

## WHAT WILL IT TAKE? TERRORISM, MASS MURDER, GANG VIOLENCE, AND SUICIDES: THE AMERICAN WAY, OR DO WE STRIVE FOR A BETTER WAY?

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*The assertion that access to firearms makes us safe, rather than increases the likelihood that oneself or a family member will die, is contradicted by a large body of evidence. Gunshots kill more than 30,000 Americans each year. Homicide accounts for approximately one-third of these deaths, with the remainder involving suicides and accidental gun discharges. In fact, firearms put us at greater risk of death than participating in war; in four months, as many Americans were shot dead in the United States as have died fighting in Iraq for an entire decade.*

*Given these grim statistics, it would be reasonable to expect swift legislative action. Living in a nation plagued by the highest gun death rate in the world should trigger public and political outrage. Yet, the country is in a state of political impasse. Despite public demand for reform, federal legislators have been unable to enact laws that would protect, at least in part, the public from gun violence.*

*Partly to blame for this political standoff may be the public's misperception that there are rigorous gun control laws at the federal and state levels, all of which in actuality are riddled with loopholes. State and federal legislators could significantly tighten gun control laws without infringing on the Second Amendment right to bear arms but repeatedly fail to do so. When proposed reforms are viewed cumulatively, it is clear that they would almost certainly prevent many firearm injuries and deaths, even if no reform can eliminate gun violence altogether.*

### INTRODUCTION

Not long after the first bomb went off at 2:50 PM on Patriots' Day in Boston, Massachusetts (aka Marathon Monday), runners stopped running, fans stopped cheering, cell phone networks were overwhelmed, hospitals filled, and Boylston Street became deserted for the first time in history.<sup>1</sup> The city came together in a way that only a

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1. Patriots' Day commemorates the beginning of the Revolutionary War, representing the first two battles (in Concord and Lexington, Massachusetts) that occurred on April 19, 1775. In Boston, the day is also set aside for the oldest annual marathon in history, dating

tragedy can inspire. Police swiped scared passengers into the transit system for free, colleagues hugged by the coffee pot instead of muttering good morning, and a beautiful memorial filled with flowers, candles, remembrances, and countless running sneakers filled Copley Square.

The nation, however, did not respond with the same compassion. Instead of asking why two Bostonians had nearly unfettered access to tools of destruction, America seemed to ask why the city did not meet violence with violence. Some observed, “I wonder how many Boston liberals spent the night cowering in their homes wishing they had an AR-15 with a hi-capacity magazine?”<sup>2</sup> and “How many Bostonians wish they had a gun [that day]?”<sup>3</sup>

Such horror was not new to the nation, or even New England. Just months earlier, on December 14, 2012, a twenty-year-old fatally shot twenty children and six staff members at Sandy Hook Elementary School in his hometown of Newtown, Connecticut.<sup>4</sup> This marked the second deadliest mass shooting by a single person in American history,<sup>5</sup> just five years after the deadliest when a college senior murdered thirty-two fellow students before committing suicide at Virginia Polytechnic Institute.<sup>6</sup>

Mass murders shock and awe but account for a small fraction of gun related fatalities. Indeed, on the days of the Boston marathon bombing and the subsequent manhunt for the perpetrators, forty-nine Americans, mostly low-income minorities living in inner cities marred with violent crime, died at gunpoint.<sup>7</sup>

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back to 1897. Approximately half a million spectators attend the event every year, and nearly 30,000 officially enter to run (un-bibbed “bandit” runners also participate but are not included in the count). *Boston Marathon History: Boston Marathon Facts*, BAA, <http://www.baa.org/races/boston-marathon/boston-marathon-history/boston-marathon-facts.aspx> (last visited Dec. 26, 2013).

2. Tweeted by Arkansas State Representative Nate Bell (R), April 19, 2013. Representative Bell has since deleted the tweet, but a screen capture of the image is available. Lisa Miller, *Nate Bell, Arkansas State Lawmaker, Send Insensitive Tweet About ‘Boston Liberals’*, HUFFINGTON POST (Apr. 19, 2013, 11:48 AM), [http://www.huffingtonpost.com/2013/04/19/nate-bell-tweet-boston\\_n\\_3116480.html](http://www.huffingtonpost.com/2013/04/19/nate-bell-tweet-boston_n_3116480.html).

3. Wayne LaPierre, Chief Exec. Officer & Exec. Vice President, Nat’l Rifle Ass’n, Address at the 2013 NRA Annual Meeting in Houston, Texas (May 4, 2013), *available at* [http://home.nra.org/pdf/waynelapierre\\_130504.pdf](http://home.nra.org/pdf/waynelapierre_130504.pdf).

4. Steve Vogel et al., *Sandy Hook Elementary Shooting Leaves 28 Dead, Law Enforcement Sources Say*, WASH. POST (Dec. 14, 2012), [http://www.washingtonpost.com/politics/sandy-hook-elementary-school-shooting-leaves-students-staff-dead/2012/12/14/24334570-461e-11e2-8e70-e1993528222d\\_story.html](http://www.washingtonpost.com/politics/sandy-hook-elementary-school-shooting-leaves-students-staff-dead/2012/12/14/24334570-461e-11e2-8e70-e1993528222d_story.html).

5. *See, e.g., Deadliest U.S. Shootings*, WASH. POST, <http://www.washingtonpost.com/wp-srv/special/nation/deadliest-us-shootings/> (last updated Sept. 23, 2013).

6. *See* VA. TECH REVIEW PANEL, MASS SHOOTINGS AT VIRGINIA TECH vii (2007), *available at* <http://www.governor.virginia.gov/tempcontent/techPanelReport-docs/FullReport.pdf>.

7. *See, e.g.,* Charles E. Basch, *Aggression and Violence and the Achievement Gap Among Urban Minority Youth*, 81 J. SCH. HEALTH 619 (2011), <http://www.ncbi.nlm.nih.gov/pubmed/>

The belief that access to firearms makes us safe, rather than exacerbates these mortality rates, is entirely fallacious. More than 30,000 Americans die by firearm each year. Homicide accounts for approximately one-third of these deaths, with the remainder involving suicides and accidental gun discharges.<sup>8</sup> As of April 2013, gun violence killed approximately as many Americans in the preceding four months as have died fighting in Iraq in the past decade.<sup>9</sup>

Given these grim statistics, it would be reasonable to expect swift legislative action. Personal security is a foundational human value, and living in a nation plagued by the highest gun death rate in the world should trigger public and political outrage. Polled in the aftermath of the Newtown tragedy, nearly ninety percent of the public favored universal background checks.<sup>10</sup> Even in the libertarian “Live Free or Die” state of New Hampshire, nearly fifty percent of the public favored stricter gun control laws.<sup>11</sup>

Nevertheless, the country is in a state of political impasse. Despite public demand for reform, federal legislators have been unable to enact laws that would protect, at least in part, the public from gun violence. During the same week that the Boston bombers were at large, the U.S. Senate voted down a bill that would have applied background check requirements to all firearm sales. President Obama expressed his dismay at the political unaccountability: “[H]ow can something have 90 percent support and yet not happen[?] . . . [W]ho are we here to represent? . . . [A]ll in all, this was a pretty shameful day for Washington.”<sup>12</sup>

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21923874 (finding that low-income minorities living in inner cities are disproportionately subject to violence).

8. See, e.g., Sherry L. Murphy et al., Nat’l Ctr. for Health Statistics, *Deaths: Final Data for 2010*, 61 NAT’L VITAL STAT. REP., May 8, 2013, at 11, available at [http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61\\_04.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_04.pdf) (finding that, for example, in 2010, 31,672 individuals died from a firearm related injury—61.2 percent suicidal inflicted wounds and thirty-five percent homicides).

9. See Basch, *supra* note 7.

10. Sarah Dutton et al., *9 in 10 Back Universal Gun Background Checks*, CBS News (Jan. 17, 2013, 7:10 AM), [http://www.cbsnews.com/8301-34222\\_162-57564386-10391739/9-in-10-back-universal-gun-background-checks/](http://www.cbsnews.com/8301-34222_162-57564386-10391739/9-in-10-back-universal-gun-background-checks/).

11. See Press Release, New England College, NH Voters Want Gun Restrictions: New England College Poll Shows Overwhelming Support for Tougher Laws (Jan. 24, 2013), available at <http://www.nec.edu/pdf-files-1/nec-polling/NEC%20Poll%20-%202013%20-%20Gun%20Control-pdf.pdf>; cf. *All in with Chris Hayes* (MSNBC television broadcast Apr. 29, 2013), available at <http://video.msnbc.msn.com/all-in-/51709443#51709443> (highlighting that, for example, fifty percent of those polled in New Hampshire reported they are less likely to support Senator Ayotte in future elections because of her vote against expanding background checks).

12. President Barack Obama, Speech on Gun Control Bill Defeat (Apr. 17, 2013), available at <http://www.whitehouse.gov/photos-and-video/video/2013/04/17/president-obama-speaks-common-sense-measures-reduce-gun-violence>.

Politicians, and even the public, misperceive the level of rigor in gun control laws at the federal and state level, which are riddled with loopholes. Proposed federal legislation would not violate the Second Amendment since the Supreme Court explicitly stated that the right to bear arms is not absolute and will always be subject to reasonable restrictions.<sup>13</sup> The truth is that state and federal legislators could significantly tighten gun control laws without infringing on a constitutional right but repeatedly fail to do so. When proposed reforms are viewed cumulatively, they would almost certainly prevent many firearm injuries and deaths—even if no reform can wholly eliminate gun violence.

Part I of this Article contrasts public perception of the status quo of gun control laws with those actually in place, demonstrating that most Americans believe firearms are more heavily regulated than they are. Part II turns to non-legislative attempts at improving gun control, including litigation against manufacturers and political fundraising groups aiming to counter the NRA's influence on politicians. Part III lays out the possibility for creating a better system of firearm regulation without violating the Second Amendment.

## I. GUN CONTROL LEGISLATION

Mass murders, such as the Newtown school shooting, or terrorist strikes, such as the Marathon Monday bombing, draw national attention to the debate over firearms control, although they account for a tiny fraction of gun fatalities. Nonetheless, they highlight the ineffectiveness of our current web of gun regulations: very dangerous people can and do access very powerful weapons, and they always will, so long as those weapons are easily available. The answer is not to ban dangerous people from accessing dangerous arms because we can no better predict dangerousness than we can ensure that non-dangerous individuals do not share their arms with others. Rather, we must make the most dangerous arms scarce, so that a mass murderer cannot kill so many before he or she can be stopped, and make ordinary firearms less available, so that record rates of suicide, homicide, and accidental mortality decline.

There is a widely publicized perception that regulating firearms is akin to nullifying the right to bear arms.<sup>14</sup> Yet, Americans also

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13. See *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3047 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008).

14. See, e.g., Cheryl K. Chumley, *Colorado Magpul's Last Stand: High-Capacity Magazine Giveaway*, WASH. TIMES (June 28, 2013), <http://www.washingtontimes.com/news/2013/jun/>

think that gun laws are stronger than they are. The American people do not realize that current legislative proposals suggest the exact restrictions Americans think already exist. Hence, they mistakenly think better enforcement of existing laws is needed, not new laws. Polling shows that a majority or near majority of Americans mistakenly believe that:<sup>15</sup>

- individuals on the terrorist watch list are barred from buying arms;
- individuals must pass a background check for every gun purchase (even at gun shows);
- high capacity magazines are prohibited;
- the purchase of unusually large amounts of ammunition triggers federal investigation; and
- it may be illegal to purchase ammunition online.

These restrictions are not currently in place, but are permissible even under the Supreme Court's most robust interpretation of the Second Amendment's meaning.<sup>16</sup> Federal and state laws and proposed laws illustrate these potential permissible restrictions.

#### A. Federal Law

Federal regulation attempting to quell violent use of firearms dates back to 1934 (the end of the prohibition) when Congress enacted the National Firearms Act.<sup>17</sup> The Act attempted to reduce the

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28/colorado-magpuls-last-stand-high-capacity-magazine/ (reporting that a manufacturer distributed 1,500 magazines at a "Farewell to Arms" festival in response to Colorado state legislation limiting the amount of ammunition a magazine can hold and strengthening background checks); Press Release, Nat'l Rifle Ass'n, Statement from the National Rifle Association of America Regarding Today's White House Task Force Meeting (Jan. 10, 2013), available at <http://www.nra-ila.org/news-issues/news-from-nra-ila/2013/statement-from-the-nra-regarding-today%27s-white-house-task-force-meeting.aspx> (expressing anger with the White House Task Force established to study and report on tactics to reduce gun violence, stating the group is "disappointed with how little this meeting had to do with keeping our children safe and how much it had to do with an agenda to attack the Second Amendment").

15. Joel Benenson & Katie Connolly, Op-Ed., *Don't Know Much About Gun Laws*, N.Y. TIMES, Apr. 7, 2013, at SR6, available at <http://www.nytimes.com/2013/04/07/opinion/sunday/dont-know-much-about-gun-laws.html>.

16. See *McDonald*, 130 S. Ct. at 3047; *Heller*, 554 U.S. at 626–27.

17. National Firearms Act, ch. 757, 48 Stat. 1236 (1934) (codified as amended in scattered sections of 26 U.S.C.).

transfer and use of “gangster” arms, or weapons with no self-defense value, by imposing a tax and requiring registration of any machine gun or firearm that could be concealed or muffled.<sup>18</sup>

Today, the Gun Control Act of 1968<sup>19</sup> and the Brady Handgun Violence Prevention Act (Brady Law)<sup>20</sup> regulate the sale of firearms across state lines by requiring such transactions to go through federally licensed manufacturers, dealers, or importers and prohibiting certain persons from purchasing or possessing these arms.

These laws seek to protect public safety by attempting to predict which individuals are too dangerous to safely handle a firearm. Indeed, Congress enacted both in response to infamous assassinations, those of John F. Kennedy, Martin Luther King Jr., and the attempted assassination of Ronald Reagan.<sup>21</sup> The Gun Control Act of 1968 prohibits licensed dealers, manufacturers, or importers from selling a firearm to certain classes of individuals, termed “prohibited persons.”<sup>22</sup> The background checks required by the Brady Law identify the following individuals as prohibited persons:<sup>23</sup>

- convicted felons;
- fugitives;
- illegal residents;
- unlawful users of controlled or prohibited substances;

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18. See *id.* The National Firearms Act was modified and renamed as the National Act of 1968 in response to the successful judicial challenge in *Haynes v. United States*, 390 U.S. 85 (1968). National Firearms Amendments Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, 1227–36 (1968).

19. Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213 (1968) (codified as amended at 18 U.S.C. §§ 921–31 (2012)).

20. Brady Handgun Violence Prevention (Brady) Act, Pub. L. No. 103-159, 107 Stat. 1536, 1536–44 (1993) (codified as amended at 18 U.S.C. §§ 921–25A (2012)).

21. See, e.g., John W. Finney, *Gun Control Bill Blocked in House*, N.Y. TIMES, June 12, 1968, at 1 (“Since the assassination of Senator Robert F. Kennedy last week, the Congressmen have been subjected to an outpouring of mail and telegrams in favor of stronger gun controls.”); BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, *Our History*, <http://www.bradycampaign.org/?q=our-history> (last visited Dec. 26, 2013).

22. Gun Control Act § 102, 28 U.S.C. § 922 (2012). The term “prohibited person” originated with the Bureau of Alcohol, Tobacco, Firearms and Explosives’s readings of firearm restriction laws. See U.S. DEP’T OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *Identify Prohibited Persons*, <http://www.atf.gov/firearms/how-to/identify-prohibited-persons.html> (last visited Dec. 26, 2013).

23. Brady Act § 102, 28 U.S.C. § 922 (2012). The Brady Handgun Violence Prevention Act further bars these prohibited persons from transferring, purchasing, or possessing arms that cross state or national borders. *Id.* § 922(g).

- individuals dishonorably discharged from the Armed Forces;
- individuals convicted of, or subject to compliance with a protective order in response to, domestic abuse; and
- individuals adjudicated as mentally ill. (A bill in the House would expand this to include any individuals under court order to take a medication, undergo counseling, or adhere to testing to ensure medication compliance).<sup>24</sup>

The Brady Law intends that licensed dealers will run a background check on every purchaser, through the use of the Federal Bureau of Investigation's National Instant Criminal Background Check System (NICS), to ensure that a customer is not one of these prohibited persons.<sup>25</sup>

In theory, NICS serves as a comprehensive list of these prohibited persons. In practice, however, using the database to restrict access has three flaws: (1) the list does not include all dangerous categories (e.g., members of terrorist organizations are not included);<sup>26</sup> (2) many individuals who meet the requirements for inclusion are never listed; and (3) even those who are a prohibited individual can avoid a database check when making a second-hand purchase.<sup>27</sup>

The first flaw is that NICS does not include all dangerous groups of individuals. Moreover, it is impossible to identify all dangerous categorizations a person may fit into before an individual performs a dangerous act since it is extremely hard to forecast dangerousness without a previously committed dangerous act.<sup>28</sup>

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24. See Press Release, U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Open Letter to All Federal Firearm Licensees (Sept. 21, 2011), available at <http://www.atf.gov/files/press/releases/2011/09/092611-atf-open-letter-to-all-ffls-marijuana-for-medicinal-purposes.pdf>. The law also prohibits sale to an individual who has renounced his or her U.S. citizenship or to a medical marijuana cardholder. *Id.*

25. See Brady Act § 103.

26. A proposed bill would have prohibited the sale to a known or suspected terrorist. See H.R. REP. NO. 113-171, at 82, 126 (2013).

27. Cf. Brady Act § 102; 27 C.F.R. § 178.11 (2002). Neither law applies to the sale of second-hand firearms (e.g., at gun shows).

28. See, e.g., Jeffrey W. Swanson et al., *Preventing Gun Violence Involving People with Serious Mental Illness*, in REDUCING GUN VIOLENCE IN AMERICA: INFORMING POLICY WITH EVIDENCE AND ANALYSIS 33, 48 (Daniel W. Webster & Jon S. Vernick eds., 2013) (noting that in a sample of individuals disqualified from purchasing a firearm from a federally licensed dealer, those disqualified for reasons of mental health accounted for only 3.4 percent of subsequent violent crime); Henry J. Steadman et al., *Violence by People Discharged from Acute Psychiatric Inpatient Facilities and by Others in the Same Neighborhoods*, 55 ARCHIVES GEN. PSYCHIATRY 393, 400 (1998) (reporting findings that the correlation between serious mental illness and violence is significantly stronger when tied with substance use disorder, and that those who are

Second, many individuals who meet the threshold for a NICS listing are never added to the database, since it relies on states to voluntarily report the names of individuals who fall into one of the prohibited categories.<sup>29</sup> Unfortunately for this context, Congress cannot compel states to contribute to a federal regulatory system.<sup>30</sup> Although states have financial incentives to submit names (and one such proposed law would create penalties by withholding funding from those that do not report), reporting is widely variable. Some states over-report<sup>31</sup> (i.e., report more individuals than are intended for inclusion in NICS), and others under-report or do not report at all.<sup>32</sup> As a result, subjection to firearms restrictions is arbitrary, if not grossly imperfect.

Third, prohibited persons can bypass a background check altogether or use counterfeit identification to pass.<sup>33</sup> In fact, because only federally licensed dealers have to conduct background checks, even those listed in NICS can purchase weapons from secondhand (i.e., private and unlicensed) sellers. This is referred to as the “gun show loophole” in the law because gun shows are the most common forum for the unregulated sale of weapons.<sup>34</sup> For example, the four guns used in the Columbine school shooting—where thirteen people were murdered—were all purchased via an unregulated forum.<sup>35</sup> Even more common than purchasing a firearm in an unregulated forum is the informal transfer of arms among family

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mentally ill and suffering from substance use disorders are no more likely to be violent than those suffering from substance use disorders alone).

29. See *Printz v. United States*, 521 U.S. 898, 935 (1997) (holding that Congress can’t directly compel state officers to implement a federal regulatory program).

30. *Id.*

31. For example, Florida reports some individuals who voluntarily commit themselves for inpatient treatment. H.B. 1355, 2013 Leg., Reg. Sess. (Fla. 2013) (approved by the Governor of Florida on June 28, 2013). California, Colorado, Florida, Idaho, Illinois, Maryland, Michigan, Mississippi, Nevada, New York, North Dakota, Texas, Virginia, and Wisconsin all report individuals who have been appointed a guardian. See *Mental Health Reporting Policy Summary*, LAW CTR. TO PREVENT GUN VIOLENCE (May 21, 2012), [http://smartgunlaws.org/mental-health-reporting-policy-summary/#identifier\\_82\\_5725](http://smartgunlaws.org/mental-health-reporting-policy-summary/#identifier_82_5725).

32. See Laura Meckler & Jack Nicas, *U.S. News: Spotty Data Weaken Background Checks*, WALL ST. J., Jan. 16, 2013, at A4.

33. See *The Alias Among Us: The Homeland Security and Terrorism Threat from Document Fraud, Identity Theft, and Social Security Number Misuse*, HEARING BEFORE THE S. COMM. ON FIN., 108th Cong. 29 (2003) (statement of Robert Cramer, Managing Director, Office of Special Investigations, U.S. General Accounting Office).

34. Larger gun shows may sell up to 1,000 firearms in each show; approximately 2,000 to 5,200 shows are held each year. U.S. DEP’T OF JUSTICE, OFFICE OF THE INSPECTOR GEN., BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES’ INVESTIGATIVE OPERATIONS AT GUN SHOWS 6 (2007), available at <http://www.justice.gov/oig/reports/ATF/e0707/final.pdf>.

35. See Chris Kirkham, *Private Gun Sale Loophole Creates Invisible Firearms Market, Prompts Calls for Reform*, HUFFINGTON POST (Dec. 21, 2012, 4:19 PM), [http://www.huffingtonpost.com/2012/12/21/private-gun-sales-sandy-hook\\_n\\_2347420.html](http://www.huffingtonpost.com/2012/12/21/private-gun-sales-sandy-hook_n_2347420.html).

members or friends,<sup>36</sup> which was the most common way a firearm used in a crime was obtained among a pool of surveyed inmates<sup>37</sup> and the way the Newtown shooter accessed his arsenal of deadly weapons.<sup>38</sup>

As evidenced by the shortcomings of NICS, Congress could do much more without endangering Second Amendment rights, including the following regulations, which were proposed in the House and/or Senate, but not enacted into law:

#### Bills Restricting Purchase, Possession, and Sale:

- limiting firearm sales to individuals twenty-one and older;<sup>39</sup>
- limiting possession of semiautomatic assault weapons to individuals twenty-one or older;<sup>40</sup>
- limiting public possession of a concealed firearm to individuals twenty-one or older;<sup>41</sup>
- requiring individuals under eighteen to be accompanied by an adult to a gun show;<sup>42</sup>
- increasing authority of the Attorney General to inspect records of licensed firearms dealers without reasonable

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36. Even Sarah Brady, the wife of Jim Brady (for whom the Brady Handgun Violence Prevention Act is named), purchased a firearm for purposes of gifting it to her son, thereby bypassing the very background check system her husband's death inspired. See Timothy J. Burger, *Brady Shady on Gun Rules: Control Backer Got Son Rifle*, N.Y. DAILY NEWS (Mar. 22, 2002, 12:00 AM) <http://www.nydailynews.com/archives/news/brady-shady-gun-rules-control-backer-son-rifle-article-1.477603>.

37. See CAROLINE WOLF HARLOW, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, NCJ 189369, FIREARM USE BY OFFENDERS I (2001), available at <http://www.bjs.gov/content/pub/pdf/fuo.pdf>. One can also avoid background checks by purchasing a firearm of historical value (a "curios" or "relic"), essentially a weapon of value for reasons other than its utility in hunting, self-defense, or offensive acts. See U.S. DEP'T OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, *Curios & Relics*, <http://www.atf.gov/firearms/faq/curios-relics.html#brady-law> (follow "9." link).

38. See John Christoffersen, *Newtown Shooting Motive Remains Unclear Following Search Warrant Revelations on Adam Lanza*, HUFFINGTON POST (Mar. 29, 2013, 2:40 AM) [http://www.huffingtonpost.com/2013/03/29/newtown-shooting-motive\\_n\\_2978093.html](http://www.huffingtonpost.com/2013/03/29/newtown-shooting-motive_n_2978093.html) ("The weapons used in the shooting had all apparently been purchased by Lanza's mother, according to prosecutor Stephen J. Sedensky III, who said in a statement accompanying the warrants that the gun locker was open when police arrived at the house and there was no sign it had been broken into.")

39. Child Gun Safety and Gun Access Prevention Act of 2013, H.R. 65, 113th Cong. § 2 (2013).

40. *Id.*

41. Common Sense Concealed Firearms Permit Act of 2013, S. 147, 113th Cong. § 2(a) (2013).

42. H.R. 65 § 6.

cause or a warrant from once annually to three times per year;<sup>43</sup>

- prohibiting formerly licensed dealers whose licenses have been revoked from making private sales;<sup>44</sup>
- requiring interstate ammunition sellers to be federally licensed;<sup>45</sup>
- expanding inclusion in the NICS database of prohibited persons to include anyone ordered by a federal court to take medication, receive counseling, and/or receive testing for medical compliance (excluding substance abuse disorder treatment);<sup>46</sup>
- expanding inclusion in the NICS database of prohibited persons to include any person involuntarily committed to a psychiatric hospital, including for substance abuse;<sup>47</sup>
- placing a financial penalty on states that fail to report to the NICS;<sup>48</sup>
- requiring licensure of all handguns;<sup>49</sup>
- prohibiting sale of “junk guns” (very inexpensive handguns);<sup>50</sup>
- prohibiting sale to any individual deemed by the Attorney General to have been engaged in terrorist activities;<sup>51</sup>
- granting the Attorney General authority to revoke a firearms license or permit from any individual determined to be engaged in terrorism;<sup>52</sup> and
- prohibiting sale or transfer of a firearm to any person convicted of a misdemeanor sex offense against a minor.<sup>53</sup>

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43. Crackdown on Deadbeat Gun Dealers Act of 2013, H.R. 236, 113th Cong. § 2 (2013).

44. Fire Sale Loophole Closing Act, H.R. 93, 113th Cong. § 2 (2013).

45. Stop Online Ammunition Sales Act of 2013, S. 35, 113th Cong. § 2 (2013).

46. Fix Gun Checks Act of 2013, H.R. 137, 113th Cong. § 103 (2013).

47. NICS Reporting Improvement Act of 2013, S. 480, 113th Cong. § 2 (2013).

48. H.R. 137 § 101; *see also* Strengthening Background Checks Act of 2013, H.R. 329, 113th Cong. § 2(c) (2013).

49. Handgun Licensing and Registration Act of 2013, H.R. 117, 113th Cong. § 2(a) (2013).

50. H.R. 965, 113th Cong. § 1 (2013).

51. Denying Firearms and Explosives to Dangerous Terrorists Act of 2013, H.R. 720, 113th Cong. § 2 (2013); Denying Firearms and Explosives to Dangerous Terrorists Act of 2013, S. 34, 113th Cong. § 2 (2013).

52. Denying Firearms and Explosives to Dangerous Terrorists Act of 2013, H.R. 720, 113th Cong. § 2 (2013); Denying Firearms and Explosives to Dangerous Terrorists Act of 2013, S. 34, 113th Cong. § 2 (2013).

53. Keep Kids Safe Act of 2013, H.R. 619, 113th Cong. § 2 (2013).

## Bills Reducing Accidents:

- requiring all arms to be sold with a safety device;<sup>54</sup>
- imposing a monetary penalty on licensed sellers who fail to have safety devices available at any point of sale;<sup>55</sup>
- placing liability on the firearm owner for harm enacted by a child accessing the gun;<sup>56</sup> and
- requiring purchasers to obtain liability insurance.<sup>57</sup>

## Bills Limiting Damage Done by Firearms and Reducing Violence:

- restricting magazine capacity;<sup>58</sup>
- prohibiting mail order ammunition purchases and requiring background checks for face-to-face purchases;<sup>59</sup>
- requiring sellers to report bulk ammunition purchases or thefts;<sup>60</sup>
- prohibiting sale, manufacture, transfer, or possession of semiautomatic assault weapons;<sup>61</sup>
- requiring a background check for all gun sales (public and private, except for gifts made to an immediate family member, inheritances, or temporary loans for recreational use);<sup>62</sup>
- requiring reporting of theft or loss of any firearm that has crossed state lines;<sup>63</sup>

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54. Child Gun Safety and Gun Access Prevention Act of 2013, H.R. 65, 113th Cong. § 3 (2013).

55. Crackdown on Deadbeat Gun Dealers Act of 2013, H.R. 236, 113th Cong. § 5 (2013).

56. H.R. 65 § 5.

57. Firearm Risk Protection Act of 2013, H.R. 1369, 113th Cong. § 2 (2013).

58. High-Capacity Ammunition Magazine Ban of 2013, S. 691, 113th Cong. §§ 2–3 (2013); Assault Weapons Ban of 2013, S. 150, 113th Cong. § 3 (as reported by the S. Comm. on the Judiciary, Mar. 14, 2013); Large Capacity Ammunition Feeding Device Act of 2013, S. 33, 113th Cong. § 2 (2013); Large Capacity Ammunition Feeding Device Act, H.R. 138, 113th Cong. § 2 (2013).

59. Ammunition Background Check Act of 2013, S. 174, 113th Cong. § 3 (2013); Stop Online Ammunition Sales Act of 2013, S. 35, 113th Cong. §§ 2(b)–(c) (2013).

60. Ammunition Background Check Act of 2013, S. 174, 113th Cong. § 4(d) (2013); Stop Online Ammunition Sales Act of 2013, S. 35, 113th Cong. § 2(d) (2013).

61. S. 150 §§ 2–3; Assault Weapons Ban of 2013, H.R. 437, 113th Cong. §§ 2–3 (2013).

62. Safe Communities, Safe Schools Act of 2013, S. 649, 113th Cong. § 122 (2013); Fix Gun Checks Act of 2013, S. 374, 113th Cong. § 202 (as reported by the S. Comm. on the Judiciary, Mar. 12, 2013); Gun Show Background Check Act of 2013, S. 22, 113th Cong. § 2 (2013); Gun Show Loophole Closing Act of 2013, H.R. 141, 113th Cong. § 2 (2013).

63. S. 374 § 203.

- broadening definition of, and increasing criminal penalties placed on, straw purchasers;<sup>64</sup>
- issuing grants to states to fund retrieval of arms from prohibited persons;<sup>65</sup>
- authorizing schools to use federal security grants for the purpose of installing surveillance equipment and/or creating hotlines for the reporting of potentially dangerous students or situations;<sup>66</sup>
- increasing criminal penalty for knowingly falsifying firearm purchase records;<sup>67</sup>
- creating a tax credit for the trade-in of an assault weapon;<sup>68</sup>
- placing an excise tax on concealable firearms;<sup>69</sup>
- creating a buyback program for concealable firearms;<sup>70</sup>
- creating a buyback program for semiautomatic assault weapons;<sup>71</sup>
- requiring any state allowing carry of concealed weapons to mandate individuals obtain a permit for such weapons;<sup>72</sup>
- prohibiting body armor piercing firearms and ammunition;<sup>73</sup> and
- directing National Institutes of Justice to study impact of risk factors for perpetrators of mass violence (e.g., poverty, video game and media violence, child abuse or neglect, exposure to bullying or criminal harm, mental illness, school supportiveness, and availability of firearms).<sup>74</sup>

These proposed regulations pass constitutional muster because they either expand on already permissible regulations to improve

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64. Stop Illegal Trafficking of Firearms Act of 2013, S. 54, 113th Cong. (2013).

65. Armed Prohibited Persons Act of 2013, H.R. 848, 113th Cong. (2013).

66. School Safety Enhancements Act of 2013, H.R. 1470, 113th Cong. (2013); School and Campus Safety Enhancements Act of 2013, S. 146, 113th Cong. (as reported by the S. Comm. on the Judiciary, Mar. 12, 2013).

67. Crackdown on Deadbeat Gun Dealers Act of 2013, H.R. 236, 113th Cong. § 4 (2013).

68. Support Assault Firearms Elimination and Reduction for our Streets Act, H.R. 226, 113th Cong. § 2 (2013).

69. Firearm Safety and Buyback Grant Act of 2013, H.R. 793, 113th Cong. § 2.

70. *Id.* § 3.

71. Assault Weapons Ban of 2013, S. 150, 113th Cong. § 6.

72. *Id.*

73. Protect Law Enforcement Armor (PLEA) Act, H.R. 538, 113th Cong. (2013); Ammunition Background Check Act of 2013, S. 174, 113th Cong. § 5 (2013).

74. Assault Weapons Ban of 2013, S. 150, 113th Cong. § 7.

enforcement and consistency in application or further regulate unusually dangerous arms (e.g., machine guns with high capacity magazines or other firearms not commonly used for self-defense). The Court has made clear that longstanding prohibitions, such as restricting access for convicted felons or the mentally ill, are plainly constitutional, and that the Second Amendment does not protect anyone's right to bear arms that are useful only for unlawful purposes.<sup>75</sup>

### B. State Law

The federal Gun Control Act creates a floor with respect to restrictions on arms that cross state lines; states are free to create additional restrictions that make firearms more difficult to obtain, or use accidentally or in criminal activity, subject to the Second Amendment.<sup>76</sup> Therefore, states can regulate arms only by prohibiting possession or transfer by certain groups (as the federal law does) or in certain locations (e.g., schools, government buildings). However, states cannot universally ban arms, such as in an urban setting where violent crime is highly prevalent. The treatment of gun control varies widely among the states.

Some states have enacted laws to regulate gun purchases and possession beyond the federal law requirements. For example, California requires all sellers, even secondhand, to be licensed by the state, and thereby requires a background check on all transfers.<sup>77</sup> In New York City, after spending eleven million dollars pushing for more stringent federal gun controls, Mayor Michael Bloomberg is financing a widespread lobbying effort to pressure

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75. See *District of Columbia v. Heller*, 554 U.S. 570, 612, 626–27 (2008).

76. The Supreme Court did not apply the Second Amendment to the states until 2010. See, e.g., *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3026, 3050 (2010) (incorporating the Second Amendment to the states through the Fourteenth Amendment). Before that time, it was widely understood that the Second Amendment served to protect states from unfettered federal power. See *id.* at 3028.

77. See, e.g., CAL. PENAL CODE §§ 12070(a), 12071(3)–(4) (2013), available at <https://www.atf.gov/files/publications/download/p/atf-p-5300-5-31st-edition/States/atf-p-5300-5-california-2010.pdf> (Section 12070(a) requires sellers to be licensed, and Sections 12071(3)–(4) require background checks in some manner before licensing); see also U.S. DEP'T OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, ATF P 5300.5, STATE LAWS AND PUBLISHED ORDINANCES—FIREARMS: 2010–2011, at xi–xii (31st ed., 2010) [hereinafter ATF REPORT ON STATE LAWS FOR FIREARMS], available at <https://www.atf.gov/files/publications/download/p/atf-p-5300-5-31st-edition/2010-2011-atf-book-final.pdf>.

state legislators into enacting stricter regulations (e.g., requiring background checks on private sales).<sup>78</sup>

Other states nearly nullify the federal law by removing certain individuals from the prohibited person classifications. For example, some states restore the right to bear arms for convicted felons upon completion of a sentence.<sup>79</sup> States can even abrogate the federal law by issuing “Brady permits,” which allow a licensed seller to waive the background check requirement for buyers that have a state permit to carry or acquire a firearm; this most often applies to handguns.<sup>80</sup> Some state permitting processes include a local background check, but these would not pick up on any reason for NICS reporting that may have occurred across state lines.<sup>81</sup>

In short, state laws are wildly inconsistent and do not function to increase safety in an age where state borders have little correlation with points of consumption or use of goods. As state laws stand, they either vitiate federal regulation or strengthen it only within artificial boundaries—for example, an individual need only cross state lines from Massachusetts to New Hampshire and back.

## II. NON-LEGISLATIVE APPROACHES TO GUN CONTROL

Legislative reform has proved intractable, in large part because of the National Rifle Association’s (NRA) persistent and sizeable financial contributions to campaigns. In the meantime, the political indulgence of the gun lobby has stymied even non-legislative attempts to control gun violence, namely litigation against gun manufacturers.<sup>82</sup> Fledgling attempts to counteract NRA influence are surfacing as a response to this recalcitrant system of gun control,<sup>83</sup> but the American fascination with possessing arms has not faltered.

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78. See Javier C. Hernandez, *For Bloomberg, Gun Control Fight Shifts to State Capitals*, N.Y. TIMES, June 2, 2013, at A1, available at <http://www.nytimes.com/2013/06/02/nyregion/bloombergs-push-for-tighter-gun-laws-shifts-to-other-states.html?pagewanted=all>.

79. See Michael Luo, *Felons Finding it Easy to Regain Gun Rights*, N.Y. TIMES, Nov. 14, 2011, at A1, available at <http://www.nytimes.com/2011/11/14/us/felons-finding-it-easy-to-regain-gun-rights.html?pagewanted=all>.

80. For a detailed list of how each state handles NICS background checks and issues Brady permits, see ATF REPORT ON STATE LAWS FOR FIREARMS, *supra* note 77, at xiii–xvi; see also <http://www.atf.gov/firearms/brady-law/permit-chart.html>.

81. See *Background Checks Policy Summary*, LAW CTR. TO PREVENT GUN VIOLENCE (May 21, 2012), <http://smartgunlaws.org/background-checks-policy-summary/> (indicating that states do local background checks, which would not include out-of-state information that would be relevant if a prohibited person crossed state lines to purchase a gun).

82. See *infra* notes 84–93 and accompanying text.

83. See *infra* notes 99–103 and accompanying text.

The obstacles the NRA poses are damaging since litigation is an effective public health harm reduction strategy in the absence of regulatory control. Tort liability deters manufacturers from placing unnecessarily dangerous products on the market, targeting advertising to minors, or otherwise creating uncontrolled risk. For example, litigation has changed the behavior, in part, of the tobacco, food, and auto industries.<sup>84</sup> However, the NRA has successfully lobbied to protect the firearm industry from liability, thwarting attempts to use litigation to reduce gun violence on a large scale.

The federal Protection of Lawful Commerce in Arms Act<sup>85</sup> is one such law that has forced courts to dismiss lawsuits that otherwise alleged actionable wrong. The law prohibits negligence actions against gun manufacturers whose arms have been used in criminal activity.<sup>86</sup> For example, it brought a stop to a proceeding that alleged negligence for the ease with which violent convicts (a prohibited class) could access firearms.<sup>87</sup> The plaintiffs argued that the manufacturer was negligent in flooding the market with a superfluous number of guns (i.e., supply outweighed legal demand).<sup>88</sup> The same law also temporarily halted claims filed by cities alleging that illegal distribution tactics, such as dealing directly to criminal organizations, exacerbated violent crime and created a public nuisance for residents.<sup>89</sup> The Protection of Lawful Commerce in Arms Act prohibits these lawsuits, even under state law, thereby precluding individuals or municipalities from seeking any relief (monetary, injunctive, or declaratory) in court from a manufacturer or distributor for injuries resulting from unlawful use of a firearm that has crossed state lines unless there is evidence that there is a design or manufacturing defect,<sup>90</sup> that the defendant knew the firearm would be used in a violent crime,<sup>91</sup> or that the defendant knowingly violated the law (e.g., by selling to dealers

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84. See, e.g., Jon S. Vernick et al., *Availability of Litigation as a Public Health Tool for Firearm Injury Prevention: Comparison of Guns, Vaccines, and Motor Vehicles*, 97 AM. J. PUBLIC HEALTH 1991 (2007), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2040374/>.

85. Protection of Lawful Commerce in Arms Act §§ 2–4, 15 U.S.C. §§ 7901–03 (2012).

86. *Id.*

87. *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1129–30 (9th Cir. 2009).

88. See *id.* at 1130.

89. Cf. *City of Gary v. Smith & Wesson Corp.*, 801 N.E.2d 1222 (Ind. 2003); *City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136 (Ohio 2002).

90. See 15 U.S.C. § 7903(5)(A)(v) (2012).

91. See *id.* § 7903(5)(A)(iii).

known to sell to criminals).<sup>92</sup> Thirty-six states have similar laws,<sup>93</sup> thereby doubling the protection firearm manufacturers and distributors enjoy.

Even where litigation is still permissible, federal law prohibits the release of data that tracks the distribution trail of firearms involved in crime,<sup>94</sup> making it nearly impossible to establish a transactional link between a manufacturer or distributor and a criminal organization. This is particularly frustrating when nearly half of firearms are used in a crime within three years of purchase from a licensed dealer, suggesting that such a link is common.<sup>95</sup>

Barring release of this type of data also dampens research on the relationship between firearms and harm. In fact, empirical evidence on this subject is purposefully rare. Shortly after the Centers for Disease Control and Prevention (CDC) began to study gun-related injuries, the *New England Journal of Medicine* published data demonstrating that a gun in the home is more likely to be used to kill a family member than to be used in self-defense.<sup>96</sup> Immediately thereafter, Congress eliminated the CDC's budget allocated to firearms research,<sup>97</sup> demonstrating the political power of the NRA to control federal activity on arms control. Indeed, to this day, CDC appropriation bills prohibit federal funding of research related to

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92. *See id.*; *see also* Williams v. Beemiller, Inc., 952 N.Y.S.2d 333, 337 (N.Y. App. Div. 2012) (finding that plaintiffs adequately alleged that defendants knowingly violated the law, which is one of several exceptions to prohibition of litigation against manufacturers under the Protection of Lawful Commerce in Arms Act).

93. *Immunity Statutes Policy Summary*, LAW CTR. TO PREVENT GUN VIOLENCE (May 21, 2012), <http://smartgunlaws.org/immunity-statutes-policy-summary/>.

94. Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. 3034, 3128–29 (2009) (adopting the Tiahrt Amendment, which precludes the use of firearm tracking data collected by the Bureau of Alcohol, Tobacco, Firearms, and Explosives from use in any civil suit, except as used by the Bureau itself).

95. *See* City of New York v. Beretta U.S.A. Corp., 401 F. Supp. 2d 244, 254 (E.D.N.Y. 2005) (noting that ATF data indicate that up to “43% of guns used in crimes in urban centers across the United States were purchased from retail dealers less than three years prior to commission of the crime”).

96. Arthur L. Kellermann et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 NEW ENG. J. MED. 1084, 1090 (1993).

97. Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009–244 (1996) (“[N]one 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.”). This language was expanded to read “in whole or in part” in 1997 and changed again in 2012 to apply to all funding appropriated to Department of Health and Human Services. Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 123 Stat. 786, 1085 (2011).

gun control, and the CDC notifies the NRA before any CDC-supported research related to gun control is published.<sup>98</sup>

In response to these attempts to protect firearms and oppose the federal laws that bar the release of data tracing arms back to their distributors, mayors of cities rampaged by violent crime have joined forces to push for more efficacious attempts to keep arms out of the hands of criminals.<sup>99</sup> Yet, neither these mayors nor other pro-gun control advocates have yet been able to match the NRA's financial pull. For the 2012 elections alone, the NRA spent 18.6 million dollars supporting campaigns of candidates opposed to gun control or running against those who favor it.<sup>100</sup> In contrast, New York City Mayor Michael Bloomberg, co-founder of *Mayors Against Illegal Guns*, allocated twelve million dollars to fund television ads throughout 2013, shaming senators who voted against a bill proposing stricter controls and more comprehensive background checks.<sup>101</sup> Former representative Gabriel Gifford's super-political action committee (super-PAC), *Americans for Responsible Solutions*, has collected eleven million dollars in its first four months of existence.<sup>102</sup> The fund is being built to match NRA spending in the 2014 congressional elections.<sup>103</sup>

Nonetheless, Americans continue to perpetuate a culture of weaponry. With more guns per capita than any other nation in the world, as well as the most guns in absolute numbers,<sup>104</sup> access to arms is de facto unrestricted, even for the most dangerous individuals. Rather than being viewed as horrifying, murderous violence is a

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98. See Michael Luo, *N.R.A. Stymies Firearms Research, Scientists Say*, N.Y. TIMES, Jan. 26, 2011, at A1, available at <http://www.nytimes.com/2011/01/26/us/26guns.html?pagewanted=all>.

99. See *Coalition Principles*, MAYORS AGAINST ILLEGAL GUNS, <http://www.mayorsagainstillegalguns.org/html/about/principles.shtml> (last visited Dec. 26, 2013) (statement of principles from the April 25, 2006 Mayors' Summit on Illegal Guns).

100. See Lee Drutman, *Explaining the Power of the National Rifle Association*, in *One Graph*, SUNLIGHT FOUNDATION (Dec. 17, 2012, 12:48 PM), <http://sunlightfoundation.com/blog/2012/12/17/gun-spending/>.

101. See CNN Political Unit, *Turning the Tables: Bloomberg's Gun Control Group Creates Scorecard* (Apr. 9th, 2013, 8:53 AM), <http://politicalticker.blogs.cnn.com/2013/04/09/turning-the-tables-anti-gun-group-creates-scorecard/>.

102. See Manu Raju & Anna Palmer, *Gabrielle Giffords Guns Group Raises \$11 Million*, POLITICO (May 8, 2013, 1:46 PM), <http://www.politico.com/story/2013/05/gabrielle-giffords-guns-group-fundraising-91074.html>.

103. See Editorial, *Our View: Expanded Background Checks Make Sense, Violate No Rights*, ANCHORAGE DAILY NEWS (July 4, 2013).

104. See Max Fisher, *What Makes America's Gun Culture Totally Unique in the World*, in *Four Charts*, WASH. POST WORLDVIEWS (Dec. 15, 2012, 2:14 PM) (citing the Max Fisher/Washington Post Small Arms Survey), <http://www.washingtonpost.com/blogs/worldviews/wp/2012/12/15/what-makes-americas-gun-culture-totally-unique-in-the-world-as-demonstrated-in-four-charts/>.

part of American daily life. Firearms, like any other product that sells well, is repeatedly tied to sex appeal, even though the media has acknowledged that exposure to violence may exacerbate deadly activity<sup>105</sup> (while at the same time using the First Amendment to shield itself from regulation that would weaken this association).

In short, non-legislative attempts to curb gun violence have had little success. Hindered by federal and state laws prohibiting legal action against negligent or even grossly negligent distribution of arms, restrictions against federal funding of firearm safety research, and First Amendment protections that bar, nearly in entirety, the divorce of sex appeal and power from images of violence, non-legislative attempts to reduce firearm-related mortality have fallen flat.

### III. A DIRE NEED FOR REFORM

The Supreme Court's modern reading of the Second Amendment makes reducing gun violence extremely difficult, but not impossible. There is no single answer, and a culture of guns in America is only growing stronger. Swift action and implementing a suite of reforms is critical.

It has been less than a decade since the Supreme Court first read two interpretations into the Second Amendment that aid gun proponents. First, the Supreme Court decided that the Second Amendment protects a broad individual right to bear arms.<sup>106</sup> In addition, the Second Amendment prevents local legislators from implementing stronger restrictions in crime-ridden cities than may be necessary in the rural environments where recreational gun use occurs.<sup>107</sup>

Those two landmark rulings have coincided with an escalating ethos that firearms are a fundamental component of our freedom. On the fiftieth anniversary of John F. Kennedy's assassination, for example, a gun manufacturer released the "Dallas Heritage Rifle," a commemorative version similar to the one used to murder the former president, engraved with an image of the Kennedy

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105. See Tina Daunt, *Joe Biden, Entertainment Industry Reps Meet to Find 'Meaningful Solutions' to Gun Violence*, HOLLYWOOD REP. (Jan. 10, 2013, 8:59 PM); Pamela McClintock, *Marketing Violence: Hollywood's Posters for Early 2013 Movies*, HOLLYWOOD REP. (Dec. 21, 2012, 1:00 PM).

106. See *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008) ("There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.").

107. *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3026 (2010) ("[W]e hold that the Second Amendment right is fully applicable to the States.").

Memorial.<sup>108</sup> This year, Illinois became the fiftieth state to legalize carrying concealed weapons in public places,<sup>109</sup> just as North Carolina stands to be the seventh state to legalize the carry of concealed arms in bars, even though one-third of firearm-related deaths occur when the shooter is intoxicated.<sup>110</sup> Perhaps no event marks the epitome of our gun culture better than the acquittal of George Zimmerman, the adult male who shot dead—at point blank—a seventeen-year-old boy. Despite the fact that Zimmerman approached the victim with a gun and walked away the only survivor, he was protected from conviction by the state's stand your ground law, which allows residents to use deadly force against another even when an opportunity to safely retreat clearly presents itself.<sup>111</sup> In the wake of Zimmerman's acquittal, nationwide calls for legal reform (namely to eliminate stand your ground laws) were met with alarm from gun owners, reflecting a pervasive ethos that not only do Americans have the right to bear arms, but also the right to kill rather than retreat.<sup>112</sup>

Such a state of affairs demands immediate and comprehensive reform. No single solution, such as trying to prevent dangerous people from accessing arms or universally arming all individuals, will work. Rather, reform requires a multifaceted approach that would focus on different terms such as requiring safety locks on all guns, using registries, allowing data sharing, using technology to personalize guns as well as to trace their movement through trade, and finally banning all high capacity magazines that wipe out multiple lives in the blink of an eye.

Without such an amalgamation of reforms, dangerous individuals will always be able to access guns, especially as long as supply far

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108. Dabney Bailey, *Engraved Rifles in Honor of JFK Assassination Stir Up Controversy*, OPPOSING VIEWS (July 18, 2013), <http://www.opposingviews.com/i/society/guns/engraved-rifles-honor-jfk-assassination-stir-controversy>.

109. See Ginny Fahs, *Illinois is 50th State to Legalize Carrying Concealed Weapons*, NPR: THE TWO-WAY (July 10, 2013, 2:10 PM), <http://www.npr.org/blogs/thetwo-way/2013/07/10/200789406/illinois-is-50th-state-to-legalize-carrying-concealed-weapons>.

110. See Ciara McCarthy, *North Carolina is on the Brink of Allowing Guns in Bars. That's a Really Terrible Idea*, SLATE CRIME BLOG (July 26, 2013, 5:29 PM), [http://www.slate.com/blogs/crime/2013/07/26/north\\_carolina\\_concealed\\_weapons\\_allowing\\_guns\\_in\\_bars\\_is\\_a\\_really\\_really.html](http://www.slate.com/blogs/crime/2013/07/26/north_carolina_concealed_weapons_allowing_guns_in_bars_is_a_really_really.html); *N.C. Lawmakers Pass Sweeping Changes to Gun Laws*, CBS NEWS (July 23, 2013, 9:14 PM), [http://www.cbsnews.com/8301-250\\_162-57595186/n.c-lawmakers-pass-sweeping-changes-to-gun-laws/](http://www.cbsnews.com/8301-250_162-57595186/n.c-lawmakers-pass-sweeping-changes-to-gun-laws/).

111. See Lizette Alvarez & Cara Buckley, *Zimmerman is Acquitted in Trayvon Martin Killing*, N.Y. TIMES, July 14, 2013, at A1, available at <http://www.nytimes.com/2013/07/15/us/george-zimmerman-verdict-trayvon-martin.html?pagewanted=all>.

112. See, e.g., Larissa MacFarquhar, *Still Packing*, NEW YORKER, Aug. 5, 2013, at 23 (profiling a woman who designs handgun size clutches for women seeking to carry a concealed weapon that is as readily available as it would be if held in a holster on the waist).

exceeds legal demand. The assumption that the law may protect the public from a well-armed society by keeping weapons away from those deemed more dangerous than others is a fallacy.

To reduce the frequency with which gun fatalities shatter families and neighborhoods and consume newspaper headlines, both Congress and state legislatures must conjure the political will to move America back towards a place where we all have the liberty to exist in public without fearing sudden death at the hands of another.

#### CONCLUSION

Firearms took the lives of approximately 31,000 Americans in 2010, a rate that is far higher than other high-income countries, whether measured in homicides or suicides.<sup>113</sup> Despite staggering mortality rates, accidental killings, and headline-grabbing deaths, mass murders have not spurred effective legislation aimed at reducing these numbers. Within the bounds of the Second Amendment, Congress could—but has not even attempted to—enact legislation described above, including imposing waiting periods on purchases from dealers trading across state lines, tracking the sale of arms as background checks are conducted, and actively pursuing straw purchasers distributing arms to criminal networks. Similarly, states could impose liability on gun owners whose arms are used in fatal shootings—accidental or otherwise—and improve screening for and access to early intervention for mental illness. All of these measures enjoy public support, but they are perceived as already the law, not as potential reforms. Thus, when legislators introduce firearm regulations, a vocal component of the population is enraged, even though the regulations mimic the protections we already think we have. The result will continue to be more of the same unless and until legislators learn to effectively message the contents of their proposals and surpass the voice of the NRA.

Congress and state legislatures must take action to implement laws that regulate arms from myriad angles. If there is any silver lining to the multiple violent tragedies that have swept our nation in 2013, it will be that they finally give politicians the courage to enact change in the face of a pervasive firearm lobby.

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113. See, e.g., Murphy et al., *supra* note 8, at 11; Simon Rogers, *Gun Homicides and Gun Ownership Listed by Country*, THEGUARDIAN.COM (July 22, 2012, 8:01 AM) <http://www.theguardian.com/news/datablog/2012/jul/22/gun-homicides-ownership-world-list> (noting that only low-income countries exceed the United States' mortality rate in firearm-related deaths).