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The Restricted Firearms License: A Proposal to Preserve Second Amendment Rights and Reduce Gun Violence in the United States

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INTRODUCTION

In the wake of the tragic shooting at Sandy Hook Elementary School in Newtown, CT, President Obama and others have called for legislative measures to combat gun violence.¹ So far, most of these proposals have focused on three principal approaches: (1) making all firearms transfers subject to National Instant Criminal Background Check System (NICS) approval,² (2) limiting firearm magazine capacity, and (3) banning models of semi-automatic firearms that possess certain “military purpose” features.³

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1. See, e.g., Jonathan Karl, Devin Dwyer, & Mary Bruce, *President Obama Unveils Sweeping Plan to Curb Gun Violence*, ABC NEWS (Jan. 16, 2013), <http://abcnews.go.com/Politics/OTUS/president-obama-unveils-sweeping-plan-curb-gun-violence/story?id=18228472>; Dianne Feinstein et al., *Assault Weapons Ban of 2013* (Jan. 24, 2013), http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=dd2252a0-db96-45cc-96a8-493a2e348c6d.

2. The NICS program is operated by the FBI, which maintains a database of persons prohibited from purchasing firearms by 18 U.S.C. § 922(g) (2006). This database is then accessed electronically to approve each individual firearms transfer at federally licensed firearms dealers. See FEDERAL BUREAU OF INVESTIGATION, NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) (April 2012), *available at* <http://www.fbi.gov/about-us/cjis/nics/general-information/nics-overview>

3. These three features are common to the Obama Administration proposal and the proposed legislation of Sen. Dianne Feinstein. THE 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>

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We strongly support the first of these approaches, which would eliminate the “gun show loophole”⁴ and require background checks for private party firearm sales. Instead of bans on magazine capacity and “military purpose” features, however—bans which together are commonly known as an “Assault Weapons Ban” (AWB)—we propose a five-year, renewable “Restricted Firearms License” program for the ownership of handguns, centerfire semi-automatic rifles, and semi-automatic shotguns.

I. CONSTITUTIONAL AND POLICY BACKGROUND

While we support a regulatory solution to gun violence, many others, including Gary Kleck, John Lott, and NRA leader Wayne LaPierre contend that more guns are the answer. Lott asserts that the proliferation of right-to-carry laws are responsible for decreasing levels of violent crime in the U.S.,⁵ Kleck concludes that Americans use guns 2.5 million times per year in self-defense,⁶ and LaPierre has suggested that the only workable solution to school shootings is to place armed police officers in every school.⁷

LaPierre’s proposal is easy to dismiss out of hand, as it would cost over \$11.8 billion per year to implement⁸ and would only address school shooting deaths, which—despite their notoriety—average a mere 12 out of the nearly 10,000 total

.whitehouse.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf; Feinstein, *supra* note 1.

4. The term “gun show loophole” is popularly used to describe the fact that private party firearms sales, which often take place at gun shows, do not require NICS approval. See *Gun Show Loophole*, COALITION TO STOP GUN VIOLENCE, <http://www.csgv.org/issues-and-campaigns/gun-show-loophole> (last visited Mar. 11, 2013).
5. JOHN LOTT, *MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL LAWS* (University of Chicago Press, 3d ed. 2010).
6. Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. CRIM. L. & CRIMINOLOGY 150, 163-64 (1995).
7. Wayne LaPierre, Executive Vice President, NRA Press Conference, (Dec. 21, 2012), http://home.nra.org/pdf/Transcript_PDF.pdf.
8. Estimate based upon 132,656 elementary and secondary schools in the U.S. in 2007-08, the median U.S. police officer salary of \$55,010. *Number of Educational Institutions, by Level and Control of Institution: Selected Years, 1980-81 through 2008-09*, NATIONAL CENTER FOR EDUCATION STATISTICS (November 2010), http://nces.ed.gov/programs/digest/d10/tables/dt10_005.asp (number of elementary and secondary schools); BUREAU OF LABOR STATISTICS, *Police and Detectives, OCCUPATIONAL OUTLOOK HANDBOOK* (March 29, 2012), <http://www.bls.gov/ooh/protective-service/police-and-detectives.htm> (median police officer salary). We also use conservative assumptions of fringe benefits equal to 35% of salary and overhead and administrative expenses of 20%.

firearms-related homicides that occur in the U.S. each year.⁹ Lott's work, however, has inspired copious scholarship both in support and opposition,¹⁰ but the consensus of the fifteen member National Research Council Committee to Improve Research Information and Data on Firearms was that right-to-carry laws simply do not have a statistically significant effect on overall violent crime—one way or the other.¹¹ And while Kleck's 2.5 million figure¹² suffers from what we can only describe as the willfully blind pursuit of false positives, we must concede that the Violence Policy Center's competing definition of defensive gun use (DGU) as an instance in which a gun is used in a justifiable homicide is similarly inadequate.¹³ Although we strongly object to Kleck's methodology, we concur with his definition of DGUs as encompassing any situation in which a person "use[s] a gun, even if it was not fired, for . . . protection."¹⁴ The National Research Council Committee to Improve Research Information and Data on Firearms endorses Kleck's typology as a "useful starting point,"¹⁵ but found 116,000 DGUs per year to be a more likely estimate.¹⁶ This is a significant figure

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9. Over the school years 1992-1993 to 2009-2010, school shootings claimed an average of 19.3 victims in the U.S. (and, prior to the massacre in Newtown, this number was trending downward). NATIONAL SCHOOL SAFETY CENTER, REPORT ON SCHOOL ASSOCIATED VIOLENT DEATHS 47 (2010), <http://www.schoolsafety.us/media-resources/school-associated-violent-deaths/savd.pdf>. The total U.S. firearms-related homicide rate was obtained from UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Homicide Statistics - Homicides by Firearm*, UNODC HOMICIDE STATISTICS (2011), <http://www.unodc.org/unodc/en/data-and-analysis/homicide.html>.
 10. See, e.g., Florenz Plassmann & John Whitley, *Confirming "More Guns, Less Crime,"* 55 STAN. L. REV. 1313 (2003) (in support of Lott's hypothesis); Ian Ayres & John Donohue, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 STAN. L. REV. 1193 (2003) (in opposition to Lott's hypothesis).
 11. COMM. TO IMPROVE RESEARCH INFORMATION AND DATA ON FIREARMS, COMM. ON L. AND JUSTICE FIREARMS AND VIOLENCE: A CRITICAL REVIEW 150-51 (Charles F. Wellford et al. eds., The National Academies Press 2004), available at http://www.nap.edu/catalog.php?record_id=10881.
 12. For a detailed analysis of calculating defensive gun uses, see *id.* at 102-19. The committee noted, *inter alia*, that Kleck's data would "imply that firearms are used defensively in every burglary committed in occupied households and in nearly 60 percent of rapes and sexual assaults committed against persons over 18 years of age; that defensive gun users thought they wounded or killed offenders in 207,000 incidents, yet only 100,000 people are treated in emergency rooms for nonfatal firearms injuries[.]" *Id.* at 112.
 13. *A Deadly Myth: Women, Handguns, and Self-Defense*, VIOLENCE POLICY CENTER (2001), <http://www.vpc.org/studies/myth.htm>.
 14. Kleck & Gertz, *supra* note 6, at 161 (emphasis added).
 15. COMM. TO IMPROVE RESEARCH INFORMATION AND DATA ON FIREARMS, *supra* note 11, at 107.
 16. *Id.* at 102-05.

and would certainly tend to support policy in favor of permitting law-abiding, responsible gun owners to own weapons for defensive purposes.

Moreover, drastically reducing firearm ownership in the U.S. is highly impractical. The U.S. civilian arsenal contains approximately 300 million firearms,¹⁷ rendering anti-proliferation policy somewhat moot. Additionally, firearms are an established part of American culture—29% of Americans personally own a gun, 43% live in a household with a gun, and 69% have fired a gun at some point in their lives.¹⁸ But perhaps the biggest argument against any ban that would be effective in reducing civilian gun ownership is that it would be unconstitutional.

In *District of Columbia et al. v. Heller*, the Supreme Court struck down the District’s handgun ban and requirement that long guns be stored locked or otherwise inoperable in the home,¹⁹ holding that the Second Amendment²⁰ guarantees an individual right to “keep and bear Arms,” and not just a communal right in the context of a “well regulated Militia.”²¹ The Court further held that while this right “is not unlimited”²² and does not extend to “dangerous and unusual weapons,”²³ it does apply to arms “in common use”²⁴ for “lawful purpose[s]”²⁵ including “self-defense.”²⁶

Subsequently, in *McDonald v. Chicago*, the Court struck down Chicago regulations that constructively (“effectively”²⁷) banned handgun ownership, holding that the individual right to keep and bear arms affirmed in *Heller* is incorporated and made applicable to the states by the Due Process Clause of the Fourteenth Amendment.²⁸ These “penumbras”²⁹ protecting against constructive

17. SMALL ARMS SURVEY, THE GRADUATE INSTITUTE, GENEVA, *Annexe 4: Civilian gun ownership for 178 countries, in descending order of averaged firearms*, Appendix to Small Arms Survey 2007: Guns and the City, SMALL ARMS SURVEY (2007), <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/Small-Arms-Survey-2007-Chapter-02-annexe-4-EN.pdf>.

18. *Guns*, GALLUP, <http://www.gallup.com/poll/1645/guns.aspx> (last visited Mar. 13, 2013). The first two statistics are from December 2012. The latter is from October 2007.

19. *District of Columbia et al. v. Heller*, 554 U.S. 570, 635 (2008).

20. “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.” U.S. CONST. amend. II.

21. *Heller*, 554 U.S. at 595.

22. *Id.*

23. *Id.* at 627.

24. *Id.*

25. *Id.*

26. *Id.* at 636.

27. *McDonald v. Chicago*, 561 U.S. ___, 103 S. Ct. 3020, 3026 (2010).

28. *Id.* at 3050.

infringement of the individual right to bear arms have led to subsequent decisions by the Seventh Circuit, inter alios, protecting such ancillary rights as the ability to establish firing ranges within the city limits of Chicago,³⁰ and to carry a concealed weapon in the state of Illinois.³¹

In short, a substantive ban on handguns is explicitly unconstitutional. And given their ubiquity/”common usage” in American society, a blanket ban (constructive or otherwise) on semi-automatic rifles would almost certainly fail as well. Accordingly, instead of banning guns, we propose regulations that will effectively prevent those who would commit homicides from obtaining the guns they need to do so.

II. FEDERAL ASSAULT WEAPONS BAN AND NATIONAL FIREARMS ACT

We believe that the Restricted Firearms License is a superior regulatory paradigm to an Assault Weapons Ban because most AWB proposals are similar—if not functionally identical—to the AWB that was in place from 1994 to 2004.³² The Public Safety and Recreational Firearms Use Protection Act of 1994, more commonly known as the Federal Assault Weapons Ban, limited magazine capacity to ten rounds³³ and banned hundreds of models of semi-automatic weapons³⁴ as well as dozens of features.³⁵ Yet despite being in place for ten years, the Federal Assault Weapons Ban did not significantly reduce gun violence by most measures.³⁶ To comply with the legislation, most gun manufacturers simply eliminated military-inspired features while continuing to produce semi-automatic weapons that, while less comfortable and less maneuverable, continued to fire the same cartridges, at the same velocities, and at the same rate of

29. Cf. *Griswold v. Connecticut*, 381 U.S. 479 (1965). For an eloquent explication of the “penumbral aspects of the Second Amendment,” see Glenn Harlan Reynolds, *Second Amendment Penumbra: Some Preliminary Observations*, 85 S. CAL. L. REV. 247, 248 (2012).

30. *Ezell et al. v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011).

31. *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012).

32. See WHITE HOUSE, *supra* note 3; Feinstein, *supra* note 1.

33. 18 U.S.C. §§ 921(a)(31), 922(w) (2000) (repealed 2004).

34. 18 U.S.C. §§ 921(a)(30)(A), 922(v) (2000) (repealed 2004).

35. 18 U.S.C. §§ 921(a)(30)(B)-(D), 922(v) (2000) (repealed 2004).

36. For an excellent analysis of the efficacy of the Public Safety and Recreational Firearms Use Protection Act of 1994, see the work of New York University Law School’s Clark A. Wohlferd, who, while advocating for increased and effective gun control measures, concluded that: “The expiration [of the AWB] serve[d] the public by promoting discussion and allowing opportunities for more meaningful gun safety measures, rather than polarizing interest groups over a largely symbolic ban.” Clark A. Wohlferd, *Much Ado About Not Very Much: The Expiration of the Assault Weapons Ban as an Act of Legislative Responsibility*, 8 N.Y.U. J. LEGIS. & PUB. POL’Y 471, 484 (2005). For a more succinct analysis, see *infra* Appendix A.

fire.³⁷ Moreover, most provisions of the Federal Assault Weapons Ban were concerned with semi-automatic “assault rifles” and not with the handguns that are responsible for 86% of gun crime.³⁸

However, while the AWB was not as effective as envisioned at curbing gun-related violence, the National Firearms Act (NFA) of 1934 and its 1968 revision have been undeniably effective. The NFA requires certain types of particularly dangerous weapons—such as fully automatic firearms, silencers, and short-barreled shotguns—to be registered with the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE).³⁹ Furthermore, the NFA requires that the purchaser undergo a comprehensive background check and pay a \$200 transfer tax.⁴⁰ This two-prong approach has been highly effective because the NFA’s stringent background check requirement ensures that NFA-restricted weapons do not fall into the wrong hands, and registration with BATFE makes NFA-restricted weapons much less appealing to criminals. Indeed, despite the existence of 456,930⁴¹ BATFE registered fully automatic firearms (or “machine guns”),⁴² only two documented murders since 1968 have involved NFA-

37. For a thorough analysis of the production of these “legalized” semi-automatic weapons, see CHRISTOPHER S. KOPER, AN UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN: IMPACTS ON GUN MARKETS AND GUN VIOLENCE, 1994-2003 36-38 (Jun. 2004), <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf>.

38. MARIANNE W. ZAWITZ, BUREAU OF JUSTICE STATISTICS, GUNS USED IN CRIME: FIREARMS, CRIME, AND CRIMINAL JUSTICE 2 (July 1995), <http://bjs.ojp.usdoj.gov/content/pub/pdf/GUIC.PDF>. Also note that while the AWB did place restrictions on handguns, these restrictions only realistically applied to large, heavy handguns that were built on rifle platforms (and usually shot rifle calibers). 18 U.S.C. § 922(a)(30)(C) (2000) (repealed 2004). Any standard, readily concealable revolver or semi-automatic pistol would be unaffected. Further, most such pistols (and revolvers) are mechanically identical, precluding any colorable differentiation among them.

39. 26 U.S.C. § 5841 (2006).

40. 26 U.S.C. §§ 5811-5812 (2006).

41. BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, FIREARMS COMMERCE IN THE UNITED STATES: 2011 24 (2011), available at <http://www.atf.gov/files/publications/firearms/121611-firearms-commerce-2011.pdf>.

42. While the Firearm Owners Protection Act of 1986 banned the manufacture of new machine guns for civilian use, machine guns manufactured before 1986 are still legal to possess under the NFA. 18 U.S.C. § 922(o) (2006). It is also important to note that fully automatic firearms or “machine guns” are different from semi-automatic “assault rifles.” Fully automatic firearms are those that can fire multiple bullets with one pull of the trigger. Semi-automatic firearms fire one bullet with each pull of the trigger, but automatically reset that action and chamber a round for the next shot (as opposed to the shooter having to work the action with a bolt, lever, or pump).

registered machine guns.⁴³ Additionally, the NFA regime has so successfully regulated the weapons in its charge that crime involving illegal, non-registered machine guns is also exceedingly rare.⁴⁴

Finally, considering the efficacy of these policy approaches in the context of the recent Sandy Hook Elementary School tragedy, it is worth noting that an AWB in the mold of the Public Safety and Recreational Firearms Use Act of 1994 would not prevent a wealthy firearms enthusiast like Nancy Lanza⁴⁵ from acquiring AWB-compliant handguns and semi-autos. And, as we have noted, a blanket ban would not pass constitutional muster.⁴⁶ An NFA-style background check, by contrast, would have investigated Nancy Lanza's household and at least had an opportunity to keep the weapons that killed her and twenty-six others out of her son's hands.

III. RESTRICTED FIREARMS LICENSE

Thus, our proposal follows the example of the NFA: stringent licensing of the handguns, semi-automatic rifles, and semi-automatic shotguns that are primarily responsible for gun violence in the United States. This is the only constitutional method for ensuring that all of these weapons are effectively regulated, which is essential to protecting our citizens from random gun violence at the hands of unstable individuals. To this end, we propose the following elements of a federal Restricted Firearms License (RFL) program:

(1) **Close the Gun Show Loophole.** All firearms transfers will be required to proceed through Federal Firearms Licensees (FFLs)—dealers who, unlike private individuals, are required to conduct a NICS background check⁴⁷ and complete a Form 4473 “Firearm Transaction Record” for all sales.⁴⁸

The NICS background check has proven efficient, effective, and generally unobtrusive for millions of Americans who legally purchase their firearms from

43. *Full Auto Weapons*, GUNCITE, (July 26, 2010), http://www.guncite.com/gun_control_gcfullau.html.

44. GARY KLECK, *TARGETING GUNS: FIREARMS AND THEIR CONTROL* 108-09 (Aldine, 1997).

45. Nancy Lanza was the mother of Sandy Hook killer Adam Lanza. See Matt Flegenheimer, *A Mother, a Gun Enthusiast and the First Victim*, N.Y. TIMES, Dec. 16, 2012, at A1, available at http://www.nytimes.com/2012/12/16/nyregion/friends-of-gunmans-mother-his-first-victim-recall-her-as-generous.html?_r=0.

46. See *supra* Part I.

47. For an overview of the NICS system, see *supra* note 2.

48. The BATFE Form 4473 records identifying information about the firearm and purchaser so that law enforcement officials may trace the weapon in the event it is used in a crime. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *FEDERAL FIREARMS REGULATIONS REFERENCE GUIDE: 2005* § 478.102(b) (Sep. 2005) available at <http://www.atf.gov/files/publications/download/p/atf-p-5300-4.pdf>.

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FFLs. The FBI reports that, since its inception in 1998, NICS had prevented 899,099 criminals and other prohibited purchasers from obtaining firearms as of 2011.⁴⁹

However, a U.S. Department of Justice study suggests that only 60% of firearms transfers occur through FFLs.⁵⁰ All other firearms are transferred through unregulated, private party sales. This is especially alarming given that only 13.5% of guns used in crimes were obtained through FFLs.⁵¹ Accordingly, there is every reason to believe that closing the gun show loophole will reduce gun crime, and very little reason to believe that doing so will be unduly burdensome to law-abiding gun owners. As of December 2012, BATFE reported the existence of 61,596 FFL retail dealers and pawnbrokers, with locations throughout all 50 states and the District of Columbia.⁵²

(2) **License the Weapons That Are Disproportionately Used in Crimes.** The possession of handguns, semi-automatic centerfire rifles,⁵³ and semi-automatic shotguns will be subject to a five-year, renewable federal RFL. This period is admittedly somewhat arbitrary, but is the standard for driver's licenses in most states. Annual renewal could become unduly burdensome, while permanent licenses would be insensitive to changing circumstances and might more often be revoked after, rather than before, a legally incapacitated person misused their weapons.

As for the question of "why not license older rifle designs?", these weapons are mainly hunting instruments, and are used in an insignificant number of crimes (as opposed to handguns, which as we noted earlier, are responsible for 86% of gun crime in the U.S.).⁵⁴ Handguns can be concealed. And rifles that fire

49. FEDERAL BUREAU OF INVESTIGATION, NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) OPERATIONS: 2011 11-12 (2011), *available at* <http://www.fbi.gov/about-us/cjis/nics/reports/2011-operations-report/operations-report-2011>.

50. PHILIP J. COOK & JENS LUDWIG, NAT'L INST. OF JUSTICE, GUNS IN AMERICA: NATIONAL SURVEY ON PRIVATE OWNERSHIP AND USE OF FIREARMS 6 (May 1997), *available at* <https://www.ncjrs.gov/pdffiles/165476.pdf>.

51. BUREAU OF JUSTICE STATISTICS, SURVEY OF INMATES IN STATE AND FEDERAL CORRECTIONAL FACILITIES (ICPSR 1997), *available at* <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/2598>.

52. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, REPORT OF ACTIVE FIREARMS LICENSES: LICENSE TYPE BY STATE STATISTICS (Dec. 11, 2012), *available at* <http://www.atf.gov/files/about/foia/download/ffl-type-by-state-2012/0612-ffl-type-by-state.pdf>.

53. Our proposal would, like most AWB proposals, exempt semi-automatic rifles chambered in .22 or lesser rimfire calibers. These weapons are of limited lethality, rarely used in crimes, and are the most common firearm for both target shooting and rural pest control.

54. *See ZAWITZ, supra* note 40, at 2, 6.

powerful cartridges with a high rate of fire (regardless of magazine capacity) are capable of disproportionate harm when misused.⁵⁵

(3) **Institute a Comprehensive Background Check.** RFLs would depend on a background check comparable to that required before purchasing NFA-regulated firearms.

While the NFA background check has proven effective for preventing criminal and mentally unstable persons from obtaining NFA regulated firearms, gun owners have raised several concerns about extending this program. These include: (a) the background check itself might be unreasonably restrictive; (b) NFA background checks can take up to six months; and (c) the NFA application requires the approval of the applicant's Chief Law Enforcement Officer (CLEO).

Given that a substantial majority of NFA applications are approved, however, and that the background check operates on a "shall-issue" basis,⁵⁶ a responsible, law-abiding gun owner is in little danger of being denied a license.

Furthermore, while a sharp increase in application volume has extended wait times to six months for many NFA background checks, a dedicated RFL licensing division funded by a much larger and more consistent number of RFL applications should return the standard wait time to four months.⁵⁷ If necessary, the statute could mandate a maximum processing period in order to avoid an "effective" ban under McDonald.

Similarly, a requirement of CLEO approval for RFL applications could lead to a de facto "red tape" ban in many jurisdictions and is therefore not an element of our RFL proposal. However, as a policy consideration, RFL regulations

55. Almost every centerfire rifle bullet generates muzzle energy in excess of 800 ft. lbs., which is generally considered sufficient to quickly and humanely kill medium-sized game, such as white-tailed deer, that are approximately the same mass (or greater) as adult humans. See Chuck Hawks, *The Killing Power of Big Game Bullets* (2006), http://www.chuckhawks.com/rifle_bullet_killing_power.htm.

56. While this standard is not explicitly stated in the statute, the only reason given for denying a transfer is "if the transfer, receipt, or possession of the firearm would place the transferee in violation of law." 26 U.S.C. § 5812(a)(6) (2006). This, combined with the general standard that substantive rights should not be subject to an official's discretion, suggests that NFA transfers do in fact proceed on a "shall-issue" basis. And while BATFE has made no formal statement on the matter, this is widely understood to be the case.

57. Currently, BATFE's "goal" is to process NFA transfers within six months. BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, NATIONAL FIREARMS ACT (NFA): PROCESSING TIMES, <http://www.atf.gov/firearms/faq/national-firearms-act-processing-times.html> (last visited Apr. 1, 2011). However, according to Class 3 FFL (NFA weapons dealer) Tom Clayton, actual processing times are often longer. Telephone Interview with Tom Clayton, CEO, Clayton's Range, in Horsham, Pa. (Mar. 9, 2013). Clayton asserts that the average time was "three to four months" until quite recently and that the current delays are largely due to understaffing (he reports that at one point, there were a total of four BATFE examiners coordinating NFA transfers). *Id.*

could provide an opportunity for CLEOs to be informed of—and offer comment on—RFL applications in their jurisdictions.

Ultimately, the RFL licensing program will work to establish a background check process that is fair and efficient for law-abiding gun owners, while ensuring that prohibited persons do not have access to restricted weapons.

(4) **Establish Real Penalties for Violations.** After a two-year implementation period, violations involving RFL firearms would be subject to criminal penalties equivalent to those prescribed by the NFA (any violation of the provisions of the NFA is a felony punishable by a fine of up to \$10,000 and up to 10 years in prison).⁵⁸ Given that the principle externality of firearms commerce is homicide, regulatory violations cannot and should not be treated lightly.

CONCLUSION

In our opinion, the proposed RFL program has several distinct advantages over a renewed AWB:

(1) **Second Amendment Rights.** The RFL proposal allows responsible, law-abiding American gun owners to continue to decide for themselves what firearms are best for their own unique sporting, hunting, and self-defense needs.

(2) **Proven Effectiveness.** The NFA firearms program has a proven track record for keeping dangerous weapons out of the hands of those who would use them improperly. The NFA's enhanced background checks ensure that only thoroughly vetted, responsible gun owners are able to purchase NFA-regulated firearms. The NFA's registry assists law enforcement officers investigating crime, and makes NFA-regulated firearms much less attractive to criminals.

We support an RFL program because it represents a rare “win-win” situation for all the stakeholders in this contentious debate. Law-abiding gun owners would retain their cherished property, while everyone could sleep easier knowing that gun owners have been thoroughly vetted by a federal law enforcement agency, and not simply by a stranger from a gun show or internet forum. Gun manufacturers would keep making guns, and the gun control lobby would enjoy a more thorough regulatory system. But most importantly, individuals with documented histories of mental instability and violent behavior—or the persons in whose households they reside—could not so easily obtain weapons for slaughter.

58. 26 U.S.C. § 5871 (2006).

APPENDIX A: EFFICACY OF THE 1994 ASSAULT WEAPONS BAN IN REDUCING GUN HOMICIDES

While gun crime declined considerably during the first two years of the Assault Weapons Ban, this phenomenon coincided with a sharp decrease in crime *overall*—including crime that was not gun-related. In light of this, U.S. Department of Justice researchers concluded that the decrease in gun crime attributable to the AWB was not statistically significant: “Random, year-to-year fluctuations could not be ruled out as an explanation of the 6.7-percent [difference].”⁵⁹

The study also concluded that “[t]he ban has failed to reduce the average number of victims per gun murder incident or multiple gunshot wound victims.”⁶⁰ In a subsequent Justice Department report, the same researchers concluded: “Should it be renewed, the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement. AWs [Assault Weapons] were rarely used in gun crimes even before the ban.”⁶¹

Indeed, while the rate of homicide by firearm in the United States was 3.68 per 100,000 people for the last five years of the AWB (2000-2004), reaching a low of 3.56 in 2001, that rate has fallen to 3.64 per 100,000 *since* the AWB ban’s expiration, reaching as low as 3.22 per 100,000 in 2010 (the last year for which complete data is available).⁶² Moreover, Senator Dianne Feinstein’s office estimates that in the eight years since the expiration of the AWB in 2004, previously banned assault weapons have resulted in just 385 deaths. While this is certainly a tragedy as forty-eight deaths per year can be called nothing less, these numbers still demonstrate that “assault weapons” are a relatively minor issue when compared with weapons that would remain unregulated by an AWB ban. Even in the absence (post-2004) of *any* federal regulation beyond that of “normal” firearms, the weapons prohibited by the AWB are responsible for less than 0.5% of the gun homicide rate.⁶³

59. JEFFREY A. ROTH & CHRISTOPHER S. KOPER, NAT’L INST. OF JUSTICE, IMPACTS OF THE 1994 ASSAULT WEAPONS BAN: 1994-96 9 (Mar. 1999), <https://www.ncjrs.gov/pdffiles1/173405.pdf>.

60. *Id.* at 2.

61. KOPER, *supra* note 39 at 3.

62. Homicide by firearm rates compiled using homicide by firearm and population data from the following sources: UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 9; Alexia Cooper & Erica L. Smith, BUREAU OF JUSTICE STATISTICS, HOMICIDE TRENDS IN THE U.S., 1980-2010 2, 27 (November 2011), *available at* <http://bjs.gov/content/pub/pdf/htus8008.pdf>; *National Intercensal Estimates (2000-2010)*, U.S. CENSUS BUREAU (last visited April 15, 2013), <http://www.census.gov/popest/data/intercensal/national/nat2010.html>.

63. Press Release, Dianne Feinstein, Feinstein to Introduce Updated Assault Weapons Bill in New Congress (Dec. 17, 2012), <http://www.feinstein.senate.gov/public/index>

THE RESTRICTED FIREARMS LICENSE

This point is chillingly illustrated by the 2007 tragedy at Virginia Tech, where Cho Seung-Hui perpetrated the worst school shooting in United States history with two AWB-legal pistols and standard 10 and 15 round magazines.⁶⁴ Even with regard to the 15 round magazines (the minority in Cho’s arsenal that day), the Virginia Tech Review Panel concluded that the “10-round magazines that were legal [under the AWB] would have not made much difference in the incident. Even [revolvers] with rapid loaders could have been about as deadly in this situation.”⁶⁵

Military features like pistol grips and synthetic stocks on rifles make firearms appear sinister and intimidating. They also make the rifles more comfortable and maneuverable—for military users, hunters, sport shooters, and criminals alike. But they do not change the key variables of (1) cartridge/caliber, (2) velocity, and (3) rate of fire. Even magazine capacity restrictions have a minimal effect on the rate of fire of mechanically similar weapons, as trained shooters can change magazines in under a second.⁶⁶ To illustrate, we have included a recent advertisement for the Ruger Mini 14 rifle in four configurations:



Figure 1

.cfm/2012/12/feinstein-to-introduce-updated-assault-weapons-bill-in-new-congress.

64. VIRGINIA TECH REVIEW PANEL, MASS SHOOTINGS AT VIRGINIA TECH 74 (Apr. 16, 2007), <http://www.governor.virginia.gov/TempContent/techPanelReport-docs/FullReport.pdf>.

65. *Id.*

66. See, e.g., Travis Tomasié, *The Perfect Reload*, <http://www.youtube.com/watch?v=HgdqfBYTUE>.

The first and third rifles from the top have not been included in any proposed AWB, and, as we discussed previously, such a ban would almost certainly be unable to withstand a legal challenge. Nevertheless, all four rifles fire the same cartridge at the same rate. The fact that the second rifle from the top *looks* like many military machine guns does not change the fact that it is only semi-automatic (one bullet per pull of the trigger). And the fact that the top rifle looks like a hunting rifle does not change the fact that it is capable of killing people quickly and efficiently. This is why our proposed RFL focuses not on a feature-based ban that would leave the first and third rifles largely unregulated, but on a licensing program that would ensure responsible, accountable ownership for all four.