" in regard to firearms and the militia. So, we have our Constitutional marching orders and they are clear: Keep track of– regulate– the guns in our country. This is way overdue.

2. Institute an Assault Weapons & High Capacity Magazine Ban
Have the courage to renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Weapons designed for war do not belong in the public realm for any reason at any time. Six children's lives were saved because Adam Lanza had to change his high capacity

magazine and it gave those precious children a chance to run out of Sandy Hook Elementary to safety. Maybe more children could have lived had Lanza only had ten round clips. Imagine, if you and your fellow Congressmen had instituted such a ban years ago, you would have already saved many lives, and maybe those of some Sandy Hook Elementary School. Maybe Ben Wheeler would still be alive, or maybe Allison, or Caroline, or Noah. Maybe...

3. Repeal Tiahrt and Upgrade Gun Trafficking to a Federal Crime
The Tiahrt Amendment must be repealed. You should be doing everything you can to move forward and pass legislation that will assist law enforcement and public safety organizations in tracking all firearms and any type of harm that comes from them-- be it suicide, accidents, murder or crime of any kind. This means the registration of every firearm purchase, and at the very least, annual physical verification of ownership. The data gathered from this tracking must be made available so it can be used to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

4. Reform Mental Health Reporting
We all know now that gun violence is almost never committed by those suffering from mental illness (and in fact they are much more often the *victims* of crime). The current background check system is seriously flawed--the latest example of such flaws is the mentally ill woman from SC who, just several days ago, legally obtained a gun even though she had documented mental illness and had been arrested for threatening to kill the president. This must be fixed. As you may know, the only reason nobody died at the school where this woman brought her new gun was the fact that she could not get the gun to fire. She pointed it at the school administrators and pulled the trigger-- several time. Had she known how to unlock the gun, there most surely would have been even more schoolchildren for your committee to consider.

5. Limit Gun Purchases to One Per Month
Antique weapons could be exempt, out of consideration of collectors. Regular, non-collector citizens should have no reason to buy more than one firearm per month. If collectors agree to a set of stringent regulations regarding full and continual accountability of the weapons they purchase, collectors could receive an exception to this law.

When it comes to how Americans feel about the gun culture in this country, the ground has noticeably shifted in favor of gun law reform. Can't you feel it? We, the previously silent majority, are fed up. We vote, we will not forget Sandy Hook, and we are not going anywhere. I realize there is much more work to be done and the above five points are simply the beginning. I don't advocate for the abolition of the 2nd Amendment, just reasonable and common sense gun law reform that is both fair to gun owners and those of us who choose not to be gun owners. The Second Amendment does not belong to the NRA or gun enthusiasts or hunters or target shooters. It belongs to all of us, and it's time for change.

Nothing I have asked for here is hard or complicated. All it will take is your resolve not to be intimidated by the NRA. The Congress of the United States does not answer to the NRA, you answer to us, The People, and we demand change.
Sincerely

Diane Samples
New Fairfield, CT

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. I know that a lot can be done legislatively to make our country a safer place that will not infringe upon Second Amendment rights.

First and foremost, please require universal background checks on both guns and ammunition. Every purchaser of a firearm should be subject to a background check through the FBI's National Instant Criminal Background Check System (NICS). Currently, an estimated 40 percent of guns sales are made by private individuals (at gun shows, over the Internet, through classified advertisements, etc.) who have no legal duty to subject purchasers to background checks or maintain records of sale. Background checks should also be required on all ammunition purchases.

Second, institute a ban on assault weapons and high capacity magazines.

There is no need for a weapon designed for battlefield use and easily outfitted with magazines holding up to 100 rounds of ammunition to be legally available to civilians but there is a very compelling reason to ban these weapons – it will save lives. Renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Mass shootings have increased in frequency since the ban expired in 2004. That is reason enough to reinstate the ban.

Third, repeal Tiahrt and make gun trafficking a federal crime.

The Tiahrt Amendment should be repealed as it restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the ATF the authority to require gun dealers to inventory lost and stolen guns and requires that NICS background check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime so there can be tougher enforcement. We should be doing everything we can to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

Finally, improve mental health reporting.

While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. Under current law, only individuals who have been *involuntarily* committed to a psychiatric institution or formally adjudicated as "mental defectives" (the law was written in 1968) are prohibited from buying firearms. This standard tells us little about who might be dangerous and allows people to acquire firearms who should never get close to a gun.

The American people are speaking loudly and clearly. We expect Congress to start protecting

our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

Public safety should not be a politically charged issue. Legislators on both sides of the aisle have an obligation to protect and safeguard the welfare of Americans. Hiding behind the Second Amendment as an excuse for inaction is not acceptable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus. Every right has limits and the Second Amendment is no exception. No one outside of the military needs an assault weapon or a 50-caliber sniper rifle that can penetrate a police officer's bullet-proof vest. No one needs a high-capacity magazine capable of turning an ordinary handgun into a killing machine. No one should be able to purchase a gun of any sort without having to undergo a background check. Loopholes need to be closed. Bans need to be reinstated. Let's get this done; for our country and for our children; and let's get this done now.

Thank you for your time.

Jennifer Schuetz

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 12, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

For weeks, I have been trying to educate myself about guns because I think it's important to approach this subject objectively. Yet, as a longtime Newtown resident, I find it difficult to be dispassionate. Our town has been forever changed and there is no explanation to account for this tragedy.

After countless hours of research on gun rights, I am left with one nagging question that no one has yet answered: *why are weapons which were conceived and developed for warfare available to civilians?* This seems to be the crux of the gun control issue; does a civil society need submachine guns in the hands of average citizens? I understand that the vast majority of gun owners are responsible and highly trained, but is it necessary to own a weapon whose only purpose is to slaughter other living things? I have read every argument out there, most notably the 2nd amendment as the supreme law of entitlement, but nothing justifies the availability of these weapons. We are not living in a war zone; we are not running in the jungles of Somalia, firing at insurgents and assassins. We are a civilized society that has acknowledged the individual right to own guns for sport, hunting, collecting and self-defense. Assault weapons have no place in in this collection of rights. The unchecked availability of these guns poses a risk to my safety, and is there an infringement on my right to life.

If you are unable to make sense of these arguments, please consider existing gun laws and the intent of the current limitations on firearms. The initial law banning machine guns has been on the books for nearly 80 years (National Firearms Act of 1934); the 1968 Gun Control Act, signed by President Regan, tightens restrictions on entitlement (barring the mentally ill, convicted felons, and those with known drug abuse problems); and the 1994 Violent Crime Control and Law Enforcement Act of 1994 bans semi-automatic weapons. Surely these legislative actions met with opposition, yet lawmakers believed such measures were necessary for the safety of society. I began to ask myself this simple question: Why is this restriction of fully

automatic guns acceptable, yet a ban on semi-automatic guns is not acceptable? I began to search for the difference. Here's what I found: The difference between a fully automatic rifle and an M-14 Bushmaster is negligible; the spray of bullets is equally deadly, the impact similarly devastating. That the shooter must pull the trigger multiple times versus just once scarcely qualifies as a distinction.

For the sake of clarity, I will repeat myself: A fully automatic rifle requires one pull of the trigger whereupon the rifle will repeatedly fire and continue to fire until all rounds are expended. The semi-automatic rifle requires that a shooter repeat the action of pulling the trigger in order to effect a continual spray of bullets. The difference is the simple requirement of repeated pulling of the trigger. How do we justify this as a substantive difference?

The arguments supporting the need for such guns typically involve self-defense. But if we are to believe the claims of responsible gun owners, such arguments seem counterintuitive. Everything I have heard about "responsible ownership of firearms" is based on a commitment to safety. Owners are assiduous in keeping guns under lock and key. How, then, will such guns serve as self-defense if, at the unpredictable moment they are needed, an owner must unlock a storage space and load the weapon? Is it likely that an intruder will await these tasks? The idea of using a semi-automatic gun for self-defense seems logical only if the user is going to keep the gun slung across his shoulder, always loaded and ready for action. This notion is as preposterous as it is perilous.

I ask you to please think carefully about the choices you make regarding gun restrictions. Despite what the gun lobby says, there IS common ground and reasonable measures will in no way infringe on the rights of gun owners.

Please do the right thing. Thank you.

Lisa Schwartz
7 Merlins Lane
Newtown, CT 06470

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin and Senate Judiciary Subcommittee Members:

I am a Virginia mother of four children and will be returning to the classroom next year as a teacher. I am writing to ask Congress to pass laws that will make the United States a safer place for our children and grandchildren.

The NRA leadership's position on gun violence, as stated by Wayne LaPierre, is that "the only way to stop a bad guy with a gun is with a good guy with a gun." My husband and I do not believe that the answer to the crescendo of mass shootings and gun violence in our country over the past several years is to arm every law-abiding citizen. Gun violence is a complex problem, but the answer to this problem is not more guns. And the answer is not to just do nothing. It's time to make it harder for the "bad guys" to acquire guns in the first place.

This is a public health and safety issue, when more than 10,000 people a year are murdered with firearms in our country, of whom 3,000 were children (Source: Brady Campaign to Prevent Gun Violence). We owe it to all the families who have lost loved ones to stand up against the gun lobby. Our nation has had too much violence and too many deaths. The time to act is now. I strongly support President Obama's recent gun legislation reform proposals.

Please write and enact legislation that will do the following:

1) Require universal background checks on both guns and ammunition. Close the loopholes for all gun sales.
2) Institute an assault weapons and high capacity magazine ban. These dangerous weapons and high-capacity clips were designed for military use and have no place on our streets.
3) Repeal the Tiahrt Amendment and make gun trafficking a federal crime. People who sell guns illegally should know that they will face severe penalties.
4) Improve mental health reporting, in order to prevent those who may be a danger to themselves or others from purchasing guns.

I support Second Amendment rights, but no Constitutional right is unlimited. As gun owners and non-gun owners alike, the majority of Americans support universal background checks and keeping guns out of the hands of criminals. The above measures would be a good start, and they would unquestionably save lives.

Thank you for considering and implementing measures to reduce gun violence.

Sincerely,

Rebecca Scoville

Senators on the Senate Judiciary Committee:

I endorse the words of Martina Leinz, below. I live in the state of Virginia, which is the source of many of the guns used in crimes all over America. I have no hope that the Virginia Legislature will pass legislation to change that, so I am depending on federal legislation to do what is necessary to make America a civilized place where human life is valued more highly than the profits of the armaments industry.

"The American people are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

Public safety should not be a politically charged issue. Legislators on both sides of the aisle have an obligation to protect and safeguard the welfare of Americans. Hiding behind the Second Amendment as an excuse for inaction is not acceptable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus. Every right has limits and the Second Amendment is no exception. No one outside of the military needs an assault weapon or a 50-caliber sniper rifle that can penetrate a police officer's bullet-proof vest. No one needs a high-capacity magazine capable of turning an ordinary handgun into a killing machine. No one should be able to purchase a gun of any sort without having to undergo a background check. Loopholes need to be closed. Bans need to be reinstated. Let's get this done; for our country and for our children; and let's get this done now."

Martina Leinz
Virginia State President
Million Mom March

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 12, 2013

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Thank you for giving all of us, We The People, the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. There is so much that can be done by Congress to make everyone safer and that is what we urge you and expect you to do. Here is a short list of what you can do now to save American lives:

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Every purchaser of a firearm should be subject to a full and comprehensive background check through the FBI's National Instant Criminal Background Check System (NICS). The fact that anyone can buy a gun in a private sale, without any check of any kind, is simply nonsensical. Since there are about 50,000 federally licensed firearm dealers in this country, let them adopt the role of administering all checks for all sales. As we all know, the Second Amendment clearly states, "well regulated" in regard to firearms and the militia. So, we have our Constitutional marching orders and they are clear: Keep track of— regulate— the guns in our country. This is way overdue.
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3. Repeal Tiahrt and Upgrade Gun Trafficking to a Federal Crime
The Tiahrt Amendment must be repealed. You should be doing everything you can to move forward and pass legislation that will assist law enforcement and public safety organizations in tracking all firearms and any type of harm that comes from them-- be it suicide, accidents, murder or crime of any kind. This means the registration of every firearm purchase, and at the very least, annual physical verification of ownership. The data gathered from this tracking must be made available so it can be used to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.
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When it comes to how Americans feel about the gun culture in this country, the ground has noticeably shifted in favor of gun law reform. Can't you feel it? We, the previously silent majority, are fed up. We vote, we will not forget Sandy Hook, and we are not going anywhere. I realize there is much more work to be done and the above five points are simply the beginning. I don't advocate for the abolition of the 2nd Amendment, just reasonable and common sense gun law reform that is both fair to gun owners and those of us who choose not to be gun owners. The Second Amendment does not belong to the NRA or gun enthusiasts or hunters or target shooters. It belongs to all of us, and it's time for change.
Nothing I have asked for here is hard or complicated. All it will take is your resolve not to be intimidated by the NRA. The Congress of the United States does not answer to the NRA, you answer to us, The People, and we demand change.

Sincerely,
Mark Snyder
New Fairfield, CT

"An Assault Gun Ban, Mr. Congress Man?"

by Sanjeev K. Sriram, MD, MPH
National Physicians Alliance
posted online by the Huffington Post on
February 8, 2013
http://www.huffingtonpost.com/sanjeev-k-sriram/an-assault-gun-ban-mr-con_b_2632370.html

This kinda sorta remix of Dr. Seuss' *Green Eggs and Ham* is dedicated to Trayvon Martin, with whom I share a birthday, and the children who lost their lives in Newton, CT.

Mr. Congress Man,
Mr. Congress Man,
Listen to me,
Mr. Congress Man!

Will you pass
an assault gun ban?

No more assault guns
in stores[1] or schools[2].
No more assault guns
without rules.

Mr. Congress Man,
Mr. Congress Man,
Will you pass
an assault gun ban?

Will you hear the
cops on the beat?
They say records
are incomplete[3].

Some states don't tell
the cops nor the D.O.J.
about bad guys
so guns can be kept away[4].

Mr. Congress Man,
Mr. Congress Man,
Will you pass
an assault gun ban?

Will you hear the
docs for our kids[5]?
We see what these
assault guns did.

Doctors from the A.A.P.
(a child health group)
wrote that guns kill five times more
than hearts gone kaput[6].

Guns kill our kids
twice more than cancer[7].
Guns end young lives,
but there's an answer.

Mr. Congress Man,
Mr. Congress Man,
Please support
this assault gun ban:

Weapons meant for
the military
can't be owned by each
Tom, Dick, and Harry.

More background checks[8]
for one and all,
Less rounds in clips[9].
Please here this call.

For many patients
with sad or troubled minds:
less stigma, more care[10]
should be easy to find.

Mr. Congress Man!
Mr. Congress Man!
Please support
this assault gun ban!

Our cops[11] and docs[12]
are in agreement.
And One Million
Moms[13] are vehement.

Will you hear us[14]?
Or the N.R.A.[15]?
How many kids
must lose their lives this way?

Mr. Congress Man!
Mr. Congress Man!
You must pass
this assault gun ban!

[1] "Man brings loaded rifle into Kroger," posted 1/29/13 on CBS-6 WTVR website: http://wtvr.com/2013/01/29/kroger-gun/
[2] "Sandy Hook superintendent shares the chilling details,"posted 1/16/13 on MSNBC website: http://tv.msnbc.com/2013/01/16/sandy-hook-superintendent-shares-the-chilling-details/
[3] "[Sherriff Richard Stanek] said the bigger issue is that the Justice Department's system for background checks is incomplete since many states don't report mental health data or felony convictions." Pickler, N. "Police push for background checks on gun purchases," posted 1/28/13 on Yahoo! News website: http://news.yahoo.com/police-push-background-checks-gun-purchases-023655912--politics.html
[4] "Studies have shown that millions of criminal and drug cases are still missing, in large part because of difficulties in making state court data mesh with the federal system." Tanfani, J. "Background check system for guns deeply flawed" posted 1/16/13 on *LA Times* website: http://www.latimes.com/news/nationworld/nation/la-na-guns-background-20130117,0,238139.story
[5] "Firearm-Related Injuries Affecting the Pediatric Population," Council on Injury, Violence, and Poison Prevention Executive Committee, *Pediatrics*, published online 10/18/12: http://pediatrics.aappublications.org/content/early/2012/10/15/peds.2012-2481.full.pdf
[6] "Gun injuries cause twice as many deaths as cancer, 5 times as many as heart disease, and 15 times as many as infections." Palfrey, JS and Palfrey, S. "Preventing Gun Deaths in Children," New England Journal of Medicine, 368: p401-403, 1/31/13: http://www.nejm.org/doi/full/10.1056/NEJMp1215606?query=TOC&&&
[7] Ibid.
[8] "Background Checks Overwhelmingly Supported by Gun Owners in 4 States," Edwards-Levy, A. posted 1/31/13 on *Huffington Post*: http://www.huffingtonpost.com/2013/01/31/background-checks_n_2590495.html
[9] "Frank Lautenberg High-Capacity Magazine Ban Introduced On First Day of Senate Session," Wing, N. posted 1/22/13 on *Huffington Post*: http://www.huffingtonpost.com/2013/01/22/frank-lautenberg-high-capacity-magazine_n_2526924.html
[10] "Obama gun plan calls for long-awaited rules on mental health," Baker, S. posted 1/16/13 on *The Hill: Healthwatch* blog: http://thehill.com/blogs/healthwatch/mental-health/277529-obama-gun-plan-calls-for-long-awaited-rules-on-mental-health
[11] "Statement of Principles," National Law Enforcement Partnership to Prevent Gun Violence: www.joycefdn.org/assets/1/7/Statement_of_Principles.pdf
[12] "The American Medical Association, American Academy of Pediatrics, Congress of Neurological Surgeons, National Spinal Cord Injury Association and many more groups . . . all support gun control legislation." Hsieh, S. "The NRA's Top 10 Enemies," posted 2/3/13 on *Truth-Out* website: http://truth-out.org/news/item/14310-the-nras-top-10-enemies
[13] One Million Moms for Gun Control: http://onemillionmomsforguncontrol.org/
[14] "Effectiveness of the Brady Act and Background Checks," posted 3/18/12 on website of the Law Center to Prevent Gun Violence: http://smartgunlaws.org/category/effectiveness-of-gun-laws/
[15] "Many argue that the reason for this inaction is simple: politicians have been afraid to take on the National Rifle Association, the large and influential pro-gun lobby that spent at least $18.6 million this past election cycle -,$11.1 million through its Political Victory Fund, plus $7.5 million through its affiliated Institute for Legislative Action." Drutman, L. "Explaining the power of the National Rifle Association, in one graph," posted 12/17/12 on the Sunlight Foundation's blog: http://sunlightfoundation.com/blog/2012/12/17/gun-spending/

One Children's Place
St. Louis, Missouri 63110-1077
StLouisChildrens.org

Lee F. Fetter
President and Senior Executive Officer

February 11, 2013

The Honorable Richard J. Durbin
Assistant Majority Leader and
Chairman, Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Durbin:

Gun violence affects the lives of far too many children. At St. Louis Children's Hospital (SLCH), we see the effects of this violence in our hospital. Our mission is to "*do what is right for kids*," and our values tell us that we must advocate for policies that help safeguard the lives and health of these innocents. We feel a moral imperative to speak out about this issue.

As a children's hospital, we are focused on the costs of this epidemic on our children, not the broader debate about the second amendment. We encourage you, as the debate about guns and gun violence unfolds, to consider steps that will lead to fewer Missouri children suffering from gun violence. We believe improvements to the federal background check system, government sponsored research into gun violence and more mental health funding can reduce the incidence of children becoming victims of gun deaths and injuries.

The statistics are stark. In 2009, the Children's Defense Fund found that 2,793 children and teens died from guns and 13,791 were injured. Of these children, 590 that died and 1,247 that were injured were under the age of 15. In 2012, SLCH treated 51 children that were victims of gunshots.

The Brady Handgun Violence Prevention Act requires gun dealers to conduct background checks on every sale. But a loophole allows guns sold at gun shows to avoid background checks. We believe that a system of universal background checks is needed.

Current federal law reads: "None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control." Recently, President Obama signed an executive order directing the CDC to start studying the causes of gun violence once again. We believe that additional data is needed to develop strategies to prevent and reduce gun violence involving children.

Finally, Missouri and other states have cut spending on mental health services for children and adults living with serious mental illness. These cuts have led to significant reductions in both hospital and community services for vulnerable individuals with serious mental illness. A report from the National Alliance on Mental Illness finds that Missouri has reduced its mental health budgets by 6.8 percent between 2009 and 2012. Missouri spent $86.15 per capita on mental health in 2009, ranking us in the lower tier of states.

Gun violence has no place in a child's life. Please thoughtfully consider proposals before congress, and support those that will help protect children.

Sincerely,

Lee F. Fetter
President
St. Louis Children's Hospital

I live in Newtown, Connecticut. On December 14, 2012, a deranged adolescent with access to several semi-automatic rifles and unlimited ammunition, killed twenty small children and six brave women who died trying to protect them. *It took him two and a half minutes.*

The tragedy went beyond the devastation of twenty-six families. More than that, it was the sense of a beautiful place being shattered- a community where doors are left unlocked, where volunteers drive the ambulance, where people tend a Victory Garden to raise fresh vegetables for the Food Bank, and where *everyone* turns out to either watch, or march in, the annual Labor Day Parade.

We will probably never again be that simple, quiet backwater we were, but we are anxious for our town to heal. It is important to us that *something* positive come out of all that waste and sorrow.

I know the NRA is pressuring legislators to resist the call for any restrictions on firearms. Using specious interpretations of the Constitution, and spreading false rumors about secret plans to encroach on individual freedom, they hope to intimidate Congress into doing nothing.

But Sandy Hook Elementary School was too high a price to pay for the sake of a fantasy in which civilians possessing such weaponry makes our society safer. Only if the shock and outrage are enough to raise the national consciousness to the point where meaningful laws can be passed, regulating the sale and possession of firearms and ammunition, then perhaps those deaths will not have been in vain.

In my lifetime there were points where the Federal Government met the challenge to do the right thing, despite raging mobs and rhetoric that equated bigotry with the American way of life. In 1948 Harry Truman issued the executive order integrating the armed forces. In 1964, after the murders of three young men in Mississippi, Lyndon Johnson persuaded Congress to pass the landmark Civil Rights Act, outlawing segregation in schools and workplaces and public accommodations.

Looking back, Mississippi was a watershed moment, which captured the public imagination to the point where people finally realized that racism and discrimination were not just a "negro problem," but rather an American problem that had to be dealt with. This realization gave Congress the impetus to take effective action.

I hope my town's tragedy can be another such watershed, one that can instill in you the will and courage to do the right thing once more. I hope you will pass legislation to close the loopholes, ensure universal and meaningful background checks on purchasers of guns *and* ammunition, limit the capacity of ammunition clips, make sure all guns are registered and licensed (just as cars and dogs are) and insist that they be kept safely locked away from anyone who should not have access to them.

Let Newtown stand not just for the enormity of our loss, but for the eventual good that came out of it.

Respectfully,
Julia Stern
19 Park Lane
Newtown, CT 06470

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention.

My name is Colleen Swain. I live in Sandy Hook, Connecticut. My children were born here, and grew up here. They attended Sandy Hook Elementary School. Though it's been 20 years, the school still binds a strong generation of friends.

However, now, the school binds our hearts in grief. There are four families in my quiet neighborhood who have lost their children in the Sandy Hook School Massacre. Gun violence has shaken our town, our state, and our nation. If such unimaginable violence can happen here, in Newtown, it can happen anywhere. Our children will never be safe until we have universal gun laws. And that's why I urge you to support President Obama's anti-gun violence proposals. It is very simply the right thing to do.

It is time to stand up to the gun lobby and bring about positive change to end the gun violence culture in our country. As with any product that has potential to inflict lethal harm, gun regulations are necessary to ensure safe use. President Obama's common-sense legislation respects the Second Amendment and the rights of safety-conscious, responsible gun owners.

In fact, this is not about the Second Amendment. Frankly, our Founding Fathers would have been appalled if they knew how the words they wrote in their time has caused so much pain and insanity within our 21st century society. I have to believe that there are far more safety-conscious gun owners than NRA members who also believe that enough is enough.

As with any dangerous product, guns need to be regulated to ensure a safe, and peaceful modern society.

I support an assault weapons ban, a ban on high-capacity magazines of no more than 10 rounds, and universal background checks.

We must ensure that criminals, people with mental health issues, or even those with no mental health history who unpredictably snap out of control, have no easy access to assault weapons. They are military killing machines that do not belong in civilian hands.

I do not want my community to be remembered as the place where the second worst shooting in our nation happened. I want Sandy Hook and Newtown to be remembered as the tipping point that brought about positive change to end gun violence in this country. Can you make that happen?

Please protect the citizens you have been elected to represent. Not the gun lobby. Not the gun industry. Americans. We have the right to life, liberty and the pursuit of happiness. We should not have to live in fear of guns out of control. Think of the 20 children and six courageous educators whose bodies were devastated. They never had a chance. But you have. This is your chance to bring about positive change. As a single-issue voter, I am counting on you. Please pass President Obama's common-sense anti-gun violence legislation.

Thank you.

Colleen Swain
Sandy Hook, CT

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 12, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for giving us, We The People, the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. There is much to be done by Congress to make our modern society safer and that is what we urge you and now expect you to do. It is time now to stand up and legislatively save American lives:

1. Universal Background Checks for both Guns and Ammunition Purchases
Every purchaser of a firearm should be subject to a full and comprehensive background check through the FBI's National Instant Criminal Background Check System (NICS). The fact that anyone can buy a gun in a private sale, without any check of any kind, is simply nonsensical. As we all know, the Second Amendment clearly states, "well regulated" in regard to firearms and the militia. So, we have our Constitutional marching orders and they are clear: Keep track of— regulate— the guns in our country. This is way overdue.

2. Institute an Assault Weapons & High Capacity Magazine Ban
Have the courage to enact a serious federal ban on assault weapons and high-capacity ammunition magazines. Close all of the loopholes that existed in the earlier assault weapons ban. Weapons designed for war do not belong in the public realm for any reason at any time. Had you and your fellow Congressmen instituted such a ban years ago, you would have already saved many lives, and maybe those of some Sandy Hook Elementary School. Maybe Ben Wheeler would still be alive, or maybe Allison, or Caroline, or Noah. Maybe...

3. Repeal Tiahrt and Upgrade Gun Trafficking to a Federal Crime
The Tiahrt Amendment must be repealed. You should be doing everything you can to move forward and pass legislation that will assist law enforcement and public safety organizations in tracking all firearms and any type of harm that comes from them-- be it suicide, accidents, murder or crime of any kind. This means the registration of every firearm purchase, and at the very least, annual physical verification of ownership. The data gathered from this tracking must be made available so it can be used to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

4. Reform Mental Health Reporting and Care
A very big issue that need serious attention. Better mental health care need to available without stigma for all Americans.

5. Time To Consider Strengthening The BATF
The NRA seemingly has an inordinate amount of influence and power over the American

gun culture. They run all the shooting ranges and all instructors are NRA-certified. They are politically involved in all things gun. Who is over seeing them? Time for US gun manufacturers to take the lead and stop relying on selling designed-for-military weaponry to Rambo-wannabes. State of the art target shooting does not involve AR15 platform weaponry! Ask the USA Olympic Shooting Team or the US Biathlon Association.

When it comes to how Americans feel about the gun culture in this country, the ground has noticeably shifted in favor of gun law reform. Can't you feel it? We, the previously silent majority, are fed up. We vote, we will not forget Sandy Hook, we will not stand for the status quo. We are determined to create a meaningful change because the time is WAY PAST DUE.

We The People need rational gun law reform that is both fair to responsible gun owners and those of us who choose not to be gun owners. The Second Amendment does not belong to the NRA or gun enthusiasts or hunters or target shooters. It belongs to all of us, and it's time for change.

The Congress of the United States does not answer to the NRA, you answer to us, The People, and we demand change.
Sincerely

Ken Swain
Sandy Hook, CT

My thoughts on the gun crisis in America:
I'm a physician that works at a Children's hospital in Philadelphia. I see more gun violence perpetrated against children than I could have ever imagined. It's wrong and it's time to do something about it. LISTEN TO THE PEOPLE OF AMERICA AND NOT THE NRA. The American people want better gun legislation. This is what we need.

1. Gun trafficking must be a federal crime.

2. Background checks must happen on EVERY gun sale. Yes, that includes father to son, or any other exception you may think is reasonable. This is considered reasonable for car ownership (i.e., title transfer.) Why not for guns?

3. Assault weapons and high ammo magazines must be banned.

Please.....we the American people are begging you. Make these changes happen.

Veronica C. Swanson, MD

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 10, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

I appreciate the opportunity to let you know **the opinion of the Catholic Dioceses of One Spirit regarding gun safety**. I speak for the 60 priests, deacons and bishops of our dioceses.

When I was young I hunted, and I can appreciate those who find this a sport. I can understand also why there would be certain limited places and people who would need guns to defend themselves outside of military or police situations.

But a culture of guns in which people might define themselves primarily by the caliber they carry or the ability to stand up to others is a culture outside the Gospels' message of peace and loving one another. In fact, it almost seems brazen to merge the two because they are so opposite. Sometimes people say that they are both, but they cannot be. To view one's self as a sort of moral vigilante with guns as the fabric of one's self projection clothing is to turn one's self into an only partial human – lacking the warmth, compassion, joy, and care for others that always define our best selves.

I know you are constrained by public forces – minimally gun owners (who are usually quite rational on this as a whole), but especially by the lobbyists such as NRA which loves its power, money and influence – but I hope you will be true to the needs of a wholesome society while you have this rare opportunity to make things better.

1) **Require Universal Background Checks on both Guns and Ammunition**. No loopholes. Ever. That means EVERYONE, EVERY TIME.

2) **Ban Assault Weapons and High Capacity Magazines**. It is totally irrational to even pretend these have a place in a civilized society.

3) **Repeal Tiahrt and Make Gun Trafficking a Federal Crime**. Why ever should law enforcement officials have their hands tied?

4) **Improve Mental Health Reporting**. This is for the safety of all, including the few mentally-ill who may find guns an outlet.

I wholeheartedly endorse the statement of the Virginia Chapter of the Million Mom March:

"Public safety should not be a politically charged issue. Legislators on both sides of the aisle have an obligation to protect and safeguard the welfare of Americans. Hiding behind the

Second Amendment as an excuse for inaction is not acceptable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus. Every right has limits and the Second Amendment is no exception. No one outside of the military needs an assault weapon or a 50-caliber sniper rifle that can penetrate a police officer's bullet-proof vest. No one needs a high-capacity magazine capable of turning an ordinary handgun into a killing machine. No one should be able to purchase a gun of any sort without having to undergo a background check. Loopholes need to be closed. Bans need to be reinstated. Let's get this done; for our country and for our children; and let's get this done now."

Let us define ourselves by the caliber of our character, and not by the caliber of our guns.

Sincerely,

James H. Burch
Principal Bishop
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TESTIMONY OF

THE MOST REVEREND KATHARINE JEFFERTS SCHORI
PRESIDING BISHOP AND PRIMATE,
THE EPISCOPAL CHURCH

SENATE JUDICIARY SUBCOMMITTEE
ON THE CONSTITUTION, CIVIL RIGHTS, AND HUMAN RIGHTS

HEARING:
"PROPOSALS TO REDUCE GUN VIOLENCE: PROTECTING OUR COMMUNITIES WHILE RESPECTING THE SECOND AMENDMENT"

FEBRUARY 12, 2013

Mr. Chairman and members of the Subcommittee:

On behalf of The Episcopal Church, a multinational Christian religious denomination of two million persons headquartered in the United States, I am grateful for the opportunity to present this testimony on the urgent task of reducing gun violence in our communities.

The United States has witnessed far too many public shootings in recent months and years. Far too many lives have been cut short or maimed by both random and targeted acts of gun violence. The school shooting in Newtown, CT horrified Americans and people around the world, yet since that day several times as many young people have died by gunshot. Each year, gun violence claims the lives of more than 3,000 children in the United States. The victims of each of these shootings are members of our families, religious congregations, and communities, and we continue to grieve for the living as well as the dead.

I commend the resolve of lawmakers who believe that the moment has arrived when our nation must come together to ask the difficult questions, and to discern what may be equally challenging answers, about how we can begin to break the cycles of violence that lead to massacres in suburban schools and routine death on the streets of our cities. It is abundantly clear to me, as I travel to communities across this country and engage in conversation with people from many walks of life, that Americans have begun to find the resolve to grapple with the complexities of violence in our culture.

This is no easy task. Just as the root causes of cyclical violence in our culture, and the ways in which that violence is expressed, are varied and complicated, so too are the solutions. We must resist the temptation to use the present moment of national angst as a pretext for pre-formed political agendas or simplistic responses that are better suited for sound bites than for meaningful, long-term change. We all share a responsibility to examine the many facets of cycles of violence in our society, and to discern equally comprehensive responses that will address the causes, means, and effects of violence.

I would suggest that we might start by examining three different levels of response.

First, we should fearlessly examine our underlying cultural attitudes toward violence, as well as the ways those attitudes are expressed, consciously and unconsciously, in our communities. There is a dangerous paradox in how our culture treats violence, glorifying it on the one hand while also trivializing it. Violence – whether physical, verbal, or mental – finds routine expression in our entertainment, recreation, politics, and our view of world affairs. Violence and aggression, the polar opposites of civility and righteousness, come to be associated

with strength, heroism, and success. Once that connection is made, these attitudes insidiously reframe our views of family and community relationships. Violence almost always begets further violence.

Society at all levels must take responsibility for building a culture that refuses to tolerate any notion of violence devoid of consequence or moral clarity, or any sense that any human life is exploitable or expendable. Families, faith communities, schools, governments, the entertainment industry, and others all have responsibilities in this area. As Episcopalians, we are committed to examining our own cultural attitudes toward violence through efforts in our own congregations and communities, to repent of our own roles in the glorification and trivialization of violence, and commit ourselves to another way.

I urge our nation's leaders to encourage this same form of accountability in other aspects of our national life. Examine entertainment and recreation, yes. But also examine how civility is lived out in our national affairs, particularly the rhetoric that diminishes and demonizes those who hold competing opinions. Examine how tolerance and understanding are taught in our schools. Encourage each American to examine his or her own attitudes. Let us challenge ourselves, as our Church declared nearly two decades ago in response to this same conversation, to "create sanctuaries for our children, so that all may come to identify and value themselves and others as the precious children of God that they are, and that they may come to know peace in their lives and to create peace for future generations."

Second, let us think seriously together about psychological wellness in our culture. Many have noted that the Sandy Hook shooter, like so many others in recent similar tragedies, appears to have been mentally ill. We have become accustomed to hearing the acquaintances of a perpetrator express their lack of great surprise at his or her actions, given previous inappropriate behavior. In many such cases, documented failures to provide adequate mental healthcare to at-risk adolescents or adults have become a routine part of the story. In other settings, including many urban environments in which violence has become routine, access to mental healthcare is often essentially unavailable, or is so stigmatized or misunderstood as to be rendered meaningless for those at risk.

The Episcopal Church, like many other faith communities, has long called for a more serious approach to mental healthcare in America: wider availability; the elimination of stigma associated with its use; and better adaptation to a variety of cultural, economic, and educational settings. Social progress in this area has been slow. Where can we now identify points for change? How can we commit to welcoming the outcast and ensuring that all members of all communities have access to the full range of healthcare, including mental healthcare, needed for their full flourishing?

I challenge lawmakers to address this question as comprehensively and creatively as possible. One promising approach is reflected in a new bipartisan legislation introduced last week by Senators Debbie Stabenow (D-MI) and Roy Blunt (R-MO) known as the "Excellence in Mental Health Act." That legislation seeks to create new community mental health centers and to upgrade existing ones, and to allow those centers to bill Medicaid and private insurance for treatment just as they do when providing physical-healthcare services. I urge lawmakers to consider this and other such responses, and to treat mental healthcare as a budgetary priority as well.

Finally, I believe – as The Episcopal Church has said continually over more than 40 years – that the role of guns in our society's culture of violence cannot be ignored. The easy accessibility of guns to those prone to commit crimes, and the danger posed by the increasingly lethal character of both the weaponry and ammunition available, are constants running through much of the recent violence in our culture.

I want to be clear that The Episcopal Church supports the constitutional right of law-abiding citizens to keep and bear arms. We recognize that law-abiding gun owners are not responsible for the crimes we are discussing today and should not be the focus of our responses to those crimes. Nevertheless, our Church is clear that

federal, state, and local gun laws and enforcement activities should focus their efforts on keeping guns out of the hands of children and those who would use them to commit violent crimes. We also stand for tighter curbs on weaponry designed primarily to enable more effective killing of other human beings, such as what are commonly referred to as military-style assault rifles.

I urge lawmakers to press for comprehensive and universal background checks for firearm ownership, regardless of where and how a gun is purchased; for bans on the availability to civilians of assault rifles and high-capacity magazines; and for policies designed to better regulate the manufacture of guns. The Episcopal Church also supports the highest level of accountability for violation of all existing laws pertaining to violence in our midst.

As Christians, we believe that all God's people should be able to live in peace. As the prophet Zechariah dreams, "old men and women shall again sit in the streets...And the streets of the city shall be full of boys and girls playing." The prophet reminds his hearers that even if this seems impossible, with God it is not (Zech 8:4-6).

Today, I urge our nation's lawmakers, and indeed all Americans, to commit to the work of making peace possible in every street and each community of this nation.

Thank you for the opportunity to provide this testimony, and please be assured of my constant prayers for you and all who undertake the costly work of public service.

Written Statement of
Marc Mauer, Executive Director,
The Sentencing Project

Prepared for the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Hearing on "Proposals for Reducing Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

February 11, 2013

Mr. Chairman, Ranking Member, and Members of the Subcommittee:

The Sentencing Project, a national nonprofit organization engaged in research and advocacy on criminal justice policy, appreciates this opportunity to offer our views to the Subcommittee on the important issue of how to protect our communities, and particularly our youth, from gun violence, and how to promote safety in schools.

Research to date demonstrates that it is counterproductive for public safety goals to add more police to schools. In order to reduce violence and promote educational objectives, it is far more effective to provide the nation's children with the necessary resources to support their emotional, mental, and scholastic development through strong school environments. We strongly support comprehensive, evidence-based solutions in the jurisdictions where they are needed to build strong communities and keep our children and families safe.

An Opportunity to Reflect

Recent mass shootings in the United States invite us to reflect and take meaningful action to improve our national policies around gun control, access to mental health services for at-risk youth, and support for violence prevention and intervention programs in our nation's vulnerable schools and communities. As various proposals from a diverse array of stakeholders are considered, we urge caution against adopting policies that could worsen outcomes for youth, support an unhealthy presence of police in schools, and lead to unnecessary involvement in the justice system for youth.

A Counterproductive Violence Reduction Strategy

Research shows that placing armed police in schools actually increases physical dangers to youth. A 2011 longitudinal study of 470 schools nationwide examined school safety over a period of years (2003- 2004, 2005-2006, and 2007-2008) during which police officers were added to some schools but not others over time. The researchers found *"...no evidence suggesting that [School Resource Officers] or other sworn law-enforcement officers contribute to school safety. That is, for no crime type was an increase in the presence of police significantly related to decreased crime rates. The preponderance of evidence suggests that, to the contrary, more crimes involving weapons possession and drugs are recorded in schools that add police officers than in similar schools that do not."*[1]

[1] Source: Na, C. and Gottfredson, D. (2011). Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors. Justice Quarterly, pp 1-32; Similar results found in this study: Jennings, W. G.; Khey, D. N.; Maskaly, J.; & Donner, C. (2011).*Evaluating the Relationship between Law Enforcement and School Security Measures and Violent Crime in Schools.* Journal of Police Negotiations 11(2): 109-124.

Most schools continue to be extraordinarily safe places for children. Violence in schools has been dropping steadily for the past 20 years since its peak in 1993, along with violent crime generally. More than 98% of youth homicides do not occur in schools. In the 2009-2010 school year there was approximately one homicide or suicide of school-age youth at school per 2.7 million.[2]

Expanding Juvenile Justice Referrals & Reducing Students' Opportunities to Succeed

Students who attend schools with on-site law enforcement are in greater danger of unnecessary involvement in the juvenile justice system through the criminalization of behaviors traditionally resolved through standard school discipline policies. In a study using data from 2,270 U.S. schools from the National Center for Education Statistic's national School Survey on Crime and Safety, researchers used various demographic factors to compare the rate at which schools report offenses to the police. They found that schools using law enforcement officers report offenses to the police at a significantly higher rate than those not using such officers.[3]

Law enforcement officers are ill-equipped to respond to students in need of mental health attention. Because police are not trained in fields such as education and developmental psychology, decisions such as whether to arrest a student rely on criteria that do not include the full range of options that would be provided if school officials responded.[4] In many of today's schools, police officers are now making decisions that were previously made by educational administrators.

Disproportionate Effects on Youth of Color

Studies routinely find that the minority composition of the school and the percentage of students identified as low-income are significant drivers in elevated percentages of offenses reported to the police.[5]

Proposals that include increased police presence in schools disproportionately affect youth of color and are now known to drive the school-to-prison pipeline, a concern recently considered by this Subcommittee in a hearing that drew experts together to discuss the increasingly troubling relationship between school misbehavior and juvenile justice involvement. Among the research discussed was the recent finding by the U.S. Department of Education's Office of Civil

[2] Robers, S., Zhang, J., Truman, J., Snyder, T.D. (2011). *Indicators of School Crime and Safety, 2011*. U.S. Department of Education, National Center for Education Statistics: Washington, D.C.
[3] Torres, M. & Stefkovich, J. A. (2009). *Demographics and Police Involvement: Implications for Student Civil Liberties and Just Leadership*. Education Administration Quarterly 45(3): 450-473.
[4] Brown, B. (2006). Understanding and Assessing School Police Officers: A Conceptual and Methodological Comment. Journal of Criminal Justice. Vol. 34: 591- 604.
[5] Torres, M. & Stefkovich, J. A. (2009). Demographics and Police Involvement: Implications for Student Civil Liberties and Just Leadership. Education Administration Quarterly 45(3): 450-473.

Rights that more than 70% of students arrested or handed over to law enforcement officials from school are youth of color.[6]

Poor Use of Resources

To the extent that security measures are ineffective, they create a false sense of security and a threatening environment directly as well as indirectly by diverting resources and money from more effective preventative measures.[7]

At the same time that more police have been added to schools, mental health services and funding for guidance counselors and school psychologists has been reduced to historic lows. Yet, a common thread in recent mass shootings is the undetected or untreated signs of mental health disorders despite signs of trouble displayed by the shooters. In the 2008-2009 school year, 5,246 law enforcement officers were placed in New York City's public schools, while only 3,152 guidance counselors were employed.[8] As noted by the International Association of Chiefs of Police (IACP), placing law enforcement officers in all of our nation's schools would consume one-seventh of the nation's police force.[9]

Conclusion

Among our most solemn responsibilities as a nation is to protect and nurture our children. Unfortunately, when crises strike, there is often a temptation to tighten sanctions and add new punishments, but we know that these actions have a disparate effect on at-risk youth—especially youth of color—long after the crisis has passed.

Real, sustainable public safety is most effectively achieved by involving an array of stakeholders, including law enforcement, courts, schools, health and social service providers, and other community organizations to work collaboratively on evidence-based youth safety interventions. It is counterproductive to merely ramp up law enforcement. In order to reduce violence, it is far more effective to provide the nation's children with the necessary resources to support their emotional, mental, and scholastic development.

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[6] U.S. Department of Education, Office of Civil Rights (2012). The Transformed Civil Rights Data Collection: Revealing New Truths about our Nation's Schools. Washington, DC: OCR. Available online: http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf.

[7] Addington, L. (2009). Cops and Cameras: Public School Security as a Policy Response to Columbine. American Behavioral Scientist. Vol. 52 (10): 1426-1446.

[8] New York City ACLU (n.d.) School to Prison Pipeline Fact Sheet. Available online: http://www.nyclu.org/files/stpp_numbers.pdf.

[9] International Association of Chiefs of Police (December 21, 2012). Statement of IACP President Craig Steckler on Proposal to Place Armed Police Officers in All Schools. (available upon request.)

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Proposals for Reducing Gun Violence: Protecting Our Communities While Respecting the Second Amendment

Statement by

Michael A. Nutter
Mayor of Philadelphia
President, The United States Conference of Mayors

Submitted to

Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

February 12, 2013

Chairman Durbin, Ranking Member Cruz, Members of the Subcommittee, I am Michael A. Nutter, Mayor of Philadelphia and President of The United States Conference of Mayors. I am submitting this statement for the record on behalf of the Conference of Mayors to provide you with the views of the nation's mayors on what we must do to reduce gun violence in this nation and to make our cities and towns, our streets, our schools, our theaters, our places of worship safer places for our people.

Again and again and again, Americans have been stunned by senseless acts of violence involving guns. The December 14 tragedy targeting young children in Newtown remains incomprehensible. Too many times during the last year, mayors have expressed shock at a mass shooting. Even more frequently, many of us must cope with the gun violence that occurs on the streets of our cities.

The U.S. Conference of Mayors has been calling for sensible gun laws to protect the public for more than 40 years. Mayors and police chiefs from cities of all sizes have worked together in this effort over the years.

Gun Violence in Cities

We have done that because of the tremendous toll which gun violence takes on the American people day in and day out:

- Every year in America more than 100,000 people are shot, and 31,537 of them die, including 11,583 who are murdered.
- Every year, 18,000 children and teens are shot, and 2,829 of them die, including 1,888 who are murdered.
- Every day in America, 282 people are shot and 86 of them die, including 32 who are murdered.
- Every day 50 children and teens are shot and eight of them die, including five who are murdered.[1]

Gun violence disproportionately affects urban areas. Our 50 largest metro areas have 62 center cities, and these cities account for 15 percent of the population, but 39 percent of gun-related murders and 23 percent of total homicides.[2]

Philadelphia, like many major cities, has struggled to control gun violence for years. However, despite our recent success at employing more effective policing techniques, deaths due to gun violence have not fallen. Let me use one set of statistics to illustrate this point:

Last year, the number of shooting victims in Philadelphia was 1,282. This is down considerably from the year before – and was the lowest number since we began tracking shooting victims in the year 2000. However, the number of homicides was up slightly – 331, seven more than the previous year. How are these two statistics possible? The answer is that the homicide victims have more bullets killing them. Or, to put it another way, there are more rounds being fired and

[1] http://bradycampaign.org/xshare/Facts/Gun_Death_and_Injury_Stat_Sheet_3-Year_Average_FINAL.pdf
[2] http://www.theatlanticcities.com/neighborhoods/2013/01/growing-divide-urban-gun-violence/4328/

more intentional head shots. So despite better policing, when someone in Philadelphia is shot, they are now more likely to die.

I would note that Pennsylvania does not have stringent gun restrictions. When the City of Philadelphia adopted strict gun laws a few years ago, the state supreme court struck those laws down. This is why we need federal legislation. Cities alone cannot reduce gun violence. We are doing everything that we can, but still losing the battle thanks to the proliferation of guns in this nation.

Philadelphia's story is not unique. Mayors everywhere struggle with gun violence, using scarce city resources to fight it – resources which we should be using to educate our children, create jobs for our residents, and revitalize our cities.

Actions Needed

In an open letter to the President and the Congress sent just three days after the Newtown tragedy occurred we urged immediate action. We called on the President to exercise his powers though Executive Order and the Congress to introduce and pass legislation to make reasonable changes in our gun laws and regulations. More than 200 mayors – 212 as of today – have now joined us on that letter. Specifically we call on Congress to:

- Enact legislation to ban assault weapons and high-capacity magazines;
- Strengthen the national background check system and liminate loopholes in it;
- Strengthen the penalties for straw purchases of guns.

Here's a little more information on each of these proposals:

- **Enact legislation to ban assault weapons and other high-capacity magazines.** On January 24 Senator Dianne Feinstein introduced S. 150, the Assault Weapons Ban of 2013. Representative Carolyn McCarthy has introduced similar legislation in the House. Senator Feinstein's bill would:
    - Prohibit the sale, manufacture, transfer and importation of 157 of the most commonly-owned military-style assault weapons and ban an additional group of assault weapons that can accept a detachable ammunition magazine and have one or more military characteristics;
    - Ban large-capacity magazines and other ammunition feeding devices that hold more than 10 rounds of ammunition – devices which allow shooters to fire numerous rounds in rapid succession without having to stop and reload; and
    - Protect the rights of law-abiding citizens who use guns for hunting, household defense or legitimate recreational purposes and exempt all assault weapons lawfully possessed at the date of enactment from the ban.
    - Require background checks on all future transfers of assault weapons covered by the legislation, including sale, trade and gift;
    - Require that grandfathered assault weapons be stored safely using a secure gun storage or safety device in order to keep them away from prohibited persons; and
    - Prohibit the sale or transfer of high-capacity ammunition feeding devices currently in existence.

- **Strengthen the national background check system and eliminate loopholes in it.** Senator Lautenberg has introduced legislation to accomplish this in the Senate and I believe Senator Schumer will be introducing the Fix Background Checks Act soon in the Senate; Representative McCarthy already has introduced similar legislation in the House. This bill would fix the background check system by requiring a criminal background check for every gun sale and make sure that states and federal agencies are submitting relevant records to the NICS databases. Specifically:
    - Every gun buyer—with reasonable exceptions— would have to pass a background check.
    - Private sellers would have a licensed firearms dealer run a background check before the sale is completed. Individuals with certain gun permits would be able to display them in lieu of a background check.
    - Certain gun transfers would be exempt from background checks: temporary loans during hunting and sporting events, gifts to immediate family members, inheritances and temporary transfers for self-defense.
    - Penalties for noncompliance would be the same as those that now apply to licensed dealers who violate the Brady Law – up to one year in prison for knowing violations.
    - Ensure that all of the names of felons, domestic abusers, the seriously mentally ill and other dangerous people into the background check system by enforcing the law on federal agency reporting and increasing incentives and penalties related to states' record sharing.

- **Strengthen the penalties for straw purchases of guns.** Senators Gillibrand and Kirk have introduced the Gun Trafficking Prevention Act of 2013; Representatives Cummings, Rigell, Maloney, and Meehan have introduced similar legislation in the House. Their bill would provide a dedicated federal statute prohibiting illegal gun trafficking, make gun trafficking a federal crime, and create stronger penalties for straw purchasers who buy firearms for criminals and felons who are prohibited from purchasing them on their own.

On January 16 the President and the Vice President released the Administration's plan to reduce gun violence – both through new legislation and executive action. I was honored to be at the White House for that release and I can tell you that the Administration listened closely to recommendations which we have offered. The Conference of Mayors has officially endorsed the Administration's plan and the nation's mayors urge the Congress to give it full consideration and to move forward on the legislative action which it requires.

We know that preventing gun violence – whether it is a mass shooting in a school or a murder on a street corner – will take much more than strengthening our gun laws. We need to reverse the culture of violence in our nation so that a violent act isn't the first response to settling a difference or compensating for a wrong. We need to strengthen and more adequately fund our mental health system so that we can identify troubled individuals earlier and get them the help they need.

The Conference of Mayors has also endorsed two proposals which I have offered to further strengthen our efforts relating to gun violence:

- We are calling for the creation of a National Commission on Domestic Terrorism, Violence and Crime in America, which would examine the issues of violent crime and its prevention, and put forward recommendations on what government can do on a local, state, and national level to reduce domestic terrorism, violence and crime, and prevent attacks such as those we witnessed in Newtown, Aurora, and Tucson, and at Virginia Tech. I believe very strongly that we need to undertake a comprehensive, longer-term examination of violence in America and what can be done to reduce it.

- We have adopted what we are calling the Sandy Hook Principles. These principles are a call to action for corporations to heed the basic core values of American citizens in promoting the health, safety and well-being of our communities. Their objective is to influence the behavior of gun and ammunition manufacturers, distributors, and retailers by establishing a baseline standard for responsible conduct.

Let me be very clear, however. Strengthening our gun laws should not have to wait for any of these other actions to occur. The time for action is now!

I was honored to be with Senator Feinstein on January 24 when she announced the Assault Weapons Ban of 2013. We urge your Committee to move quickly on that vitally important bill and on others being offered which will help to keep guns out of the hands of criminals. The nation's mayors pledge to work with you to build a safer America for our children and all of our citizens.

10 February 2013

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

I write as a citizen, a retired high school teacher, a parent and a grandparent, strongly urging you to move toward enacting legislation doing the following:

1-require universal background checks on guns and ammunition
2-ban the sale of assault weapons and high capacity magazines
3-improve mental health reporting
4-repeal the Tiahrt amendment and make gun trafficking a federal crime

Thank you for the opportunity to send this letter prior to Tuesday's hearing.

Sincerely,

Robert L. Tripp
Reston, Virginia

Testimony Submitted for the Record

On behalf of the

United States Conference of Catholic Bishops

before the

United States Senate
Committee on the Judiciary

"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

February 12, 2013

Introduction
The United States Conference of Catholic Bishops (USCCB) is grateful for the opportunity to provide this testimony for the hearing on *Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment.*

The tragic shooting at Sandy Hook Elementary in Newtown, Connecticut, as well as the many other tragedies that have happened in our communities, homes and throughout the world, shatters the peace of us all. There are countless examples: Columbine, Virginia Tech, mall and cinema shootings in Oregon and Colorado, and the assassination attempt on Congresswoman Gabrielle Giffords. Sadly, gun violence, the global illicit trade of weapons and ammunition, and other acts that strike at the life and dignity of persons, are an all too common reality.

More than ever, the Church and all people of good will must work together to confront the pervasive culture of violence and instead build a culture that values life, peace and the inherent dignity of all. We join Pope Benedict XVI who stated in his *2013 Message for the World Day of Peace*, "Life in its fullness is the height of peace. Anyone who loves peace cannot tolerate attacks and crimes against life." Today, we particularly call on Congress to pursue policies that will contribute to reducing gun violence in our society and help save lives.

The Work of the Church
The Church has been a consistent voice for the promotion of peace at home and around the world and a strong advocate for the reasonable regulation of firearms. Simply put, guns are too easily accessible.

The Vatican's Pontifical Council for Justice and Peace, in their document, "The International Arms Trade (2006)," emphasized the importance of enacting concrete controls on the production, possession, and trade in weapons, including handguns, calling for them to be regulated "by paying due attention to specific principles of the moral and legal order."

The USCCB has also been a consistent advocate for peace and the prevention of gun and other forms of violence that strike at the life and dignity of persons. In 1994, recalling the words of Pope Paul VI, "if you want peace, work for justice," the U.S. bishops issued their pastoral message, *Confronting a Culture of Violence: A Catholic Framework for Action.* In their message the bishops stated, "We have an obligation to respond. Violence -- in our homes, our schools and streets, our nation and world -- is destroying the lives, dignity and hopes of millions of our sisters and brothers." The USCCB was also a supporter of the Assault Weapons Ban initially passed in 1994 but which expired in 2004.

In 2000, the U.S. bishops issued their pastoral statement, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice.* In the statement the bishops called for all people to work for a culture of life and to do more to end violence in our homes and to help victims break out of patterns of abuse. In regard to gun violence prevention, the bishops wrote, "We support measures that control the sale and use of firearms and make them safer (especially efforts that prevent their unsupervised use by children or anyone other than the owner), and we reiterate our call for sensible regulation of handguns."

In the aftermath of the tragedy in Newtown, Connecticut, the chairmen of three committees of the USCCB issued a joint statement to decry violence in society. They said the tragedy had given rise to

discussions about national policies and steps that can be taken to foster a culture that protects the innocent and those most vulnerable among us. In their statement the bishops called on all Americans, but especially legislators, "to address national policies that will strengthen regulations of firearms and improve access to health care for those with mental health needs."

On January 15, Bishop Stephen E. Blaire, Chair of the USCCB Committee on Domestic Justice and Human Development joined 46 other national religious leaders in signing the letter of *Faiths United to Prevent Gun Violence*. The letter urges Congress to support policies that:

- Require universal background checks for all gun purchases;
- Limit civilian access to high-capacity weapons and ammunition magazines;
- Make gun trafficking a federal crime, and;
- Improve access to mental health care for those who may be prone to violence.

In addition to policies intended to curb gun violence, we must also look to our entertainers, especially film producers and video game creators, and encourage them to reflect on how their profit motives have allowed the proliferation of movies, television programs, video games and other entertainment that glorify violence and prey on the insecurities and vulnerabilities of our young people. Such portrayals of violence have desensitized all of us. We must improve our resources for parents, guardians and young people, so that they can evaluate entertainment products intelligently. The viewing and use of these products have negative emotional, psychological and spiritual effects on people, especially the young.

Our society must recognize the urgency for providing health services and support to those who have mental illnesses and to their families and caregivers. As a community we need to support one another so no one feels unable to get help for a mentally ill family member or neighbor in need. Burdensome healthcare policies must be adjusted so people can get help for themselves or others in need. Just as we properly reach out to those with physical challenges we need to approach mental health concerns with equal sensitivity. There is no shame in seeking help for oneself or others; the only shame is in refusing to provide care and support.

Tragic events such as what occurred in Newton, Connecticut, and the violence that occurs in our homes and communities and around the word, should lead us to live out what Pope Benedict calls "our innate vocation to peace." Together we must confront the culture of violence with love and work together to promote a culture of life and peace.

Statement to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Monday, February 11, 2013

United States Senate
Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Dear Senators:
On behalf of the congregations of the Unitarian Universalist Association, I am writing to express our shock and dismay at the tragic level of preventable gun violence in our country.

We commend you for calling and holding this hearing. Though some in our society argue that the only way to stop tragic mass shootings is by putting guns in the hands of even more people, the undeniable positive correlation between the number of guns in a society and the number of incidents of gun violence in that society show clearly that this is not the way to reduce gun violence.

As people of faith we are called to love one another, not protect ourselves from one another.

On Sunday, July 27, 2008 a man motived by hate opened fire with a 12-gauge shotgun inside the Tennessee Valley Unitarian Universalist Church in West Knoxville during a children's play. Two adults were killed and seven others were wounded. A letter the shooter left in his car before the attack expressed hatred against gay people and the "liberal movement."

In response, the Unitarian Universalist Association took out a full page ad in the New York Times on Sunday, August 10, 2008 reaffirming our commitment to the liberal positions the shooter claimed to be attacking. The ad begins with this statement:

Our Doors And Our Hearts Will Remain Open

It ends with the following statement by the Rev. William Sinkford, Unitarian Universalist Association President at the time of the attack.

We will not give in to fear. We will meet hatred with love. We will continue to work for justice. Our hearts, and the doors of our more than 1,000 Unitarian Universalist congregations nationwide, remain open. Unitarian Universalists stand on the side of love. We invite you to stand with us.
I have included the full ad as a separate document in our written submission to the Committee.

The Unitarian Universalist Association responded to the hate crime in Knoxville by beginning a national **Standing on the Side of Love Campaign**. Through the campaign we stand on the side of love with people, who, all too often, others say it's ok to hate. Here's a partial list:

- Gay, lesbian, bisexual, transgender and queer people.
- Muslims
- Sikhs
- Undocumented immigrants
- Prisoners held indefinitely at Guantanamo Bay, Cuba
- Indigenous people of North America

Statement to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

We ask our elected and appointed representatives at federal, state, and local levels to enact reasonable regulations to reduce gun violence. Specifically, we ask you to adopt these common sense measures:

1. Universal Background checks for all Gun Purchases, regardless of Venue.
2. Ban High-Capacity Weapons and Ammo Clips
3. Make Gun Trafficking a Federal Crime

We ask everyone, particularly our political, religious, and community leaders, to stand on the side of love, to fulfill the word of the Prophet Micah when he wrote that what God requires of us is "To do justice, to love mercy, and to walk humbly with your God."

If we are to stop the scourge of gun violence we must deny the calls of those who say the only way to stop gun violence is by the threat of even more gun violence. Instead of equipping ourselves with weapons designed to kill, let us equip ourselves with the power of love. We are called to love one another, not protect ourselves from one another.

We must love, i.e. treat with respect and care, our neighbors, as difficult as that might be. We are called, by all that is holy, to love. In closing, we would ask you to consider again these words of the Rev. William Sinkford, President of the Unitarian Universalist Association (2001-2009).

We will not give in to fear. We will meet hatred with love. We will continue to work for justice. Our hearts, and the doors of our more than 1,000 Unitarian Universalist congregations nationwide, remain open. Unitarian Universalists stand on the side of love. We invite you to stand with us.

Please stand with us by enacting common sense restrictions on guns.

Standing on the Side of Love,

Reverend Craig C. Roshaven, Witness Ministries Director
Unitarian Universalist Association of Congregations
202-393-2255 x14
1100 G Street, NW
Washington, DC 20005

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 12, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for giving me the chance to offer my testimony regarding this very important issue facing your committee today. I am a resident of Sandy Hook, and although I have always been concerned about the overwhelming presence of guns and violence in our society, I did little to address it until the shocking events of December 14th at Sandy Hook Elementary School. My beautiful six year old friend and neighbor, Avielle Richman was killed, along with her friends and teachers in her first grade classroom. Each day as I look out the window at Avielle's rope swing and climbing ladder hanging from the huge maple tree between our houses I am reminded that that I owe it to Avielle and her devastated parents to do something to create change in our nation.

I am now dedicated, as is my family, to attending to this issue from here on out. We will not lose interest or fade away, we are here to stay and we will be paying very close attention to what our state and national representatives are doing to solve

the problems that have led us all to this point of unspeakable proliferation of gun violence of all kinds. I am appalled by the level of gun violence in our nation from murder, suicide and accidents which takes place in homes, schools, workplaces, and city streets in both urban and suburban settings. My views represent the beginning of a movement that will only grow in size and power. To be on the right side of history, please have the courage to stand with those of us who want to see an end to this unthinkable violence.

As an American citizen, and resident of Sandy Hook, CT, I expect Congress to support the following:

1. Institute an Assault Weapons & High Capacity Magazine Ban
You must fully support a federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Don't listen to those who would say that so few crimes are committed with these weapons that it won't make a difference. It would have made a difference at Sandy Hook Elementary. Six children were able to escape that horrific scene because the shooter paused to exchange an empty magazine for a new one. Any measure, even if it would save just one life, is worth it. There is no reason that a single person should die because a small portion of the population

wishes to have access to firearms that were designed for war.

2. Implement a Buy-Back and Destruction Program for All Previously Purchased Guns and Ammunition

Use Australia as the example to follow and do not "grandfather" all existing assault weapons into the ban. These weapons have no place in civilian life. If most Americans had been paying attention to this issue, these weapons would have never been allowed into the consumer market in the first place. Now let's correct our mistake. Australia's post-buy back statistics are solid and incontrovertible. Our country's tolerance of gun violence is making us the embarrassment of the developed world.

3. Implement Universal Background Checks for Guns and Ammunition

Anyone who wants to purchase any kind of gun should be subjected to a comprehensive background check through the FBI's National Instant Criminal Background Check System (NICS). Once purchased, the gun should be registered on a yearly basis and the owner should be responsible for proving he/she has the gun in their possession. The current check system is inadequate, to say the least, and must be reformed immediately. This is easy, get it done.

4. Repeal Tiahrt and Upgrade Gun Trafficking to a Federal Crime. You should do everything you can to pass legislation that will assist law enforcement and public safety organizations in tracking all firearms and

any type of harm that comes about as a result of them. The data gathered from this tracking must be made available so it can be used to trace illegal guns and allow the ATF and law enforcement to do their jobs effectively. You do not work for the NRA or their members who represent only a small minority of the people of our nation. You work for all citizens and we are now watching every move you make concerning gun legislation.

5. Limit Gun Purchases to One Per Month.
Take this common sense approach to gun purchases and make it law. Reasonable exemptions can be built into the law, to apply to collectors for example. This alone will go a very long way in reducing the number of guns that find their way into the hands of criminals and thus reduce gun violence.

4. Mental Health Reporting Reform
The current background check system does not adequately address situations of documented mental illness. This action should be handled very carefully so as to be fair to those who are already suffering and are victims of crimes much more often than they are ever the perpetrators. A comprehensive and cross-referenced system must be instituted. In this technologically advanced nation, surely we can solve this problem swiftly.

Respectfully,

Joan Velush & Craig Rogers
Sandy Hook, CT

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 12, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for giving me the chance to offer my testimony regarding this very important issue facing your committee today. I am a Sandy Hook resident, and although I have always had strong feelings about the presence of guns and violence in our society, I admit that did little to address it until my neighbor, Avielle Richman along with 26 other innocent people was murdered on December 14th

I am now dedicated to attending to this issue from here on out. We will not lose interest or fade away, we are here to stay and we will be paying very close attention to what our state and national representatives are doing to solve the problems that have led us all to this point of unspeakable proliferation of gun violence of all kinds. I want to be clear that I am appalled by the level of gun violence regardless of what type and where it takes place. This is the beginning of a movement that will only grow in size and power. I beg you to be on the right side of history and

stand with us.

As an American citizen, and resident of Sandy Hook, CT, I expect Congress to support the following:

1. Institute an Assault Weapons & High Capacity Magazine Ban
You must fully support a federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Don't listen to those who would say that so few crimes are committed with these weapons that it won't make a difference. It would have made a difference at Sandy Hook Elementary. Six children were able to escape that horrific scene because the shooter paused to exchange an empty magazine for a new one. Any measure, even if it would save just one life, is worth it. There is no reason that a single person should die because a small portion of the population wishes to have access to firearms that were designed for war.
2. Implement a Buy-Back and Destruction Program for All Previously Purchased Guns and Ammunition.
Use Australia as the example to follow and do not "grandfather" all existing assault weapons into the ban. These weapons have no place in civilian life. If most Americans had been paying attention to this issue, these weapons would have never been allowed into the consumer market in the first place.

Australia's post-buy back statistics are solid and incontrovertible. Our country's tolerance of gun violence is making us the embarrassment of the developed world.

3. Implement Universal Background Checks for Guns and Ammunition

Anyone who wants to purchase any kind of gun should be subjected to a comprehensive background check through the FBI's National Instant Criminal Background Check System (NICS). Once purchased, the gun should be registered on a yearly basis and the owner should be responsible for proving he/she has the gun in their possession. The current check system is inadequate, to say the least, and must be reformed immediately. This is easy, get it done.

4. Repeal Tiahrt and Upgrade Gun Trafficking to a Federal Crime

The government agencies in charge of finding and prosecuting gun traffickers need their hands untied so they can do their job effectively. You do not work for the NRA or their members who represent only a small minority of the people. You work for the people of this country and we are now watching every move you make. Those of you who show you are not worthy of your jobs, by putting the dirty money of the NRA and NSSA before the lives of children, will lose your jobs at The People's earliest opportunity.

5. Limit Gun Purchases to One Per Month.

Take this common sense approach to gun purchases and make it law. Reasonable exemptions can be built into the law, to

apply to collectors for example, but this alone will go a very long way in reducing the number of guns that find their way into the hands of criminals and thus reduce gun violence.

4. Mental Health Reporting Reform

The current background check system does not adequately address situations of documented mental illness. A comprehensive and cross-referenced system must be instituted. In this technologically advanced nation, surely we can solve this problem swiftly.

Two years ago Avielle couldn't decide if she wanted to be a cat, a princess or a fairy for Halloween, because of a gun she will never trick or treat again. Please help us bring some goodness out of this horror.

Respectfully,
Zoe Velush-Rogers
We are Sandy Hook

Violence Policy Center

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www.vpc.org web

Testimony of Kristen Rand, Legislative Director, Violence Policy Center

Before the Senate Judiciary Committee,

Subcommittee on the Constitution, Civil Rights and Human Rights

"Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

February 12, 2013

The Violence Policy Center (VPC) is a national non-profit organization that conducts research, policy analysis, and advocacy to reduce gun violence in America. The VPC has particular expertise on matters involving the gun industry. We appreciate the opportunity to submit written testimony on this critically important topic.

Strong Gun Laws Save Lives

As Congress considers legislation to strengthen federal gun laws, including extending background checks to all gun transfers, banning assault weapons and high-capacity ammunition magazines, and implementing anti-trafficking measures, the experience of states with different guns laws is instructive. The evidence is overwhelming that strong gun laws work to save lives and that such laws serve an important government interest in improving public safety. Looking at comparative firearm death rates across the United States, the conclusion is inescapable that states with strong gun laws and low rates of gun ownership have the lowest overall gun death rates while states with weak gun laws and high rates of gun ownership have the highest rates of overall gun death (including homicide, suicide, and unintentional fatal injuries). Moreover, the disparity in rates between the states with the lowest rates and those with the highest rates is striking. For 2010, the most recent year for which complete data is available, Alaska ranked

first with an overall gun death rate of 20.28 per 100,000, while Hawaii ranked 50th with an overall gun death rate of 3.31 per 100,000.

Hawaii requires the licensing of gun owners as well as the registration of most firearms. The state has banned assault weapons and high-capacity ammunition magazines and prohibits the sale of handguns that do not meet minimum quality standards. Alaska, on the other hand, has no significant state laws regulating firearms. The following chart shows the top five and bottom five states ranked by their overall gun death rates for 2010 using data from the Centers for Disease Control and Prevention WISQARS database.

States with the Five *Highest* Gun Death Rates				**States with the Five *Lowest* Gun Death Rates**			
Rank	**State**	**Household Gun Ownership[1]**	**Gun Death Rate per 100,000**	**Rank**	**State**	**Household Gun Ownership**	**Gun Death Rate per 100,000**
1	Alaska	60.6 percent	20.28	**50**	Hawaii	9.7 percent	3.31
2	Louisiana	45.6 percent	19.06	**49**	Massachusetts	12.8 percent	4.12
3	Montana	61.4 percent	16.58	**48**	Rhode Island	13.3 percent	4.66
4	Alabama	57.2 percent	16.36	**47**	New Jersey	11.3 percent	5.19
5	Wyoming	62.8 percent	16.32	**46**	New York	18.1 percent	5.22

More Law Enforcement Officers are Killed with Firearms in States With Weak Gun Laws

The importance of strong gun laws in preventing gun-related death is starkly demonstrated by examining how and where law enforcement officers are feloniously killed. According to FBI data, law enforcement officers were killed by guns in much higher numbers in states with weak

[1] State gun ownership rates were obtained from the September 2005 Pediatrics article *Prevalence of Household Firearms and Firearm-Storage Practices in the 50 States and the District of Columbia: Findings From the Behavioral Risk Factor Surveillance System, 2002*, which is the most recent comprehensive data available on state gun ownership.

gun laws. From 2002 to 2011, 230 officers were killed by firearms in the South.[2] During that same time frame, 56 officers were killed with guns in the Northeast.[3] Controlling for the population of law enforcement personnel, officers were killed with guns at a rate three times higher in the South (where, except for Delaware, Maryland and the District of Columbia,[4] weak gun laws prevail) than in the Northeast (the region with the highest concentration of states with strong gun laws).[5]

States with Weak Guns Laws Export Death and Injury

Illegal gun traffickers often buy firearms in states with weak laws and those guns are subsequently recovered in jurisdictions with strong gun laws. A report from the Mayors Against Illegal Guns (MAIG) found that, "Although the rates at which states export crime guns vary significantly, states that have enacted strong gun laws have significantly lower export rates than states with weak gun laws."[6] One of the most stark examples of this phenomenon is the District of Columbia which has some of the strongest gun laws in the country. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) traced the source state of 871 guns recovered in the District in 2011. Only 20 of those firearms originated in the District. Virginia and Maryland supplied the most crime guns, with 232 each. North Carolina was the source for 77 guns and Georgia supplied 55. Although the District's firearm homicide rate has declined

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[2] Designated by the FBI as consisting of Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma, and Texas. *Law Enforcement Officers Killed and Assaulted, 2011*, FBI, Criminal Justice Information Services Division.

[3] Designated by the FBI as consisting of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New Jersey, New York, and Pennsylvania. *Law Enforcement Officers Killed and Assaulted, 2011*, FBI, Criminal Justice Information Services Division.

[4] A total of 13 officers were feloniously killed in these three jurisdictions by any means during the time frame of 2002 to 2011. A breakout of those killed by firearms for the time frame is not available.

[5] The rate of officers killed from 2002 to 2011 in the South was 15.96 per 100,000 officers, while the rate in the Northeast was 4.82 per 100,000 officers.

[6] *Trace the Gun: The Link Between Gun Laws and Interstate Gun Trafficking*, A Report from Mayors Against illegal Guns, September 2010, at 29.

significantly, falling from 24.12 per 100,000 in 2000 to 13.96 in 2010, the guns trafficked into the jurisdiction undoubtedly contribute to its still too-high homicide rate.

Conversely, research supports the fact that states with stronger gun laws that include assault weapons bans are less attractive as source states for gun traffickers. Analyses of ATF trace data by researchers at the Johns Hopkins Center for Gun Policy and Research indicate that the border states with the highest per capita rate of exportation of crime guns to Mexico (Arizona, New Mexico, and Texas) had export rates four times that of California. The researchers attribute this to California having much more stringent gun sales laws than the other border states. California is a relatively unattractive environment for traffickers to acquire their guns because the state has banned the assault weapons that they clearly wanted, gun purchasers can more readily be held accountable for illegally transferring their guns, and California's law prohibits bulk gun sales common in gun trafficking rings operating in Texas and Arizona. A separate study, "Cross-Border Spillover: U.S. Gun Laws and Violence in Mexico," published in December 2012 found that "the reach of U.S. gun laws extends beyond its borders. Our analysis shows that the expiration of the U.S. FAWB [federal assault weapons ban] led to immediate violence increases within areas of Mexico located close to American states where sales of assault weapons became legal. The estimated effects are sizable, and unrelated to the idiosyncratic influence of specific border states, trends in socioeconomic conditions, legal enforcement patterns and drug-trafficking along the border."

States with stronger gun laws are in essence held hostage to states with weaker laws. Individual states can only do so much to reduce gun violence within their borders when guns are so freely available in neighboring states. A critical function of government is protecting the lives of its citizens and in particular the lives of its first responders. It is clear that stronger federal laws are necessary to reduce the gun violence that claims the lives of more than 30,000 Americans every year. Moreover, the experience of states with strong laws clearly demonstrates that such laws are not burdensome to the exercise of individual rights.

The International Experience Shows Strong Gun Laws Save Lives

Pro-gun advocates often cite the United Kingdom and Australia as proof that gun laws don't work. In fact, statistics from these two countries, both of which acted swiftly and decisively in the wake of mass tragedies eerily similar to the massacre in Newtown, show that implementation of strong gun laws has been successful in both preventing mass shootings and reducing overall gun death.

The U.K. strengthened its laws in response to two shootings that were remarkably similar to the one at Sandy Hook Elementary School in Newtown, Connecticut. In 1987, Michael Robert Ryan, an unemployed laborer, gunned down 16 people in Hungerford, England. He was armed with assault weapons, including a Chinese variant AK-47 assault rifle. Less than a decade later, Thomas Hamilton killed 16 children and their teacher at the Dunblane Primary School in Scotland on March 13, 1996. He used Browning pistols and two Smith & Wesson .357 Magnum revolvers. Parliament responded to both shootings with strong new laws. After the Hungerford massacre semiautomatic weapons were outlawed and the availability of some types of shotguns was limited. In response to the national outcry after the Dunblane shooting , the 1997 Firearms Act prohibited private citizens from owning most types of handguns and restrictions were placed on sporting rifles. As a result, the most recent statistics available show that firearms were used to kill 39 people in England and Wales in the 2011/2012 reporting period. According to Andy Marsh, firearms director at Britain's Association of Chief Police Officers, "What we have in the U.K. now are significantly lower levels of gun crime, levels that continue to fall today. People say you can't unwind hundreds of years of gun history and culture [in America], but here in the U.K., we've learned from our tragedies and taken steps to reduce the likelihood of them ever happening again."[7] Moreover, according to recent statistics from the British Home Office:

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[7] *After shooting tragedies, Britain goes after guns*, The Washington Post, February 01, 2013, http://articles.washingtonpost.com/2013-02-01/world/36670256_1_gun-crime-gun-violence-bans-on-assault-weapons.

- Overall, firearms were reported to have been used in 9,555 recorded crimes in 2011/12, the eighth consecutive annual fall and a 16% decrease on 2010/11. This compares with an overall decrease of 4% of all offences recorded by the police between 2010/11 and 2011/12.

- The fall in non-air weapon offences in the last year is largely driven by the fall in the use of handguns, down 15% between 2010/11 and 2011/12 (from 3,107 to 2,651). This continues the fall in the use of handguns since it peaked in 2001/02 at 5,874 offences.[8]

Britain has experienced one mass shooting since its last round of tough new gun laws that were implemented in 1997. Derrick Bird, killed 12 people and injured 11 others before killing himself in Cumbria, England in 2010, but criminologists argue that the rampage could have been worse had the shooter had access to greater firepower.

Australia has had similar success preventing mass shootings through implementation of strong gun laws. Australia's national tragedy occurred on April 28, 1996 when Martin Bryant, a 29-year-old diagnosed with delusional schizophrenia, stepped through the door of the Broad Arrow Café in Port Arthur, Tasmania and opened fire with a semi-automatic assault rifle on tourists eating lunch. He killed 35 people and wounded 21 in the worst gun massacre in Australia's modern history. Reacting to the ensuing public outrage, conservative Prime Minister John Howard quickly moved to transform Australia's gun laws. The new laws required registration and licensing requirements for all gun buyers, extensive background checks and a 28-day waiting period before purchase, a ban on semiautomatic rifles that included a government buy-back, and handgun licences were restricted to members of target shooting clubs who compete in a minimum number of matches each year.

The effect of these laws was recently reviewed in a paper presented by, Philip Alpers of the Sydney School of Public Health at the Summit on Reducing Gun Violence in America: Informing Policy with Evidence and Analysis held at Johns Hopkins Bloomberg School of Public Health, Baltimore on 15 January 2013. An excerpt from the paper recites the statistics:

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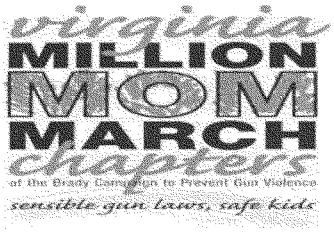
[8] Statistical Bulletin: Focus on: Violent Crime and Sexual Offences, 2011/2012, Office for National Statistics, www.ons.gov.uk/ons/rel/crime-stats.

A range of public health benefits have also been both observed and disputed. As policy changes took effect in the wake of the Port Arthur massacre, the risk of an Australian dying by gunshot fell more than 50 per cent, and stayed there (Alpers, Wilson and Rossetti, 2013). The number of gun homicides fell from 69 in 1996 to 30 in 2012 (Alpers, Wilson and Rossetti, 2013). **In the decade before the country's change of direction, 100 people died in eleven mass shootings (Chapman, Alpers et al, 2006). Following the 1996 announcement of legislation specifically designed to reduce gun massacres, Australia has seen no more mass shootings** [emphasis added]. Firearm-related deaths which attract smaller headlines still occur, yet the national rate of gun homicide – which before Port Arthur was already one fifteenth the US rate – has now plunged to 0.13 per 100,000, or 27 times lower than that of the United States (Alpers, Wilson and Rossetti, 2013). The evidence is clear that following gun law reform, Australians became many times less likely to be killed with a firearm (Alpers, Wilson and Rossetti, 2013). That said, causality and standards of proof are as contentious here as in any community polarised by the gun debate. Central to the differing interpretations is the fact that Australia's gun death rates were already declining prior to its major public health interventions. Taking this into account, one study concluded nevertheless that "the rates per 100,000 of total firearm deaths, firearm homicides and firearm suicides all at least doubled their existing rates of decline after the revised gun laws" (Chapman, Alpers et al, 2006). Next, a countervailing study interpreted essentially the same empirical findings to conclude the opposite, namely that "the gun buyback and restrictive legislative changes had no influence on firearm homicide in Australia" (Baker and McPhedran, 2007). In an article for the National Rifle Association of America, one of the co-authors of this study was quoted as saying "The findings were clear... the policy has made no difference. There was a trend of declining deaths which has continued" (Smith, 2007). A third paper relied on different tests to find that Australia's new gun laws "did not have any large effects on reducing firearm homicide or suicide rates" (Lee and Suardi, 2010). **These two "little or no effect" studies and their methodology have since been heavily criticised (Neill and Leigh 2007, Hemenway 2009, Hemenway 2011)** [emphasis added].

CONCLUSION

Robust evidence supports the case for stronger federal gun laws. Congress can and must act quickly to prevent another Newtown by implementing comprehensive laws including background checks on all gun transfers, bans on semiautomatic assault weapons, and measures

to prevent illegal gun trafficking. These laws can and will work to enhance public safety and save lives.



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The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 10, 2013

Dear Senate Judiciary Committee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention. As the Virginia State President of the Million Mom March, I am speaking on behalf of all of our chapters and members. We are united in our belief that there is much that can be done legislatively to make our country a safer place that will not infringe upon Second Amendment rights.

1) Require Universal Background Checks on both Guns and Ammunition

Every purchaser of a firearm should be subject to a background check through the FBI's National Instant Criminal Background Check System (NICS). Currently, an estimated 40 percent of guns sales are made by private individuals (at gun shows, over the Internet, through classified advertisements, etc.) who have no legal duty to subject purchasers to background checks or maintain records of sale. What is the purpose of having a NICS database with millions of disqualifying records if prohibited purchasers can simply circumvent the system? It would be the equivalent of having optional security screening at our airports, with a second line for folks who simply wish to bypass the scanners. In this Information Age, NICS checks are typically completed in a matter of minutes, and they can be administered by any one of the nation's more than 50,000 federally licensed firearm dealers. Background checks should also be required on all ammunition purchases.

2) Institute an Assault Weapons & High Capacity Magazine Ban

Renew the federal ban on assault weapons and high-capacity ammunition magazines and close all of the loopholes that existed in the earlier assault weapons ban. Mass shootings have increased in frequency since the ban expired in 2004. That is reason enough to reinstate the ban. There is no need for a weapon designed for battlefield use and easily outfitted with magazines holding up to 100 rounds of ammunition to be legally available to civilians but there is a very compelling reason to ban these weapons – it will save lives.

3) Repeal Tiahrt and Make Gun Trafficking a Federal Crime

The Tiahrt Amendment should be repealed as it restricts access of law enforcement to gun-trace data making it very difficult for the police to track down sellers of illegal guns, to investigate gun trafficking patterns, and to make connections between individual gun-related crimes. It also denies the ATF the authority to require gun dealers to inventory lost and stolen guns and requires that NICS background check records be destroyed within 24 hours. In addition to repealing Tiahrt, Congress should make gun trafficking a federal crime so there can be tougher enforcement. We should be doing everything we can to trace illegal guns and to empower the ATF and law enforcement to do their jobs effectively.

4) Improve Mental Health Reporting

While the vast majority of those who suffer from mental illness will never be dangerous, a more effective approach to preventing persons that are a danger to themselves or others from acquiring firearms is needed. Under current law, only individuals who have been *involuntarily* committed to a psychiatric institution or formally adjudicated as "mental defectives" (the law was written in 1968) are prohibited from buying firearms. This standard tells us little about who might be dangerous and allows people to acquire firearms who should never get close to a gun.

There are many other issues that need to be addressed, such as violent video games, the glorification of gun violence in the movies and TV and the effect this has on our youth. But these issues will take time to tackle and resolve and will require a cultural shift. The suggestions I have made above and legislation already put forth in this Congress that echo recommendations made the President's task force would be simple and immediate steps that would help bring an end to gun violence.

The American people are speaking loudly and clearly. We expect Congress to start protecting our children rather than protecting guns. We expect Congress to put the interests of public safety ahead of the interests of the gun lobby.

Public safety should not be a politically charged issue. Legislators on both sides of the aisle have an obligation to protect and safeguard the welfare of Americans. Hiding behind the

Second Amendment as an excuse for inaction is unacceptable. There is absolutely nothing inconsistent with believing in both the Second Amendment and in sensible legislation to prevent the mass shootings that have plagued our country like an out-of-control virus. Every right has limits and the Second Amendment is no exception. No one outside of the military needs an assault weapon or a 50-caliber sniper rifle that can penetrate a police officer's bullet-proof vest. No one needs a high-capacity magazine capable of turning an ordinary handgun into a killing machine. No one should be able to purchase a gun of any sort without having to undergo a background check. Loopholes need to be closed. Bans need to be reinstated. Let's get this done; for our country and for our children; and let's get this done now.

Most respectfully,

Martina Leinz
Virginia State President
Million Mom March

To: Chairman Dick Durbin, The Senate Judiciary Committee

From: Jennifer Wall, resident of Virginia

Re: Subcommittee on the Constitution, Civil Rights, and Human Rights

Date: February 10, 2013

Dear Chairman Durbin and Senate Judiciary Committee Members,

I am writing to support the tightening of our nation's laws in relation to gun violence. I am a Virginia resident and mother of three school-aged children. I am very concerned that the prevalence of guns in our society means that another and yet another school or workplace shooting is inevitable. Yet I feel that this inevitability does not mean that we cannot, as a nation, take reasonable steps to reduce the likelihood of future tragedy.

I do not accept as fact the NRA leadership's position that "the only way to stop a bad guy with a gun is with a good guy with a gun." Our laws can be crafted to make it much more difficult for those with murderous intent to gain access to firearms. This is a public health issue that is clearly within the purview of good government. The families of those who have been slain by senseless violence deserve to see our nation's leaders enact gun legislation reform proposals.

I encourage the Judiciary Committee and Congress to write and enact legislation to address gun violence by doing the following:

1) Require universal background checks on all gun purchases and ammunition,
2) Eliminate the gun show loophole,
3) Reinstate the assault weapons and high capacity magazine ban,
4) Increase the penalties for gun trafficking, and make it a federal crime,
5) Make it nearly impossible for those who are mentally ill to purchase firearms.

While it is true that these measures would not have prevented the deaths of the children and teachers in Connecticut due to the particular facts in that case, these measures will make it that much more difficult for persons of criminal intent to carry out their plans.

Thank you for your consideration,

Jennifer Wall

The WASHINGTON ETHICAL SOCIETY believes in the intrinsic worth and goodness of every person. We strive towards a society where every person's needs are met and everyone experiences safety, security, and support to realize their unique potential. We envision a society that is imbued with peace, freedom, inclusion, and mutual respect. Using guns and other weapons to harm people denies our basic dignity and ultimately cannot solve the problems facing us. We affirm that safety is a human right, and that it is our responsibility to promote a culture of nonviolence.

To work towards this vision of a peaceful world, we are moved to make public our views.

¤ Every hour of every day in the United States people are injured or killed with guns. We are outraged at recent shootings of worshippers at a Sikh temple in Wisconsin and a UUA church in Tennessee, of Trayvon Martin in Florida, of moviegoers in Colorado, and of schoolchildren and adults in Connecticut. We view these as violent acts against all humanity.

¤ We live in a culture that often promotes the use of violence as a means to end conflict, which is legitimized by societal institutions, and that fails to teach a viable alternative to violent force. The direct violence we see in murders and assaults results from and reinforces the structural and cultural violence in our society.

¤ In 2007, there were approximately 290 million firearms owned by U.S. civilians, more per capita than any country on earth. In 2009, there were 11,493 homicides attributed to gun violence and 18,735 suicides. In 2003, of all the firearm deaths in the 23 highest income countries, 80% occurred in the United States.

¤ Violence is not caused by guns but is facilitated by guns. The safest society is one that minimizes the threat of gun violence both through limiting the availability of firearms and educating gun owners in safe use.

¤ Marginalizing and dehumanizing people perpetuates the cycles of violence.

¤ Our society can never end gun violence without transforming the structural and cultural roots of violence.

Our ethical principles guide our support of actions, which include but are not limited to:

× Enacting legislation prohibiting semi-automatic guns and high capacity ammunition magazines, and requiring background checks for all gun sales, whether private or not;

× Regulating the manufacture, sale, licensing, possession, and use of firearms - both domestically and for export;

× Instituting increased gun safety training for owners of firearms;

× Overturning the current interpretation of the Second Amendment of the U.S. Constitution as stated in *District of Columbia v. Heller;* and

× Prioritizing society-wide teaching and use of conflict resolution and transformation so that everyone will have access to effective nonviolent tools with which to address their struggles.

The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 11, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

There is a line to be drawn beyond which we cannot possess certain arms under the second amendment. We are not entitled to possess nuclear weapons, rocket launchers, and machine guns because the danger they pose to the public outweighs the right to own these arms.

Over 30,000 people die from gunshots each year with over 100,000 wounded. Over 900 a month are murdered. Of those killed each year, 5000 are children under the age of 18. Semi-automatic assault weapons have been used in some of the worst cases of mass murders, including the maiming and killing of twenty 6 year olds in Connecticut. These statistics deserve our attention and action. The country must decide where to draw the line on what arms we can own and how to make those arms as safe as possible.

Any actions taken to reduce deaths by guns should be common sense solutions that respect the right to bear arms. However those of us who are gun owners should recognize that any action taken will require some sacrifice and inconvenience on our part.

Even though gun manufacture and assault weapon manufacture in particular are very profitable, the gun industry must help to deal effectively with gun violence, even if it means earning somewhat less money.

No solution is perfect but if a solution can reduce the number of children maimed or killed, then that solution deserves our serious consideration and should be adopted if at all possible.

Although we can't completely prevent criminals and mentally disturbed people from accessing guns, we can substantially reduce access by screening out those who should not own guns, including felons, abusers and those declared a danger to themselves and others.

To prevent access to guns by dangerous people, an instant background check can be conducted using a Federal database.

Instant background checks can be required for all gun sales, including those at gun shows or private sales. If we allow loopholes, dangerous people seeking guns will chose sellers who are not required to do background checks.

Enforcement of existing firearms laws is essential. The NRA suggests this should be done before any new measures are taken. However, the Alcohol Tobacco and Firearms Administration, which is in charge of enforcement of gun laws, has been intentionally weakened by Congress. It has not had more than a part time director for 6 years due to the failure of the US Senate to confirm nominees. Senate confirmation has been required for this non-cabinet position only since Rep. James Sensenbrenner inserted this requirement as part of the Patriot Act in 2006, the same year he received a National Achievement Award from the NRA. Congressional legislation introduced as an amendment to a spending bill by Rep. Todd Tiarht and approved by the NRA forbid the ATF from requiring gun dealers to keep an inventory to check for lost or stolen guns; allowed dealers to refuse to cooperate with police; required the destruction of background check information within 24 hours of purchase, and prevented oversight of used gun sales. Congress has not increased the number of ATF agents in 40 years in spite of rapidly increasing gun sales. While the ATF is authorized to inspect gun dealers books no more than once a year, in practice the average time between inspections is 17 years. We should support the request from Mayors across the US to repeal this law.

If Congress reinstitutes proper enforcement, those who conduct illegal gun sales and fail to do background checks should be prosecuted, suffer large fines and be prohibited from selling guns for an extended period of time.

We can require the use of some of the existing methods of providing easy access safety locks for guns or gun safes. Existing products include 'safety bullets' and small and large safes accessed by fingerprints of up to 32 persons or by simple 4

number codes punched into a key pad. These safety measures do not reduce immediate access to a gun more than a second or two, and virtually eliminate the chance of accidental discharge, use by children or access by unauthorized persons.

Since guns are inherently dangerous products, like dynamite, making gun owners strictly liable for deaths or injuries resulting from guns they own will increase their responsibility for gun safety and accountability.

Semi-automatic assault weapons are not useful for hunting, and are not the most useful weapon for self-protection. Since they fire-high powered bullets designed to maim or kill people at long range they should not be allowed in homes and should be confined to gun ranges where they can be kept under lock and key. In this way those who fear the potential of government tyranny can have access to assault weapons should the need arise.

Ammunition magazines that hold more than 10 bullets are not useful for hunting and are not realistically needed for self-protection.

Large ammunition magazines make it possible for a criminal or mentally ill person to fire 50 and more rounds without reloading and to kill large numbers of people before anyone can attempt to disarm the shooter. Prohibiting the sale of magazines with over ten rounds would reduce casualties if mass shootings do occur. Law abiding citizens can always own multiple magazines and would not lose the opportunity to fire numerous rounds.

Studies following the Virginia Tech massacre show that it is very difficult for armed bystanders to pick out the 'bad guy,' and to properly aim and hit the right person in the chaos of a mass shooting. The armed bystander at the Gabby Giffords shooting acknowledged that due to his misperception he almost shot the person disarming the murderer. Therefore arming teachers or students does not appear to be a safe solution.

Having more resource police officers in schools may increase deterrence but we should not teach our children that violence is best prevented with more violence. Instead we should teach our children at home and in school that violence is not a solution for problems except as a last resort and that counseling and mediation are better alternatives that prevent violence. Congress should fully restore the funding for the 'Substance Abuse and Mental Health Service Administration' that they removed in the House budget of 2012.

Calls for careful study of all the factors involved in gun deaths very often is a way of saying we will take no action. Basic common sense solutions such as those proposed here do not require long studies and can be implemented quickly.

There are those who will say that the line to bear arms should be drawn to allow unrestricted access to semi-automatic assault weapons; that even a second or two of delay in accessing their guns is unacceptable; and that large magazines are necessary to have equal firepower with intruders who may somehow have acquired those magazines. We must decide if these arguments are sufficient to justify taking no action.

Basic common sense actions to help solve gun access and safety problems may make it more inconvenient to exercise the right to bear arms, but some inconvenience should be tolerated in order to save lives, especially those of little children.

Sincerely

Robert C. West, Jr, member Virginians for Responsible Gun Laws

Afton, VA 22920

As a parent of a son who attended Sandy Hook Elementary School, I am seeking your help to change the gun laws in our country.
I ask you to stand against the gun lobby. The proposals set forth by President Obama, should be enacted as soon as possible.

This can be a moment when history is made, by passing gun laws that help protect all citizens, eliminate semi-automatic
weapons, high capacity magazines, and have universal background checks for all buyers of guns.

Nobody knows how Newtown will recover from this massacre, but if you can steer Gun Violence Prevention in the right
and reasonable direction, we will all be grateful to you.

Thank you.

Donald Wilson
Sandy Hook, CT

Chairman Dick Durbin and Committee Members,

I am writing you as a 26 year resident of Newtown CT, as a small business owner, and as President of The Working Women's Forum which meets in Sandy Hook, CT.

I feel I must convey to you the sadness and gut-wrenching pain that we have suffered here in our town in the past two months. From the days after the shooting, where helicopters hovered in the skies, to the ongoing daily funerals that took place on our Main Street, to the sight of police cars parked in front of our schools, to the knowledge that our police force is understaffed due to the trauma they faced that day.

I also feel I must tell you that as a business person, I have seen the effects it has had on my fellow small business owners, some of who are near to closing. Our town has been torn upside down.

As the President of Working Women's Forum, a professional women's group that meets literally steps away from Sandy Hook Elementary School, I feel I must convey to you the feeling of loss of our members and those who have attended our meetings, those who lost their first graders, those whose children were present at that school and survived, and those of us who mourn every day what occurred there. Because we care.

You may find this hard to believe, but I am exposed to gun violence every week when I visit my fiance in New Haven, CT. In the last 3 weeks of January 2013, in his quiet neighborhood there were 3 shootings, 2 occurred in businesses that we walk to. And two of these shootings were fatal.

I must ask you this question: When will this madness end? I am not against guns but our society is out of control.

1.We can't keep making it easier for people to acquire more guns. There are too many guns.
2.We can't allow rifles to be purchased differently than handguns.I have heard no one explain why they need to have a semi-automatic rifle with a large capacity magazine to hunt or use for self defense.
3.We can't allow people to walk into a store and buy enough ammunition to fill a shopping cart.

My request is brief and to the point: The Constitution protects our rights to Life, Liberty, and the Pursuit of Happiness. As David Wheeler, father of Ben Wheeler, 6 years old, who was brutally murdered on Dec 14, 2012, so eloquently reminded us: our right to LIfe should supersede all others.

Thank you for giving me the opportunity to express my views.

Maureen Wilson

Win The War® Against Violence

Statement for the Record

February 11th 2013

Proposals for Reducing Gun Violence: Protecting Our Communities While Respecting the Second Amendment

Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

Date: **February 12, 2013** *Time:* **10:00 a.m.**
Location: **Dirksen Senate Office Building Room 226**

Dear **U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights:**

We greatly appreciate your **Sub-Committee** allowing us to submit a **Statement for the Record** for your **February 12, 2013 Hearing**. This letter is the first of its kind from our organization or from myself.

My name is **Douglas A. Wain**. I am the Executive Director of a Kentucky 501 (c) (3) nonprofit organization and public charity headquartered in Lexington, Kentucky called **Win The War! Against Violence.** Our mission: **To help bring about a substantial reduction in violence through education.**

We would first like to say that during the last 12 months we have met with many State and National Representatives. We could not have been more impressed. Everyone was courteous, personable and respectful. The same can be said for their aids, assistants and counsel.

Our relatively new organization is a one-trick pony; our purpose is *violence prevention* only. And the largest amount of evidence we have found to prevent violence is through *education*. If kids know better, they do better, as *Maya Angelou* has helped us realize.

We believe the key to reducing all unjustified violence is focusing on **youth** ages **12** to **24**. Evidence shows that this age group is responsible for nearly ***50 Percent*** of all violent offences not only here in the **U.S.** but in the world.

Willie Sutton said in the 1920's on why he robbed banks, "*That's where the money is.*" If we want to significantly move-the-dial back on violence, then we must concentrate on youth; especially youth ages **12** to**17,** before they reach the most dangerous age among violent offenders which is **19** to **24.**

We adults can do what we can. We can allocate funds, create fair, common-sense laws, and give enforcement the tools they need to protect their communities, but we believe *at most* that is only half the solution. Youths must meet us halfway. They must bring something to the table to reduce violence in **America**; not marginally, but *significantly*.

We have initiated an *education only* **Youth Violence Prevention Challenge** in our home state, the great Commonwealth of Kentucky. It has united most every state governmental office, state nonprofit and state association in Kentucky to give our youth this *crystal clear message*: "**Unjustified Violence Against Other People Is NOT ACCEPTABLE In Our Commonwealth of Kentucky**".

Win The War Against Violence

We are sure that our all our State and Federal Representatives will do their part. But we slightly older adults are not the ones doing most of the violence. It's the younger adults and teens that are. I'm not sure if adults alone *can* stop violence. But we believe that when good-hearted people try, everything helps. Therefore we should try everything. It is not necessary to debate which piece of the puzzle is bigger when solving the problems of violence because the risk factors and situations can be so diverse that we may never know which piece works best and when. Sometimes the smallest things have the greatest impact. And we will never know whom the next youth will be who will give in to their ancient, antiquated instinct for violence. That is why we must talk to *all* youth about violence. We believe our **Youth Violence Prevention Challenge** does that.

Can youths stop their own violence? Yes. Each youth is already empowered with a personal, unique, individual, one-of- a-kind *identity*. Their *identity* is their soul, their spirit, their essence. There was never a person like them before and there will never be another person like them again. Their individual *identity* was not given to youth by adults; it was given to them by greater forces, God, Nature, or both depending on your beliefs. This personal *identity* we believe gives every youth *superpowers*, it can prevent them from not only doing violence but help them navigate thought-out their life. Youth can do this without adults, but of course we adults should to help and try to remove as many hazardous hurdles for them as possible.

We believe that whatever us adults create, we can make the rules and laws for. What we build, we can control. Nothing man makes could possibly be divine. But whatever we do create and govern, they should be surrounded by the good *principles* in life. Our good *principles* should create and the laws, our good *principles* should be used when applying them and our good *principles* should change the laws if they do not closely match our good *principles*.

These good *principles* in life are the same good *principles* that build this great country, **The United States of America**, and all the great institutions on earth. Believing in the good *principles* in life and applying them correctly we believe is morality. Morality added to all youth's unique *identity* we believe is the ultimate answer to violence. We owe it to youth to show them the way, hold up mirror to them and show them that all of them, without exception, are already gifted and empowered. It's possible that the greatest power we adults possess in not that over nature of science but our ability to influence our youth.

Most youth are already peaceful, unfortunately, as my middle school principal once said, "*It's a few that ruin it for everybody*". If I had to sum up all the world's problems into one sentence, that would be it. We believe people do violence to *feel good, better, best*. For selfish reasons. We need to show all youth that morally feels better then violence. That it lasts a lot long and is more often rewarded in society. We could, and should, help youth feel better about themselves now.

This **Youth Violence Prevention Challenge** has all the obstacles that might stop someone form supporting it removed from it. It does not conflict with any law or *U.S. Constitutional Provision* or *Amendment* and it aims to reduce *all forms* of unjustified violence not just a few.

Since our organization is not there in person, *although we are available,* we thought we would try to anticipate some of your questions and provide answers.

Why should youth not do violence? Because it is in their own-self interest *without* being selfish and that is a rare and beautiful combination.

What is justified violence? Justified violence is in self defense, a universal standard. We believe that defending yourself, which is protecting your identity, is not an option but is mandatory.

Pushback on peace? We been promoting our **Youth Violence Prevention Challenge** for over one year and we have not seen any pushback. In fact, whoever we talk to about this Youth Challenge usually has their own personal story that the wish to share.

Win The War® Against Violence

Why peace? We believe peace in the lynch-pin to achieve faster advancement and progress as a civilization and to increase our odds of survival, both individually and collectively. No one is immune from violence.

What about deterrence? We believe in the "*Double-Sided Coin of Deterrence*". Peace though Strength and Strength though Peace. Unless you push both equally hard you will not know who to fight, when to fight or how to fight.

Who is our team? Our team is the largest, oldest and greatest team of all time, peaceful people. We believe a much more peaceful world is right around the corner. We think the tipping point has already passed with the end of the Cold War and the arms race is going to turn into the peace race. Let **America** win this race too. We can observe one, and only one, problem in the **United States of America**, not enough teamwork. Hopefully we can continue to *unite* people behind this initiative.

We encourage all the distinguished members of this **Senate Judiciary Sub-Committee** and the full **Senate Committee on the Judiciary** to include this **America's Youth Violence Prevention Challenge** to America's youth to voluntarily reduce violence **Ten Percent** in the next 12 months. This Challenge is not political, religious, financial, *judgmental*, and does not require legislation, funding, cost or enforcement. But despite these flaws it might cut to the core of the problem of violence by focusing on youth and maybe with a little luck, might work.

We have additional information and documentation on our organization, its founders and this campaign. We would be honored to provide it to the *Sub-Committee* if so desired.

We wish to thank the Sub-Committee for this opportunity for your time and for your dedication.

All the best,

Douglas A. Wain, Executive Director
Win The War! Against Violence

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The Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Chairman Dick Durbin

February 10, 2013

Dear Chairman Durbin & Senate Judiciary Subcommittee Members:

Thank you for allowing me the opportunity to submit testimony in advance of your hearing on Gun Violence Prevention.
To me the words of the *Preamble to the Constitution of the United States* clearly state why we joined together. The unsettling news of gun violence destroys those very concepts of domestic tranquility, general welfare , and the blessing of liberty described in the preamble.

People without guns hardly ever kill. The gun is the weapon of choice in mass killings, gang killings, domestic violence, and suicides. It is, simply put, the gun that is the problem. We may not be able to prevent all killings, but rational thinking tells us we need to do more to stop the violence that has invaded our everyday life.
No citizen should be apprehensive about attending a movie or public event, visiting a mall, or sitting in a classroom.

Please honor the lives of all who have died from senseless gun violence, and most particularly those innocent children at Sandy Hook, by passing new legislation listed below.

a. Background checks for anyone wanting to purchase a gun whether at a dealer, the internet or gun shows.
b. Institute a ban on assault weapons and high capacity magazine clips.
c. Repeal Tiahrt and Make Gun Trafficking a Federal Crime.
d. Improve Mental Health Reporting.

Most respectfully,

Maryanne Yergovich

GEORGETOWN UNIVERSITY LAW CENTER

February 7, 2013

Randy E. Barnett
Carmack Waterhouse Professor of Legal Theory

Hon. Ted Cruz, Ranking Member
Subcommittee on the Constitution, Civil Rights and Human Rights
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Cruz,

Within minutes of the Sandy Hook murders, gun control advocates began exploiting this horrific event to promote their favored policies. I know this because I was contacted by reporters to respond to these calls even before I had heard that the event had taken place moments before. This was far too early to know what had happened, much less how and why. Yet the drum beat had begun for long sought after measures that would not have prevented these murders. That drum beat continues.

I understand that you are having hearings on various gun control proposals on Tuesday, February 12th. In your deliberations, you may find useful the attached article entitled, "Gun control fails rationality test," that appeared on January 29th in the *Washington Examiner*. In this article, I make the following points:

- The Supreme Court evaluates fundamental rights using a heightened standard of scrutiny;
- The Supreme Court has held that the individual right to keep and bear arms is a fundamental right;
- Some of these measures – for example, laws prohibiting such popular rifles as the AR-15 and the normal capacity magazines for such rifles – are flatly precluded by the Supreme Court's categorical protection of weapons "in common use" by ordinary citizens for lawful purposes, such as the protection of self and others;
- These and most other gun regulations currently under consideration would also fail the least demanding heightened scrutiny: rationality review;
- This is because most proposals either would not have prevented the incidents that are said to motivate their passage, they would keep legal weapons of identical lethality, or they are discriminatory in their treatment of the Second Amendment rights of American citizens;
- For this reason, these measures are irrational;
- This analysis is useful to identify such measures as pretextual efforts, the real purpose of which is to impose an undue burden on the exercise of the fundamental right to keep and bear arms, or to improperly stigmatize its exercise;
- For all these reasons most, if not all, of the measures being proposed are unconstitutional.

To this analysis, I would add that the Congress has its own independent obligation to

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Congress has the first word. And a refusal by Congress to enact a measure because, in its judgment, the measure violates the Second Amendment will take precedence over any judicial or executive branch opinion on that question. Only if Congress concludes that a measure *is* constitutional, does the executive and judicial branches have the opportunity to disagree with this assessment.

Therefore, it falls to your subcommittee to inquire seriously into whether any given measure under consideration would actually violate the Second Amendment. To this end, you should ask:

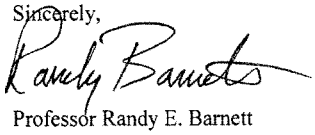
- Would the proposed measure would have prevented the event, such as Sandy Hook, that is being used to justifies its enactment?
- Are firearms with equal if not greater lethality and rate of fire left legal while others are being prohibited?
- Will some citizens – such as current or retired members of law enforcement or government officials – be privileged in the means by which they can protect themselves over others?
- If an American citizen who is employed to protect the safety of others, or an active or retired police officer, requires a certain type of weapon, with a certain rate of fire or capacity, to protect him or herself or others, why does not a law abiding citizen of the United States require the same sort of weapon for the same lawful purpose?
- Will those who are willing to violate laws be affected in any manner by the existence of this measure, or will its burden largely be borne by law-abiding, and in many cases licenced, citizens who pose no threat to others?
- Will a gun control measure, such as the maintenance of a data base, facilitate future violations of the fundamental guarantees of the Second Amendment, for example, by making confiscation of weapons easier?

The rationality of gun control measures turn on the answers to these and other such questions. Yet most law professors who opine on the constitutionality of gun control measures simply do not know enough about firearms, or the realistic effects of gun regulations, to have a genuinely expert opinion on whether any particular proposal is constitutional. Instead, their opinions are typically based either on their predictions of how courts will rule, often based on how they *hope* the courts will rule, or their opinion of how deferential courts should be to the Congress. Unless they address questions such as those I listed, however, their opinions can provide little guidance to Congress in its independent assessment of the constitutionality of these proposals.

It is the job of Congress to ask these questions in order to ferret out efforts to violate the fundamental rights of Americans by those who dislike the rights protected by the Second Amendment, or who have an irrational fear of firearms. The answers provided by such an independent inquiry will reveal many of the current proposals to be pretextual efforts having little or nothing to do with preventing the incidents that have roused the emotions of the public, and everything to do with imposing an undue burden upon, and stigmatizing the exercise of a fundamental right.

I hope this letter, and the accompanying article, helps inform the Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights discussion.

Sincerely,



Professor Randy E. Barnett
Carmack Waterhouse Professor of Legal Theory
Director, Georgetown Center for the Constitution

Opinion

Op-Ed: Gun control fails rationality test

January 29, 2013 | 8:00 pm

44 Comments

Randy Barnett
Randy Barnett teaches constitutional law at Georgetown Law and is the author of "Restoring the Lost Constitution: The Presumption of Liberty" (2005).
The Washington Examiner

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On Wednesday, the Senate Judiciary Committee will hold a hearing on the various gun control proposals that have been floated in the wake of the Sandy Hook school shootings. Although they are said to be merely "reasonable regulations" of the Second Amendment's right to keep and bear arms, most or all of these proposals are irrational and unconstitutional.

The Supreme Court has established a two-tiered protection of liberty. Under the lowest tier, "rational basis review," it will uphold restrictions on liberty so long as it can imagine any possible reason why Congress might have adopted the measure. By contrast, if a liberty is deemed by the court to be a "fundamental right," it will subject restrictions of that right to "heightened scrutiny," meaning that it will skeptically examine the means Congress chose to achieve its ends. This close comparison of means to ends is intended to smoke out justifications that are really pretexts for efforts to improperly stigmatize or restrict the exercise of a fundamental right.

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In 2008, the Supreme Court held that the right to keep and bear arms was a fundamental right. In DC v. Heller, the court did not specify the exact type of heightened scrutiny it would employ when legislation restricts gun rights, except to insist that it would be higher than "rational basis review," and that a complete ban on weapons "in common use" by the citizenry for self-defense and other lawful purposes -- such as handguns -- is unconstitutional under any type of heightened scrutiny.

So, when considering the constitutionality of bans on so-called military-style assault weapons, or restrictions on the capacity of magazines, senators should begin by asking whether the weapons being banned are in common use by civilians. When it comes to so-called assault weapons, like the AR-15, or 30-round magazines, the answer is clearly "yes." Millions of such weapons and magazines are in private hands.

That should settle the matter, but senators can go a step further and ask whether these or other measures are actually rational -- to articulate the end they are seeking to accomplish, then assesses whether the means adopted actually match up with the purported end. Would they actually have prevented a mass shooting or ameliorated real crimes?

This heightened "rationality review" could help ensure that the reason being articulated is the real reason for the law.

For example, "assault weapons" are a made-up category of weapons that is based solely on cosmetic features that make them look like the fully automatic weapons used by the military. Banning them leaves other rifles that are functionally identical in their lethality and rate of fire completely legal. Moreover, far more powerful hunting rifles are left untouched by the law, as are shotguns. This is simply irrational and therefore unconstitutional.

The same can be said for New York's law limiting handguns to seven rounds, while allowing both active and retired police officers to keep their handguns that hold up to 15 rounds. If retired cops need 15 rounds to effectively protect themselves and others, then so do other citizens. Arbitrarily discriminating among Americans in this way is irrational and unconstitutional.

In fact, heightened rationality review confirms what we independently know is going on. Within hours of Sandy Hook, gun control proponents were beating the drums for their long-desired measures, like background checks for private gun sales, that would not in any way have prevented that tragedy. But the exploitation of these deaths is not just morally offensive.

The measures now being rushed through Congress before emotions can subside are irrational and pretextual, which means they are also unconstitutional.

February 11, 2013

United States Senate
Committee on the Judiciary
Subcommittee on the Constitution,
Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Cruz:

Thank you for holding this hearing on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment." On behalf of over half a million members of Campaign for Liberty, I appreciate the opportunity to address this issue.

In the wake of December's tragic loss of life at Sandy Hook Elementary School, many Americans have called for new federal laws to prevent further incidents of gun violence. Unfortunately, most of the proposals currently before Congress not only violate the Second Amendment, as well as other parts of the United States Constitution, but they would fail to prevent future mass shootings.

Today, I want to recommend that Congress adopt a policy that would meet the constitutional test and prove effective in protecting schoolchildren from gun violence: full repeal of the 1990 Gun Free School Zones Act and all amendments to it.

Under the Gun Free School Zones Act, it is a federal crime for an individual to have a firearm either in a school or within 1,000 feet of a school. While the legislation does allow for lawful holders of concealed carry permits to possess firearms within a Gun Free School Zone, it makes it a federal crime for anyone other than an on-duty law enforcement officer or school security personnel to discharge a firearm on school premises. As a practical matter, this means that most schools, except for those that can afford to hire professional, full-time security personnel, are left defenseless.

The supporters of the law claimed it would guard school children from gun violence. However, in passing this law, Congress overlooked a crucial fact: mass murderers do not obey "gun-free zone" laws.

In fact, disarming school personnel, except those few specifically designated as "school security," can encourage deranged and violent individuals to specifically target schools. After all, what better way to ensure one will inflict maximum damage than to target a location where carrying a firearm is a federal crime?

Even if repeal of the Gun Free School Zones Act does not discourage all school shootings, it will still save lives by giving school personnel the ability to defend themselves and the children in their care.

Currently, federal law forces school personnel whose schools do not have full-time security staff to wait helplessly during a crisis until the police arrive. The horror of school shootings is compounded by the knowledge that some of the victims could have been spared had staff members simply been able to access a firearm.

If the Gun Free School Zones Act was effective in curbing violence against our children, one would expect statistics to show school shootings have declined since the law was enacted. Instead, they demonstrate exactly the opposite: before this law was passed, Americans had not experienced a mass shooting in a school since before 1900. Since the second version of the law was passed, there have been 13 such incidents.

The Gun Free School Zones Act in effect today is actually the second version of the law. Congress first passed the act in 1990. In the 1995 case of *United States v. Lopez*, 514 U.S. 549, 115 S. Ct. 1624, 131 L. Ed. 2d 626, the Supreme Court held that, contrary to the claims of the law's backers, the Constitution's Commerce Clause did not give Congress the power to regulate gun possession in or around schools.

Following the *Lopez* decision, Congress quickly passed a revised version of the bill, limiting its application to the use of a firearm obtained through interstate or foreign commerce.

Backers of the Gun Free School Zones Act claim this change makes the bill a legitimate exercise of Congress' power to regulate interstate commerce. This is nonsense, as the Commerce Clause is intended to create a free trade zone among the states, not to give Congress unfettered regulatory authority over every use of a product made or sold in "interstate commerce."

It is impossible for the Gun Free School Zones Act to pass constitutional muster. Even if the Gun Free School Zones Act was a legitimate exercise of Congress' authority under the Commerce Clause, it would still be unconstitutional, as it violates the Second Amendment. The Second Amendment clearly prohibits <u>any</u> federal infringement on the right to keep and bear arms.

Legislation making it a federal crime to possess a gun within 1,000 feet of a school is clearly an infringement on the right to keep <u>and bear</u> arms.

Even if the Gun Free School Zones Act did not violate the Second Amendment, it would still fail to be constitutional, as the federal government has no legitimate authority to dictate to local schools how to best ensure the safety of their students. Instead, school safety (like all matters relating to education) is among the many areas left to states, local governments, and individuals. The system of federalism created by the Constitution thus ensures that individual school districts can adopt the school safety polices that best fit their unique needs. This is a much more efficient way of ensuring safety than forcing every school in the nation to comply with federal "one-size-fits-all" rules and regulations.

As an organization dedicated to restoring constitutional government, Campaign for Liberty not only supports full repeal of the Gun Free School Zones Act, but we oppose providing federal funding for

school safety officers, as this proposal is also unconstitutional. It is disappointing to see several high-profile defenders of the Second Amendment support expanding a federal role in school safety. It is also disturbing to see these so-called "advocates" of individual liberty support unconstitutional proposals such as expanding background checks and mental health databases. Those who claim to defend the Second Amendment undermine their cause when they support any unconstitutional expansion of federal power.

If Congress is serious about protecting our children and addressing school safety, it will reject calls for new infringements on the Second Amendment that will only satisfy those looking for photo-ops with scary-looking weapons and/or new opportunities to violate the American people's liberties. Instead, Congress should restore the people's right to determine for themselves how best to protect their children by repealing the unconstitutional Gun Free School Zones Act.

In Liberty,

John F. Tate
President
Campaign for Liberty

February 7, 2013

Hon. Ted Cruz, Ranking Member
Subcommittee on the Constitution, Civil Rights and Human Rights,
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator:

Our violent crime statistics establish a simple fact: Over 99% of gun owners are good Americans who never commit any crime. In almost every case, gun crimes are committed by long time criminals whose gun ownership is illegal because of their prior felony convictions or because they are insane or juveniles. Their illegal gun ownership could easily be remedied – by spending billions and billions and billions of dollars to build and staff scores of new prisons and staff other criminal justice positions. If felons could expect mandatory life imprisonment for having an illegal gun, illegal guns and gun crime would almost disappear. But gun prohibitionists and many politicians find it easier to loudly scapegoat innocent gun owners for crime -- and enact new laws while the ones we already have go unenforced. What sense does that make.

THE HISTORY OF GUNS IN AMERICA

Because the American colonies were too poor to afford a professional military, colonial law required every house, and every male colonist, to have a gun. This applied even if the house was occupied only by women. Yet gun-ridden colonial America "was one of the least homicidal societies in the Western world." Roth, AMERICAN HOMICIDE 13-14 (Harvard 2009).

That experience underlay the Second Amendment. Late 18th Century liberals firmly believed, as one prominent American divine (Timothy Dwight) expressed it, that the possession of arms by ordinary people was "harmless."

Modern criminology concurs: unlike ordinary people, murderers always turn out to be extreme aberrants, occasionally insane and in the great majority of cases felons. Prof. Elliott's review so characterizes "virtually all" killers. Delbert S. Elliott, "Life Threatening Violence is *Primarily* a Crime Problem: A Focus on Prevention," 69 COLO. L. REV. 1081, 1093 (1998) at 1087-88.

Likewise studies reviewed by Prof. Kennedy show killers

> are likely to commit their murders in the course of long criminal careers consisting primarily of nonviolent crimes but including larger than normal [for other criminals] proportions of violent crimes. [David M. Kennedy, et al., "Homicide in Minneapolis: Research for Problem Solving," 2 HOMICIDE STUDIES 263, 269 (1998).]

As the Academy of Criminal Justice Sciences summary of criminological studies states: based on actual criminal records, "the average murderer turns out to be no less hardened a criminal than

the average robber or burglar." Gerald D. Robin, VIOLENT CRIME AND GUN CONTROL (Cincinnati, Academy of Criminal Justice Sciences: 1991) at p. 47 references omitted.

It is useful to contrast the studies I have cited to assertions of gun ban advocates falsely blaming murder on law abiding owners. Uniformly, if falsely, their articles attribute "most shootings" not to "felons or mentally ill people" but to ordinary gun owners. [Quoting gun ban advocate K.K. Christoffel, "Toward Reducing Pediatric Injuries from Firearms: Charting a Legislative and Regulatory Course", 88 PEDIATRICS 294, 300 (1991).] What is most remarkable about such statements is that they are never accompanied by supporting references even though they appear in articles that have references for other points. There are no references because none exist!

Rather they contradict established criminological fact. Prof. Elliott summarizes murder studies from the 19th Century to 1997, the date of Elliott's article. More recent data agree: murderers are extreme aberrants whose prior felonies preclude their legally having guns. Thus a New York Times summary of 1,662 murders in that city in 2003-2005: "More than 90 percent of the killers had criminal records ...." [Jo Craven McGinty, "New York Killers, and those killed, by the numbers," N.Y. TIMES, April 28, 2006.]

A 2006 Massachusetts Kennedy School study found: "Some 95% of homicide offenders ... [had been] arraigned at least once in Massachusetts courts before they [murdered],... On average ... homicide offenders had been arraigned for 9 prior offenses...." Anthony A. Braga, et al., "Understanding and Preventing Gang Violence: Problem Analysis and Response Development," 9 POLICE Q. 20-4 6 (2006).]

My 2009 article cites later studies with identical results for Illinois, North Carolina, Milwaukee, Baltimore, Atlanta etc., etc.[Kates & Cramer, "Second Amendment Limitations and Criminological Considerations," 60 Hastings Law Journal 1339 (2009).]

In the District of Columbia -- which banned handguns in 1976, thereafter attaining America's highest murder rate -- Kristopher Baumann, Chairman of the Fraternal Order of Police comments:

> [There is no]... record of a registered gun having been used in the commission of a crime. The problem is not individuals who legally own guns; *the problem is criminals....*" [Washington Post, Sunday, April 18, 2010 emphasis added. A15.]

Though only 15% of Americans have criminal records, roughly 90 percent of adult murderers have **adult** records (exclusive of their often extensive juvenile records), with an average adult crime career of six or more years, including four major felonies. [Gary Kleck & Don B. Kates, ARMED: NEW PERSPECTIVES ON GUN CONTROL 20-21 (2001).]

In contrast, "areas in England, America and Switzerland with the highest rates of gun ownership were in fact those with the lowest rates of violence." [Joyce Lee Malcolm, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE (Harvard, 2002) at 204.

So State University of New York criminologists Hans Toch and Alan Lizotte comment that "It is hard [for anti-gun advocates] to explain that where firearms are most dense, violent crime rates are lowest, and where guns are least dense violent crime rates are highest." [Toch and Lizotte "Research and Policy: The Case of Gun Control", in PSYCHOLOGY AND SOCIAL POLICY, edited by Peter Sutfeld and Philip Tetlock (1992) at p. 234 and n. 10.].

In sum, ordinary gun owners never commit gun crimes. Those who do commit murder and other gun crimes are long term criminals. We can dissuade them from having guns by enacting laws punishing them drastically. But enforcing such laws will cost money which we are unwilling to spend.

Very truly yours,

Don B. Kates
Research Fellow
Independent Institute

Dear Senator Cruz:

Thank you for inviting me to provide written testimony for the hearing before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights entitled "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment".

Let me begin by saying that the gun owners and NRA members I've had the privilege of working with—as a fellow member, board member, and ultimately president of the NRA—are second to no one in their desire to protect our communities against violence of all kinds. Of course, they are also second to no one in respecting the Second Amendment—a completely compatible goal because fundamentally, the Second Amendment is about community protection. By guaranteeing the right of Americans to protect themselves, it also allows them to protect their communities, both directly and through its deterrent effect on crime.

Any discussion of these issues today must start with the *Heller* and *McDonald* cases. While the Supreme Court in those cases recognized the Second Amendment as protecting a fundamental, individual right, gun prohibitionists and some lower courts have tried to minimize that protection by reading into the decisions a host of limitations not intended by the Supreme Court. In particular, they have drawn comfort from two passages in *Heller*.

The first of those suggests that "presumptively lawful regulatory measures" would include "longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."[1]

One common error in the interpretation of this passage is the assumption that "presumptively" means "inherently" or "automatically." This is obviously wrong. For example, it is easy to imagine "conditions and qualifications on the commercial sale of arms" that would be burdensome enough to make sales impossible, which in turn would have a crippling effect on the exercise of Second Amendment rights.

Another even more common issue is not an error but a deliberate legal strategy of trying to shoehorn any desired regulation into these categories. For example, we've seen state legislative proposals that would have prohibited the carrying of firearms in nearly any public area under the guise of protecting "sensitive places." Similarly, any effort to expand the classes of persons prohibited from possessing firearms is portrayed as similar to the prohibition on possession by felons. There's no doubt that proposals to ban private, non-commercial transfers of firearms will likewise be portrayed as analogous to restrictions on commercial sales.

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[1] *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008).

The second passage often relied on is the statement that while the "arms" protected are those "in common use at the time,"[2] this "limitation is fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'"[3]

This language is central to the debate over issues such as regulating "assault weapons," as anti-gun advocates suggest that it applies to any piece of hardware they want to ban. For example, in the follow-up *Heller II* litigation, the District of Columbia did not deny that guns affected by its "assault weapons" ban are common, but claimed that they were unprotected because they are "dangerous and unusual."[4]

But this argument distorts the historical record. The authorities the *Heller* court cited for that "historical tradition" made clear that the prohibition didn't relate to particular types of arms, but to the idea that any weapon—no matter how common—could be "dangerous and unusual" if used to terrorize the public. Arms were only considered "dangerous and unusual" if they were *used* in a dangerous and unusual way. In fact, one of the cases cited in *Heller* involved a defendant who carried no conventional "weapon" at all.[5]

It is also critical not to lose sight of the lower court decision upheld in *Heller*. That decision noted that "[t]he modern handgun—and for that matter the rifle and long-barreled shotgun—is undoubtedly quite improved over its colonial-era predecessor, but it is, after all, a lineal descendant of that founding-era weapon ..."[6] This idea of "lineal descent" is important in responding to the absurd notion—very popular among editorial writers—that supporters of the Second Amendment want people to keep and bear ballistic missiles, biological weapons or other items that have no ancestors among the "arms" known to the Founders.

In addition to misreading *Heller* as to what laws should be upheld, anti-gun advocates and too many lower courts have also misread *Heller* as to how those laws should be measured. Many courts have adopted forms of "intermediate scrutiny" analysis that amount to nothing more than the kind of balancing test that Justice Breyer advocated in his *Heller* dissent, a point well stated by Judge Kavanaugh, dissenting in *Heller II*:

> *Heller* and *McDonald* didn't just reject interest balancing. The Court went much further by expressly rejecting Justice Breyer's intermediate scrutiny approach, disclaiming cost-benefit analysis, and denying the need for empirical inquiry.[7]

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[2] *Id.* at 627, citing *United States v. Miller*, 307 U.S. 174, 179 (1939).

[3] *Id.*

[4] *Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011). The D.C. Circuit, unfortunately, agreed with the District—based almost entirely on the legislative testimony of an anti-gun group's lobbyist—that these guns were "dangerous and unusual." But the court also agreed that the record was clear that the guns were in "common use," with millions of AR-15s, for example, having been sold in the U.S. *Id.*

[5] *State v. Lanier*, 71 N.C. 288 (1874) (defendant riding horse through courthouse).

[6] *Parker v. District of Columbia*, 478 F.3d 370, 398 (D.C. Cir. 2007).

[7] *See Heller v. District of Columbia* ("Heller II"), 670 F.3d 1244, 1261 (D.C. Cir. 2011).

A final point, often overlooked in this debate, is the need for Congress to act on some independent constitutional basis. Up to this point, most firearms legislation has been based either on the Congress' power to regulate interstate and foreign commerce, or on its taxing power.[8] Proposals to regulate non-commercial, purely intrastate, transactions—as in current "universal background check" proposals—are therefore constitutionally suspect at best.

What can the Congress do within constitutional limits to protect our communities? The answer is, quite a bit. For example, the Congress can strengthen laws aimed at illegal commercial dealing in firearms, and adopt measures to make enforcement of those laws a higher priority. Congress can strengthen Americans' ability to protect themselves by removing restrictions on Americans' right to carry firearms on public lands, or while traveling interstate. And Congress can exercise its taxing power by offering tax credits for purchases of gun safes and other safe storage devices. Obviously, these are just a few examples of the ideas that can be considered if the Congress chooses to have a fair and honest debate on how to protect our neighborhoods and our children.

Again, thank you for the opportunity to offer my views on these issues.

Respectfully,

Sandra S. Froman

NRA Member, Board Member, Executive

Committee Member and Former President

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[8] *See, e.g.*, *United States v. Lopez*, 514 U.S. 549 (1995) (striking down original Gun Free School Zones Act for lack of any nexus to interstate commerce); *Sonzinsky v. United States*, 300 U.S. 506 (1937) (upholding National Firearms Act under taxing power).

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February 12, 2013

Subcommittee on the Constitution, Civil Rights and Human Rights
Committee on the Judiciary
United States Senate

Re: Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment

CONGRESS HAS NO POWER TO CRIMINALIZE INTRASTATE TRANSFER OF FIREARMS BETWEEN PRIVATE INDIVIDUALS OR TO REQUIRE DEALERS TO PERFORM BACKGROUND CHECKS IN TRANSACTIONS TO WHICH THEY ARE NOT A PARTY

Honorable Members of the Subcommittee,

My name is Stephen P. Halbrook. I have litigated cases under the Gun Control Act and other firearm laws for 35 years. I am the author of the *Firearms Law Deskbook* (West 2012), *The Founders' Second Amendment* (2008), and *Freedmen, the Fourteenth Amendment, and the Right to Bear Arms* (1998), reissued as *Securing Civil Rights* (2010). I represented a majority of the members of both Houses of Congress as amici curiae in *District of Columbia v. Heller,* 554 U.S. 570 (2008), and participated in *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010). Both of these decisions cited my books as authority. I have testified before this body regarding prior gun control bills and contributed to this Subcommittee's print *The Right to Keep and Bear Arms* (1982).

Today I wish to address proposals to make it a federal crime for one individual to transfer a firearm to another individual in a purely private transaction in the same State, whether as a gift or for payment, without a federal background check. These proposals would also require federally-licensed firearms dealers to conduct the background checks for such transactions to which they are not parties, and to do so for a maximum fee.

"This government is acknowledged by all to be one of enumerated powers." *McCulloch v. Maryland*, 17 U.S. 316, 4 Wheat. 316, 405, 4 L. Ed. 579 (1819). Congress has power "to regulate

commerce . . . among the several States . . . ." U.S. Const., Art. I, § 8. That is the basis for the Gun Control Act's provisions requiring persons engaged in the business of dealing in firearms to obtain licenses, to keep records of transactions, and to conduct background checks under the National Instant Criminal Background Check System (NICS). After all, firearm dealers are directly engaged in interstate commerce.

However, making it a federal crime for one private individual to transfer a firearm to another private individual, where both are in the same State and both are legally qualified to possess firearms, would be a radical extension of federal power without any warrant in the Commerce Clause or any other power enumerated in the Constitution. Mere transfer of a gun from a private individual to another is not "commerce . . . among the several States" which Congress may regulate. Congress has no general legislative power, as do the States.

United States v. Lopez, 514 U.S. 549, 567 (1995), rejected arguments that would "convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States." The Court invalidated a Gun Control Act prohibition on mere possession of a firearm at a school based on reasoning that applies equally here:

> We pause to consider the implications of the Government's arguments. The Government admits, under its "costs of crime" reasoning, that Congress could regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce. . . . Under the theories that the Government presents . . ., it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement . . . where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.

Id. at 564.

If a dealer undertakes to sell a firearm, the dealer may be required to conduct a NICS check. The license authorizes the dealer to transfer a firearm if he so chooses, which occurs when the dealer and the purchaser enter into a contract. But the dealer cannot be required to enter into a contract, or to be subject to a price ceiling for firearms the dealer sells.

Nor may Congress compel a dealer essentially to enter into a contract to conduct a NICS check for a private transaction, and to boot dictate the charge for the transaction. The dealer is no more a federal employee subject to conscription than were the state and local law enforcement officers that the interim Brady Act commanded to conduct background checks, which the Supreme Court invalidated in *Printz v. United States*, 521 U.S. 898 (1997).

I represented the sheriffs before the Supreme Court in *Printz*, which held: "'The Federal Government may not compel the States to enact or administer a federal regulatory program.' . . . The

mandatory obligation imposed on CLEOs [chief law enforcement officers] to perform background checks on prospective handgun purchasers plainly runs afoul of that rule." *Id.* at 933 (citation omitted). It may be said of the far more radical proposals at hand, that the Federal Government may not compel private citizens who have firearm dealer licenses to administer a federal regulatory program of performing background checks on strangers with whom they have no business dealings.

Printz found the conscription at issue unconstitutional for the further reason that the CLEOs were not federal employees, which is also pertinent here:

> The Constitution does not leave to speculation who is to administer the laws enacted by Congress; the President, it says, "shall take Care that the Laws be faithfully executed," Art. II, § 3, personally and through officers whom he appoints (save for such inferior officers as Congress may authorize to be appointed by the "Courts of Law" or by "the Heads of Departments" who are themselves presidential appointees), Art. II, § 2. The Brady Act effectively transfers this responsibility to thousands of CLEOs in the 50 States, who are left to implement the program without meaningful Presidential control (if indeed meaningful Presidential control is possible without the power to appoint and remove).

Id. at 922.

Concurring, Justice Thomas wrote: "Absent the underlying authority to regulate the intrastate transfer of firearms, Congress surely lacks the corollary power to impress state law enforcement officers into administering and enforcing such regulations." *Id.* at 937. He added:

> Even if we construe Congress' authority to regulate interstate commerce to encompass those intrastate transactions that "substantially affect" interstate commerce, I question whether Congress can regulate the particular transactions at issue here. The Constitution, in addition to delegating certain enumerated powers to Congress, places whole areas outside the reach of Congress' regulatory authority. . . . If . . . the Second Amendment is read to confer a personal right to "keep and bear arms," a colorable argument exists that the Federal Government's regulatory scheme, at least as it pertains to the purely intrastate sale or possession of firearms, runs afoul of that Amendment's protections.

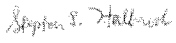
Id.

The proposals here are even more radically-far afield than the scheme invalidated in *Printz*. Making it a crime for one person to give, lend, or sell a gun to a family member, neighbor, or other person in a locality does not remotely qualify as a regulation of commerce among the States. Conscripting a firearm dealer involuntarily to conduct background checks on persons with whom the dealer is not conducting any business, and mandating how much may be charged, may not be justified by any provision of the Constitution. The entire scheme would infringe on the Second

Amendment right of the people to keep and bear arms.

Thank you for this opportunity to express my views.

Sincerely,



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February 10, 2013

Hon. Ted Cruz, Ranking Minority Member
Subcommittee on the Constitution, Civil Rights
and Human Rights
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Sen. Cruz,

I write in connection with the subcommittee's hearing on proposals to reduce gun violence. I will try to be concise.

Nature of the "Semiautomatic Assault Weapon" Concept

"Assault rifle" is a rough translation of the German "sturmgewehr," or "storm-rifle." The concept underlying this class of firearms dates to World War II. All the nations involved in that conflict entered it with semiautomatic or bolt action rifles firing cartridges that were remarkably similar, developing somewhat over 2,000 foot/pounds of energy, and designed to be effective out to 600-800 yards. These cartridges were too powerful for full automatic fire from a standard rifle: no solider could stand the recoil at full automatic.

During the War, however, German engineers realized that infantry battles occurred at 200-300 yards; in most terrain it was hard even to see opposing infantry beyond that distance. If the military cartridge's power were cut by about half, from 2,000 foot/pounds to about 1,000, it could be fired at full automatic, and still suffice for conflicts at 200-300 yards. This gave rise to the first sturmgewehr, the MP 43/44, firing a smaller rifle cartridge at full automatic.

Thus any true "assault rifle" is capable of full automatic fire; that is core to its purpose. A "semiautomatic assault rifle" is simply a semiautomatic rifle of about half the power of a standard WWII rifle. To give a concrete example: the United States fought WWII with the semiautomatic M-1 Garand; it fired a .30-06

cartridge with about 2,400 foot/pounds of energy. The modern AR-15 platform rifle fires a .223 caliber (5.56 mm) cartridge with about 1,250 foot/pounds of energy. To give another: the Soviets fought WWII with a 7.62 mm rifle, shooting a 147 grain bullet at 2,717 feet per second. The AK-47 fires a 123 grain bullet at 2,350 feet per second; its projectile is both lighter and slower than the WWII round. An "assault rifle" is by definition full automatic (also known as select fire). A semiautomatic version is simply a semiautomatic rifle of less power than WWII semiautomatic rifles.

So what is the origin of the idea that there is such a thing as a "semiautomatic assault rifle," and that it is somewhere especially dangerous? Back in the 1990s, the Violence Policy Center, an antigun group, issued a report that proposed making such rifles a focus, because in the popular mind they were easily confused with fully automatic firearms. It essentially proposed a public relations campaign based on deception.

An attack on recognized constitutional rights, based upon deception and taking advantage of mistaken popular impressions, seems questionable to anyone who holds a commitment to the Constitution. Let us go into more detail.

The Scope of the Second Amendment: "Firearms in General Use"

Heller v. District of Columbia noted that "*Miller* said, as we have explained, that the sorts of weapons protected were those 'in common use at the time.'" 128 S.Ct. at 2817. The AR-15 platform has become the epitome of a firearm "in common use."

I refer to it as a platform, since the AR-15 is "modular"; its receiver has two parts: an upper receiver into which the barrel mounts, and a lower receiver, which holds the firing assembly, and mounts the buttstock and lower grip. The two can be disconnected in about a minute. By mounting another upper receiver and barrel, an AR-15 can be enabled to fire a wide range of rifle and handgun cartridges, and the length and weight of the barrel can be changed to suit the owner's needs. A single rifle can thus suffice for target matches, law enforcement, and hunting small and large game. While other firearms can be re-barreled to a new caliber or cartridge, this is generally work that can only be done by a gunsmith with specialized tools. An AR-15 owner might switch between .223 or .22-250 for small game and target competition, 6.8 mm for deer hunting, and .50 Beowulf for home protection or larger game such as bears.

The AR-15 is probably the semiautomatic rifle in *most* common use by

Americans today. Assessing this is not a simple task, because rifle manufacturers are required to report to the government only the total number of rifles made, not broken down by design. I base this conclusion on the following:

1. A friend and fellow researcher, Mark Overstreet, has compiled a breakdown of rifle manufacturers who produce *only* AR-15 type rifles. In 2008, the most recent year for which data was available, these manufacturers produced 22% of American civilian rifle production. (The fact that this portion of firearms manufacturing can be profitable producing nothing but AR-15s speaks for itself).

2. In addition to these, there are many manufacturers who make AR-15s together with other firearms, and this number is rising. For example, the handgun manufacturer Smith and Wesson recently brought out two rifles, both of them AR-15 types. Remington, which mainly produces bolt-action rifles, has brought out an AR-15. Ruger Arms, which manufactured the AR-15's main competition, the Ruger Mini-14, has now brought out its own AR-15.

3. In 2010, the National Shooting Sports Foundation surveyed over 8,000 shooters. The results indicated that about 8.9 million Americans went target shooting with AR-15 type rifles in the previous year.[1]

4. A 2012 survey by the National Shooting Sports Foundation found that 26.3% of shooters owned an AR-15-type firearm, up from 18.1% the previous year. In addition, 21% of shooters who did not already own one planned to acquire one in the next year.[2]

Based on these data, it is clear that the AR-15 platform qualifies as "in common use." The same would be true of the AR-15's standard magazines, which hold 20 or 30 rounds. The number of these in use (many of them sold as surplus by the government itself) is likely in the tens of millions.

Permissible Restrictions

Of course, constitutionally-protected activity is subject to some restrictions. The *Heller* decision indicates that these must pass some level of heightened

[1] http://www.nssf.org/NewsRoom/releases/show.cfm?PR=041910.cfm&path=2010.
[2] http://www.nssf.org/PDF/research/0412SurveyTrackerSupplement_MSR.pdf.

scrutiny – either strict scrutiny or intermediate review – which alike require proof of some relationship to genuinely achieving and important goal, while minimizing unnecessary impact on the protected activities. I see two considerations here, relating to the persons affected and to the arms regulated.

1. Persons Affected

Police and "civilians" own firearms for the same reason: self-defense against criminal activity. It is difficult to justify any legislation that would bind one but not the other, when both have the same purpose and need. That is to say, if law enforcement officials need an AR-15, or a 20 round magazine to defend themselves, it is hard to explain why a non-LEO would not.

Even less explicable are laws which exempt not only serving LEOs, but also retired ones. Retirement includes disability retirement, which includes disability due to mental status.

2. Scope of Regulation

As noted above, "semiautomatic assault rifle" is internally contradictory and thus meaningless. A "semiautomatic assault rifle" is simply a semiautomatic rifle of about half military power. Drafters of legislation are thus forced to define what they would restrict in ways that are arbitrary and irrational.

One approach is to ban rifles by name; this is exceptionally arbitrary, since it can ban one firearm while allowing others with exactly the same capabilities to be made. For example, the 1994 ban applied to the "Colt AR-15" but not to the Ruger Mini-14, even though both fired the same cartridge at the same rate of fire from magazines of the same size.

The other approach is to ban rifles with certain features, cosmetic in nature, affecting appearance but not function. To take some examples, from the 1994 ban:

Bayonet lugs. Enough said. I have never in my life seen a report of a criminal bayoneting someone. Banning this feature is utterly irrational.

Grenade launchers. Any real, functional, rifle grenade is so tightly regulated as to be impossible to obtain. A launcher for one is a matter of appearance, not of function.

Flash suppressors. The flash suppressor is a small structure at the end of the barrel, designed to minimize the firearm's flash at night. With modern ammunition, fired at semi-automatic rates, it is nearly impossible to see the flash,

even without such a suppressor. I have verified this by firing an AR-15 with and without the suppressor in a completely dark rifle range. Again, this is not something that has any effect on function.

"Pistol grips." I put this in quotations since all modern rifles have a pistol grip. What is meant is a pistol grip separate from the buttstock, the portion of the stock that leads back to the shoulder.

The separate pistol grip is a byproduct of designs that raise the buttstock, in order to reduce "muzzle flip." When a rifle fires, the recoil come back along the line of the barrel. Traditionally, the line of the barrel would pass above the center of the shooter's shoulder. This caused the rifle to flip up in recoil. This was undesirable in full automatic fire, since only the first shot would go where it was aimed, the following shots would go high.

The solution was to move the shoulder stock higher, closer to the line of the barrel, thus making the recoil push the shooter straight back, without the barrel flipping upward. But if the pistol grip remained integral with the buttstock, the hand holding the grip would be twisted into an unnatural position. The solution was to make the pistol grip separate from the buttstock. This result was an artifact of the decision to raise the buttstock.

With semiautomatic rifles, the problem of the rifle climbing during firing a burst does not exist. The separate pistol grip is a matter of design, not of function.

Sincerely,

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Feb. 8, 2013

Dear Senator Cruz:

I am submitting this letter for the Feb. 12, 2013, Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights and Human Rights hearing "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment."

To begin with, the Subcommittee should acknowledge that crime reduction policy has been a great success in the United States in recent decades. For example, in the early 1980s, the U.S. homicide rate was more than 10 per 100,000 population. Today, that rate has fallen by over half, to under 5. This is comparable to the early 1960s. Overall rates of violent crime have also fallen sharply since their peak of several decades ago.[1]

There are many causes for this progress. Perhaps one of them is that today, 41 of the 50 states respect the constitutional right to bear arms, so that a law-abiding adult can obtain a permit to carry a concealed firearm for lawful protection, or even

[1] The 2011 murder and non-negligent manslaughter rate was 4.7 per 100,000 population. FBI Uniform Crime Reports, *Crime in the United States 2011*, Table 1, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-1. The violent crime rate was 386. *Id.*

Data as far back as 1960 are available via the FBI's UCR Data Tool. http://www.ucrdatatool.gov/. The tool can provide total crime data, and U.S. population, from which rates can be calculated. In 1980, the violent crime rate was 597. The homicide rate was 10.2. In 1962, the violent crime rate was 162, and the homicide rate was 4.6.

carry without a permit in a few states. In contrast, in the early 1980s, only about half a dozen medium or small states provided a fair system for licensing the carrying of firearms.

Second, the exploitation of the Newtown murders as an occasion to impose a plethora of new anti-gun laws is unwise. Professor Gary Kleck, of Florida State University, is by far the most eminent worldwide scholar on quantitative data about firearms, and the effect of firearms laws. His book *Point Blank: Guns and Violence in America* was the winner of the Michael J. Hindelang Award of the American Society of Criminology, for "the most outstanding contribution to criminology" in a three-year period.

Kleck's 2009 article "The worst possible case for gun control: mass shootings in schools" [American Behavioral Scientist 52(10):1447-1464] explains why gun control laws enacted as part of an inchoate desire to "do something" after an atrocious crime such as a mass murder in a school are particularly unlikely to prevent future such crimes. Rather, the "do something" anti-gun laws typically amount to an expression of rage against guns or gun owners, and fail to make children safer.

Regarding some particular proposals that have been raised, as alleged responses to Newtown:

The "assault weapons" issue is one of the most long-standing hoaxes in American politics. The guns suggested for prohibition do not fire faster, nor do they fire more powerful ammunition, than guns which are not singled out for prohibition. External features such as telescoping stocks, or forward grips, make it easier for a user to control the firearm, to shoot it accurately, and to hold it properly. Features which make a firearm more accurate are not a rational basis for prohibition.[2]

Magazines holding more than 10 rounds are not "high capacity." Semi-automatic handguns constitute over 82% of new handguns manufactured in the United States.[3] A large percentage of them have standard, factory capacity magazines of 11 to 19 rounds. The AR-15 type rifle has for years been the best-selling rifle in the United States. The factory standard magazine for an AR-15 rifle is 30 rounds.

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[2] *See* David B. Kopel, *Rational Basis Analysis of "Assault Weapon" Prohibition*, 20 JOURNAL OF CONTEMPORARY LAW 381 (1994), http://davekopel.org/2A/LawRev/rational.htm. Cited in *Kasler v. Lungren*, 72 Cal. Rptr. 2d 260, 265 (Cal. App. 1998)

[3] 2011 manufacturing data from the Bureau of Alcohol, Tobacco, Firearms & Explosives. http://atf.gov/statistics/download/afmer/2011-final-firearms-manufacturing-export-report.pdf.

Assertions by some prohibitionists that the aforesaid common guns and common magazines are only made for mass murder are a malicious libel against the millions of peaceable Americans who own these self-defense and sporting tools.

Pursuant to *District of Columbia v. Heller*, such firearms and magazines may not be prohibited, because they are "typically possessed by law-abiding citizens for lawful purposes." 554 U.S. 570, 625 (2008). As *Heller* explained, the Second Amendment prohibits prohibition of "an entire class of 'arms' that is overwhelmingly chosen by American society for that lawful purpose" of self-defense. *Id.* at 628.

Senator Feinstein's prohibition bill targets an enormous class of arms. Taking into account the at least 4 million AR-15 rifles, plus everything else, the Feinstein ban would likely apply to at least 10 million firearms.

As for the magazines, the Feinstein ban does not focus solely on genuinely "high capacity," non-standard magazines (e.g. 75 or 100 rounds) but instead bans common magazines holding 11 or more rounds; the gigantic class of what she would ban probably numbers at least several tens of millions, and perhaps much more.

That in itself is sufficient, according to *Heller*, to make prohibition unconstitutional.

The conclusion is reinforced by *Heller*'s observation that handgun prohibition was unconstitutional "Under any of the standards of scrutiny that we have applied to enumerated constitutional rights." *Id.* at 628. For substantive rights (as opposed to procedural ones), the two main standards are Strict Scrutiny and Intermediate Scrutiny. The former is for most situations of racial discrimination by government, and for most types of content-based restrictions on speech. The latter is used for government discrimination based on sex, as well as for most "time, place, and manner" regulations of speech in public places.

So we know that handgun prohibition fails Strict Scrutiny and also fails Intermediate Scrutiny. Although formulations of Intermediate Scrutiny vary from case to case, the general approach is that to pass Intermediate Scrutiny, a law must involve "an important government interest" and must "substantially" further that interest.

Now consider Intermediate Scrutiny as applied to handguns. Handguns constitute approximately one-third of the U.S. gun supply. They are used in about half of all homicides.[4]

And yet, a handgun ban fails Intermediate Scrutiny. If a handgun ban fails, then the bans on magazines and on so-called "assault weapons" must also fail.

The large majority of firearms banned by Sen. Feinstein's bill are rifles. Rifles constitute about a third of the American gun supply. But rifles account for fewer than 3% of U.S. homicides—fewer than blunt objects such as clubs or hammers. The rifles covered by the Feinstein bill would account for even less.

Because handguns (very frequently used in crime) cannot be banned under Intermediate Scrutiny, rifles, or a subset of rifles (rarely used in crime) cannot be banned either.

There are no solid national statistics about the current use of 11+ magazines in crime. Given that 11-19 round magazines are standard for a large fraction of modern handguns, one might guess that 11+ round magazines would be used in some crimes. Even so, such magazines would be used less often in crime than handguns in general. Thus, a magazine ban also fails Intermediate Scrutiny.

It is important to remember that when applying Intermediate Scrutiny to a Second Amendment question, *Heller*'s methodology (by announcing that a handgun ban fails Intermediate Scrutiny) is that one must not consider solely the criminal uses of an arm. One must also consider the frequency of an arm's use by "law-abiding citizens for lawful purposes." The sheer quantity of what Senator Feinstein would

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[4] In 2011, there were 12,664 murders in the U.S. Handguns accounted for 6,220; shotguns for 356; rifles for 323; "other guns" for 97; and "firearms, type not stated" for 1,587. (Total of 8,583 firearms homicides). Knives were 1,694, and "Blunt objects (clubs, hammers, etc.)" were 496.
FBI, Uniform Crime Reports, *Crime in the United States 2011*, Table 8, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/expanded-homicide-data-table-8.

The FBI reports that firearms (not differentiated by type) were used in 41% of robberies in 2011. FBI Uniform Crime Reports, *Crime in the United States 2011*, Robbery Table 3. http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/robbery-table-3. Firearms were used in 21% of aggravated assaults. FBI Uniform Crime Reports, *Crime in the United States 2011*, Aggravated Assault Table, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/aggravated-assault-table. Given the preponderance of handguns, compared to long guns, in homicides, it is reasonable to infer that handguns are also disproportionately used in robberies and aggravated assaults. Firearms are rarely used in forcible rapes.

ban is itself evidence that the banned firearms and magazines are "typically possessed by law-abiding citizens for lawful purposes."

Heller makes it clear that some non-prohibitory controls are permissible. Because the *Heller* case was about a gun ban, the Court did not deeply explore the contours of legitimate non-prohibitory controls. However, the Court has said enough to at least raise questions about the constitutionality of "universal background checks."

It is often said, by anti-gun lobbyists, that 40% of firearms sales take place today without checks. Notably, the study on which this claim is based was conducted before the National Instant Criminal Background Check System became operational.

Besides that, a great many private transfers of firearms take place between family members, or other persons who have known each other for many years.

More fundamentally, private transfers are not with the proper scope of Congress's power to regulate "Commerce . . . among the several States." Pursuant to federal law since 1968, private sales may only take place intra-state. 18 U.S.C. §922(a). They are not interstate commerce. Nor, indeed, are they necessarily commerce of any sort, no matter how broadly defined, since many such transfers are gifts.

In *Printz v. United States* (1997), Justice Thomas's concurring opinion suggested that a mandatory federal check on "purely intrastate sale or possession of firearms" might violate the Second Amendment. 521 U.S. 898, 938 (2007).

This view is supported by the Supreme Court's opinion in *District of Columbia v. Heller*. There the Court provided a list of "longstanding" laws which were permissible gun controls. *Heller* at 626-27. The inclusion of each item on the list, as an exception to the right to keep and bear arms, provides guidance about the scope of the right itself.

Thus, the Court affirmed "prohibitions on the possession of firearms by felons and the mentally ill." Felons and the mentally are exceptions to the general rule that individual Americans have a right to possess arms. The exception only makes sense if the general rule is valid. After all, if *no-one* has a right to possess arms, then there is no need for a special rule that felons and the mentally ill may be barred from possessing arms.

The second exception to the right to keep and bear arms is in favor of "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." This exception proves another rule: Americans have a general right to carry firearms. If the Second Amendment only applied to the keeping of arms at home, and not to the bearing of arms in public places, then there would be no need to specify the exception for carrying arms in "sensitive places."

The third *Heller* exception is "laws imposing conditions and qualifications on the commercial sale of arms." The word "commercial" does not appear because the Supreme Court was trying to use extra ink. Once again, the exception proves the rule. The Second Amendment allows "conditions and qualifications" on the *commercial sale* of arms. The Second Amendment does not allow Congress to impose "conditions and qualifications" on *non*-commercial transactions.

Federal law has long defined what constitutes "commercial sale" of arms. A person is required to obtain a Federal Firearms License (and become subject to many conditions and qualifications when selling arms) if the person is "engaged in the business" of selling firearms. This means:

> a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

18 U.S.C. §921(a)(21)(D). Of course a person who is "engaged in the business," but who does not have a FFL, is guilty of a federal felony every time he sells a firearm. 18 U.S.C. §§922(a), 924.

Currently, the federal NICS law matches the constitutional standard set forth in *Heller*. NICS applies to all sales by persons who are "engaged in the business" (FFLs) and does not apply to transfers by persons who are not "engaged in the business."

President Obama has already ordered the Bureau of Alcohol, Tobacco, Firearms and Explosives to inform FFLs about how they can perform a NICS check for private persons who would like such a check. On a voluntary basis, this is legitimate, but it would be constitutionally dubious to mandate it.

Finally, there has been talk of new federal laws against gun trafficking and against straw purchases. Fortunately, gun trafficking and straw purchases are already illegal, and there are many people who have the federal felony convictions to prove it.

Allegedly, federal prosecutors will be more willing to enforce the already-existing bans on trafficking and straw purchases if the laws are restated by enacting new legislation. A simpler approach would be for the President or the Attorney General to order U.S. Attorneys to give greater attention to the enforcement of the existing laws. Moreover, new statutes, especially when drafted in a "do something" crisis atmosphere may turn out to be highly overbroad, and to impose harsh new penalties on persons who were not the intended targets of the new statutes. The poorly-named "USA PATRIOT Act" should provide a cautionary example.

Below are some articles which might be interest to the Subcommittee.

"Guns, Mental Illness and Newtown." Why random mass shootings have increased and what to do about it. *Wall Street Journal*. Dec. 17, 2012. http://online.wsj.com/article/SB10001424127887323723104578185271857424036.html.

"Arming the right people can save lives." Good guys with guns have managed to thwart many mass attacks. *Los Angeles Times*. Jan. 15, 2013. http://www.latimes.com/news/opinion/commentary/la-oe-kopel-guns-resistance-nra-20130115,0,955405.story.

My U.S. Senate Judiciary Committee testimony on gun violence. Jan. 30, 2013. http://davekopel.org/Testimony-Senate-Judiciary-Kopel-1-30-13.pdf.

"Ronald Reagan's AR-15." Volokh.com. Jan. 15, 2013. http://www.volokh.com/2013/01/15/ronald-reagans-ar-15/.

"A Principal and his Gun." How Vice Principal Joel Myrick used his handgun to stop the school shooter in Pearl, Mississippi. By Wayne Laugesen. *Boulder Weekly*. Oct. 15, 1999. http://davekopel.org/2A/OthWr/principal&gun.htm.

Pretend "Gun-free" School Zones: A Deadly Legal Fiction. 42 CONNECTICUT LAW REVIEW 515 (2009). http://ssrn.com/abstract=1369783.

"Gun-Free Zones." *Wall Street Journal*, April 18, 2007. The murders at Virginia Tech University. http://davekopel.org/2A/OpEds/Gun-Free-Zones.htm.

Sincerely,

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February 11, 2013

Honorable Ted Cruz
Ranking Member
Senate Judiciary Committee Subcommittee
on the Constitution, Civil Rights and Human Rights
United States Senate

Dear Senator Cruz:

I am informed that the subcommittee will soon hold a hearing on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment." In connection with that hearing, the subcommittee may be told that proposed bans on so-called assault weapons and on large capacity magazines are constitutionally permissible, and that Judge Douglas Ginsburg's opinion for the court in *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) supports this conclusion.

The attached article explains that Judge Ginsburg's opinion for the court misapplied the applicable law. For the reasons set out in the article, this opinion should not be accepted as authoritative by other courts or by your subcommittee.

Regards,

Nelson Lund

Attachment

Civil Rights

No Conservative Consensus Yet: Douglas Ginsburg, Brett Kavanaugh, and Diane Sykes on the Second Amendment

*By Nelson Lund**

Note from the Editor:

This paper examines the largely unexplored subject of the different approaches courts are taking with regard the right to possess firearms following the Supreme Court's 2008 recognition of this right in *District of Columbia v. Heller*. As always, The Federalist Society takes no position on particular legal or public policy initiatives. Any expressions of opinion are those of the author. The Federalist Society seeks to foster further discussion and debate about this issue. To this end, while there is currently a limited amount of scholarship on this subject, we offer links below to various court decisions discussing this issue, and we invite responses from our audience. To join the debate, please e-mail us at info@fed-soc.org.

Related Links:

- District of Columbia v. Heller, 554 U.S. 570 (2008): http://www.supremecourt.gov/opinions/07pdf/07-290.pdf
- Heller v. District of Columbia, 670 F.3d 1244 (D.C. Cir. 2011) (*Heller II*): http://www.cadc.uscourts.gov/internet/opinions.nsf/DECA496973477C748525791F004D84F9/$file/10-7036-1333156.pdf
- Ezell v. City of Chicago, 651 F.3d 684 (7th Cir. 2011): http://www.ca7.uscourts.gov/tmp/ID0XPIFF.pdf

Introduction

For several decades, the District of Columbia banned the possession of handguns or any other operable firearm in the home. In *District of Columbia v. Heller*,[1] the Supreme Court concluded that the Second Amendment protects a private right to arms, which enables individuals to exercise their inherent right of self-defense, including the right to defend oneself against criminal violence. This conclusion was strongly supported by evidence about the original meaning of the constitutional provision. The Court then invalidated D.C.'s handgun ban on the ground that handguns are the most popular weapon for self-defense in the home today. Justice Scalia's majority opinion went on to endorse a broad range of gun control regulations without justifying them with evidence about the original meaning of the Second Amendment.[2] These included:

- Bans on the possession of firearms by felons and the mentally ill.
- Bans on carrying firearms "in sensitive places such as schools and government buildings."
- Laws imposing conditions and qualifications on the commercial sale of arms.
- Bans on carrying concealed weapons.
- Bans on "those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns" and apparently also machine guns.

In 1791, American citizens enjoyed an almost unlimited right to keep and bear arms because legislatures had chosen to impose almost no restrictions on that right. We have virtually no historical evidence about constitutional limits on the government's discretion to alter those legal rights because it had not become a matter of public controversy.

Heller might have been regarded as an exercise in judicial restraint if it had simply invalidated the D.C. law on the ground that it severely compromised what the Court called "the core lawful purpose of self-defense."[3] Unfortunately, the opinion's approval of various regulations not at issue in the case, combined with its lackadaisical reasoning in support of its various conclusions, created a mist of uncertainty and ambiguity.

After *McDonald v. City of Chicago*[4] held that the Fourteenth Amendment made the Second Amendment applicable to the states, the need for a workable framework of analysis became more acute. The lower courts have not enjoyed the luxury of confining their rulings to anomalous laws aimed at disarming the civilian population, which *Heller* said would be invalid "[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights."[5]

Faced with harder cases, and with the fogginess of the *Heller* opinion, these courts have understandably adapted the "tiers of scrutiny" framework widely used in other areas of constitutional law. They have quickly and fairly uniformly coalesced around an interpretation of *Heller* that provides an intelligible framework. The emerging consensus can be roughly summarized as follows:

- Some regulations, primarily those that are "longstanding," are presumed not to infringe the right protected by the Second Amendment.
- Regulations that severely restrict the core right of self-defense are subject to strict scrutiny.
- Regulations that do not severely restrict the core right are subject to intermediate scrutiny.

* *Patrick Henry Professor of Constitutional Law and the Second Amendment, George Mason University School of Law*

This is an abbreviated version of Second Amendment Standards of Review in a *Heller* World, *forthcoming in the* Fordham Urban Law Journal, *published here with permission.*

The *Heller* Court seems to have self-consciously refrained from adopting such a framework, but neither did it specify any alternative. We might therefore expect Second Amendment jurisprudence to continue developing through the application of this model.

Maybe it will. But a vigorous challenge was recently advanced in a dissenting opinion by Judge Brett Kavanaugh of the D.C. Circuit. He rejected the consensus approach adopted by his court, arguing that a very different framework is dictated by Justice Scalia's opinion in *Heller*. It is therefore worth considering the differences between Judge Kavanaugh's approach and the one adopted by his colleagues and by other courts of appeals.

I conclude that the analytical framework in Judge Douglas Ginsburg's majority opinion is superior to Judge Kavanaugh's. The majority, however, misapplied that framework. A variation developed and applied by Judge Diane Sykes of the Seventh Circuit illustrates how the inferior federal courts can best approach novel Second Amendment issues.

I. *Heller II*

Prior to 2008, the District of Columbia had sought through its laws to effect an almost complete disarmament of the civilian population. After losing the *Heller* case, the D.C. government went back to the drawing board in an effort to restrict civilian access to guns as much as possible in light of *Heller*. In *Heller II*, the named plaintiff in that case, along with other individuals, challenged several provisions of the city's revised gun control laws.[6]

The plaintiffs in *Heller II* challenged three main elements of the D.C. gun control regime:

- A requirement that gun owners register each of their firearms with the government. The registrant is required to submit detailed information about himself and the weapon, and to renew the registration every three years. Citizens are forbidden to register more than one pistol in any thirty-day period.
- Every applicant for registration must in effect be licensed to register by passing a series of tests, attending a training course, and being fingerprinted and photographed.
- D.C. also prohibited a wide range of semi-automatic firearms, as well as any magazine with a capacity of more than ten rounds.

A. The Majority Opinion

Judge Ginsburg's majority opinion offered the following analysis and conclusions:

- The basic registration requirement, as applied to handguns but not long guns, is similar to longstanding regulations that are presumptively constitutional, and the plaintiffs failed to overcome this presumption by showing that the requirement has more than a *de minimis* effect on their constitutional rights.
- Some of the specific registration provisions are novel rather than longstanding, and are therefore subject to additional scrutiny. The court reached the same conclusion about the licensing requirements and about all of the registration and licensing requirements for long guns.

Relying largely on First Amendment free speech decisions, the court concluded that none of these requirements imposes "a substantial burden upon the core right of self-defense,"[7] and that strict scrutiny is therefore inappropriate. Instead, the court concluded that intermediate scrutiny should be applied, which requires the government to show that the regulations are "substantially related to an important governmental objective."[8] Finding that the record was insufficient to apply this standard of scrutiny, the court remanded for further proceedings.

- The court declined to decide whether semi-automatic rifles and large-capacity magazines receive any protection at all under the Second Amendment.[9] Assuming *arguendo* that they do, the court then concluded that it was "reasonably certain" that the prohibition does not substantially burden the right. Accordingly, it applied intermediate rather than strict scrutiny.

The court upheld the ban on certain semi-automatic rifles, primarily because of evidence suggesting that they are nearly as dangerous or prone to criminal misuse as the fully automatic rifles that *Heller* had excluded from constitutional protection. The ban on high-capacity magazines was upheld on the basis of evidence that they are useful to criminals and that they encourage an excessive number of shots to be fired by those engaged in legitimate self-defense.

B. The Kavanaugh Dissent

Judge Kavanaugh thought that the majority's approach to the case was based on a complete misinterpretation of *Heller*. In his view, the Supreme Court has rejected the tiers-of-scrutiny approach. Instead, *Heller* teaches that courts are to assess gun regulations by looking to the Constitution's text and to history and tradition, and by drawing analogies from these sources when dealing with modern weapons and new circumstances.

Judge Kavanaugh analyzed the new case as follows:

- He argued that D.C.'s entire registration and licensing scheme is unconstitutional because it does not meet *Heller*'s test approving of "longstanding" regulations. He conceded that registration requirements imposed on gun *sellers* meet *Heller*'s test, but pointed out that there is no tradition of imposing such requirements on gun *owners*. The city's licensing requirements, which are inseparable from the registration requirement, are similarly novel and therefore also invalid.

Judge Kavanaugh's analysis was based on a misreading of *Heller*. The Supreme Court said that certain longstanding regulations are at least presumptively constitutional, and Judge Kavanaugh is right that registration requirements on gun owners are not longstanding. But *Heller* nowhere said that novel regulations are always unconstitutional. The Court rested its decision on a perception that many Americans today have good reasons for making handguns their preferred weapon for defense of the home. The Court did not say that the novelty of the handgun ban rendered it unconstitutional, or that a longstanding ban on handguns would have been upheld.

• Judge Kavanaugh also concluded that D.C.'s ban on semi-automatic rifles is unconstitutional because (1) they are not meaningfully different from semi-automatic handguns, which *Heller* had already decided may not be banned, and (2) they have not traditionally been banned and are in common use today.

This reading of *Heller* is also technically flawed. The Supreme Court's holding involved only a particular handgun, which was a revolver, not a semi-automatic. *Heller* did not say, one way or the other, whether a ban on semi-automatic pistols would be unconstitutional.

Judge Kavanaugh also misread *Heller* on the common use test. In that case, the Supreme Court concluded that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns."[10] The awkward double negative in this statement strongly suggests that the Court was careful to avoid saying that all weapons typically possessed for lawful purposes *are* protected. Whatever the Court may decide in the future, it has not yet said that all weapons in common use for lawful purposes are *ipso facto* protected by the Second Amendment.

III. Applying *Heller*

A. The Rights and Wrongs of the Majority Approach in Heller II

Judges Ginsburg and Kavanaugh engaged in a detailed debate about the appropriate framework for analysis. Neither judge made a plausible case that his preferred framework can be derived from the *Heller* opinion. The real problem is that *Heller* is so Delphic, or muddled, that the kind of methodological debate found in *Heller II* is unresolvable. That said, Judge Ginsburg's approach seems to me to be clearly preferable.

First, as explained above, Judge Kavanaugh's approach required him to misread *Heller* in order to find guidance precise or clear enough to provide rules of decision in *Heller II*.

Second, and perhaps more important, Justice Scalia's *Heller* opinion itself shows that his use of history and tradition is little more than a disguised version of the kind of interest balancing that he purported to condemn. At crucial points, he simply issued *ipse dixits* unsupported by any historical evidence, and at other points, he misrepresented historical facts.[11] He could hardly have avoided doing so, given the paucity of relevant historical evidence about the original meaning of the Second Amendment. That problem is even more acute in cases dealing with less restrictive regulations. Covert interest-balancing dressed up as an analysis of history and tradition is no better than more straightforward interest-balancing in the form of strict or intermediate scrutiny, and almost certainly worse.

This is not to say that *Heller II* was correctly decided. Judge Kavanaugh's most powerful arguments are directed against the majority's application of its framework to the challenged regulations. Those regulations were manifestly meant to suppress the legitimate exercise of constitutional rights, and the majority was far too deferential to the government in reviewing them.

Judge Kavanaugh is right that D.C.'s registration and licensing scheme is quite different from the limited registration requirements that have been widely imposed for many decades. The important point, however, is not their novelty, but their lack of an adequate rationale. Whether under strict or intermediate scrutiny, they should not be upheld without a showing by the government, at a minimum, that they can make a significant contribution to public safety.

The government tried to do so by arguing that a registration system enables police officers who are executing warrants to determine whether residents in the dwelling have guns. This rationale is woefully inadequate. Even the greenest rookie officer in the District of Columbia would know that many residents possess unregistered guns. The regulation cannot accomplish the purpose advanced to justify it, and the justification cannot satisfy any form of heightened scrutiny.

Apart from the government's failure to show a substantial relation between public safety and its registration requirements, this kind of registration system has traditionally been resisted in American history for a reason closely bound up with an important purpose of the Second Amendment. When the government collects this kind of detailed information about individuals and the guns they own, it gives itself a powerful tool that it could use for the unconstitutional confiscation of guns or the unconstitutional harassment of gun owners.[12] Even a narrow reading of the Second Amendment would have to acknowledge that its purpose includes the prevention of such illegalities. For that reason, the District of Columbia should have an especially heavy burden to bear in justifying regulations that would help it to do what it has already demonstrated that it wants to do, namely disarm the civilian population. The government did not come close to meeting that burden.[13]

The majority's decision to uphold D.C.'s ban on a wide range of semi-automatic rifles is also inconsistent with heightened scrutiny. The banned rifles are defined primarily in terms of cosmetic features, and they are functionally indistinguishable from other semi-automatic rifles that are not banned. The regulation is therefore arbitrary and without any real relation to public safety. It certainly fails the majority's own test, under which "the Government has the burden of showing there is a substantial relationship or reasonable 'fit' between, on the one hand, the prohibition . . . and, on the other, [the Government's] important interests in protecting police officers and controlling crime."[14] That failure alone should have sufficed to invalidate the ban.

Heller assumed that fully automatic rifles are outside the protection of the Second Amendment. The *Heller II* majority analogized semi-automatic rifles to these unprotected weapons on the ground that semi-automatics can fire almost as rapidly as those that are fully automatic. This argument is fallacious. *Heller* treated fully automatic weapons as a special case, apparently on the basis of history and tradition, without saying anything at all to suggest some kind of penumbral rule that protected weapons must have a significantly slower rate of fire than those that are fully automatic.

Even assuming, *arguendo*, that such a penumbral rule was implied by *Heller*, D.C. allows other semi-automatic rifles that can fire just as quickly as those that are banned. The underinclusiveness of the regulation confirms it was not

based on a functional similarity between automatic and semi-automatic weapons. The putative similarity therefore cannot justify the regulation under heightened scrutiny.

The majority offered two justifications for the ban on large-capacity magazines. First, it accepted testimony that such magazines give an advantage to "mass shooters." Maybe they do. But how could the District's regulation possibly reduce this problem? Large-capacity magazines are freely available by mail order and at stores in nearby Virginia. The government apparently assumed that criminals bent on mass shootings will refrain from obtaining such magazines out of respect for D.C.'s regulation. Rather than accept this assumption, the court might well have taken judicial notice of the opposite. Or at least required the government to prove such a counterintuitive notion.

The majority also credited testimony that large-capacity magazines can tempt legitimate self-defense shooters to fire more rounds than necessary. This testimony shows at most that banning such magazines could conceivably have some good effects on some occasions. But the same could be said about D.C.'s original and unconstitutional ban on all handguns, which illustrates why the argument is fatally flawed. Banning medical books containing photos of corpses might save some children from psychological trauma, which would be a good thing, too. But nobody would consider such a book ban constitutional.

Assuming that intermediate scrutiny is appropriate, the government is required at a minimum to show a *substantial* relation between the regulation and public safety. The *Heller II* majority cited no evidence showing that the magazine ban would save any significant number of lives, or any lives at all. Nor did it even consider the possibility that innocent civilians might lose their lives because they ran out of ammunition while trying to defend themselves. The government failed to meet its burden of showing that the magazine ban satisfies even intermediate scrutiny, and the ban should therefore not have been upheld.

B. A Better Approach: Ezell v. City of Chicago

Chicago responded to *McDonald* in much the same fashion as the District of Columbia had responded to *Heller*: by adopting a sweeping and burdensome new regulatory regime to replace the handgun ban that the Supreme Court had invalidated. In *Ezell v. City of Chicago*,[15] the Seventh Circuit reviewed Chicago's decision to require one hour of range training as a prerequisite to lawful gun ownership, while simultaneously banning from the city any range at which this training could take place.

Judge Diane Sykes began by offering a more detailed and somewhat different interpretation of *Heller* and *McDonald* than that of the D.C. Circuit.[16] Briefly stated, she interpreted the Supreme Court's opinions as follows:

- Just as some categories of speech are unprotected by the First Amendment as a matter of history and tradition, some activities involving arms are categorically unprotected by the Constitution. To identify those categories, courts should look to the original public meaning of the right to arms (as of 1791 with respect to the Second Amendment and as of 1868 with respect to the Fourteenth Amendment).
- If an activity is within a protected category, courts should evaluate the regulatory means chosen by the government and the public benefits at which the regulation aims. "Borrowing from the Court's First Amendment doctrine, the rigor of this judicial review will depend on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right."[17] Broadly prohibitory laws restricting the core Second Amendment right—like those at issue in *Heller* and *McDonald*—are categorically unconstitutional. All other laws must be judged by one of the standards of means-end scrutiny used in evaluating other enumerated constitutional rights, and the government always has the burden of justifying its regulations.

The court concluded that firing ranges are not categorically outside the protection of the Second Amendment. The evidence cited by the City fell "far short of establishing that target practice is wholly outside the Second Amendment as it was understood when incorporated as a limitation on the States."[18]

The more difficult question for the court involved the choice of a standard of review. Judge Sykes interpreted *Heller* to permit the use of First Amendment analogies, and she summarized the rather intricate set of tests generated by the Supreme Court in that area. From those cases, she distilled an approach to the Second Amendment. Severe burdens on the core right to self-defense will require an extremely strong public-interest goal and a close means-ends fit. As a restriction gets farther away from this core, it may be more easily justified, depending on the relative severity of the burden and its proximity to the core of the right.

Applying this test to the gun-range ban, the court concluded that the right to maintain proficiency in the use of weapons is an important corollary to the meaningful exercise of the core right. This requires a rigorous review of the government's justifications, "if not quite 'strict scrutiny.'"[19] The City did not come close to satisfying this standard. It produced no evidence establishing that firing ranges necessarily pose any significant threat to public safety, and at least one of its arguments was so transparently a makeweight that "[t]o raise it at all suggests pretext."[20]

The analytical framework adopted by Judge Sykes in this case is broadly similar to the one adopted by the *Heller II* majority. Her approach, however, is superior in at least two important respects.

First, *Heller II* adopted a view reflecting a somewhat loose consensus of other circuit courts. Judge Sykes, however, relied almost entirely on *Heller*, *McDonald*, and other Supreme Court decisions, and she exhibited a detailed and thoughtful familiarity with the Court's opinions. It is true that *Heller* and *McDonald* can be read differently, as Judge Kavanaugh showed in *Heller II*, but Judge Sykes' analysis has better support in the text of the opinions. Inferior federal courts are required to follow the Supreme Court,[21] but not to follow the lead of other circuits. It is therefore generally a better practice to focus on what the Supreme Court itself has said—to look, so to speak, for the Court's "original meaning"—than to play a kind

of telephone game by interpreting Supreme Court opinions on the assumption that other courts have read them correctly.

Second, and this is more important, Judge Sykes took the importance of the Second Amendment more seriously than the *Heller II* majority. Whereas *Heller II* casually applied intermediate scrutiny in a way that too often accepted flimsy justifications for the regulations, Judge Sykes insisted on the kind of rigor that courts routinely demand in First Amendment cases. Unlike the *Heller II* majority, she gave appropriate attention to the fundamental principle, expressly adopted by the Supreme Court, that the Second Amendment should not "be singled out for special—and specially unfavorable treatment."[22] If enough other judges will follow her lead, perhaps the Second Amendment will not return to its pre-*Heller* status as a kind of constitutional pariah.

Conclusion

The Supreme Court's *Heller* opinion disapproved a governmental ban on keeping a handgun in the home, while endorsing a number of other gun control regulations. The Court refused to adopt any clear analytical framework for resolving the countless issues about which *Heller* said nothing. Some of its reasoning, or rhetoric, suggests that such issues should be resolved solely by consulting American history and tradition, along with the text of the Constitution. Other parts of the opinion can be read to point toward the use of the Court's "tiers of scrutiny" approach.

The federal courts of appeals have declined to follow the history-and-tradition approach. The effort by Judge Brett Kavanaugh to take that approach in his *Heller II* dissent illustrates why this approach is not likely to prove fruitful, or even workable. The D.C. Circuit's majority opinion in *Heller II* illustrates the perils of adapting the "tiers of scrutiny" approach without an adequate regard for the value of Second Amendment rights. Judge Diane Sykes' opinion for the Seventh Circuit in *Ezell* shows that circuit judges who are so inclined can show appropriate respect both to the Supreme Court and to the Second Amendment. She deserves to be widely imitated.

Endnotes

1 554 U.S. 570 (2008).

2 For a detailed analysis, see Nelson Lund, *The Second Amendment, Heller and Originalist Jurisprudence*, 56 UCLA L. Rev. 1343, 1356-68 (2009), *available at* papers.ssrn.com/sol3/papers.cfm?abstract_id=1324757.

3 554 U.S. at 630.

4 130 S. Ct. 3020 (2010). In this case, the Court struck down a handgun ban similar to the one at issue in *Heller*. For further details, see Nelson Lund, *Two Faces of Judicial Restraint (Or Are There More?) in* McDonald v. City of Chicago, 63 Fla. L. Rev. 487 (2011), *available at* papers.ssrn.com/sol3/papers.cfm?abstract_id=1658198.

5 554 U.S. at 628-29.

6 Heller v. District of Columbia, 670 F.3d 1244 (D.C. Cir. 2011).

7 *Id.* at 1257 (citing Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 661 (1994)).

8 *Id.* at 1257-58 (citing Clark v. Jeter, 486 U.S. 456, 461 (1988)).

9 The court also refused to consider issues involving semi-automatic pistols and shotguns, on the ground that none of the plaintiffs had tried to register such weapons.

10 554 U.S. at 625.

11 For a detailed proof of these claims, see Lund, *supra* note 2, at 1356-67.

12 This is not a paranoid fantasy. *See, e.g.*, Stephen P. Halbrook, *"Only Law Enforcement Will Be Allowed to Have Guns": Hurricane Katrina and the New Orleans Firearm Confiscations*, 18 Geo. Mason U. C.R. L.J. 339 (2008) (discussing the aftermath of a police decision that only law enforcement officers would be allowed to possess guns in New Orleans after Hurricane Katrina struck the area).

13 To its credit, the majority recognized that the government had failed to meet its burden with respect to some of the registration and licensing requirements. In calling for further development of the record on remand, however, the court merely required the government "to present some meaningful evidence" to justify its predictions about enhanced public safety. 670 F.3d at 1259. That doesn't sound like much of a hurdle.

14 *Id.* at 1262.

15 651 F.3d 684 (7th Cir. 2011).

16 After the district court denied the plaintiffs' motion for a preliminary injunction, the Seventh Circuit reversed and remanded with orders to grant the motion. Because of the procedural posture of the case, the court of appeals did not issue a decision on the merits. In explaining why the plaintiffs had demonstrated a strong likelihood of success on the merits, however, the court provided a detailed analysis that I will treat for simplicity of exposition as though it were a merits decision.

17 651 F.3d at 703.

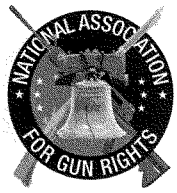
18 *Id.* at 704-06.

19 *Id.* at 708.

20 *Id.* at 709-10.

21 State courts may have more latitude than federal courts in dealing with guidance from the Supreme Court. *See* Nelson Lund, *Stare Decisis and Originalism: Judicial Disengagement from the Supreme Court's Errors*, 19 Geo. Mason L. Rev. 1029, 1039-41 (forthcoming 2012), *draft available at* papers.ssrn.com/sol3/papers.cfm?abstract_id=2033946.

22 McDonald v. City of Chicago, 130 S. Ct. 3020, 3044 (2010); *cf.* United States v. Skoien, 614 F.3d 638, 651-54 (7th Cir. 2010) (en banc) (Sykes, J., dissenting) (criticizing Judge Frank Easterbrook's majority opinion for relieving the government of its burden of justifying its disarmament regulation and for depriving a criminal defendant of an opportunity to contest the dubious non-record evidence on which the majority relied).



The National Association for Gun Rights

Gun Control's Racist History
Subcommittee on the Constitution, Civil Rights and Human Rights
United States Senate
February 12, 2013

"No free man shall ever be debarred the use of arms."

– Thomas Jefferson, June 1776

"Be it enacted by the legislature of the state of Mississippi, that no freedman, free Negro, or mulatto not in the military service of the United States government, and not licensed so to do by the board of police of his or her county, shall keep or carry firearms of any kind, or any ammunition, dirk, or Bowie knife."

Laws of the State of Mississippi, Passed at a Regular Session of the Mississippi Legislature, held in Jackson, October, November and December, 1965, Jackson, 1866, pp. 82-93, 165-167.

Since the founding of the United States, firearms ownership has been inextricably linked to the American ideal of individual liberty and freedom.

Today, as those who would prefer that only a certain class of citizen -- government officials -- ever be legally armed, law-abiding Americans have grave cause for concern. Even the current Feinstein Gun Ban (S. 150) under consideration before Congress exempts many government officials, targeting instead law-abiding citizens.

Historically, classes of American citizens who have found themselves targeted by gun control have been precisely those citizens that have seen their civil rights trampled.

This was true throughout the period of slavery in the United States and the Jim Crow-era in the southern United States.

History proves a free man is an armed man.

Today, those who value liberty and freedom should view the current fight over gun control as the premier civil rights issue of our day.

There can be no liberty and no freedom without the ability to defend it.

Founders on Gun Control

By far, the most well-known statement today regarding the Founders views on gun control is enshrined in the Second Amendment to the United States Constitution.

Politicians in both parties pay lip service to the Second Amendment. Virtually no one will come out in complete and total opposition. Instead, they'll say the Second Amendment is a "collective right" – to be controlled and regulated by government.

The United States Supreme Court partially struck down this reasoning in the *Heller* decision in 2008, reaffirming the Second Amendment reflects an individual right to keep and bear arms.

But the court certainly did not go far enough, leaving many unconstitutional state and local anti-gun laws untouched. And nowhere did the Supreme Court link the idea of individual gun ownership as clearly as the Founders did in their statements.

What's been lost is how directly linked the Founders viewed the right to self-defense – enshrined in the Second Amendment – with freedom. Time and again in their statements, the Founders linked the idea of slavery to being disbarred from the use of arms.

> "I ask, Sir, what is the militia? It is the whole people. To disarm the people is the best and most effectual way to enslave them."
>
> *George Mason*
> Virginia's Convention to Ratify the Constitution, 1788

> "The supposed quietude of a good man allures the ruffian; while on the other hand arms, like laws, discourage and keep the invader and plunderer in awe, and preserve order in the world as property. The same balance would be preserved were all the world destitute of arms, for all would be alike; but since some will not, others dare not lay them aside … Horrid mischief would ensue were the law-abiding deprived of the use of them."
>
> *Thomas Paine*
> *1 Writings of Thomas Paine at 56 (1894)*

> "No free man shall ever be debarred the use of arms."
>
> *Thomas Jefferson*
> Proposed Virginia Constitution, 1776

Gun Control During Slavery

Since even before the nation's founding, black Americans were often singled-out as targets for gun control laws.

It was well understood by whites at the time that allowing slaves to be armed would result in an end to slavery.

Clayton E. Cramer, wrote extensively about this in an article for *Kansas Journal of Law & Public Policy* in the winter of 1995, entitled, "The Racist Roots of Gun Control."

> "The historical record provides compelling evidence that racism underlies gun control laws — and not in any subtle way. Throughout much of American history, governments openly stated that gun control laws were useful for keeping blacks and Hispanics "in their place" and for quieting the racial fears of whites.
>
> "Racist arms laws predate the establishment of the United States. This is not surprising. Blacks in the New World were often slaves, and revolts against slave owners often degenerated into less selective forms of racial warfare. The perception that free blacks were sympathetic to the plight of their enslaved brothers and the "dangerous" example that blacks could actually handle freedom often led New World governments to disarm all blacks, both slave and free."

Mr. Cramer goes on to cite examples from 1751 in which French colonist in Louisiana were required to "stop any blacks and if necessary beat 'any black carrying any potential weapon, such a cane.'"

Throughout the 1700s and on into the 1800s, racially targeted gun control laws would spread from including only enslaved blacks to free black citizens, as well.

In "The Racist Roots of Gun Control, Mr. Cramer writes:

> "Elijah Newsom, 'a free person of color,' was indicted in Cumberland County in June of 1843 for carrying a shotgun without a license."

The state of Tennessee, which stated that "freemen of this State" had a God-given right to own and carry firearms was later changed to "free white men."

Even the Supreme Court's *Dred Scott* decision of 1857 stated black Americans could no be full citizens of the United States because if they were, they would have "the full liberty . . . to keep and carry arms wherever they went."

Racial Gun Control Post Slavery

Sadly, targeting blacks with anti-gun schemes didn't end with slavery. According to *Reason Magazine's* article, "The Klan's Favorite Law" by David B. Kopel:

> "The states enacted Black Codes which barred the black freedmen from exercising basic civil rights, including the right to bear arms. Mississippi's provision was typical: No freedman 'shall keep or carry fire-arms of any kind, or any ammunition.'
>
> "Under the Mississippi law, a person informing the government about illegal arms possession by a freedman was entitled to receive the forfeited firearm. Whites were forbidden to give or lend freedman firearms or knives."
>
> These laws continued unabated for decades.

Even much of the push for gun control in the late 1960s was in response many black Americans decision to arm themselves with the increase of racial violence.

According to *The Atlantic's* "Secret History of Guns" by Adam Winkler from September of 2011, much of the rush to gun control in the late 1960s was racially motivated.

In California and elsewhere, in response to rising racial violence, blacks were arming themselves. In response to the Black Panther movement, Republicans in California passed the Mulford Act prohibiting the open carrying of firearms.

Adam Winkler went on to state in the "Secret History of Guns:"

> "Civil-rights activists, even those committed to nonviolent resistance, had long appreciated the value of guns for self-protection. Martin Luther King Jr. applied for a permit to carry a concealed firearm in 1956, after his house was bombed. His application was denied . . ."

At the federal level, there was a mad rush to demonize Saturday Night Specials" – inexpensive handguns often purchased by blacks – were suddenly demonized. According to Mr. Winkler.

> Because these inexpensive pistols were popular in minority communities, one critic said the new federal gun legislation 'was passed not to control guns but to control blacks.'
>
> Today, with government going all-out to disarm as many Americans as possible,

this should make any freedom-loving American wary of keeping and maintaining our rights into the future.

Gun Control Today

Of course, the push for control launched in the 1960s has become less and less overtly racist, but the lessons are clear.

Aggressors use gun control to turn classes of citizens into easy potential victims.

Regardless of the intent of today's laws, this sadly has been the effect of modern-day gun control.

Federal laws prohibiting firearms in schools leave localities unable to protect against armed madmen. Bans on certain types of firearms and hurdles to carry concealed weapons are impediments to law-abiding citizens carrying firearms.

Criminals, by definition, simply avoid the law.

Even so-called "mental health checks" result in veterans who have served our country honorably being forbidden from buying firearms just because they acknowledge stress upon returning from war.

American history shows being denied the right to keep and bear arms results in lost freedom and the trampling of our God-given Constitutional rights.

So instead of looking for ways to expand gun control laws – which only end up causing more bloodshed – Congress should be looking to eliminate them.

STATEMENT OF CHRIS W. COX
EXECUTIVE DIRECTOR, NRA INSTITUTE FOR LEGISLATIVE ACTION
BEFORE THE U.S. SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS
HEARING ON "PROPOSALS TO REDUCE GUN VIOLENCE: PROTECTING OUR COMMUNITIES WHILE RESPECTING THE SECOND AMENDMENT
216 HART SENATE OFFICE BUILDING
FEBRUARY 12, 2013

Dear Chairman Durbin and Ranking Member Cruz:

Thank you for the opportunity to submit testimony today on behalf of the more than four million members of the National Rifle Association of America. A discussion of unprecedented scope regarding new proposed restrictions on our Second Amendment rights is taking place on Capitol Hill right now—the first substantive debate on these issues that the Congress has undertaken since the Supreme Court issued two landmark rulings on this subject. The subject matter of today's hearing is timely and necessary to inform the legislative debate that is soon to follow. In debating new restrictions on our Second Amendment rights, lawmakers must be careful to heed the parameters set forth in the Supreme Court's rulings.

Though many proposed restrictions have been discussed, the number of bills introduced in this chamber as of this writing remains quite small. I will focus my remarks on the most notable, S. 150, as introduced by Senator Feinstein, in which she would:

- Ban 157 firearms by name. Her 1994 ban banned only 19 firearms by name.
- Ban detachable-magazine semi-automatic rifles and semi-automatic shotguns not exempted by name, for having a "pistol grip," defined to mean any "characteristic that can function as a grip." It would also ban rifles and shotguns for having a folding, telescoping, or detachable stock (defined as any stock adjustable for length or height, which would include many stocks used on rifles and shotguns used in competitive shooting); a forward grip; a threaded barrel; or a barrel shroud (handguard).
- S. 150 would also ban any semi-automatic shotgun for having a fixed magazine that holds more than five rounds of any size ammunition, a detachable magazine, or a revolving cylinder. It would also ban rifles and shotguns for having a "grenade launcher or rocket launcher," which is irrelevant, since launchers are restricted under the National Firearms Act and aren't commercially sold for the rifles and shotguns in question.

- Exempt a relatively small number of detachable-magazine semi-automatic rifles and semi-automatic shotguns, but only "as such firearm was manufactured on the date of introduction of the Assault Weapons Ban of 2013." This would mean that manufacturers of exempted rifles and shotguns wouldn't be permitted to change the names or the configuration of the exempted guns. It would also mean that a gun owner would violate the law by making routine kinds of modifications to an exempted firearm, such as by changing the barrel length, installing a heavier barrel in a rifle for accuracy in hunting or target shooting, changing a rifle's sights, or even reducing the magazine capacity of a tubular-magazine shotgun.
- Ban all semi-automatic rifles and pistols that have fixed magazines that hold more than 10 rounds, except for tubular-magazine .22 caliber rifles.
- Ban any semi-automatic handgun that uses a detachable magazine, if it has a threaded barrel, a second pistol grip, or a magazine that mounts anywhere other than in the grip, or if it is a semi-automatic version of a fully automatic firearm.
- Ban frames and receivers of guns that would not be banned, because they are identical to the frames or receivers of guns that would be banned. (For example, a Ruger Mini-14 with a folding stock—banned under S. 150—uses the same receiver as a fixed-stock Mini-14 exempted in the bill.)
- Ban "combinations of parts" from which "assault weapons" could be assembled. This could be read to ban the acquisition of a single spare part, which in conjunction with other spares, would constitute a "combination."
- Ban parts that accelerate the firing rate of a semiautomatic rifle. This could be read to ban common items such as competition trigger parts, which allow a user to shoot more quickly but which do not change the semiautomatic function of the rifle.
- Ban all belt-fed semi-automatic firearms.
- Ban magazines and other feeding devices that hold more than ten rounds of ammunition, regardless of the firearm for which they are designed.
- Prohibit people from transferring ownership of banned magazines, even through inheritance.
- Require people who sell existing "assault weapons" to process any subsequent transfer through a dealer.
- "Exempt" specifically named bolt-action, pump-action, lever-action and other manually-operated rifles and shotguns. As with Sen. Feinstein's 1994 exemption list, her current version doesn't contain any handguns.

This laundry list of restrictions goes far beyond the law that was in effect from 1994 to 2004. Sen. Feinstein proposes to dramatically expand the scope of the 1994 ban, but since that time, two landmark Supreme Court cases have set new precedent for what is and is not

constitutional under the Second Amendment. Those cases have tremendous implications for the upcoming debate over all firearms-related legislation, including S. 150.

The Supreme Court ruled in *District of Columbia v. Heller* that the Second Amendment protects "the individual right to possess and carry weapons in case of confrontation."[1] Contrary to suggestions that the amendment protects only muskets, the Court said:

> Some have made the argument, bordering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment. We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communication and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.[2]

And contrary to gun control supporters' claims, *Heller* didn't exclude semi-automatic "assault weapons," as they are defined in S. 150, from the Second Amendment. The terms "semi-automatic" and "assault weapon" don't appear at all in the *Heller* decision. The Court suggested that *fully* automatic M16s might not be protected under the Second Amendment. Yet S. 150 would have no impact on the law regarding fully automatic firearms, which have been heavily restricted since 1934.

What the Court did do in *Heller* was invoke the American people as a barometer of what is protected under the Second Amendment. The Court struck down the District of Columbia's handgun ban, in part because "handguns are the most popular weapon *chosen by Americans* for self-defense in the home, and a complete prohibition of their use is invalid."[3] (Emphasis added.)

Heller thus designates the American public as the arbiter of which firearms are popular and in common use, and thus protected under the Second Amendment. Semi-automatic firearms and their magazines are commonly kept for self-defense, and the Supreme Court has accepted the judgment of American gun owners as to what firearms and magazines are most useful for that purpose. Most handguns sold today are semi-automatics, and a significant percentage of them are designed for magazines that hold 11 or more rounds. Indeed, the size of a standard pistol magazine sold today is in the teens. And if the Second Amendment protects the right to own handguns, it must also protect the right to own the standard factory magazines that handguns use.

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[1] *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

[2] *Id.* at 582.

[3] *Id.* at 629.

At the same time, nothing in the *Heller* opinion limited the Court's reasoning to handguns. As noted above, the Court said the Second Amendment "extends, prima facie, to all instruments that constitute bearable arms"—which certainly include rifles that are popular and commonly used for self-defense. Most of the rifles targeted by Sen. Feinstein's bill, such as the AR-15, are particularly useful for self-defense, due to their low recoil, reliability and compact size.

This common-sense conclusion was also reached by Judge Brett Kavanaugh, of the U.S. Court of Appeals for the D.C. Circuit, in the follow-up case of *Heller vs. District of Columbia.* His opinion said:

> In my judgment, both D.C.'s ban on semi-automatic rifles and its gun registration requirement are unconstitutional under Heller. In *Heller*, the Supreme Court held that handguns – the vast majority of which today are semi-automatic – are constitutionally protected because they have not traditionally been banned and are in common use by law-abiding citizens. There is no meaningful or persuasive constitutional distinction between semi-automatic handguns and semi-automatic rifles. Semi-automatic rifles, like semi-automatic handguns, have not traditionally been banned and are in common use by law-abiding citizens for self-defense in the home, hunting, and other lawful uses. Moreover, semi- automatic handguns are used in connection with violent crimes far more than semi-automatic rifles are. It follows from Heller's protection of semi-automatic handguns that semi-automatic rifles are also constitutionally protected and that D.C.'s ban on them is unconstitutional.[4]

Under the sound reasoning put forth by Judge Kavanaugh, the ban on semiautomatic rifles that is proposed by S. 150 would also be patently unconstitutional.

Beyond the test of common use, the *Heller* decision also colors the attempt in S. 150 to ban magazines based on their capacity. A magazine ban would limit the ability of people to engage in self-defense. There is no way to foresee how many rounds of ammunition may be needed to fend off a criminal attack, especially when defenders may miss under stress; assailants may not drop at a single shot;[5] and nearly a third of violent attacks by strangers involve multiple assailants.[6] That's why magazines that hold more than 10 rounds are used by millions of private citizens and thousands of law enforcement officers—and while a police officer routinely carries spare magazines, a private citizen waking up to a burglar in the house is unlikely to have such

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[4] *Heller v. District of Columbia*, 670 F.3d 1244, 1269-70 (D.C. Cir. 2011) (Kavanaugh, J., dissenting).

[5] For example, in a recent, widely publicized case, a Georgia mother protecting her children shot a home invader five times, but the assailant was nonetheless able to retreat to his car and drive away. *See* Alexis Stevens, *Home Invasion: Husband to wife: 'Shoot him again! Shoot him!'*, Atlanta Journal-Constitution, Jan. 10, 2013.

[6] Erika Harrell, *Violent Victimization Committed by Strangers, 1993-2010* 8, Bureau of Justice Statistics Special Report NCJ 239424 (Dec. 2012).

resources at hand. Law enforcement officers favor so-called "large" magazines because they don't want to be at an inherent disadvantage when confronting criminals; millions of civilians own them for precisely the same reason.

Supporters of S. 150 are fond of quoting a passage in *Heller* which notes that under the reasoning of *United States v. Miller*, "the sorts of weapons protected [are] those 'in common use at the time,' and that this limitation is fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'"[7]

Proponents of S. 150 argue that the guns they propose to ban are both dangerous and unusual. But even aside from the fact that this ancient prohibition only related to the manner and circumstances in which arms were carried, the Court's comment actually works against them; firearms that are in "common use" by definition are not "dangerous and unusual." And no one can legitimately argue that semiautomatic rifles are not in common use at this time. In fact, they are in such demand that it has become virtually impossible to buy any of the rifles S. 150 proposes to ban. And there are already millions in private hands. Semiautomatic technology is more than 100 years old, and has come to dominate the market not only for self-defense, but also for hunting and recreational use.

Finally, it is not just the Heller case that has established the boundaries of what is constitutional under the Second Amendment. The firearms that Sen. Feinstein considers "assault weapons" would also easily meet the Second Amendment standard articulated by the Supreme Court in *Miller*. In that case, the Court considered whether the Second Amendment protected the right to a short-barreled shotgun. Because the trial court decided the case by quashing the indictment and the defendant's counsel did not appear when the Supreme Court reviewed the case, the Supreme Court returned the case to the trial court, saying:

> In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment, or that its use could contribute to the common defense.[8]

Today, rifles such as the AR-15 certainly have a "reasonable relationship to the preservation or efficiency of a well-regulated militia," and their use "could contribute to the common defense." After all, they are universally used in the national service rifle matches authorized by Congress

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[7] *Heller*, 554 U.S. at 627, citing *United States v. Miller*, 307 U.S. 174, 179 (1939).

[8] *Miller*, 307 U.S. at 178.

and conducted by the Civilian Marksmanship Program, a privatized program once run by the United States Army.[9]

Heller reinforced the "common use" concept first put forth in *Miller*. The *Miller* Court also observed that historically, the well-regulated militia has consisted of individuals who, if called to service, are "expected to appear bearing arms supplied by themselves and of the kind in common use at the time."[10] With Americans owning more than 4 million AR-15s alone, such firearms are certainly "in common use."[11]

Many who dwell inside the Beltway have little grasp of what's taking place in the rest of the country, and this is more true in the gun debate than in many others. Americans are voting with their pocketbooks, and the popularity of semiautomatics continues to soar. Civilian ownership of all of the firearms and magazines that Senator Feinstein is proposing to ban has risen to all-time highs. Americans now own about 100 million handguns, tens of millions of "assault weapons" as defined by S. 150, and so many tens of millions of "large" magazines that it seems pointless to venture an estimate. While Senator Feinstein tells reporters that Americans support another gun and magazine ban, Americans are buying everything she proposes to ban in unprecedented numbers.

Illustrating the point, Americans bought 11 million new guns in 2012. Background checks for firearms increased 53 percent during the November 2012-January 2013 period, as compared to the same three-month period a year earlier.[12] These increases followed President Obama's re-election; his statement that gun control would be a "central issue" of his final term; and Senator Feinstein's announcement that she intended to introduce another bill to ban guns and magazines.

There is no doubt that the political discussion about banning guns has resulted in this spike in sales. First-time gun buyers are rushing out to purchase the guns and magazines targeted by S. 150, precisely because they know that some in Congress are trying to ban them. What's ironic is that this trend further ensures that these guns and magazines are in "common use," and therefore even more strongly protected under *Heller*.

Thank you again for the opportunity to offer this testimony.

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[9] *See CMP Competition Rules* ¶¶ 6.1-.2, 8.1.1(16th ed. 2012) , *available at* http://www.odcmp.com/Competitions/Rulebook.pdf (requiring use of government-issued semi-automatic rifles or their commercial equivalents). The program, formally known as the Corporation for the Promotion of Rifle Practice and Firearms Safety, is chartered by Congress and authorized to receive under 36 U.S.C. 40701 *et seq*.

[10] *Miller*, 307 U.S. at 179.

[11] Estimate calculated from Bureau of Alcohol, Tobacco, Firearms and Explosives Annual Firearms Manufacturing and Export Reports, 1986-2011.

[12] *See* "Total NICS Firearm Background Checks," available at http://www.fbi.gov/about-us/cjis/nics/reports/20130205_1998_2013_state_program_to_date_purpose_ids.pdf.

NATIONAL SHOOTING SPORTS FOUNDATION, INC.
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"Universal Background Checks" – Key Facts to Consider

The National Shooting Sports Foundation (NSSF) is the trade association for America's firearms, ammunition, hunting and shooting sports industry. Our more than 8,300 members include thousands of federally licensed firearms retailers, most of which are small business owners.

Under current federal law (the Brady Act), federally licensed firearms retailers must run a background check through the Federal Bureau of Investigation's (FBI) - National Instant Criminal Background Check System (NICS)[1] on the buyer before transferring the firearm (new or used) to that individual. The retailer must conduct the NICS check regardless of whether the transfer takes place at the licensed premises or at a gun show. Our industry has long supported the current NICS background check system.

The Obama Administration, some members of Congress and gun-control organizations now advocate expanding the Brady Act to require background checks for every firearm transfer in the United States between private citizens, whether it is a father passing his shotgun down to his son, a grandfather giving his granddaughter a Christmas gift of her first rifle, or two private collectors transferring a rare and valuable firearm from one collection to another.

So-called "universal background checks" raise important constitutional questions involving States rights under the 10th Amendment and the limits of Congress' Commerce Clause powers. But leaving those issues aside for a moment, based on the experience of licensed firearms retailers in the few states that require retailers to conduct background checks on the private transfer of firearms between individuals, we know requiring "universal background checks" will impose on federally licensed retailers significant increased regulatory burdens, tremendous additional costs, logistical nightmares, unacceptably lengthy delays in processing NICS checks, unprecedented liability exposure and other additional unintended consequences.[2]

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[1] Under the Brady Act, 13 states perform the background checks on all firearms (Point of Contact or POC states) and 8 states do the background check for the transfer of handguns only (Partial POC states). The state-performed background checks use the same federal databases as the FBI-NICS background checks.

[2] Creating the technology infrastructure within NICS to support such a system would also cost the American taxpayer a significant amount of money. Gun control groups claim that 40% of guns sold are not subject to a background check. This assertion is based on a 1990s telephone survey that said 60% of all firearm transactions go through licensed retailer with a check being performed, implying the other 40% do not involve a background check. The survey results make it clear that there are serious flaws in using a phone survey for this type of information gathering. For example, the same section said that 3% of respondents said they obtained guns through the mail, to which the authors said the respondents "may have misremembered or may have referred to a mail-order purchase arranged through an FFL." When considering the fact that the survey also found that the average firearm in circulation in 1994 was acquired by its present owner in 1981 - more than a decade before the survey - it's hard to take the self-reporting seriously. This 40% figure has been discredited by recent analysis which concluded the figure is actually 14-22% http://www.washingtonpost.com/blogs/fact-checker/post/update-obama-claim-on-

Universal Background Checks Raise Serious Constitutional Questions

Universal background checks raise important constitutional questions involving States rights under the 10th Amendment and the limits of Congress' Commerce Clause powers.

- The Federal government cannot constitutionally compel state governments to perform background checks on private party transfers of firearms. See *Printz v. United States*, 521 U.S. 898 (1997) (Brady Act violated 10th Amendment in that Congress may not require states to administer federal firearms laws.). Therefore, those checks would all be required to be conducted by federally licensed retailers. However, there are serious constitutional questions regarding whether Congress under its Commerce Clause powers can compel private businesses (licensed retailers) to perform a purely governmental function (background checks) unrelated to their licensed business (intra-state transfers between private parties)?

Increased Cost to Businesses

Before any expansion of NICS checks is mandated, consider the following:

- The universal background check is a pure cost to the retailer, most of which are small "mom-and-pop" businesses. The retailer would lose a significant amount of money generating the legally required recordkeeping entries, maintaining those records for decades for law enforcement, and performing the background check on a firearm they are not selling and for which they realize no profit. The market, and not the government, should set the fee for performing a "universal background check." A market determined fee will allow the retailer to recoup their costs, in the same way the retailer's regulatory compliance costs are factored into the price of the firearms they sell, and allow the retailer to realize a reasonable profit for their time and effort. Government established fee of $10.00, or some other nominal fee, is woefully inadequate.

- Licensed retailers would need to be free to decide not to conduct "universal background checks." However some states, including California, mandate that licensed retailers must perform this government function as a condition of their license, and then also cap the amount they can charge for the service.

- Licensed retailers would be forced to use paid staff hours or to hire additional staff and pay for additional infrastructure to accommodate such transactions, including, but not limited to additional surveillance equipment, secure firearm storage, parking, IT infrastructure, and acquisition and distribution (A&D) records. Staff conducting background checks on private party transfers will not be able to serve paying customers, many of whom will leave the store rather than wait, resulting in lost sales.

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background-checks-moved-from-verdict-pending-to-2-pinocchios/2013/01/25/59caeca6-672f-11e2-85f5-a8a922f8e55e7_blog.html

Liability Risks

- In addition to the cost of providing this government function, the liability a retailer has in such transactions (e.g., retaining additional ATF Forms 4473 subject to inspections and litigation for 20 years; maintaining A&D records for the life of the business) would require a significant increase in compliance efforts. Any errors would be cited as violations by ATF against the retailer. A single violation of the Gun Control Act or the ATF regulations is sufficient to revoke a retailer's license. Imagine losing your livelihood for a record-keeping error for a product you didn't even sell.

- Licensed retailers would be forced to handle firearms that they are not familiar with because they do not stock them. It would no longer be the case that every firearm they now acquire, whether new or used, is a firearm that they want to acquire.

- Some "used" firearms in commerce may have been modified by their owners and may have missing markings, making proper firearm acquisition and disposition records difficult for retailers to achieve.

- The licensed retailer would also be subject to product liability and other lawsuits if the transferred firearm is alleged to be defective. Insurance coverage in those cases will likely be unavailable to the retailer since they did not sell the firearm. Imagine being sued over an accident involving a firearm you didn't sell and having no insurance coverage.

- Federal law requires licensed retailers to provide a "secure gun storage or safety device," typically a gun lock, when they transfer any handgun. See 18 USC 922(z). Who will pay for the cost of the gun lock?

- Some states require a waiting period (CA, CT, IL, etc.) before a firearm can be transferred during which time the licensed retailer must hold the firearm in inventory and become legally responsible for the firearm while in their custody. A party to the private transaction would assert a claim that the firearm was altered or damaged while in the retailer's exclusive custody and control.

- Similarly, if the firearm being transferred is in the retailer's possession, custody and control while a "delayed" NICS response is being resolved (up to three business days[3]), the retailer would face additional liability over claims that the firearm was altered or damaged while in the retailer's possession.

- There are significant safety concerns presented by a massive influx of "private party" firearms entering a carefully controlled retail establishment. For example, in California, persons have entered large retailers with a firearm and walked through

[3] Brady Act provides that after three business days the licensed retailer may transfer a firearm if the delay has not been resolved. However, ATF encourages retailers to hold the firearm beyond three days until the delay is resolved.

the store, e.g., past the shoe department, to get to the sporting goods section in order to conduct a private party background check.

Logistical Nightmare

In addition:

- Logistical questions remain such as whether the use of state Point of Contact (POC) systems would be authorized for such transactions.

- In the event a buyer is denied based on the background check results, it is unclear how the transaction should be handled. Would the retailer then be required to run a background check on the seller before returning the firearm to the seller? If the firearm is maintained overnight by the licensed retailer, federal law would require the retailer to conduct a background check and have them complete a Form 4473 in order to return the firearm to the private party seller.

- What is a licensed retailer to do in the event of a "double denial" (both the private party buyer and seller are denied). This has happened in California. How would such a transaction be noted on ATF Form 4473?

- In some states, consistent with the requirements of the Brady Act, ATF has qualified certain firearms permit holders, i.e., conceal carry permit holders as exempt from the NICS background check requirement because a check was recently conducted on that individual when the permit was issued. Would the same rules apply for private party transactions involving the holders of such permits?

- Some states allow retailers to opt out of doing private party transaction checks. For example, in Pennsylvania, retailers may opt out and the County Sheriff performs the checks instead. Would this be allowed under a federal mandate? And if all retailers opt out due to the high costs and compliance issues, what would happen next?

- The FBI NICS center is already overwhelmed with over-the-counter retail transactions. According to the FBI, this winter's activity surge required the cancellation of all Christmas leave and the calling in of all CJIS employees who ever worked for NICS to help with the traffic. Despite these efforts, the NICS system experienced extensive and unprecedented delays during this time.

- The Department of Justice declined to pursue industry supported legislation to allow federal firearms licensees access to NICS to conduct employment screening checks on current or prospective employees because it would have resulted in a mere 2% increase in NICS checks, an amount DOJ said NICS could not absorb. How can NICS be expected to handle a 14 to 22% increase, let alone a 40% increase?[4]

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[4] See footnote 2.

- The same problem exists in Point of Contact states where the state facilities are also overwhelmed with retail transactions. The Colorado CBI is currently eight days behind in processing background checks. Adding a massive influx in transactions would further tax the systems to the point of potential collapse.

- Residents of Washington, D.C. would face an untenable situation under such a proposal. There is only one firearm retailer in the District of Columbia to facilitate the private party transactions. Residents of rural Alaska would face similar barriers as they may be 600 miles distance from a retailer.

- Additionally, there remains uncertainty about how to best handle temporary transactions, such as the loan of a firearm for a hunting trip or at the shooting range.

The NSSF urges lawmakers to carefully consider these important questions when considering public policies such as requiring universal background checks for the transfer of firearms between private parties.

Federally licensed firearms retailers depend on the NICS system to ensure that they do not transfer firearms to prohibited persons. But the NICS system is only as good as the records that are in the system. It is well documented that the current NICS system does not contain all of the records it should. NSSF believes it should be a top priority to Fix NICS℠ to ensure the safe and legal transfer of firearms. A high priority should be placed on enhancing the current FBI NICS system by getting all disqualifying records pertaining to mental health and other federal prohibitions on firearms ownership in the NICS system.

February 12, 2013

The Honorable Ted Cruz
United States Senate
B40B Dirksen
Washington, DC 20510

Dear Senator Cruz,

On behalf of South Texans' Property Rights Association (STPRA), that represents more than five million acres of land in South Texas; I find it necessary to address this committee today with my great concern of additional gun regulations called for by some in the United States.

A universal background check, bans on ammunition clips, and background checks for ammunition purposes will only punish the honest individual and will do nothing to lessen mass killings of the deranged.

I live less than 90 miles from the border of Mexico. I see what occurs in Mexico when guns are made illegal for use by their citizens. I see how the innocent are over taken by criminals, leaving them helpless and defenseless. We do not need or want the same thing to happen in the United States.

There are sufficient laws in the statues today. It is time now that they are fully enforced. Put the burden of proof on the criminals and the mentally ill, not on law abiding U.S. citizens. We need no more laws, we need common sense to prevail, and I hope that that is achieved in today's hearing.

Sincerely,

Susan Durham

Susan Durham
Executive Director

South Texans' Property Rights Association
P.O. Box 397 | Falfurrias, TX 78355 | Tel: 361-348-3020 | Fax: 361-348-3121 | www.stpra.org

February 8, 2013

ILYA SHAPIRO
Senior Fellow in Constitutional Studies

Hon. Ted Cruz, Ranking Member
Subcommittee on the Constitution, Civil Rights and Human Rights
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Subcommittee Hearing entitled "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment"

Dear Senator Cruz,

Thank you for your interest in my and the Cato Institute's perspective regarding the various legislative proposals that have been offered in response to the tragedy at Newtown. As you know, Cato is one of the nation's leading advocates of individual liberty and limited government and so we are at the forefront of all public debates regarding constitutional civil rights—including the Second Amendment's protection of the natural right to armed self-defense.

Being an advocate for individual rights and civil liberties can be difficult. When terrorists attack, when the economy fails, and yes, when evil visits elementary schools, the natural instinct is to demand security above all else. Politicians' natural instinct is just do something, anything, that seems responsive to the crisis of the day.

A good example of this tendency is the law signed by New York Governor Andrew Cuomo last month, which Cato research fellow Trevor Burrus dissects in a blogpost ("A Cosmetic Gun Law") that I enclose here. See also the absurd situations that the District of Columbia's draconian—but ineffectual—restrictions provoke, as I describe in a second attached blogpost ("D.C. Treats Celebrities Better Than Veterans, Illustrating the Absurdity of Gun Laws.").

Yet, as Cato's chairman Bob Levy wrote after the Tucson shooting—I enclose his op-ed ("Gun Control Measures Don't Stop Violence")—no gun regulation has ever been shown to reduce the incidence of violent crime, suicide, or accidents. So found a 2004 National Academy of Sciences study that reviewed 253 journal articles, 99 books, and 43 government publications evaluating 80 gun-control measures. A year earlier, the Centers for Disease Control examined a host of policies, ranging from ammunition bans to waiting periods, registration to zero-tolerance laws—and likewise found no evidence that the laws reduced gun violence.

The problem, as I write in a second op-ed that I enclose ("Why I Still Support the Right to Bear Arms," on which this letter is based), is that no law could make the 300 million firearms in America disappear, even if we wanted to do that. Even making it illegal to own a gun, were that constitutional, wouldn't prevent a criminal or madman from doing his malevolent deed. Robust policies to prevent legal gun ownership only translate to guns being overwhelmingly possessed by those willing to break the law.

Indeed, Connecticut has some of the strictest gun laws in the country, and Sandy Hook Elementary is a "gun-free zone"—as was the movie theater in Aurora, Colorado (which is why the killer there chose it, passing up more convenient venues).

None of the measures at the top of gun-control advocates' agenda—such as banning so-called assault weapons and closing gun-show loopholes—would've averted these shootings. And as you yourself demonstrated during the Senate Judiciary Committee hearing on January 30, adding certain cosmetic features such as pistol grips and bayonet mounts to ordinary hunting rifles does not in any way affect their functionality or otherwise transform them into weapons of war.

As Cato associate policy analyst David Kopel wrote in the third op-ed I'm enclosing ("Guns, Mental Illness and Newtown"), we'd be better off focusing on the identification and treatment of mental illness—the common factor in all these incidents—and ensuring that disqualifying records make it into the database used for background checks (which would've stopped the Virginia Tech shooter from buying his guns).

That's not to say that we shouldn't have *any* gun regulations. Cracking down on "straw purchasers" is a good idea and military-grade weapons like fully automatic "machine guns"—or rocket launchers, as I told Stephen Colbert on his July 8, 2010 show—indeed have no place in civilian life.

On the other hand, it's perfectly reasonable for someone to have a gun to protect herself or her family. That's why the Second Amendment is so important: Americans cherish their life, liberty, and pursuit of happiness so much that they instituted a government that protects their right to defend against anyone who would threaten them.

After the 1999 Columbine shootings, Colorado passed a series of laws that should serve as a national model (for states; the Constitution doesn't give the federal government the power to enact most of the legislation that's been floated lately.) As Kopel details in the fourth op-ed I'm enclosing ("Colorado Consensus on Gun Laws"), some of them consist of what people call "gun control," while others are in the "gun rights" category. The most important one was the Concealed Carry Act, which has already saved countless lives, including at an Aurora church—three months before the theater shooting—where an off-duty cop killed a career criminal who was targeting congregants.

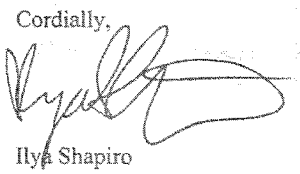
These cohesive measures are based on an obvious principle that enjoys broad public support: Guns in the wrong hands are dangerous, while guns in the right hands protect public safety—as Burrus details in the fifth op-ed that I enclose ("Face It: Guns

Are Here to Stay"). The Second Amendment exists to protect the grand American experiment in self-government. Call me a "Constitution nut," but I'm crazy about allowing people to live their lives with the maximum freedom possible.

If I could snap my fingers and end gun violence, I would. I would even take guns away from hunters and sportsmen if it meant better self-defense for the rest of us. Men aren't angels, however, and, by definition, criminals don't follow the law. Yes, in the wake of Newtown, my colleagues and I still support the right to bear arms.

Again, thank you for inviting me to submit my views. Should you have any questions, my email is ishapiro@cato.org and my direct line is (202)218-4600.

Cordially,



Ilya Shapiro

Enclosures:

1. Trevor Burrus, "A Cosmetic Gun Law," *Cato at Liberty Blog*, January 15, 2013.
2. Ilya Shapiro, "D.C. Treats Celebrities Better Than Veterans, Illustrating the Absurdity of Gun Laws," *Cato at Liberty Blog*, February 8, 2013.
3. Robert A. Levy, "Gun Control Measures Don't Stop Violence," *CNN.com*, January 19, 2011.
4. Ilya Shapiro, "Why I Still Support the Right to Bear Arms," *(New Jersey) Star-Ledger*, January 11, 2013.
5. David Kopel, "Guns, Mental Illness and Newtown," *Wall Street Journal*, December 17, 2012.
6. David Kopel, "Colorado Consensus on Gun Laws," *National Review Online*, July 26, 2013.
7. Trevor Burrus, "Face It: Guns Are Here to Stay," *New York Daily News*, January 7, 2013.

A Cosmetic Gun Law

By Trevor Burrus January 15, 2013 *Cato At Liberty*
http://www.cato.org/blog/cosmetic-gun-law

Last night, the New York Senate passed far-reaching reforms to New York's gun laws. The law should easily pass the Assembly and then be signed by Governor Andrew Cuomo. Almost assuredly, this law will save no lives and stop no mass shootings. In fact, it may make New Yorkers less safe.

I invite you to read over the previsions of the law—expanding the definition of already-banned "assault" weapons, banning the sale of magazines that hold over seven rounds, a requirement that licenses be renewed every five years—and ask if there is a single would-be killer out there who would be hampered by such restrictions in a country where he is already surrounded by 300 million guns? It is simply unreasonable to think that any unstable person with plans for mass carnage will be stopped by only having seven rounds per magazine. The Virginia Tech shooter, after all, solved this "problem" by carrying a bag with 19 magazines.

And how could this law make New Yorkers less safe? First, the law will inevitably limit law-abiding citizens' access to weapons, and those citizens may need those weapons to protect themselves or others from a crime. At minimum, this occurs 108,000 times per year, according to the federal government's National Crime Victimization Survey, and it likely occurs far more than that (you can read more about defensive gun use in the Cato study *Tough Targets*).

Second, onerous gun restrictions tend to drive gun purchasers underground. Those black and illicit markets are further expanded by gun-control advocates' attempts to shame and demonize those who own firearms and enjoy using them in a responsible manner (for example, the recent Gawker exposé publishing the names and addresses of gun owners in New York City, who were blatantly described as "a**holes," as well as the *Journal News* publishing similar data for gun owners in Westchester and Rockland counties). Moreover, as J.D. Tuccille recently documented in *Reason*, evading gun restrictions is not just a national pastime, it is an international pastime. Tuccille writes that there are approximately 58,000 registered gun owners in New York City, but that the Justice Department estimates that there are about 2 million illegal guns in the city.

Pushing more of the gun trade underground by passing onerous restrictions and creating bureaucratic labyrinths impairs our ability to keep guns out of the hands of dangerous people.

Some aspects of the law, such as the requirement that mental health professionals report patients who they believe are likely to harm themselves or others, seem like an honest attempt to prevent dangerous people from having guns. However, the requirement violates the traditional rules of therapist/patient confidentiality, and unfortunately it will

likely do more to dissuade people from seeking help out of fear that they may be disarmed by the state.

Governor Cuomo's statement—"Enough people have lost their lives. Let's act"—shows that this law is more an example of the "something must be done, this is something, therefore it must be done" tendency in politics rather than a carefully considered bill that offers workable solutions to the problem. In many ways, this is the biggest harm of these cosmetic gun laws: lawmakers can pat themselves on the back and incorrectly say, "we saved some lives today" and then move on to other tasks while having done nothing to solve the problem.

D.C. Treats Celebrities Better Than Veterans, Illustrating the Absurdity of Gun Laws

By Ilya Shapiro February 8, 2013 *Cato At Liberty*
http://www.cato.org/blog/dc-treats-celebrities-better-veterans-illustrating-absurdity-gun-laws

Last month, D.C. attorney general Irvin Nathan announced that he would not be prosecuting David Gregory for displaying an empty ammunition magazine on his national TV show *Meet the Press*—even though NBC knew ahead of time that this action would violate D.C. law. In a letter to NBC, Nathan admonished Gregory for knowingly flouting the law, but said he decided to exercise "prosecutorial discretion" and not pursue a criminal case. "Prosecution would not promote public safety in the District of Columbia, nor serve the best interests of the people," Nathan wrote.

In the *Washington Post* story about this episode, I was quoted as calling Nathan's decision "a wise use of prosecutorial discretion" but that the episode "illustrates the absurdity of some of these gun laws." My position apparently paralleled that of the NRA—even though Gregory had waved the illegal magazine in front of the group's executive VP, Wayne LaPierre—but "thousands of gun advocates" signed a White House petition calling for Gregory's arrest because he ought to be treated the same as anyone else.

Indeed, a friend soon pointed out to me that D.C. authorities were not treating people equally: Last summer, Army Specialist Adam Meckler, a veteran of the Afghanistan and Iraq wars, was arrested and jailed for having a few long-forgotten rounds of ordinary ammunition—but no gun—in his backpack in Washington. Meckler violated the same section of D.C. law as Gregory did, and both offenses carry the same maximum penalty of a $1,000 fine and a year in jail. [H/t: Jason Epstein]

Well, that's disgusting, and D.C. authorities ought to be ashamed of themselves. But the correct response isn't to waste taxpayer dollars on prosecuting David Gregory, but rather to not prosecute the Adam Mecklers of the world.

Now, I've never been a prosecutor or even practiced criminal law, so it could well be that it's outside the ethical bounds of discretion not to charge someone who so brazenly flaunts the law as Gregory and the NBC producers did. But if incidents like these doesn't make people realize that it's lunacy to criminalize, as a strict liability offense, no less (meaning that your knowledge or mental state is irrelevant), the mere possession of magazines, bullets, and other gun-related accoutrements (without even getting to an "assault weapon" ban, etc.), then nothing will. A magazine is a metal box with springs, of which there are hundreds of millions in the country. A bullet is a piece of metal that, in

the absence of a gun, is less deadly than a rubber band. It's people who insist on demonizing such objects that lend creedence to those on the other side who believe that any gun regulation is a step toward confiscation and tyranny.

Let me be even clearer: Criminalizing the possession of a magazine or bullet is as extreme as legalizing the private ownership of nuclear missiles. The idea that celebrities should be treated no differently than anyone else is an important one to draw from the David Gregory incident. But it's even more important, at least in the context of our ongoing discussion over gun policy, to understand that putting stupid laws on the books doesn't make us any safer and indeed draws resources away from actions (like investigating, prosecuting, and preventing violent crime) that do.

Gun control measures don't stop violence

By Robert A. Levy , Special to CNN
January 19, 2011 5:47 a.m. EST

CNN.com

Editor's note: Robert A. Levy is chairman of the Cato Institute. He served as co-counsel to the plaintiffs in District of Columbia v. Heller, the successful Supreme Court challenge to Washington's handgun ban.

(CNN) -- Against the horrific backdrop of the Tucson, Arizona, tragedy, new gun control proposals are on the way. Some of our legislators will be tempted to apply Rahm Emanuel's aphorism, "Never let a good crisis go to waste."

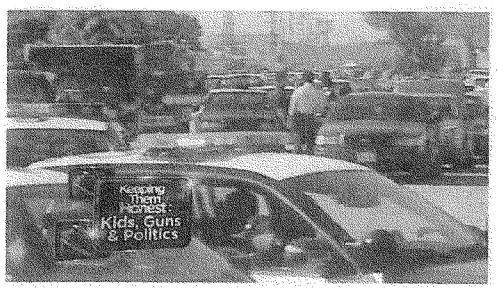
For example, Rep. Carolyn McCarthy, D-New York, wants to outlaw magazines with more than 10 rounds -- even those already in circulation. She hasn't explained how a ban on previously sold magazines would deter anyone but law-abiding citizens.

Still, the Supreme Court has suggested that sensible gun regulations may be constitutionally permissible. Sensible is not, however, what we have in Washington, Chicago, New York and other cities, where you can probably get a pizza delivery before a response from a 911 call. Police cannot be everywhere.

Selected proposals may nonetheless be constructive, with three important qualifications. First, government has the burden to show that a regulation will not unduly impede the use of firearms for self-defense. Second, ostensibly modest steps down a slippery slope must not compromise core Second Amendment rights. Third, a regulation must be effective in promoting public safety, when weighed against reliable evidence that past restrictions have not lessened the incidence of gun-related crimes.

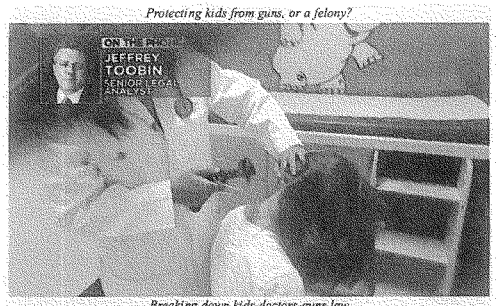
Recall that Washington banned handguns for 33 years; during some of those years the city was known as the nation's murder capital. Killers not deterred by laws against murder were not deterred by laws against owning guns. Moreover, anti-gun regulations did not address the deep-rooted causes of violent crime -- illegitimacy, drugs, alcohol abuse and dysfunctional schools -- much less mental instability.

For another view, read Sarah Brady on gun control

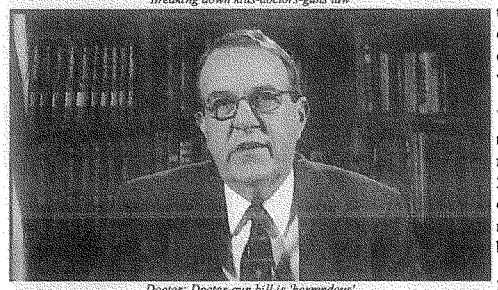


In 2004, the National Academy of Sciences reviewed 253 journal articles, 99 books and 43 government publications evaluating 80 gun-control measures. Researchers could not identify a single regulation that reduced violent crime, suicide or accidents. A year earlier, the Centers for Disease Control reported on ammunition bans, restrictions on acquisition, waiting periods, registration,

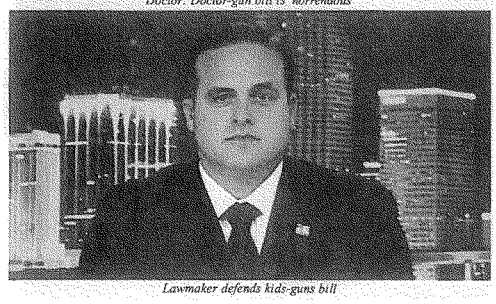
Protecting kids from guns, or a felony?



Breaking down kids-doctors-guns law



Doctor: Doctor-gun bill is 'horrendous'



Lawmaker defends kids-guns bill

licensing, child access prevention and zero tolerance laws. CDC's conclusion: There was no conclusive evidence that the laws reduced gun violence.

So much for the quasi-religious faith that more controls mean fewer murders. There are about 500,000 gun-related crimes annually in the United States. Further, Americans own roughly 250 million guns. Assuming a different gun is used in each of the 500,000 crimes, only 0.2% of guns are involved in crime each year. A ban on firearms would be 99.8% over-inclusive.

We should also resist seemingly measured gun controls such as raising the age limit from 18 to 21, requiring background checks at gun shows, and reinstating the assault weapons ban.

Eighteen-year-olds are allowed to vote, go to war, get married and divorced, and have an abortion. Maybe that cutoff is too low; but an individual sufficiently mature to engage in those activities is responsible enough to own a gun for self-defense.

Gun shows did not play a role in Jared Loughner's rampage. He apparently acquired his firearm at a retail store through a licensed dealer. In fact, merely 2% of guns used by criminals are purchased at gun shows. That includes straw purchases, which are already illegal, and purchases through dealers, which are subject to background checks. Nearly all rejected buyers turn out to be false positives. Others, bent on committing crimes, just shop elsewhere, on the black market if necessary.

Expiration of the assault weapons ban in 2004 did not -- contrary to popular belief -- legalize automatic firearms. Those weapons have been banned since 1934 for all practical purposes. The ban covered semi-automatic weapons, which are used by tens of millions of Americans for hunting, self-defense, target shooting, and even Olympic competition. Take it from The New York Times, written a few months after the ban expired: "Despite dire predictions that the streets would be awash in military-style guns, expiration of the assault weapons ban has not set off a sustained surge in sales (or) caused any noticeable increase in gun crime."

The U.S. Constitution imposes no obstacle to more thorough screening of gun applicants for mental impairment. Nor does the Constitution likely preclude reasonable background checks, or even tighter constraints on high-capacity magazines. Those proposals, which may reflect the common-sense views of many Americans, must be tempered by this reality: Experience indicates that gun restrictions have minimal effect on access to weapons by criminals and deranged people.

The opinions in this commentary are solely those of Robert Levy.

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Everything Jersey

Why I still support the right to bear arms: Opinion

By Star-Ledger Guest Columnist

on January 11, 2013 at 5:31 AM, updated January 11, 2013 at 5:32 AM

By Ilya Shapiro

Being an advocate for individual rights and civil liberties can be difficult. When terrorists attack, when the economy fails, and yes, when evil visits elementary schools, the natural instinct is to demand security above all else.

On learning of the horror in Newtown, Conn., I could thus easily understand the reaction that soon filled my Facebook feed: "We have to do something. There should be laws restricting guns so they don't get in the hands of these deranged murderers."

The logical impulse for those of us who defend private gun ownership is to duck such discussions altogether, to let the passions settle. But on the contrary, with the White House task force preparing its recommendations, it's more important than ever to present our position with clear-eyed resolve.

Even against the backdrop of last month's tragedy, I still support the fundamental right to armed self-defense. Especially in an imperfect world where madness abounds, I oppose policies that would restrict legal gun ownership by law-abiding citizens.

I say this despite having grown up in Canada and never owned a gun. I've shot handguns and rifles about a dozen times at friends' invitation, but never gone hunting. The last eight years I've lived in Washington, where, despite the Supreme Court's 2008 ruling, it's still near-impossible to obtain a personal firearm (and illegal to carry one outside your home).

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So I hope you can accept that I'm not a "gun nut."

But you don't have to be crazy about guns to recognize that no law could make the 300 million firearms in America disappear. Even making it illegal to own a gun wouldn't prevent a criminal or madman from doing his malevolent deed. Robust policies to prevent legal gun ownership only translate to guns being overwhelmingly possessed by those willing to break the law — i.e., criminals.

Indeed, Connecticut has some of the strictest gun laws in the country, and Sandy Hook Elementary is a "gun -free zone" — as was the movie theater in Aurora, Colo.

None of the measures at the top of gun-control advocates' agenda — such as banning so-called assault weapons (ordinary rifles with certain cosmetic features like pistol grips or bayonet mounts) and closing gun-show loopholes — would've averted these shootings. The Newtown killer stole the pistols he used from his mother.

We'd be much better off focusing on improvements we can make in identifying and treating mental illness — the common factor in all these incidents — and ensuring that disqualifying records make it into the database used for background checks (which would've stopped the Virginia Tech shooter from buying his guns).

That's not to say that we shouldn't have any gun regulations. Cracking down on "straw purchasers" is a good idea and indeed military-grade weapons like fully automatic "machine guns" have no place in civilian life.

On the other hand, it's perfectly reasonable for someone to have a gun to protect herself or her family. That's why the Second Amendment is so important: Americans cherish their life, liberty and pursuit of happiness so much that they instituted a government that protects their right to defend against anyone who would threaten them.

After the 1999 Columbine shootings, Colorado passed a series of laws that should serve as a national model. Some of them consist of what people call "gun control," while others are in the "gun rights" category. The most important one was the Concealed Carry Act, which has already saved countless lives, including at an Aurora church — three months before the theater shooting — where an off-duty cop killed a career criminal who was targeting congregants.

These measures are based on an obvious principle that enjoys broad public support: Guns in the wrong hands are dangerous, while guns in the right hands protect public safety.

The Second Amendment exists to protect the grand American experiment in self-government. Call me a "Constitution nut," but I'm crazy about allowing people to live their lives with the maximum freedom possible.

If I could snap my fingers and end gun violence, I would. I would even take guns away from hunters and sportsmen if it meant better self-defense for the rest of us.

Men aren't angels, however, and, by definition, criminals don't follow the law. Yes, in the wake of Newtown, I still support the right to bear arms.

Ilya Shapiro is a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the Cato Supreme Court Review.

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THE WALL STREET JOURNAL.
WSJ.com

OPINION December 17, 2012, 7:04 p.m. ET

Guns, Mental Illness and Newtown

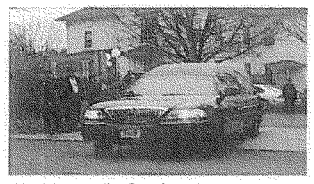
There were 18 random mass shootings in the 1980s, 54 in the 1990s, and 87 in the 2000s.

By DAVID KOPEL

Has the rate of random mass shootings in the United States increased? Over the past 30 years, the answer is definitely yes. It is also true that the total U.S. homicide rate has fallen by over half since 1980, and the gun homicide rate has fallen along with it. Today, Americans are safer from violent crime, including gun homicide, than they have been at any time since the mid-1960s.

Mass shootings, defined as four or more fatalities, fluctuate from year to year, but over the past 30 years there has been no long-term increase or decrease. But "random" mass shootings, such as the horrific crimes last Friday in Newtown, Conn., have increased.

Related Video



Editorial page editor Paul Gigot discusses the Newtown shooting and its political aftermath.

Alan Lankford of the University of Alabama analyzed data from a recent New York Police Department study of "active shooters"—criminals who attempted to murder people in a confined area, where there are lots of people, and who chose at least some victims randomly. Counting only the incidents with at least two casualties, there were 179 such crimes between 1966 and 2010. In the 1980s, there were 18. In the 1990s, there were 54. In the 2000s, there were 87.

If you count only such crimes in which five or more victims were killed, there were six in the 1980s and 19 in the 2000s.

Why the increase? It cannot be because gun-control laws have become more lax. Before the 1968 Gun Control Act, there were almost no federal gun-control laws. The exception was the National Firearms Act of 1934, which set up an extremely severe registration and tax system for automatic weapons and has remained in force for 78 years.

Nor are magazines holding more than 10 rounds something new. They were invented decades ago and have long been standard for many handguns. Police officers carry them for the same reason that civilians do: Especially if a person is attacked by multiple assailants, there is no guarantee that a 10-round magazine will end the assault.

The 1980s were much worse than today in terms of overall violent crime, including gun homicide, but they were much better than today in terms of mass random shootings. The difference wasn't

that the 1980s had tougher controls on so-called "assault weapons." No assault weapons law existed in the U.S. until California passed a ban in 1989.

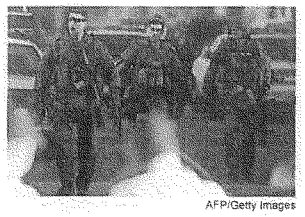
Connecticut followed in 1993. None of the guns that the Newtown murderer used was an assault weapon under Connecticut law. This illustrates the uselessness of bans on so-called assault weapons, since those bans concentrate on guns' cosmetics, such as whether the gun has a bayonet lug, rather than their function.

What some people call "assault weapons" function like every other normal firearm—they fire only one bullet each time the trigger is pressed. Unlike automatics (machine guns), they do not fire continuously as long as the trigger is held. They are "semi-automatic" because they eject the empty shell case and load the next round into the firing chamber.

Today in America, most handguns are semi-automatics, as are many long guns, including the best-selling rifle today, the AR-15, the model used in the Newtown shooting. Some of these guns look like machine guns, but they do not function like machine guns.

Back in the mid-1960s, in most states, an adult could walk into a store and buy an AR-15 rifle, no questions asked. Today, firearms are the most heavily regulated consumer product in the United States. If someone wants to purchase an AR-15 or any other firearm, the store must first get permission for the sale from the FBI or its state counterpart. Permission is denied if the buyer is in one of nine categories of "prohibited persons," including felons, domestic-violence misdemeanants, and persons who have been adjudicated mentally ill or alcoholic.

Since gun controls today are far stricter than at the time when "active shooters" were rare, what can account for the increase in these shootings? One plausible answer is the media. Cable TV in the 1990s, and the Internet today, greatly magnify the instant celebrity that a mass killer can achieve. We know that many would-be mass killers obsessively study their predecessors.



AFP/Getty Images

State troopers leaving Sandy Hook Elementary School in Newtown, Conn., Dec. 14.

Loren Coleman's 2004 book "The Copycat Effect: How the Media and Popular Culture Trigger the Mayhem in Tomorrow's Headlines" shows that the copycat effect is as old as the media itself. Johann Wolfgang von Goethe's 1774 classic "The Sorrows of Young Werther" triggered a spate of copycat suicides all over Europe. But today the velocity and pervasiveness of the media make the problem much worse.

A second explanation is the deinstitutionalization of the violently mentally ill. A 2000 New York Times study of 100 rampage murderers found that 47 were mentally ill. In the Journal of the American Academy of Psychiatry Law (2008), Jason C. Matejkowski and his co-authors reported that 16% of state prisoners who had perpetrated murders were mentally ill.

In the mid-1960s, many of the killings would have been prevented because the severely mentally ill would have been confined and cared for in a state institution. But today, while government at most every level has bloated over the past half-century, mental-health treatment has been decimated. According to a study released in July by the Treatment Advocacy Center, the number of state hospital beds in America per capita has plummeted to 1850 levels, or 14.1 beds per 100,000 people.

Moreover, a 2011 paper by Steven P. Segal at the University of California, Berkeley, "Civil Commitment Law, Mental Health Services, and U.S. Homicide Rates," found that a third of the state-to-state variation in homicide rates was attributable to the strength or weakness of involuntary civil-commitment laws.

Finally, it must be acknowledged that many of these attacks today unfortunately take place in pretend "gun-free zones," such as schools, movie theaters and shopping malls. According to Ron Borsch's study for the Force Science Research Center at Minnesota State University-Mankato, active shooters are different from the gangsters and other street toughs whom a police officer might engage in a gunfight. They are predominantly weaklings and cowards who crumble easily as soon as an armed person shows up.

The problem is that by the time the police arrive, lots of people are already dead. So when armed citizens are on the scene, many lives are saved. The media rarely mention the mass murders that were thwarted by armed citizens at the Shoney's Restaurant in Anniston, Ala. (1991), the high school in Pearl, Miss. (1997), the middle-school dance in Edinboro, Penn. (1998), and the New Life Church in Colorado Springs, Colo. (2007), among others.

At the Clackamas Mall in Oregon last week, an active shooter murdered two people and then saw that a shopper, who had a handgun carry permit, had drawn a gun and was aiming at him. The murderer's next shot was to kill himself.

Real gun-free zones are a wonderful idea, but they are only real if they are created by metal detectors backed up by armed guards. Pretend gun-free zones, where law-abiding adults (who pass a fingerprint-based background check and a safety training class) are still disarmed, are magnets for evildoers who know they will be able to murder at will with little threat of being fired upon.

People who are serious about preventing the next Newtown should embrace much greater funding for mental health, strong laws for civil commitment of the violently mentally ill—and stop kidding themselves that pretend gun-free zones will stop killers.

Mr. Kopel is research director of the Independence Institute and co-author of the law school textbook, "Firearms Law and the Second Amendment" (Aspen, 2012).

A version of this article appeared December 17, 2012, on page A17 in the U.S. edition of The Wall Street Journal, with the headline: Guns, Mental Illness and Newtown.

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NATIONAL REVIEW ONLINE www.nationalreview.com PRINT

Colorado Consensus on Gun Laws

By Dave Kopel

July 26, 2012 4:00 A.M.

After the Columbine High School murders, Colorado enacted eight specific gun-law reforms. Three of these reforms are examples of what people usually call "gun control," and five of them are in the "gun rights" category. But to many Coloradoans, all eight of the measures are cohesive and consistent. They are all based on the same principles: Guns in the wrong hands are very dangerous, and guns in the right hands protect public safety. Colorado strengthened its laws to make it harder for the wrong people to acquire guns and simultaneously strengthened laws to remove obstacles to the use and carrying of firearms by law-abiding citizens. As a whole, the laws embody a compromise that enjoys broad public support; they settled a gun-policy debate that had raged in Colorado for 15 years. The Colorado consensus has already saved lives.

CONCEALED CARRY ACT

The most important element of the Colorado reforms is the Concealed Carry Act, which became law in 2003. This law strongly protects the right of law-abiding adults to carry handguns for the defense of self and others. Forty other states have similar laws.

The reform has so far thwarted at least one massacre. In December 2007, a man murdered two teenagers at the Youth with a Mission training center in the Denver suburbs. He then drove south to Colorado Springs and attacked the New Life megachurch in Colorado Springs. He killed two people in the parking lot and then entered the building, carrying hundreds of rounds of ammunition. Fortunately, a volunteer security guard for the church, Jeanne Assam, was

carrying a licensed handgun, and she quickly shot the attacker. According to Pastor Brady Boyd, "she probably saved over 100 lives."

Elsewhere in the United States, three school shootings have been stopped because teachers or other responsible adults had firearms: Edinboro, Penn.; Pearl, Miss.; and the Appalachian Law School in Grundy, Va.

Colorado law allows government buildings to be declared "gun-free zones," but Colorado law insists that when a government promises a gun-free zone, the government must keep the promise: Licensed carry may be forbidden in a government building *only* if all entrances to the building are controlled, and if the public entrances have metal detectors manned by armed guards.

Under Colorado law, therefore, government entities may not simply post a NO GUNS sign and leave law-abiding, licensed citizens defenseless against violent criminals. Earlier this year, in a unanimous decision, the Colorado supreme court ruled that the University of Colorado may not forbid licensed carry on its campuses. All the other public universities in Colorado had already been complying with the law by allowing licensed carry, and there have not been any problems.

K–12 schools have special restrictions: Licensed carry is allowed only in automobiles on school property, not in buildings or on sports fields. Although this approach is not ideal, it does allow the possibility that in case of an attack, an adult could retrieve a firearm from an automobile and then confront the attacker. That is how lives were saved in Pearl, Miss.

The Concealed Carry Act did not disturb the property rights of business owners — if they wish to, they may prohibit concealed carry on their business premises. Fortunately, very few Colorado businesses have done so. But one that did was Century Theaters. Compounding the problem, Century Theaters did not

create an actual "gun-free zone" (as some government buildings in Colorado have). Instead, Century Theaters created a *pretend* gun-free zone. Century Theaters did *nothing* to prevent armed criminals from entering the theater.

As is common in mass homicides, the killer in this case chose to target victims in a "gun-free" zone — with predictable and horrific results. When armed police finally confronted him, he surrendered quickly. This, too, is common; mass killers tend to be cowards who crumble at the first resistance.

The *San Francisco Chronicle* reports that the vest the Aurora killer bought from the website Tactical Gear was not bulletproof. An even if he was wearing a different vest that he procured elsewhere, such a vest does not make the wearer invincible. A shot to the chest can still knock a shooter down and break a rib, providing time for someone to tackle him.

Among the victims in the Century Theater's "gun-free" zone were members of the U.S. Armed Forces. Had one of them — or any other law-abiding adult — had a handgun on Friday night, the shot might have stopped the killer. Any resistance almost certainly would have saved lives by distracting the killer's attention.

The Concealed Carry Act was primarily written by the County Sheriffs of Colorado and was based on the permit-issuance policies developed by Larimer County (Fort Collins) sheriff Jim Alderdan. As in most American states, the procedure for issuing a permit is objective in routine cases: Has the applicant provided proper documentation of the required safety training? Did the applicant's ten-point fingerprints, collected and sent to the FBI and to the Colorado Bureau of Investigation, confirm that the applicant does not fit into any of the disqualifying categories?

But, as in many states, Colorado law goes farther and allows the sheriff to make discretionary denials — if the discretion is properly applied. The sheriff may deny a carry-permit application if the sheriff "has a reasonable belief that documented previous behavior by the applicant makes it likely the applicant will present a danger to self or others." In case of a denial, the applicant can appeal to a court, and the burden of proof is on the sheriff.

This provision is informally called "the naked man rule," meaning that the sheriff can deny a permit to the man who sits naked in his front yard, muttering about the Martians, but who has a clean record. The County Sheriffs of Colorado deemed it essential that the Concealed Carry Act include the naked-man rule. Yet the Brady Campaign inaccurately claims that Colorado has zero "law enforcement discretion when issuing [concealed-carry] permits."

The National Rifle Association expressed strong support in the Colorado legislature for the Concealed Carry Act. By contrast, another group, Rocky Mountain Gun Owners, fought hard against the Concealed Carry Act, because of the naked-man rule and because of other provisions that failed to meet RMGO's standards of perfection. Ultimately, not a single pro-gun legislator voted with RMGO. The NRA-endorsed Concealed Carry Act won a bipartisan majority of 46–16 in the House (including almost every Democrat outside Denver and Boulder) and 23–12 in the Senate.

Surprisingly, an article in *Politico* on July 21 claimed that the Concealed Carry Act was written to RMGO's specifications. Exactly the opposite is true: To help the Concealed Carry Act become law, the NRA had to defeat RMGO just as much as it had to defeat the Colorado affiliates of national anti-gun organizations such as the Brady Campaign.

ADDITIONAL LAWS TO PROMOTE SELF-DEFENSE

A second post-Columbine reform in the "gun rights" category is the strengthening by the Colorado legislature of an existing state law that stops local jurisdictions from interfering with the carrying of firearms in automobiles, for which Colorado has never required a permit.

The third gun-rights reform is also in this area of state preemption: Another post -Columbine state law preempts some other aspects of gun control, such as a Denver ordinance that prohibited parents from teaching firearms safety to their children. The Colorado preemption law is nonetheless rather weak by U.S. standards — in the majority of states, local gun laws are prohibited, and many of the remaining states allow local gun laws only on certain enumerated topics — and it's weakened further by judicial interpretation. However, because most Coloradoans view the gun issue as well settled, local governments have enacted essentially no new gun controls recently, for they know that if they did, the long -term result would be much stronger preemption laws at the state level.

Colorado was one of 34 states that enacted a statute prohibiting lawsuits against gun companies for the misdeeds of criminals — the fourth gun-rights law passed since Columbine. The laws protect self-defense rights by thwarting the attempts of anti-gun groups and a few big-city mayors to destroy the firearms industry through litigation. No such lawsuit against a gun company had ever been filed in a Colorado, and the legislature intended to make sure it stayed that way. Congress enacted a similar federal law in 2005, the Protection of Lawful Commerce in Arms Act.

In the early 20th century, during a period of labor strife caused by coal companies' refusal to recognize the rights of miners to join unions, a corporate-dominated legislature enacted a law allowing the governor to ban gun sales

during an "emergency." That law had never been used, but the post-Columbine legislature, enacting its fifth gun-rights reform, repealed it — thus ensuring that guns would be available at a time when they were needed most.

STRENGTHENING GUN REGULATION

Complementing the five laws to protect the self-defense rights of law-abiding citizens, Colorado passed three laws that aim to keep guns out of the wrong hands.

A "straw purchaser" is someone who can legally buy a gun — but who buys a gun on behalf of a prohibited person, such as a convicted criminal. Straw purchases have been illegal under federal law since 1968, and in 1986 the straw -purchase ban was strengthened by the NRA's flagship bill, the Firearms Owners' Protection Act. Colorado's first post-Columbine "gun control" law is similar to the federal one, and it allows local law enforcement to bring cases in state court instead of depending on busy federal prosecutors to file federal charges.

The Columbine guns had been procured by adults who bought the guns on behalf of the killers. So, as the second gun-control measure, Colorado enacted a statute against transferring a firearm to a minor without consent of the minor's parent or guardian. Previously, Colorado law had forbidden such transfers of handguns, but not long guns.

Finally, Colorado voters in 2000 passed a law imposing some special restrictions on gun shows, because three of the four Columbine guns had been obtained at a gun show. In most states, the laws for selling guns at a gun show are exactly the same as for selling a gun anywhere else. Thus, persons who are in the business of selling guns must have a federal license and must conduct a background check on every sale.

In contrast, according to federal law, persons who are not "engaged in the business" of selling firearms are not covered by the rules applicable to firearms businesses. So if a private person sells a rifle to his neighbor or to his friend at a hunting club, the federal rules about background checks and paperwork do not apply. But under Colorado's 2000 law, if that very same private sale takes place at a gun show, then there must be a background check.

I didn't support that law, because I think that laws about gun sales should be uniform, not dependent on the location of the sale. However, the Colorado gun-show law is much more moderate than the gun-show bills that have been introduced in Congress. Unlike those laws, the Colorado law does not give a bureaucrat the administrative power to prohibit gun shows, does not structure the background checks so as to create a gun-registration system, and does not create new restrictions for licensed firearms dealers.

The gun-show initiative won 67 percent of the vote — only a little bit less than the proportion favoring Colorado's Concealed Carry Act. Polls found that the supermajority support for concealed carry actually increased slightly after Columbine.

While Colorado strengthened laws to keep guns out of the wrong hands and put them in the right hands, it rejected all proposals to restrict law-abiding gun ownership — such as bills that would have banned certain guns or magazines, or outlawed guns at schools and colleges.

In broad terms, the Colorado consensus matches the national consensus that solidified a few years later, and which was ratified by the Supreme Court's decisions in *District of Columbia v. Heller* (2008) and *McDonald v. Chicago* (2010).

There is still room for refinement and technical improvements in Colorado's statutes, but the post-Columbine period in Colorado resolved a contentious social debate. Coloradoans, including their liberal Democratic governor John Hickenlooper, are unlikely to let themselves by bullied by the national media into abandoning their consensus, which is based on strong rights and sensible regulations.

— David Kopel is research director at the Independence Institute, in Denver, and an adjunct professor at Denver University, Sturm College of Law.

Permalink

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DAILY NEWS

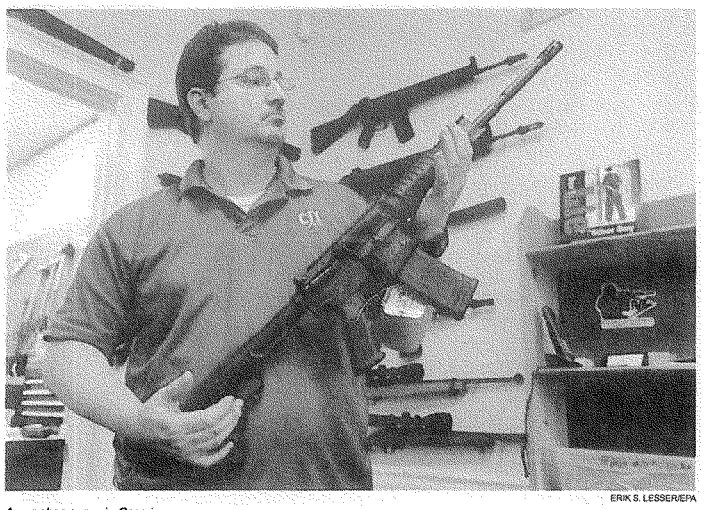
OPINION

Face it: Guns are here to stay

Weapons do less harm and more good than many Americans will acknowledge

BY TREVOR BURRUS / NEW YORK DAILY NEWS

MONDAY, JANUARY 7, 2013, 4:22 AM



ERIK S. LESSER/EPA

A gun shop owner in Georgia.

The horrific massacre in Newtown, Conn., is reigniting the debate over guns — which must begin with the realistic premise that there will never be a gun-free America. Until we own up to this truth, we won't get anywhere.

An emotional revulsion toward guns inhibits productive dialogue between gun-control advocates and their opponents. For many gun-control supporters, a good world is one where private ownership of guns is both unnecessary and illegal.

I have sympathy for the appeal of this ideal, but such a daydream cannot guide our public policy.

There are approximately 300 million guns in private hands in the United States. Even if the government enacted a massive program to confiscate these weapons, the feds would fail in their task and frighten millions of Americans in the process.

And if they did somehow manage to take away legal weapons? That would still leave criminals happily armed.

We must simply accept the inevitability of an America teeming with guns (to the chagrin of Piers Morgan and his fellow liberals). If we at least agree on this realistic starting point, we can move the debate toward reasonable and effective policy proposals: better mental-health care to prevent seriously ill people with violent tendencies from acquiring weapons; background checks; better enforcement of existing laws.

None of these need to involve taking guns out of the hands of law-abiding Americans in order for us to avoid the next Newtown. In fact, guns may well help prevent it.

In December 2007, for example, Matthew Murray entered the New Life Church in Colorado Springs, Colo., armed with two handguns and an assault rifle (the same arsenal possessed by Adam Lanza). Murray had killed two people in the parking lot before entering the church. Inside, he shot one man in the arm before being shot by Jeanne Assam, a former police officer with a concealed-carry permit.

Potential massacres were also stopped in 1997 at a Pearl, Miss., school and in 1998 at a school dance in Edinboro, Pa. In both cases, responsible citizens prevented mass bloodshed by drawing their weapons and using them for the public good. Mock the NRA's Wayne LaPierre all you want, but in those two cases — and plenty of others — good guys with a gun did save the day.

Forty-one states currently have safe and effective concealed-carry permitting systems, and eight other states have more restrictive discretionary permitting laws. Since the 1980s, there has been a profusion of states that allow concealed carry and — despite the dire predictions of many — there has been no corresponding increase in crime rates.

Permit holders are not having parking-lot shootouts or brandishing their weapons during mall scrums over toys. In the past 20 years, the cases of permit holders using their guns improperly are quite rare — and they are certainly much rarer than the times in which people used a concealed weapon to successfully defend themselves.

In short, we have become a society that allows widespread gun-carrying for law-abiding citizens, and this has occurred largely in silence not because of political pressure by the gun lobby or cowardice by Democrats but because there is almost nothing to report.

Almost nothing. We have been mostly silent about just how many times Americans use guns to lawfully and successfully defend themselves from crime.

At minimum, according to the Justice Department's own data, this occurs about 110,000 times per year.

There are, however, many reasons to suspect that this data severely under-reports the true number; other studies have found that Americans use guns defensively between 830,000 and 2.45 million times per year.

Moreover, these numbers don't include the inherently immeasurable instances where would-be criminals decided not to commit a specific crime due to the fear that the would-be victim might be carrying a gun.

In the wake of the Newtown tragedy, stricter gun laws will almost certainly be proposed. But if we make the reasonable assumption that criminals will evade these laws if at all possible, and that identifying shooters before their crimes is a monumentally difficult task, then we can start to deal with actually attainable, second-best solutions.

While we should do everything we can to prevent massacres like Newtown, we should also remember what it takes to stop a New Life Church.

Burrus is a research fellow in the Cato Institute's Center for Constitutional Studies.

OTHERSTORIES

11 Foods You Can't Buy Anywhere Anymore
(The Fiscal Times)

Gonzalez: President Obama calls on Congress to act on immigration reform while patrolling the border has become big business for the government

Victoria Justice in New York City
(Zimbio)

No thank you, Karl Rove

[?]

Texas State Rifle Association

Protecting Our Constitution
Since 1919

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February 7, 2013

Senate Judiciary Committee

Gentlemen:

The Texas State Rifle Association Officers, Board of Directors, Members and Staff urge Senators Cornyn and Cruz to stop and not support any additions to Federal law which further restrict law-abiding gun owners.

We strongly oppose what's being called "universal background checks" on firearm sales and transfers and oppose the addition of ammunition. We strongly oppose passing bans or limiting the ownership on any category of firearm or magazine not currently covered by federal law.

TSRA members are aware that existing law is not being fully utilized. We know courts outside our state are not reporting-up mental health records to NICS, ATF is not following up and prosecuting those who "straw purchase" a firearm for a person not eligible to purchase or possess a firearm.

In addition, TSRA members have seen the FBI Uniform Crime Report, Murder Victims by Weapon, which indicates a steady decline over the previous five year period for categories related to murder by weapon. FBI statistics do not support the need for additional firearms-related law, rules or regulations. The report demonstrates a declining rate within all categories of weapon including "Blunt Instruments" and "Knives or Other Cutting Instruments". Obviously the decline is not tied to background checks.

Our 38,000 Texas members rely on good information and good data. We urge our Government to do the same.

Sincerely

Alice Tripp

Alice Tripp

The Honorable Ted Cruz
B40B Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Senator Cruz:

Texas Trophy Hunters Association is a membership based organization started in San Antonio over 37 years ago with a mission to facilitate the advocacy of and defend the rights and traditions of the sport of hunting, the Second Amendment, outdoor recreation and wildlife management through direct promotion, education and community outreach; in so doing, Texas Trophy Hunters Association is the Voice of Texas Hunting. We currently have approximately 20,000 members, over 4 million viewers of Trophy Hunters TV and 50,000 attendees to our Trade Shows that regularly advocate to us their desire to protect their Second Amendment rights, their hunting traditions and the right for law abiding citizens to protect their families. We also receive regular feedback from our Facebook followers and e-newsletter subscribers

Texas is a very popular state for law abiding gun owners and hunters alike. Sportsmen in Texas spend over $6.6 billion a year on related outdoor recreation purchases, including firearms and ammunition, and hunters alone spend $2.3 billion a year. It is obvious to us that restricting our Second Amendment rights any further would have a huge impact on the Texas outdoor recreation economy, hunting and all related industries.

We at Texas Trophy Hunters Association represent our members and subscribers when we say that we support whole heartedly the enforcement of our existing gun laws first and do not wish to see any further restrictions placed on our gun ownership rights. We believe that the vast array of new restrictions being proposed would further dilute the ability for law enforcement to enforce the current laws on the books. Texas Trophy Hunters Association and its members are prepared to defend our Second Amendment rights by joining our voices in strong opposition against the liberal proposals to restrict our Constitutional freedoms!

Sincerely,

Jim Butcher
SVP Finance & Operations
Texas Trophy Hunters Association

Hal Gahm
SVP Sales & Operations
Texas Trophy Hunters Association

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Texas Wildlife Association

"Working for tomorrow's wildlife ... TODAY!"

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February 12, 2013

U.S. Sen. Ted Cruz
B40B Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Cruz,

The Texas Wildlife Association strongly supports your efforts and leadership to protect the Second Amendment and its constitutional rights for U.S. citizens.

The Texas Wildlife Association is a statewide membership organization of over 6200 members who own or manage nearly 40 million acres of private property in Texas. TWA serves Texas wildlife and its habitat, while protecting property rights, hunting heritage, and the conservation efforts of those who value and steward wildlife resources.

The Texas Wildlife Association firmly believes every sportsman, sportswoman, and American has the right to keep and bear arms. The constitutional right to keep and bear arms protects the means by which the vast majority of American hunters equip themselves to go afield. Efforts to preserve our Hunting Heritage can be undone if new barriers to hunting are added by limiting the tools that the vast majority of sportsmen depend on to hunt.

Our organization is committed to assisting you and other Congressional leaders who support the Second Amendment and the right to keep and bear arms in anticipation of increased Congressional activity aimed at increasing federal gun control regulations.

As vital as free speech is to a free society, the Second Amendment is equally vital. Therefore, we should refrain from picking and choosing how Americans exercise their Second Amendment rights.

The rationale for gun control is to keep guns from the hands of criminals. Rational people agree guns do not belong in the hands of criminals. The irony is that if we outlawed every gun in the world, the AR 15 (and others) would only be in the hands of criminals, the government, and not everyday U.S. citizens.

Thank you for your strong leadership and efforts on this very important issue. The Texas Wildlife Association looks forward to assisting you in the protection of the Second Amendment and its constitutional rights.

Sincerely,

Glen Webb

Glen Webb
President

THE UNIVERSITY of TENNESSEE
KNOXVILLE
COLLEGE of LAW

February 7, 2013

Senator Ted Cruz
United States Senate
Washington, DC 20510

Re: Gun Control and the Second Amendment

Dear Senator Cruz:

As I discussed with your assistant Max Pappas, attached is a copy of my recent article from the Southern California Law Review, entitled *Second Amendment Penumbras: Some Preliminary Observations.*[1] Now that individual possession of firearms has been firmly recognized as a constitutional right, this piece explores related issues such as gunowners' right to travel, the right to carry weapons in public and to transport firearms and ammunition from place to place, the right to purchase firearms and ammunition, and the like.

Let me just add a few other observations. First, although I have seen some pundits suggest that the language in *Heller* about the common law's tolerance for bans on "dangerous and unusual" weapons might permit an "assault weapons" ban, I think that such claims are poorly founded, for the simple reason that so-called "assault weapons" are neither dangerous nor unusual.

All weapons are dangerous, of course, but so-called "assault weapons" fire no more rapidly than other semiautomatic rifles or pistols, nor are their cartridges particularly powerful. Likewise, the archetypal example, the AR-15, can hardly be called unusual, given that it is the most popular rifle in America today.[2] Thus, a categorization of the AR-15 as "dangerous and unusual" would seem untenable. Likewise, while similar rifles such as the AK-47 variants, the SKS, etc., might not be as popular as the AR-15, they can hardly be characterized as unusual, nor are they any more dangerous. The same is true of full-capacity (e.g., 30-round) magazines, which are owned by millions of Americans.

It is for this reason that many have suggested that legislation singling out particular makes and models of firearms for prohibition would be not simply a violation of the Second Amendment, but constitutionally invalid on grounds of irrationality. As Georgetown University law professor Randy Barnett recently wrote:

> For example, "assault weapons" are a made-up category of weapons that is based solely on cosmetic features that make them look like the fully automatic weapons used by the

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[1] 85 So. Cal. L. Rev. 247 (2012).

[2] Patrik Jonsson, Is the AR-15 as popular as the iPod? Christian Science Monitor, February 6, 2013. Available online at http://www.csmonitor.com/USA/DC-Decoder/2013/0206/Gun-debate-101-Is-the-AR-15-as-popular-as-the-iPod. (Calling the AR-15 "the most popular gun in America.")

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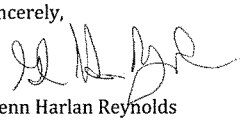
> military. Banning them leaves other rifles that are functionally identical in their lethality and rate of fire completely legal. Moreover, far more powerful hunting rifles are left untouched by the law, as are shotguns. This is simply irrational and therefore unconstitutional.
>
> The same can be said for New York's law limiting handguns to seven rounds, while allowing both active and retired police officers to keep their handguns that hold up to 15 rounds. If retired cops need 15 rounds to effectively protect themselves and others, then so do other citizens. Arbitrarily discriminating among Americans in this way is irrational and unconstitutional.[3]

I would add that, although I am aware of no authority on the subject, laws that grant different classes of people – for example, retired law enforcement officers – greater rights to arms should be considered to implicate the constitutional ban on titles of nobility.[4] Though we tend to think of titles of nobility as involving terms like Duke or Baron, the chief characteristic of titles of nobility (which were not necessarily hereditary) was holders' freedom from legal restraints that applied to the masses, and one of the chief characteristics of the gentry in England at the time of the framing was that they had a right to bear arms that the common people did not.

At any rate, I hope that you find my Second Amendment article useful, and these brief thoughts at least moderately interesting. Should you have any further questions, please feel free to contact me.

Sincerely,



Glenn Harlan Reynolds
Beauchamp Brogan Distinguished Professor of Law

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[3] Randy Barnett, Gun Control Fails Rationality Test, Washington Examiner, January 23, 2013, available online at http://washingtonexaminer.com/gun-control-fails-rationality-test/article/2519971.

[4] U.S. Const., art I, sec. 9. A similar ban applies to the states under art I, sec. 10.

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Clayton E. Cramer
[redacted]

February 7, 2013

The Honorable Ted Cruz
The United States Senate
Capitol Hill
Washington, DC

Dear Senator Cruz:

Thank you for inviting me to share my expertise concerning the problem of gun violence in America. My published books and law review articles examine, among other subjects, Black history, the origins of American gun culture, the judicial interpretation of both federal and state right to keep and bear arms provisions, and the history of mental health care in the United States. My work has been cited in *D.C.* v. *Heller* (2008), *McDonald* v. *Chicago* (2010), and many decisions of the U.S. Courts of Appeal and state supreme courts.

Attached please find an article from the Federalist Society publication *Engage* published last year: "Madness, Deinstitutionalization & Murder." The *Engage* article examines the role that the deinstitutionalization of the mentally ill, starting in the 1960s, and reaching full fruition in the 1970s played in increasing murder rates. Of most relevance to the recent tragedy in Connecticut, deinstitutionalization turned what had been a shockingly rare event--random acts of mass murder--into something that horrifies us, but no longer shocks us, because such incidents happen several times a year. This article is adapted from a chapter in *My Brother Ron: A Personal and Social History of the Deinstitutionalization of the Mentally Ill* (2012).

That deinstitutionalization increased murder rates is not an impressionistic or anecdotal claim: as the article points out, multivariate correlation analysis by Prof. Bernard Harcourt of the University of Chicago demonstrates a statistically significant negative correlation between murder rates and total institutionalization rates (the sum of prison and mental hospital occupancy) for the years 1928 to 2000. Using an entirely different technique, Prof. Stephen P. Segal of University of California, Berkeley demonstrated in 2011 that three measures of mental health care systems are statistically significant in relation to state-to-state variations in murder rates. Indeed, one-third of this variation can be explained by one factor alone: the relative ease of involuntary commitment of the mentally ill.

The evidence for this is includes not only the many examples in the *Engage* article, but by the details of many of the most recent and most horrifying of these mass murders. James Holmes is the man being tried for the murders in Aurora, Colorado. Several weeks before those murders, his psychiatrist was sufficiently concerned about him to contact local police. The exact nature of those contacts, of course, is now tied up in court proceedings,[1] but for a psychiatrist to break doctor/patient confidentiality suggests that she believed she had a *Tarasoff* obligation to inform the police that her patient was a danger to others.[2] Unfortunately, Colorado's current emergency commitment statute creates an extraordinarily high standard of what constitutes "imminent danger to others or to himself"[3] and James Holmes apparently was not considered an "imminent risk."[4]

Similarly, news reports quote a friend of the Lanza family that Mrs. Lanza was attempting to have her son committed at the time he went on the rampage in Newtown, Connecticut. Because court records on such proceedings are not public, the most that local police officials could confirm was that there was some discussion about future mental health care for the son.[5]

Yet while the connection between deinstitutionalization and these random acts of mass murder is abundantly clear, the focus on these relatively rare crimes (totaling less than 1% of all U.S. murders each year) obscures the far more common murders by mentally ill offenders that receive only local news coverage, because they involve *only* one or two victims. As the *Engage* article points out, at least 18% of Indiana inmates convicted of murder are mentally ill: a more detailed examination of the data shows that 11% of Indiana murder convicts are suffering from psychotic conditions that have caused them to lose connection to reality. By my estimate, it is likely that there are 1300 to 1400 murders a year in the U.S. by such severely mentally ill offenders. Of these, about 500 likely involve weapons other than firearms. (One example from last Tuesday: a mentally ill woman in Sebastopol, California charged with stabbing her mother to death.)[6] Any gun control measures are guaranteed to be ineffective at reducing *non-gun* murders by mentally ill offenders. At best, they can only reduce murders with guns--and only the

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[1] Mark Greenblatt, Carol McKinley, and Mike Gudgell, "James Holmes' Psychiatrist Contacted University Police Weeks Before Movie-Theater Shooting: ABC Exclusive," ABC News, August 6, 2012, http://abcnews.go.com/US/james-holmes-psychiatrist-contacted-university-police-weeks-movie/story?id=16943858#.UCGGtfaPWzk, last accessed February 6, 2013.

[2] Tarasoff v. Regents of the University of California, 17 Cal.3d 425 (1976)(obligates mental health workers to warn individuals or police of threats of violence by patients). Other courts have imposed variations of Tarasoff in most other American jurisdictions.

[3] Colorado Revised Statutes 27-65-105(a)(I) (2011).

[4] "Did CU Officials Consider James Holmes 'High Risk' For Violence?" The Denver Channel, August 16, 2012, http://www.thedenverchannel.com/news/did-cu-officials-consider-james-holmes-high-risk-for-violence-, last accessed February 8, 2013.

[5] Jana Winter, "EXCLUSIVE: Fear of being committed may have caused Connecticut gunman to snap," Fox News, December 18, 2012, http://www.foxnews.com/us/2012/12/18/fear-being-committed-may-have-caused-connecticut-madman-to-snap/#ixzz2KB2OXmv4, last accessed February 8, 2013.

[6] Paul Payne and Martin Espinoza, "Sebastopol woman accused of killing mom had a history of arrests," Santa Rosa (Cal.) *Press-Democrat*, February 7, 2013, http://www.pressdemocrat.com/article/20130206/ARTICLES/130209699/1350?p=all&tc=pgall, last accessed February 7, 2013.

very optimistic believe that gun control laws will make anything but a marginal improvement in murder rates.

On the other hand, if we look at the solutions that have been demonstrated to work--such as increasing the number of psychiatric beds available per capita and making emergency involuntary commitment statutes less restrictive (as discussed in Prof. Segal's paper)--we can reduce murder rates *regardless* of weapon type. However, because these involve state law changes, they must be the subject of state legislation, not congressional action. Congress can shine a bright light on the problems that the well-intentioned policy of deinstitutionalization caused, but state legislatures must take principal responsibility for solving these problems.

There has been considerable discussion of the problems of mentally ill offenders not ending up on the national firearms background check system. As an example, Massachusetts has supplied *one* such name to the national background check system since 1999 (as a test), apparently because the state's mental health law prohibits such disclosures. Fourteen states have submitted less than *five* mental health records during that time.[7]

While it would certainly be good for the states to submit records of involuntary commitments and adjudications of mental defect to the national background check system, this alone will make only a small difference because so many states do not involuntarily commit persons who clearly are severely mentally ill. As an example, Jared Lee Loughner, who shot Rep. Giffords and killed six others in Tucson, was expelled from college because of his bizarre, frightening, and obviously mentally ill behavior.[8] Yet because he was never involuntarily committed, his name was never submitted to the national background check system, and he was able to purchase a firearm without restriction. Similarly, Seung-Hui Cho, the Virginia Tech shooter, because he was not involuntarily committed for his bizarre, frightening, and obviously mentally ill behavior, was able to purchase a firearm as well. (He was ordered to undergo *outpatient* treatment, but did not do so, and fell through the cracks.)[9]

The core problem is that states are failing to provide involuntary mental health services to persons who are clearly too ill to recognize that they are ill. In 1960, it was possible to pretend that leaving such persons to their own devices was only an individual tragedy. Today we have too many examples to pretend that this zealous protection of the right of the mentally ill to die of exposure or by their own hands does not also have horrendous consequences for the larger society. Let me emphasize that this problem of mass murder

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[7] David Uberti, "Mass. keeps mental health data from FBI gun checks," *Boston Globe*, January 28, 2013, http://bostonglobe.com/news/nation/2013/01/28/massachusetts-among-worst-sharing-mental-health-data-for-gun-background-checks/WmvEKsnUWsQWxvvsXwLY5O/story.html, last accessed February 8, 2013.

[8] Peter Grier, "Jared Lee Loughner: what is known about Tucson, Arizona, shooting suspect," *Christian Science Monitor*, January 10, 2011, http://www.csmonitor.com/USA/2011/0110/Jared-Lee-Loughner-what-is-known-about-Tucson-Arizona-shooting-suspect, last accessed February 8, 2013.

[9] Richard J. Bonnie, James S. Reinhard, Phillip Hamilton and Elizabeth L. McGarvey, "Mental Health System Transformation After The Virginia Tech Tragedy," Health Affairs, February, 2013, http://content.healthaffairs.org/content/28/3/793.full, last accessed February 8, 2013.

by the deinstitutionalized mentally ill is not unique to the United States. My *Engage* article gives examples of many such mass murderers in Europe as well, and at rates not so terribly different from us, in spite of Europe's generally stricter gun control laws.

What is this going to cost? Perhaps nothing at all. Enclosed please find a draft of a paper I prepared for the Independence Institute after the Aurora shootings last year: "Reforming Colorado Mental Health Law." My estimate, based on figures put together for a Colorado task force looking into this problem, suggests that the states are spending about $3 billion a year in current and future costs prosecuting and incarcerating mentally ill murderers. Costs for prosecution and imprisonment of other severely mentally ill felons are likely on a similar scale.[10] You can provide a lot of mental health services, both inpatient and outpatient, for that kind of money without even considering the other social costs that deinstitutionalization has produced.

The United States is at something of a crossroads here: we can remain focused on gun control, or we can look at the root cause of not only the random acts of mass murder, but many other serious social maladies. The deinstitutionalization of the mentally ill has played a destructive role not only with respect to crime, but also the degradation of urban life, and the barbarous degradation of mentally ill people, who are a large fraction of the homeless in our country.[11]

Deinstitutionalization of the mentally ill is the root cause of most of these shocking acts of mass murder, and the much more common but less publicized murders that happen every day in America, which *very* seldom involve high-capacity magazines or scary looking black rifles. Pretending that gun control is going to have much of an impact on this is like putting a Band-Aid on an arm with a severed artery. It is only a short-term solution, because it covers up a deeper problem. It is time to recognize and solve the root problem.

Very Truly Yours,

Clayton E Cramer

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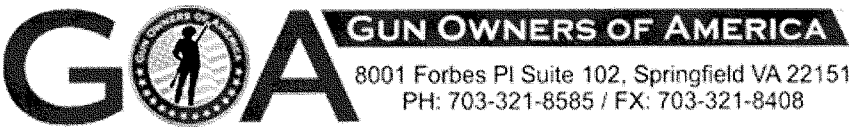
[10] Using the numbers from Clayton E. Cramer, "Reforming Colorado Mental Health Law," Independence Institute, 9-10, scaled up to the United States as a whole.

[11] Clayton E. Cramer, *My Brother Ron: A Personal and Social History of the Deinstitutionalization of the Mentally Ill* (2012), 146-50.



February 12, 2013

Senator Ted Cruz
U.S. Senate Judiciary Committee
Washington, DC 20510

Dear Senator Cruz:

I want to thank you for the opportunity to submit testimony to the U.S. Senate Judiciary Committee, which is conducting a hearing to deal with the following subject: "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment."

Gun Owners of America believes that all of the gun control proposals that are currently on the table in the Senate will infringe upon the rights of law-abiding Americans and will do nothing to make our communities and schools safer.

All of us have deeply grieved over what happened in Newtown, Connecticut this past December. The loss of any life is tragic, and especially when we see so many young children murdered by an evil, heinous individual.

But rather than punish law-abiding Americans, who would never even think of committing such horrible crimes, I hope that the Connecticut tragedy will be the tipping point that pushes us to eliminate the gun-free zone laws that are in fact criminal-safe zones. One measure of insanity is repeating the same failure time after time, hoping that the next time the failure will turn out to be a success. Gun-free zones are a lethal insanity.

Israel finally came to grips with this in the early 1970s, and they have decisively stopped these attacks after a busload of children was massacred by Muslim terrorists. When I was there in the late 1990s, if you saw a busload of students, you saw at least one young teacher with a firearm protecting the groups of students.

The Israelis have decisively stopped these school-related attacks and proved they want to live. Do we have the courage and fortitude to do the same?

As you will see in the corresponding testimony that is written by two senior members of the GOA staff, we do not support Universal Background Checks -- or any expansion to cover private sales at gun shows. And we do not support calls for banning certain firearms -- misnamed as "assault weapons" -- or limiting magazine capacity.

We are actually safer today than when the Clinton semi-auto ban sunset in 2004, as the FBI reports show that the murder rate has dropped 14% in the ensuing years (from 2004-2011).

I hope that you will prevail upon your colleagues to respect our God-given rights and to set their sights on eliminating truly harmful restrictions like the Gun-Free School Zones ban.

Sincerely,

Larry Pratt
Executive Director

APPENDIX

A Sampling of Individual Testimonies Regarding ATF Copying of 4473s

NOTE: All the names, addresses and dates below are redacted, in compliance with the wishes of those GOA members who forwarded their testimonies to us.

Dear GOA:

I am a gun dealer. Recently the [ATF] agents have begun recording the submission of information on the 4473 forms. "Quality and customer assurance" are the reasons given for these recordings. I have asked how long these recordings are kept and who has access to them. I was told they were kept indefinitely was not told who had access. My question is how is this different than storing the information on gun owners. Is that not illegal? Hope you can look into this for me. Just does not feel right. Thank you.

<name redacted>

Dear GOA:

We have a gun store in <location redacted> where the ATF here ... removed and had destroyed all paperwork (paper work of the corporation including customers receipts, utility bills, 4473's, A&D Books and personal paperwork). ATF also removed the video equipment in which would have incriminated them.

<name redacted>

Dear GOA:

Years ago I worked in a local gun shop. The ATF entered to do an inspection. They removed some 4473s and made a huge stink of missing periods or abbreviated state names -- like <state abbreviation redacted> -- instead of <state name redacted> and the like. The owner wound up in court explaining each and every clerical error.

During the ATF inspection the agent informed the owner that his intent was to shut down every gun shop within his region, and that they were merely waiting on the directive from the President. The owner promptly shut down and sold his business.

<name redacted>

Dear GOA:

I perform IT support for a local gun store, which I do not wish to name. (They pay me well, and I don't want retribution to them for these comments). I am willing to report this as long as I remain anonymous. They do a reasonably high volume of firearms sales, and I have assisted through 3 of the last ATF "audits."

In the first audit, the ATF agents requested copies of EVERY invoice containing a firearm and the full gun log. I received the support call when the printer died trying to print a 37,000-page report for the agents.

When the agents learned that the store had an electronic gun log, they requested a complete copy electronically. This audit found only 1 clerical error in over 35 thousand transactions. The next year's audit went smoother, as the store owner was prepared to produce the reports electronically. In this audit, there were no errors found (clerical or otherwise). Because the ATF decided that a "no error" audit was impossible, they sent a team of 4 agents to the store for the next year's audit, and they were on site for over 3 weeks.

They pulled every 4473 and invoice, and the gun log, and compared them all manually. They were given free reign at the store, and desks to work in. They insisted that their work through this "audit" be unobserved.

Again, they copied the gun log, it is suspected they scanned all the 4473s, and at the very least, entered all the information into a database or spreadsheet, so they could correlate their report. Their report found 2 errors -- in tens of thousands of transactions. In one, the address on the 4473 did not match the driver's license of the purchaser, and in the second, the county of residence was left off the form. In two cases, the ATF agents "implied" dire consequences with non-compliance to their requests.

<name redacted>

Dear GOA:

I was told first hand by the owner of <name of store redacted> that the ATF entered his firearms store and attempted to use the 4473s from his firearms sales activities to "make a list of all male Hispanics that had purchased a firearm during a certain period." He informed the ATF agent that he could not do this and that he was breaking the law by attempting to make the list. The ATF agent informed the store owner that "he was the federal government and he can do whatever he pleases."

At this point the store owner told the ATF agent that if he attempted to leave the store with the list he would use deadly force to prevent his departure. I was told that the ATF agent called his office and other higher ranking ATF agents arrived to smooth things over

with this store owner. The store owner's first name is <name redacted> and <name of store redacted> is located at <address redacted>.

<name redacted>

Dear GOA:

I am a 01FFL. At my last compliance check, the ATF agent was taking digital photos of records. I do not believe he took pics of 4473's but did take pics of records, such as bound book, personal firearms log. Why the personal log if not for future registration? They contain name and address, firearm make, model, serial #, caliber, quantities. While they are pleasant and polite during every visit (exception was one ordered by <name and date redacted>), I don't trust them at all, my gut feeling screams out.

<name redacted>

Dear GOA:

If you want a true HORROR story of government abuses of NICS records, their illegal/unconstitutional misuse (by state & local LE, and a public employer, and a federal FUSION center) and the destruction of a person's professional career/livelihood (and personal life) for the simple exercise of the Second Amendment, I recommend GOA take a hard look at the <case redacted>....

Specifically, per GOA's request for ATF's recent unlawful copying of all FFL dealer 4473 forms and records, I, as plaintiff pro se (by no fault of my own) in the above identified federal case <redacted>, personally observed two federal agents at the <name of courthouse redacted> discussing the fact "the ATF was in town," meaning regionally in <city redacted>. I witnessed this conversation at the Clerk of the Court's office, approximately <time period redacted> ago.

Following this event, by regular visits to local gun stores and gun shows, I have learned the ATF has apparently been in the <city redacted> region for the purpose to copy and record all Form 4473 records. I am not sure how far back the ATF's "investigation" goes, or for what specific purpose to infringe on the rights and privacy of law-abiding, legal gun owners/purchasers and Second Amendment supporters/advocates. I personally observed a likely ATF vehicle and agent at a gas station in <city redacted>, during this same approximate period. Federal agents with big handguns and lots of ammo magazines under their sports-jackets stick out like a sore thumb in <region redacted>.

Please contact me if you have questions or require additional information concerning this information. Thank you.

<name redacted>

Dear GOA:

First of all please don't use my name or other information and that of my ex co-worker.... I received [the email below] from a former coworker and we're both retired LEO's, Law Enforcement Officers. We have been talking about the Gun Control issues over the last several months and here are some seriously concerning emails I have gotten about what is happening on the inside. These troubling remarks are an indicator that the government who stated they were not going to collect and store information on gun purchases are doing exactly the opposite and have been doing this for some time.

Since the Form 4473 was introduced and adopted by my state I am concerned that what is said in these emails is true. The Form 4473 is required to be kept for 20 years and it may even exceed that. And with the new online version via the ATF -- http://www.atf.gov/applications/e4473/ -- you can see this information will be stored indefinitely and placed into a database for easy access by our government.

And since they can't seem to keep records safe who knows how many other agencies, hackers, or governments will acquire these records. Look at all the military records which were lost/stolen in <date redacted>.

These are blatant rights violations and a serious problem with these records for which the government has access to. This legislation needs to be revamped so that after a background check is completed the form 4473 paperwork gets stored for three months-time and once that time limit expires they are destroyed, and the governments are not permitted to access them without a search warrant signed by a judge in accordance with the U.S. Constitution as stated. And all rejected form 4473's are placed into a separate file for law enforcement to conduct further background investigations and for those trying to obtain a firearm illegally 100% prosecution should be mandatory in accordance with current laws.

Here [is] the email:

"My neighbor's kid is an agent working down south. I talk to him every so often and he tells me this is going to pass. They have been compiling a database of everyone who bought assault weapons over the past four years. They also have local agents making copies of all gun store surveillance cameras and have had agents photographing everyone going into gun shows where a lot of weapons are being sold under the radar...."

Good luck with the fight and hope these emails will provide insight into the nefarious activities of our government and the Anti-Gun crowds' unconstitutional slow erosion of or 2nd Amendment Rights.

Sincerely,

<name redacted>

Dear GOA:

I imagine that most gun owners don't know that the info from 4473 forms has been used as a form of registration, contrary I believe to the mandate of Congress that this info was to be kept for 90 days only. If I am wrong please correct me. I know this to be true because I was contacted by two <state redacted> law officials in about <date redacted> concerning a <gun type redacted> that was used in a felony. I was assured I had done nothing wrong, but they told me the history of the revolver from the sale in <location redacted> to me. I bought the gun from a dealer that had let his FFL go and turned in his paper work. I bought this gun prior to <date redacted>.

<name redacted>

Dear GOA:

I had an FFL which I sold guns from my home, it was all legal. When the taxes and business started to lose me money instead of make me money I closed it down. I was instructed by the ATF to send them all of the 4473's that I had accumulated. I sent them in after being told it was the law, and I didn't want any trouble.

<name redacted>

Addendum from Gun Owners of America

In the last two examples, the ATF told out-of-business dealers to turn in their 4473 forms to the Bureau. The problem is that it does not appear that the ATF ever notifies dealers that ATF can NOT order these records to be turned over to them.

Although the 1968 Gun Control Act allowed dealers going out of business to turn over the records (including their 4473s and bound books) to the ATF, the McClure-Volkmer Act of 1986 gave dealers the option of turning those records over to an active dealer. In particular, 18 U.S.C. 926(a)(3) says in part:

> *No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established....*

Hon. Ted Cruz, Ranking Member
Subcommittee on the Constitution,
Civil Rights and Human Rights
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Members of the Subcommittee:

A subcommittee that is charged to protect the Constitution, Civil Rights, and Human Rights is the appropriate one to determine how to protect our communities from gun violence while respecting the Second Amendment rights of the residents of those communities. To strike the right balance the Committee needs to keep two things in mind.

First, self defense is the most basic human right and the special focus of the Second Amendment. Our Founders agreed with philosophers and jurists on the centrality of this right. Because no one else, neither society nor the police, can protect all of us, all the time we must be able to protect ourselves. Firearms are the weapons best suited for self-defense permitting the weak—women, the elderly, one individual confronted by many -- to protect themselves against the strong. As a member of the British parliament put it when assured society would protect everyone, "It is not very much consolation that society will come forward a great deal later, pick up the bits, and punish the violent offender." In fact, according to the D.C. Court of Appeals in *Warren v. District of Columbia* the police have no duty to protect any of us. The Washington police in *Warren* were being sued for failing to respond to repeated 911 calls, leaving three young women to be horribly abused for fourteen hours. The judge informed the women: "it is a fundamental principle of American law that a government and its agents are under no general duty to provide public services, such as police protection, to any individual citizen."

In *District of Columbia v. Heller* the Supreme Court affirmed that the Second Amendment protects an individual right for Americans to have firearms for their self-defense and to keep and bear the weapons "in common use for self-defense and other lawful purposes." These weapons include handguns and semi-automatic rifles with their customary magazines. In *McDonald v. City of Chicago* the Court incorporated the Second Amendment to the states because it protected a fundamental right of Americans.

Second, enabling individuals to protect themselves does not make our communities more dangerous. Quite the opposite. Forty-four states have an

explicit right to keep and bear arms in their state constitutions. Thirty-nine states are now "shall-issue concealed carry" states, where any law-abiding resident who fulfills basic requirements can carry a concealed firearm. The number of firearms in civilian hands has continued to increase in the last few years. In 2009 the FBI reported 14,033,624 background checks for the purchase of a gun, up 10% from the prior year. Yet despite the increase in firearms the rate of violent crime in the US has been declining for 20 years. Since crime peaked in 1991 at 758.1 crimes per 100,000 people by 2009 it had declined to 429.4 crimes per 100,000. In January 2012 the *Christian Science Monitor* reported that the last time the murder rate was this low gasoline was 29 cents a gallon.

Since civilian disarmament is both unconstitutional and ineffective, how can we protect Americans from deranged, mass murderers? These so-called "gun-free" zones attract those bent on mass murder. The best way to protect our school children and others in "sensitive places" is to have someone trained and armed on the premises.

Secondly, we must find a better way to deal with the violent mentally ill. The present system offers little protection to the mentally ill or society. Present protections against reporting potentially dangerous individuals need to be reconsidered. This will entail your Committee examining the balance of rights and protections of a different sort, patient privacy rights.

Neither of these approaches will intrude upon the Second Amendment right and both will be far more effective than a ban on semi-automatic weapons or reduction of ammunition magazines in common use, policies unlikely to survive a constitutional challenge.

I strong urge the Committee to focus on solutions that will keep us safer while not infringing on the basic Second Amendment right of self-defense.

Sincerely yours,
Joyce Lee Malcolm
Professor of Law
George Mason University School of Law

ROBERT A. LEVY

[redacted]

E-Mail: rlevy@cato.org

February 11, 2013

Hon. Ted Cruz, Ranking Member
Subcommittee on the Constitution, Civil Rights and Human Rights
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Sen. Cruz:

In connection with tomorrow's Subcommittee hearing on "Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment," I would like to submit the enclosed article for your consideration.

The article is entitled "Reflections on Gun Control by a Second Amendment Advocate." It will be published today on the website of the *National Law Journal*. I'll provide a link to your office as soon as it's available.

Overall, I am skeptical about the efficacy of gun regulations – in major part because they are imposed almost exclusively on persons who are not involved in gun-related violence. I suggest in the article, however, several steps that might enhance public safety without violating core Second Amendment rights – including background checks on private sales at gun shows, if the checks can be completed in no more than 24 hours. Because the Supreme Court has held that the right to bear arms is "fundamental," government bears a heavy burden in justifying further regulations. So far, the regulators have not met that burden.

Thank you for the opportunity to express my views on this important topic.

Sincerely,

Robert A. Levy

Robert A. Levy
Chairman, Cato Institute
Co-Counsel to the Plaintiffs in
District of Columbia v. Heller

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Reflections on gun control by a Second Amendment advocate

Robert A. Levy

The National Law Journal

02-11-2013

From the beginning, the battle for gun rights was structured as a three-step process. Step 1: Determine the meaning of the Second Amendment. That was accomplished by the U.S. Supreme Court's decision in *District of Columbia v. Heller*, which affirmed that the Second Amendment secures an individual right to bear arms, in part for self-defense. Step 2: Determine where the Second Amendment applies. That was accomplished by the Court's decision in *McDonald v. Chicago*, which affirmed that the amendment covers every state and locality—not just federal enclaves such as Washington. Step 3: Determine the scope and limitations of Second Amendment rights. That's the next major task.

As co-counsel to Dick Anthony Heller, I was a vigorous advocate for the right to possess firearms for self-defense. But I understand, as does every rational individual, that the right is not absolute. The Second Amendment does not guarantee a 12-year-old's right to possess a machine gun in front of the White House when the president is walking on the lawn. Some persons, some weapons and some circumstances may be regulated. Subsequent cases will have to flesh out the details. But the Constitution does not foreclose common sense and the right to bear arms does not foreclose public safety Reasonable persons should be able to fashion reasonable restrictions —a framework for gun control in the aftermath of Newtown—without violating core Second Amendment rights.

Here is the key principle: Both *Heller* and *McDonald* corroborated that the right to bear arms is "fundamental"; i.e., it is implicit in the concept of ordered liberty and deeply rooted in our nation's traditions and culture. Consequently, the Constitution establishes a presumption of individual liberty. That means government bears a heavy burden to justify any regulations that would compromise the right.

With that principle in mind, let's examine several proposed restrictions that are currently front and center.

• *Banning high-capacity magazines*. Gun rights advocates posit a Korean shop-owner in the Watts riots needing multiple rounds to protect his store and family. But others cite multiple-victim killings like in Newtown where innocent lives might have been saved if high capacity magazines had been effectively banned.

Firearms experts note that murderers can easily load a second or third magazine in a matter of seconds. Accordingly, limiting magazine size to, say, 10 rounds will not have much practical effect. Perhaps so; but that would also mean individuals trying to defend themselves would not be seriously hampered by a 10-round limit. They too could reload very rapidly.

If regulators can show that the benefits of banning high-capacity magazines exceed the costs, I have little doubt that such a ban would survive a Second Amendment court challenge. But there are three related problems: First, magazines are simple metal boxes with a spring. They can be made in a well-equipped machine shop. Second, there is no way to confiscate the millions of high-capacity magazines now in circulation. Third, millions of existing semi-automatic pistols come with 12-19-round magazines; thus a ban on any

size below 20 rounds would encounter great resistance.

• *Re-enacting an assault weapons ban.* Evaluation of an assault weapons ban, like that of a magazine ban, should be based on empirical evidence. After the 1994 ban expired in 2004, the *New York Times* reported: "Despite dire predictions that the streets would be awash in military-style guns, expiration of the assault weapons ban has not set off a sustained surge in sales [or] caused any noticeable increase in gun crime." Millions of so-called assault weapons are now used by millions of Americans for hunting, self-defense, target shooting, even Olympic competition. Criminals typically use handguns; assault weapons are expensive and difficult to conceal.

In Washington, where the *Heller* case was litigated, the city experienced 46 violent crimes per day, each and every day for an entire year, nearly two decades after D.C. enacted an outright ban on all functional firearms for all people in all places at all times. The D.C. government insisted that gun smuggling—mostly from Virginia, where regulations were lenient—was the root of the problem. Not likely. Consider island nations that do not have to deal with cross-border smuggling, such as Ireland, the United Kingdom, and Jamaica. All three of them imposed bans but saw violent crime increase.

Cross-country comparisons can be misleading because there are so many differences that affect crime rates. That's why it's instructive to look at data serially, over time, and analyze what happened in each country before and after gun controls are enacted.

Jamaica is particularly revealing. Beginning in 1974, handguns were virtually banned. You could get them with a license, but you had to prove need, and licenses were almost never issued. Since the ban, the murder rate has soared to become one of the highest in the world—now more than double other Caribbean nations, six times higher than before the ban, and a dozen times the U.S. rate. Naturally, the ban is not wholly to blame, but it certainly did not help.

Moreover, even if we were to reenact the assault weapons ban, how could we deal with the millions of such guns already owned? Some people think a voluntary buy-back program would work. But it would be costly. And who might the sellers be? They would be individuals who valued the money more than the firearm. That would include low-income persons living in high-crime areas who obey the law but need a means to defend themselves. And who would keep the weapons? They would be individuals who valued the firearm more than the money. That would include criminals, terrorists and mentally deranged persons who are not motivated by financial incentives.

In the *Heller* case, Justice Antonin Scalia suggested that the Second Amendment would pose no barrier to outlawing weapons that are not in common use and especially dangerous. Clearly, some weapons can be banned. Essentially, automatic weapons have been banned since 1934; and they remain banned. The task is to identify those firearms or attachments that are not commonly used or needed for self-defense, and would improve public safety if they were banned. The 1994 Assault Weapons Ban went too far; but a better-crafted, limited version might be warranted.

Banning popular semi-automatic rifles, merely because they come equipped with a pistol grip or some other attachment that has no effect on their lethality, makes no sense whatsoever. FBI data for 2011 indicate that almost 13,000 people were murdered with a weapon. Of those, 1,700 were killed with knives; almost 500 with hammers, bats, and clubs; and 728 by someone's bare hands. Only 323 people were killed with rifles of all types.

• *Background checks for private sales at gun shows.* Gun control advocates occasionally misuse the phrase "close the gun-show loophole" to urge that all private sales be subject to background checks. Two clarifications: First, sensible proposals to extend background checks would not reach *all* private sales, but only those at gun shows. Second, most sales at gun shows are through licensed dealers that already have to conduct such checks.

Survey data indicate that less than 2 percent of guns used by criminals are bought at gun shows and flea markets—and that includes sales through licensed dealers. Still, the *New York Times* editorializes that background checks "prevented nearly two million gun sales" over a 15-year period. Of course, that's ridiculous; there is no way for the *Times* to determine how many sales did not happen. Violence-prone buyers who do not pass the background check go elsewhere for their purchases.

Here are the figures for a recent year: The National Instant Criminal Background Check System (NICS) denied 79,000 would-be buyers. Of those, 105 were prosecuted and 43 were convicted. That's a conviction rate of 5/100ths of one percent. Either the remaining denials were false positives – legitimate purchases unjustly blocked by NICS – or, if the denials were proper, then 99.95 percent of the 79,000 rejected applicants escaped punishment. Neither conclusion offers much hope for an expanded system of background checks.

Further, the claim that background checks take just a few minutes to process on the telephone is disingenuous at best. A significant number of checks last 72 hours, and most gun shows are two-day events. The intent of requiring checks for private sales may be to drive gun shows out of business. Indeed, existing delays and the large number of false positives have reduced gun shows by about 14 percent. Some say that's a good thing. But they know that a law banning gun shows would not pass constitutional muster; so they try to accomplish the same thing through the backdoor.

Remember, the "I" in NICS stands for "Instant." If technology were to facilitate truly speedy background checks – say, 24 hours maximum —without unreasonably intruding on privacy rights, I would have no objection to extending NICS to cover private sales at gun shows—not because I am convinced that expanded background checks would curb violence, but because it would get us past this particular debate and let us concentrate on options that might be more productive.

• *Drug legalization*. The single most effective option—which is not being discussed at all—would result in a huge reduction of gun violence: Legalize drugs. There are 1.5 million drug arrests each year, and more persons incarcerated for drug infractions than for all violent crimes combined. Fifty percent of our federal prison population comprises narcotics violators. Most important, because drugs are illegal, participants in the drug trade cannot go to court to settle disputes and enforce contracts. As a result, disputes are resolved by force. Meanwhile, the Drug Enforcement Administration has 10,000 agents, analysts, and support staff, who could be fighting terrorism or real crime—including gun violence.

• *Mental illness*. A second step is earlier detection and treatment of mental illness. I do not pretend to be an expert on mental health, so I am not prepared to offer specifics. But I do believe that early detection and treatment can be a legitimate function of government. It's part of a state's police power to protect residents against rights-violating activities, such as the criminal use of firearms.

There are, however, three corollaries: First, government funding should be limited to those mental illnesses that could cause harm to innocent bystanders. It is not the government's role to pay for private medical care unless third-party rights are involved. Second, federal funding is not constitutionally authorized. This is a state matter—an application of the state's police power, which the federal government does not possess. Third, to the extent that government peruses medical records and may even prescribe involuntary treatment, there are serious civil liberties implications that must be confronted.

• *Armed guards*. Another alternative—suggested by the National Rifle Association—is armed guards at schools. In the United States, there are approximately 100,000 public schools, so staffing should not be prohibitively expensive. About 28 percent of those schools already employ security officers who carry firearms. For the remaining schools, retired police and military personnel would be obvious recruits. The focus should be on entrance security, which reduces manpower requirements.

It's true that an armed guard did not prevent Columbine; but neither did the ban on assault weapons and high-capacity magazines then in effect. Moreover, the rules of engagement, which have since been changed, told the armed guard at Columbine to wait for SWAT team backup. No wonder the guard did not stop the carnage; although he did delay the killers, which gave some students time to escape.

About two-thirds of public schools are elementary schools, thus educators and parents would have to assess if young children could be psychologically stressed by the presence of armed guards. Assuming that problem can be addressed, the idea has considerable merit—and its implementation would have an immediate impact. Gun-free school zones have been a magnet for the mentally deranged. We have armed guards in banks, airports, power plants, courts, stadiums, government buildings, and on planes. There is no reason why armed guards at all public schools—not just 28 percent of them—should not be considered.

In fact, it might even be desirable to extend the program—on a strictly volunteer basis—to teachers and principals. They would require extensive background screening and psychological testing, as well as classroom and practical training—roughly equivalent to what sky marshals now get. The teachers and principals wouldn't necessarily carry firearms, but the weapons would be accessible—subject, of course, to proper safe-storage regulations.

In the Aurora, Colo., shooting, seven theatres showing the *Batman* premier were within a 20-minute drive of the suspect's apartment. Researcher John Lott reports that the killer did not pick the closest theatre or the largest theatre. He picked the only one of the seven that banned concealed weapons. With just two exceptions, every public mass shooting in this country over the past 60 years has taken place where citizens are banned from carrying guns. The same pattern is true in Europe, where three of the worst six school shootings occurred despite strict gun regulations.

The Israelis have learned that police and soldiers cannot protect all of the terrorist targets all the time. In exceptionally dangerous locations, licensed and trained citizens, including teachers, are armed with concealed weapons. An added benefit is that killers do not know whom to attack first.

That said, in urging armed guards at schools, the NRA's Wayne LaPierre got it wrong on two counts: First, a government mandate for armed guards should not be imposed on all schools—especially not private schools, which should adopt whatever security measures they deem appropriate, with liability only for unreasonable negligence. Fully informed parents who do not like the security arrangements are free to send their children elsewhere.

Second, Congress has no role to play in funding armed school guards. Like mental health treatment, this is a police power function that is constitutionally reserved to the states. Security that may be necessary in the inner city of Detroit is likely to be quite different than what's needed in the hills of Montana. Each state or locality should decide for itself, and foot its own bill. When the feds pay the piper, the feds end up calling the tune.

Our framers intended that the states serve as experimental laboratories. Residents who disapprove can vote with their feet. Even the indisputably anti-gun *Washington Post* editorialized: Armed guards are "not unreasonable where local schools feel they need [them]."

• *Cautionary comments*. In the aftermath of the horrific and heart-rending tragedy at Sandy Hook Elementary, our gun laws should and will be re-evaluated. But the process must be measured and dispassionate. And before we embark on a crusade for new controls, let's

remember a few facts:

First, random multi-victim killings are a fraction of 1 percent of all murders in the United States. Regrettably, they will occur even where stringent gun controls are imposed. In Norway, with tight controls and licensing, Anders Breivik gunned down 69 people. Here in the United States, our worst incident killed 38 elementary school children in Michigan. The weapon of choice was bombs, not guns. From a historical perspective, U.S. gun controls from 2000 to date have been relatively restrictive. Part of that time, we had a ban on assault weapons. The entire time, we had background checks. Nonetheless, random mass killings occurred three times more often since 2000 than over the decade of the '80s, when gun controls were weaker.

Second, the evidentiary debate in peer-reviewed journals centers on the question of whether gun laws such as right-to-carry reduce violent crime or have no significant effect. Despite dozens of studies, no reliable evidence indicates that such laws increase crime. The two most exhaustive studies on gun control were conducted by the National Academy of Sciences and the Centers for Disease Control. Neither agency could be accused of favoring the gun lobby. In 2004, the National Academy reviewed 253 journal articles, 99 books and 43 government publications evaluating 80 gun-control measures. Researchers could not identify a single gun-control regulation that meaningfully reduced violent crime, suicide, or accidents. In 2003, the CDC reported on ammunition limits, restrictions on purchase, waiting periods, registration, licensing, child access prevention and zero-tolerance laws. Conclusion: None of the laws demonstrably reduced gun violence.

Third, guns are already the most heavily regulated consumer product in the United States. Handguns are the only consumer product that cannot be purchased outside the buyer's state of residence. Firearms retailers, wholesalers, and manufacturers all require federal licenses. Each retail sale must be pre-approved by government. Nationwide, thousands of laws regulate who can own a gun, how it can be purchased, and where it can be possessed and used.

Overall, I am skeptical about the efficacy of gun regulations that are imposed almost exclusively on persons who are not part of the problem. Drug legalization would radically reduce gun violence overnight. Armed guards at schools and better detection and treatment of mental illness should help. The NRA thinks so, and I agree. But the NRA is less convincing in its opposition to a ban on magazines with 20 or more rounds, a sensibly refined version of the assault weapons ban, and background checks (if they can be completed in no more than 24 hours) on private sales at gun shows.

With regard to further regulations, the Supreme Court has directed government to certify two essential points: First, the proposals will make us safer. Second, the same ends could not be attained without unduly compromising individual rights that are secured by the Second Amendment. So far, the regulators have not met that burden.

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ADDITIONAL SUBMISSIONS FOR THE RECORD

A list of material and links can be found below for Submissions for the Record not printed due to voluminous nature, previously printed by an agency of the Federal Government, or other criteria determined by the Committee:

Cramer, Clayton, Professor, "Reforming Colorado Mental Health Law," issue paper:
http://www.claytoncramer.com/scholarly/ColoradoMentalHealthReform-1.pdf.

Pratt, Erich, and Michael Hammond, Gun Owners of America, "Current Gun Control Proposals Will Endanger the Rights of Law-Abiding Americans," statement:
http://gunowners.org/congress02122013.htm.

Reynolds, Glenn Harlan, Professor, "Second Amendment Penumbras: Some Preliminary Observations," research paper:
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2002132.

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