

Brady Campaign



To Prevent Gun Violence

SENSIBLE GUN LAWS SAVE LIVES

GUN VIOLENCE IN AMERICA

PROPOSALS FOR THE OBAMA ADMINISTRATION

**BRADY CAMPAIGN TO PREVENT GUN VIOLENCE
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THE CASE FOR COMMON SENSE GUN LAWS

America's gun violence problem must be addressed if we are to effectively respond to the crises facing our health care system, urban communities, and homeland security. In this country, it is too easy for dangerous people to obtain dangerous weapons. There are only a few federal gun laws, and even those have loopholes. This leads to senseless gun deaths and injuries affecting thousands each year. We should implement stronger laws and policies that will protect our families and communities from gun violence by making it harder for convicted felons, the dangerously mentally ill, and other prohibited persons to obtain guns.

Every day in America, guns claim 84 lives, and wound nearly 200; every year more than 30,000 people die – over 3,000 of them children and teens – and over 70,000 are injured.¹ Firearm homicide is the leading cause of death for black men ages 15-34, and is the leading cause of death for *all* African-Americans 15-24.² Homicide represents the second-leading cause of death for Hispanics between the ages of 15 and 24, 76% of which are firearm related.³ Estimates of direct medical costs for firearm injuries range from \$2.3 billion⁴ to \$4 billion,⁵ with additional annual indirect costs estimated at \$19 billion.⁶

America is the sole high-income, industrialized country that has not responsibly addressed the problem of gun violence. The firearms death rate in the U.S. is *eight* times higher than in other high-income countries⁷ and the rate among children under 15-years-old is nearly *twelve* times higher in the U.S. than in 25 other industrialized countries *combined*.⁸

There are effective solutions that can reduce gun violence. Beginning with the Brady Law in 1993, the assault weapon ban in 1994, and other Clinton Administration policies, our nation experienced an historic decline in gun crime and violence. During the first ten years of the Brady Law gun homicides dropped 37%,⁹ while other gun crimes dropped 73%.¹⁰ However, during the Bush years, gun crime increased as the Administration and Congress weakened the Brady Law, allowed the assault weapons ban to expire, gave the gun industry special legal protection, and instituted other counterproductive policies.

President-elect Obama and Vice President-elect Biden “favor commonsense measures that respect the Second Amendment rights of gun owners, while keeping guns away from children and from criminals who shouldn't have them,”¹¹ and the public overwhelmingly agrees. For example, 83% of all November 2008 voters favor background checks for all gun sales – *and more than two-thirds want the gun laws they support to be adopted during the first year of the Obama administration*.¹² The views of McCain voters and gun owners are no different.¹³

This Memorandum presents a suggested blueprint for reform of our nation's gun laws and policies for the Obama Administration and the new Congress to consider. These proposals are clearly constitutional under the U.S. Supreme Court's recent Second Amendment decision in *District of Columbia v. Heller*, 554 U.S. ___, 128 S.Ct. 2783 (2008), and they pose no threat to the interests of law-abiding gun owners. First, we outline an agenda for reversing the damage done during the Bush years. Second, we list ideas for new laws, regulations and policies that can inaugurate a new era of progress in reducing gun deaths and injuries. Reforms that can be undertaken without new legislation are noted. This memo is not intended to present an exhaustive list of effective measures that can be taken to reduce gun violence, but does provide a starting point for consideration.¹⁴

PART ONE

REVERSING THE DAMAGE DONE DURING THE BUSH ADMINISTRATION

This section addresses policy proposals to reverse legislation and policy initiatives adopted during the last eight years that are hampering efforts to combat gun violence.

REPEAL THE TIAHRT AMENDMENT'S UNWARRANTED RESTRICTIONS ON ATF

The so-called Tiahrt Amendment (named after Congressman Todd Tiahrt of Kansas) includes several riders attached annually to Justice Department appropriations legislation since 2004 that make it harder for law enforcement to prevent gun violence. *They should be repealed.*

- ***Repeal Restrictions on Disclosure of Crime Gun Data***

One Tiahrt rider severely limits the authority of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) to disclose crime gun trace data to the public under the Freedom of Information Act (“FOIA”), bars admissibility of such data in civil suits against the gun industry, and restricts disclosure of the data to law enforcement.¹⁵ Before these restrictions, ATF had released to the public portions of its trace database – records of the more than two million crime guns ATF has traced from the manufacturer to the first retail purchaser – as well as reports analyzing patterns of crime gun sales.¹⁶ This data had helped police solve gun crimes, and helped illuminate how the illegal gun market is supplied,¹⁷ while any information that was confidential or would jeopardize law enforcement operations was protected from disclosure under FOIA.

President-elect Obama’s transition agenda states, “As president, Barack Obama would repeal the Tiahrt Amendment, which restricts the ability of local law enforcement to access important gun trace information, and give police officers across the nation the tools they need to solve gun crimes and fight the illegal arms trade.”¹⁸ We agree that the amendment should be repealed, as do more than 200 individual police chiefs, 11 national police organizations, 21 state and regional police organizations, and more than 230 mayors.¹⁹ Senator John McCain also spoke out forcefully against the first Tiahrt restrictions.²⁰

The Tiahrt rider restricting disclosure and use of gun data should be repealed.

- ***Repeal the 24-hour Brady Record Destruction Requirement***

Another Tiahrt-sponsored appropriations rider codified the Bush Administration policy destroying certain National Instant Criminal Background Check System (“NICS”) records after 24 hours.²¹ Prior to the Bush Administration, the Department of Justice retained background check records on approved gun sales for 90 days to ensure that the NICS, established pursuant to the Brady Law, was working properly and that criminals were not being mistakenly approved for gun purchases. The General Accounting Office²² estimated that the Bush Administration change could result in hundreds of criminals, terrorists and other prohibited gun buyers being mistakenly approved for gun purchases.²³ Without retained NICS records, law enforcement has no opportunity to retrieve guns mistakenly sold to prohibited purchasers. The

Justice Department Inspector General also found that the 24-hour destruction policy makes it easier for corrupt dealers “to falsify the NICS check to hide a knowing transfer of a gun to a prohibited person.”²⁴

The pre-Bush retention policy for NICS background check records should be restored.

- ***Repeal the Prohibition on ATF’s Power to Require Dealer Inventory Audits***

A third Tiahrt appropriations rider bars ATF from implementing its proposed regulation requiring gun dealers to conduct annual inventory audits to address the problem of guns “disappearing” from gun shops with no record of sale.

The rider protects corrupt gun dealers who supply criminals. Firearms that dealers claim “disappeared” from their shops are frequently trafficked and prized by criminals because the guns are virtually untraceable. Corrupt gun dealers sometimes attempt to disguise illegal off-the-book sales by claiming that the firearms were lost or stolen.²⁵ A 2008 Brady Center analysis found that in 2007 more than 30,000 guns were “missing” from licensed gun dealers. Gun dealers who have large numbers of guns “disappear” from their inventory often supply criminals. For example, former gun dealer and National Rifle Association (“NRA”) Board Member Sandy Abrams, who eventually lost his license after being cited for more than 900 violations of federal gun laws, had 422 guns missing in one inspection, more than one-quarter of his inventory, and his shop had over 483 firearms traced to crimes.²⁶ The Washington, D.C.-area snipers killed 10 people in their 2002 shooting spree using an assault rifle they obtained from Bull’s Eye Shooter Supply of Tacoma, Washington, which “lost” at least 238 guns, including the snipers’ assault rifle, over three years.²⁷

The rider barring implementation of an ATF inventory rule should be stripped from future appropriations bills, and ATF should issue the rule.

REPEAL NEW RULES ALLOWING CONCEALED CARRY IN NATIONAL PARKS

The Bush Administration Department of Interior has announced a last-minute rule change that rescinds long-standing Reagan-era federal rules that for decades have kept national parks and wildlife refuges free of loaded, concealed firearms. Under the new rule, park and refuge visitors are allowed to carry hidden semiautomatic weapons and other firearms,²⁸ endangering park users and leading to an increased risk of gun crime. The rule even allows the carrying of concealed firearms in national parks and refuges located in states that explicitly ban the carrying of guns in state parks.

Rules in place since the Reagan Administration have allowed visitors to transport guns in national parks and wildlife refuges if they are unloaded and stored or dismantled.²⁹ These restrictions have made the parks some of the safest places to visit in the country. Numerous studies confirm that concealed carrying of firearms does not reduce crime and, if anything, leads to increased violent crime, and thousands of dangerous people getting licenses to carry.³⁰ In Florida, for example, more than 4,200 concealed carry licenses were revoked because many licensees committed crimes.³¹ Since becoming the first state to allow concealed carrying in 1987, Florida has led the country in annual violent crime rates more than any other state.³² This rule change was opposed by a coalition of national parks groups, park law enforcement officers, former park officials, and gun violence prevention groups.

In addition to making parks more dangerous, the rule should be rescinded because the Bush Administration completely failed to undertake the environmental analysis required by the National Environmental Policy Act.³³ This review was required because the proposed rule would increase the risk of gun crime, injury and death in the parks and wildlife refuges, directly harm “the enjoyment of [the national parks]” and impair their use for future generations, and threaten “opportunities for parents and their children to safely engage in traditional outdoor activities” in wildlife refuges.³⁴

These last-minute regulations allowing loaded, concealed firearms in national parks and wildlife refuges should be rescinded. We should reinstate the rules in place since the Reagan Administration that bar the carrying of loaded, concealed firearms in national parks and wildlife refuges.

**REPEAL OR AMEND THE FEDERAL GUN INDUSTRY LEGAL PROTECTION
STATUTE TO RESTORE EQUAL JUSTICE FOR GUN VIOLENCE VICTIMS**

As Senators, President-elect Obama and Vice President-elect Biden opposed the gun lobby-backed Protection of Lawful Commerce in Arms Act (“PLCAA”) signed by President Bush in 2005. The law exempts from basic common law principles gun companies who arm criminals – and treats gun violence victims as second class citizens, without the full rights to seek civil justice that are enjoyed by those injured by any other product or activity. The law should be repealed or amended.

The PLCAA radically alters state law, essentially overruling decisions by numerous courts holding that gun dealers, distributors, and manufacturers can be held liable under state common law for injuries caused by their negligent sale or design of guns.³⁵ The PLCAA also eliminates promising incentives to curb gun violence. During the Clinton years, litigation made great strides in forcing the gun industry to become part of the solution to gun violence, including a settlement the Clinton administration secured with Smith & Wesson, which agreed in specific ways to distribute its guns more responsibly and to include safety devices in guns.

The PLCAA should be repealed or, in the alternative, amended to at least allow victims of gun violence to recover damages under common law principles where a legal cause of their injuries was the reckless conduct of a gun company.

PART TWO

MOVING FORWARD TO REDUCE CRIME AND PREVENT GUN VIOLENCE

In addition to reversing the negative legislation and policies enacted during the Bush years, the new Administration and Congress should implement an affirmative agenda of legislation and regulatory reform to reduce crime and gun violence.

EXTEND AND STRENGTHEN BRADY BACKGROUND CHECKS TO KEEP GUNS FROM DANGEROUS PURCHASERS

- *Extend Brady Background Checks to All Gun Sales, Including All Gun Show Sales*

We agree with the Obama transition agenda that the gun show loophole should be closed,³⁶ and with Attorney General nominee Eric Holder that background checks should be required for all gun sales. *Our national gun policy should be “no background check, no gun, no excuses.”*

The Brady Law’s background check requirement has been very effective at blocking dangerous people from buying guns. Through the end of 2007, more than 1.6 million prohibited purchasers – felons, the mentally ill, domestic violence abusers, and others – have been denied sales at licensed gun dealers.³⁷ However, as Holder wrote in 2001:

Unfortunately, unlicensed sellers are permitted by law to sell firearms with no background check whatsoever. Millions of firearms change hands every year through this back-door, yet perfectly legal, method – giving criminals and terrorists remarkably easy and undetectable access to weapons. This legal loophole must be closed immediately. We can no longer allow the purchase of firearms through the Internet or a newspaper ad, at a gun show or a flea market, or in any other type of sale from an unlicensed seller, without any background check or other record of purchase. The stakes are too high.³⁸

The no-check loophole is a major supply source for criminals who want guns, especially at gun shows.³⁹ It is estimated that about 40% of gun sales are made by unlicensed sellers.⁴⁰

Eighteen states and the District of Columbia have taken steps to close the “gun show loophole,” with several requiring background checks on all gun sales.⁴¹ Model legislation has worked since 1989 in California, where every gun sale must first be run through the state’s background check system.⁴² Unlicensed sellers need only take their guns to a licensed dealer to run the check and complete the sale.

Background checks should be required for all gun sales.

- ***Fully Fund the NICS Improvement Act***

On January 8, 2008, President Bush signed into law the National Instant Check System (NICS) Improvement Amendments Act of 2007, which provides for financial assistance to aid states in sending records to NICS and financial penalties if they fail to provide records. This law was passed after the Virginia Tech massacre, where the killer was able to arm himself because a court order that should have blocked his gun purchase was not reported to NICS. In response, some states have reviewed their records and procedures and started forwarding more records to the NICS. But more progress will be possible if Congress appropriates the funds authorized by the Act.

The NICS system was first implemented in 1998, as required by the Brady Law, to ensure that prohibited purchasers cannot buy firearms from gun dealers. However, a background check is only as good as the records it can search. Many prohibited persons are not blocked from buying guns because their records are not in NICS, including about 80-90% of relevant mental health records and 25% of felony convictions.⁴³ A fully funded NICS Act should help block hundreds of thousands of prohibited buyers who are not presently stopped by the Brady Law because their names are not in NICS.⁴⁴

Congress should appropriate the full amount of authorized funding to assist states in submitting records of prohibited purchasers to NICS.

- ***Close the “Terror Gap” To Deny Firearms to Terrorists***

Under current law, known or suspected terrorists are not prohibited from buying or possessing firearms, unless they have already committed crimes or are otherwise barred. As Attorney General nominee Eric Holder wrote in 2001, there are “numerous and chilling examples” of terrorists buying guns in America,⁴⁵ and there are many more recent examples as well.⁴⁶

One solution was proposed by Senator Frank Lautenberg (D-NJ) and Representative Peter King (R-NY) in the “Denying Firearms and Explosives to Dangerous Terrorists Act.”⁴⁷ Based on a Bush Administration proposal, this legislation would provide the U. S. Attorney General with discretionary authority to block a gun sale to a known or suspected terrorist where the AG reasonably believes that the person may use a firearm or explosives in connection with terrorism. In 2001, Holder called for background checks to include “whether the potential buyer is on an FBI or other law enforcement watch list of suspected terrorists.”⁴⁸ Incoming Chief of Staff Rahm Emanuel has strongly endorsed terror gap legislation.⁴⁹

The “terror gap” loophole should be closed.

- ***Prohibit Gun Possession by Violent Misdemeanants and Persons Convicted of Violent Acts As Juveniles***

Criminals who have been convicted of certain violent misdemeanors are not barred from gun possession under current law. This loophole should be closed. A study found that persons convicted of violent misdemeanors were eight times more likely to be charged with subsequent firearm and/or violent crimes, and one out of every three violent misdemeanants who sought to buy handguns were arrested for new crimes within three years of buying the handgun.⁵⁰ As Attorney General nominee Eric Holder has advocated, we should also close the loophole that allows persons convicted of violent and other serious offenses as juveniles to legally purchase a weapon on their 18th birthday or later in adulthood.⁵¹

A law should be enacted to bar gun possession by individuals who have been convicted of certain violent misdemeanors and by individuals who have been adjudicated delinquent for an act that would have been a violent felony if committed by an adult.

STRENGTHEN ATF AUTHORITY TO REGULATE DEALERS, CRACK DOWN ON CORRUPT DEALERS, AND FIGHT GUN TRAFFICKING

- ***Restrict Large-Volume Handgun Sales to Reduce Trafficking***

Large-volume handgun sales should be restricted as part of a comprehensive strategy to reduce gun violence.⁵² Even though high-volume handgun sales facilitate gun trafficking into the illegal market, current federal law allows any legal purchaser to buy an unlimited number of handguns in a single purchase.

Gun traffickers often buy large numbers of handguns to resell to criminals. Handguns sold in multiple sales accounted for 20% of all handguns sold and traced to crime in 2000.⁵³ For example, one Ohio gun dealer sold hundreds of guns at gun shows to a gun trafficking ring – including 87 handguns in a single transaction. The guns were trafficked from Ohio into New York State, where they have been used in dozens of crimes.⁵⁴ Federal law enforcement authorities have long regarded the purchase of multiple handguns by a single buyer in a single transaction as an “indicator” that the buyer intends to traffic the guns to the illegal market.⁵⁵ For this reason, if someone buys two or more handguns in a five-day period, federal law treats the purchase as suspect, and it must be reported to ATF.

Congress should enact a law similar to those enacted in California, Maryland, and Virginia, restricting handgun purchases to one-per-month per purchaser. A Brady Center study published in the *Journal of the American Medical Association* found that Virginia’s law reduced crime guns trafficked from Virginia; before the law, 38% of guns originating in the Southeast and traced in the Northeast were sold in Virginia, but after the law Virginia’s share was reduced to 16%.⁵⁶ However, because gun traffickers can use new “source” states when a state law is enacted, a federal law is needed.

A federal law restricting bulk handgun sales should be enacted.

- ***Give ATF Stronger and More Flexible Authority to Enforce the Law against Corrupt Dealers***

Legislation is needed to repeal restrictions that prevent ATF from more effectively enforcing gun laws. Almost 60% of the nation's guns traced to crime come from only about 1% of the country's gun dealers, yet ATF is severely hindered in its ability to inspect, sanction, or shut down rogue dealers.⁵⁷ The Bureau's authority to revoke dealer licenses should be strengthened and it should be given new authority to inspect dealers more frequently, temporarily suspend dealer licenses, levy civil penalties, and bring felony charges against dealers for record-keeping violations that often occur when dealers engage in off-the-books gun sales.

Weak gun laws continually prevent ATF from promptly shutting down lawbreaking dealers despite years of federal gun law violations. Restrictions enacted in 1986 as part of the gun lobby-backed Firearm Owners Protection Act ("FOPA") placed severe constraints on ATF's ability to enforce the law, including: requiring years of repeated violations before ATF can revoke the license of a corrupt gun dealer; limiting ATF's inspection powers to a single, unannounced inspection of a gun dealer in any 12-month period; classifying serious violations of firearms record-keeping laws as misdemeanors rather than felonies; and imposing a heightened "willfulness" burden of proof for most gun law violations.⁵⁸

Congress should enact legislation to give ATF the authority and flexibility it needs to enforce our nation's gun laws and crack down on corrupt gun dealers.

- ***Strengthen ATF's Ability to Crack Down on Gun Dealers Who Sell to Straw Purchasers***

Under current law, dealers can be prosecuted for engaging in sales to "straw buyers" only by relying on charges of aiding and abetting a false statement by the purchaser, or for record-keeping violations that were felonies prior to 1986 but are now classified as misdemeanors.⁵⁹ Since federal prosecutors generally do not expend their limited resources prosecuting misdemeanors, most dealers caught violating federal law usually escape criminal prosecution.⁶⁰ The lack of criminal prosecutions of gun dealers dramatically skews the incentives when dealers are faced with gun traffickers offering cash for firearms, leading many to make the illegal sale.⁶¹

Congress should enact legislation making it a felony for any licensed dealer to transfer a firearm knowing that the person completing the paperwork is not the actual purchaser.

- ***Require Gun Owners to Report Lost or Stolen Guns***

Federal law should require gun owners to report in a timely manner missing or stolen guns to federal authorities. This is needed to prevent gun owners from covering up sales to prohibited purchasers by later claiming – when those guns are traced to crime – that their guns were stolen. ATF has reported that in 88% of the firearms traced to crime, the purchaser of the gun is not the same person as the criminal from whom the gun is recovered.⁶² While some of these guns may have been stolen from gun owners,⁶³ often they were sold in the criminal

market. Without a reporting requirement, it is difficult to rebut a trafficker's false claim that a gun was stolen.

Federal law already requires gun dealers to report lost or stolen firearms.⁶⁴ Several states, including Connecticut, Massachusetts, New York, Ohio, and Rhode Island, as well as the District of Columbia, require owners to report lost or stolen guns.

Federal law should require that gun owners promptly report lost or stolen guns.

- ***Require Licensed Dealers to Adopt Minimum Security Safeguards to Prevent Gun Thefts***

A 2008 Brady Center analysis showed that, in 2007, more than 30,000 guns were reported missing from licensed gun dealers' shops.⁶⁵ To prevent guns from being stolen by criminals, ATF should issue regulations requiring dealers to meet specified security standards in order to obtain, and retain, a license to sell guns. This could be done by ATF *without* additional legislation as part of dealer licensing regulations.

ATF should promulgate regulations requiring gun dealers to take mandatory steps to secure their inventory to prevent theft. This action can be taken without additional statutory authority.

- ***Require Licensed Gun Manufacturers and Dealers to Perform Background Checks on Their Employees***

Although convicted felons and other prohibited persons are barred from possessing or buying guns, there is no requirement that federally licensed gun manufacturers and dealers conduct background checks on employees who sell guns. To make it harder for dangerous people to get guns, prospective gun industry employees should be screened to ensure that they are not prohibited purchasers. Several states already require gun dealers to conduct background checks on employees to ensure that dangerous persons are not selling firearms, and this should be required nationwide.

ATF should promulgate regulations that, as a condition of gun manufacturers and dealer licensing, require licensees to conduct background checks on their employees. This action can be taken without additional statutory authority.

- ***Prevent Dealers from Liquidating Their Inventory without Background Checks After Their Licenses Have Been Revoked***

Even after ATF revokes a dealer's license for violating federal law, it has allowed those dealers to transfer their inventory – frequently hundreds of guns – to their “personal collections,” and then sell them. Even worse, former dealers are permitted under federal law to sell guns from their “personal collections” without conducting a Brady background check. ATF can, and should, cease this practice, and it can do so *without* additional legislation.

This “fire sale” loophole was exploited by former NRA Board Member Sandy Abrams, who was cited for more than 900 violations of federal gun laws at his Baltimore gun shop.

Despite Abrams' violations, ATF permitted him to transfer hundreds of guns to his personal collection when his license was revoked. Abrams continued illegally selling guns, and pled guilty in 2008 to selling an assault weapon to a criminal who shot at police officers.⁶⁶ Similarly, ATF allowed Ugur "Mike" Yildiz to transfer over 200 guns from the shop's inventory to his personal collection after his license was revoked. Yildez then illegally sold many of those guns, and many have been linked to violent crimes.⁶⁷

ATF should refuse to allow dealers whose licenses have been revoked from transferring firearms from the store's inventory to their personal collection. This action can be taken without additional statutory authority.

STRENGTHEN TRACING OF CRIME GUNS TO HELP LAW ENFORCEMENT SOLVE CRIMES

- ***Require All New Guns to Have Microstamping Capability By a Date Certain***

We agree with President-elect Obama that a law requiring guns to have microstamping capability to assist law enforcement is "the kind of common sense gun law that gun owners as well as victims of gun violence can get behind."⁶⁸ Federal legislation should be passed, similar to the statute recently enacted in California, to require all new semiautomatic handguns to be equipped with technology that transfers unique identifying information from guns to discharged cartridges. The California law received the support of 65 police chiefs and sheriffs throughout the state, as well as the California Police Chiefs Association, the Orange County Chiefs' and Sheriff's Association, the Peace Officers Research Association of California (PORAC), and the Los Angeles Police Protective League. A federal microstamping requirement would allow pistols used in crime around the country to be traced by police from the cartridges left behind at crime scenes.⁶⁹ Federal legislation will help law enforcement track down armed criminals and solve gun crimes by giving police more precise investigative leads to pursue suspects.

Federal law should require that all new handguns have microstamping.

- ***Require Dealers to Report Information about Guns Sold to Manufacturers To Streamline Tracing of Crime Guns***

Tracing of crime guns is often cumbersome and unsuccessful because ATF must make contact first with the manufacturer, then with the distributor and dealer to complete a trace. As nearly half of traces initiated by law enforcement are not completed to the point of identifying a retail purchaser,⁷⁰ law enforcement is deprived of valuable leads in solving gun crimes. ATF can streamline and significantly improve tracing by requiring dealers to report simple details about the sale of each gun to the manufacturer. This reporting requirement could also be applied to secondhand guns, which cannot now be traced because they have passed through unlicensed purchasers before being acquired and sold by the dealer.

ATF should require dealers to report details to manufacturers about all guns sold. This action can be taken without additional statutory authority.

RESTRICT MILITARY-STYLE WEAPONS

We agree with President-elect Obama that we can uphold the Second Amendment “while keeping AK-47s out of the hands of criminals.”⁷¹ Assault weapons are semiautomatic versions of fully automatic guns designed for military use. Semiautomatic assault weapons unleash extraordinary firepower. ATF has concluded that assault weapons “are not generally recognized as particularly suitable for or readily adaptable to sporting purposes” and instead “are attractive to certain criminals.”⁷² ATF’s analysis of guns traced to crime showed that assault weapons “are preferred by criminals over law abiding citizens eight to one.... Access to them shifts the balance of power to the lawless.”⁷³

Since the federal assault weapon law expired in 2004, police in major cities report a resurgence of assault weapon use in crime, with hundreds of people killed on our streets with these weapons of war since late 2004.⁷⁴ Law enforcement throughout the nation has called for them to be restricted to the police and military. Presidents Gerald Ford, Jimmy Carter, Ronald Reagan, Bill Clinton, and George W. Bush all have supported a federal ban on assault weapons.

Congress should enact strong legislation that closes the loopholes in the previous assault weapons statute and restricts civilian ownership of other weapons that were originally designed for military use, such as .50 caliber sniper rifles that have the range and power to bring down aircraft. High-capacity ammunition magazines and armor-piercing bullets should be similarly restricted.

REQUIRE CONSUMER SAFETY STANDARDS AND CHILDPROOF SAFETY FEATURES FOR FIREARMS

We agree with the Obama transition agenda that all guns should be childproof.⁷⁵ Every day, eight children and teenagers are killed by firearms, and many more are injured. One-third of children live in homes with firearms, and in almost half of those homes a gun is kept unlocked.⁷⁶ Yet when the Consumer Product Safety Commission was created, the gun lobby ensured that guns – the one product designed to cause death and injury – were exempt.⁷⁷ Thus, many handguns do not include life-saving safety features. For example, many guns fire when dropped, and many semiautomatic handguns lack adequate chamber loaded indicators, so untrained users often do not know when a gun is loaded.

Handguns should also include feasible childproof safety features that prevent guns from being fired by an unauthorized user. Several models currently on the market have internal locking mechanisms, and technology is being created that could read the palm print or fingerprint of its owner.

Congress should enact legislation making firearms subject to the same consumer product safety regulation that covers virtually all other consumer products. Childproof safety features should be required, when feasible.

REQUIRE MINIMUM SAFETY STANDARDS FOR HANDGUN OWNERS AND IMPROVE RECORDKEEPING OF HANDGUN TRANSFERS

To reduce gun violence, Congress should enact a law that treats handguns like cars, with handgun owners required to be trained in safe storage and handling of guns; and with sales recorded to help stop interstate gun trafficking. Like current state licensing and registration systems, a federal law

would ensure that handgun owners meet minimum safety standards. It also would help law enforcement prevent criminals from obtaining guns and solve gun crimes.

Congress should enact legislation to require that handgun owners be trained in safe storage and handling of firearms, and require recordkeeping applicable to all handgun transfers to aid law enforcement in solving gun crimes.

**IMPROVE NATIONAL VIOLENT DEATH REPORTING SYSTEM DATA, AND
RESTORE FIREARMS RESEARCH FUNDING FOR THE CENTERS FOR DISEASE
CONTROL AND PREVENTION**

To reduce deaths caused by violence, the Centers for Disease Control (“CDC”) received funding in 2002 to establish the National Violent Death Reporting System (“NVDRS”), a database covering all homicides, suicides, and suspicious injury deaths that occur in participating states. The NVDRS assists violence prevention efforts by providing detailed data on the cause of death, the weapon used, victim and offender information, and toxicology results, information that is vital to help craft the most effective interventions aimed at reducing homicides and suicides.

Riders to CDC appropriations legislation now require CDC's National Center for Injury Prevention and Control to add an explicit prohibition on the use of CDC funds “to advocate or promote gun control.”⁷⁸ This inhibits important research, as it creates a chilling effect on the use of CDC funds to evaluate the effectiveness of policy interventions related to guns as an individual and community risk factor for violent injury. It is also unnecessary, as federal law prohibits the use of Health and Human Services funds for lobbying.

The NVDRS should be fully funded. In addition, restrictions on funding for CDC’s research into the causes of gun violence and the effectiveness of various laws and policies should be eliminated.

ENDNOTES

- ¹ CDC National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (2005 (deaths) and 2006 (injuries), most recent year available), available at: www.cdc.gov/ncipc/wisqars/. Calculations by Brady Center to Prevent Gun Violence, Feb. 29, 2008.
- ² National Center for Health Statistics, 2002.
- ³ Data from the Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (2005, most recent year available), available at: www.cdc.gov/ncipc/wisqars.
- ⁴ American Academy of Pediatrics, *Firearm-Related Injuries Affecting the Pediatric Population*, 105 PEDIATRICS 888 (2000).
- ⁵ Kizer KW et al., *Hospitalization charges, costs, and income for firearm-related injuries at a university trauma center*, 273 J. AM. MEDICAL ASS'N 1768 (June 14, 1995).
- ⁶ Ginsburg, JA et al., American College of Physicians, *Firearm Injury Prevention*, 128 ANNALS OF INTERNAL MEDICINE 237 (1998).
- ⁷ Krug EG et al., *Firearm-related deaths in the United States and 35 other high and upper-middle-income countries*, 27 INT'L J. EPIDEMIOLOGY 214 (1998).
- ⁸ Centers for Disease Control and Prevention, *Rates of homicide, suicide and firearm-related death among children - 26 industrialized countries*, 46 MORBIDITY MORTALITY WEEKLY REPORT 101 (Feb. 7, 1997).
- ⁹ Dep't of Just., Bureau of Just. Stat., *Key Facts at a Glance, Crimes Committed with Firearms, 1973-2006*, available at <http://www.ojp.usdoj.gov/bjs/glance/tables/guncrimetab.htm>.
- ¹⁰ Dep't of Just., Bureau of Just. Stat., *Criminal Victimization, 2004*, at 10 (Sept. 2005).
- ¹¹ http://www.change.gov/agenda/urbanpolicy_agenda/#crime-and-law-enforcement.
- ¹² Polling of 1,083 voters conducted between November 5 and 9, 2008 by Penn, Schoen & Berland Associates for the Brady Campaign to Prevent Gun Violence, accessible at www.bradiycampaign.org/xshare/pdf/memo-11-18-08.pdf.
- ¹³ *Id.*
- ¹⁴ While the focus of these proposals is to make it harder for dangerous people to get dangerous weapons, we continue to also support other necessary components of a comprehensive approach, such as strong enforcement of current gun laws and strong punishment of gun crime.
- ¹⁵ Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, 118 Stat. 2859 (Dec. 8, 2004). *See also* Consolidated Appropriations Act of 2006, Pub. L. No. 109-108.
- ¹⁶ *See* Brady Center to Prevent Gun Violence, *Without a Trace: How the Gun Lobby and the Government Suppress the Truth About Guns and Crime* iv (2006).
- ¹⁷ *See, e.g.,* ATF, *Crime Gun Trace Reports*, at 53 (2002) ("Trace information and analysis of cases are contributing to a more precise picture of the structure of the illegal firearms market."). *See also* ATF, *Commerce in Firearms in the United States*, at 2 (Feb. 2000) (noting that 1.2 percent of dealers supplied over 57 percent of guns recovered in crime and traced).
- ¹⁸ http://www.change.gov/agenda/urbanpolicy_agenda/#crime-and-law-enforcement. Then-Senator Obama also signed onto an April 13, 2007 letter to Senate Appropriations Chair Byrd and Commerce, Justice, Science Subcommittee Chair Mikulski opposing the Tiahrt Amendments and any attempts to attach them to Justice Department Appropriations.
- ¹⁹ *See* <http://www.bradiycampaign.org/xshare/pdf/tiahrt/tiahrt-opposition.pdf>.
- ²⁰ In a January 2004 speech on the Senate floor, Senator McCain said of the Tiahrt restrictions, "This provision has no support from the law enforcement community, and was even opposed by Chairman Young and Subcommittee Chairman Wolf. Yet, here it is today, included in this terrible bill. Mr. President, this language is an embarrassment to law abiding gun owners and is a slap in the face to law enforcement." Available at: http://mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=7F0602D5-E595-7E6D-7E4E-C9CF2B514EB0.

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- ²¹ The policy change was made pursuant to a Justice Department appropriations rider that was made final through regulation, Section 616 of P.L. 108-447, 118 Stat. 2915, then made final by regulation. 69 Fed. Reg. 43892, July 23, 2004, codified at 28 CFR § 25.9(b)(iii).
- ²² The General Accounting Office has since been renamed the Government Accountability Office.
- ²³ General Accounting Office Report, GAO-02-653, *Potential Effects of Next-Day Destruction of NICS Background Check Records*, (July 2002). *Indeed, another study found that dealers whose clientele are denied gun sales as a result of Brady background checks are much more likely to sell guns traced to crime than dealers without such clientele.* Garen J. Wintemute et al., *Risk Factors Among Handgun Retailers for Frequent and Disproportionate Sales of Guns Used in Violent and Firearm Related Crimes*, 11 INJURY PREVENTION 361-62 (2005).
- ²⁴ U.S. Dep't of Just., Off. of the Inspector Gen., *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Report No. I-2004-005 at 53 (July 2004).
- ²⁵ See Brady Center to Prevent Gun Violence, *U.S. Gun Shops "Lost" More Than 30,000 Firearms Last Year*, June 17, 2008, available at <http://www.bradycampaign.org/media/release.php?release=988>.
- ²⁶ Weak gun laws, however, kept Abrams in business for nearly a decade before ATF could shut him down. Abrams continued illegally selling guns after ATF revoked his license, and he pled guilty in 2008 to selling an assault weapon to a criminal who shot at police officers. See Brady Center to Prevent Gun Violence, *Death Valley: Profile of a Rogue Gun Dealer* (June 2006), available at <http://www.bradycenter.org/reports/>; Matthew Dolan, *No Jail For Gun Dealer, Man Gets Probation For Selling A Felon An Assault Rifle*, BALTIMORE SUN, Jan. 15, 2008.
- ²⁷ *Errant Gun Dealer, wary agents paved way for Beltway sniper tragedy*, SEATTLE TIMES, Apr. 29, 2003.
- ²⁸ The final rule is available at 73 F.R. 74966-02 and will be available at 36 C.F.R. §2.4(h) & 50 C.F.R. §27.42(e) when it takes effect on Jan. 9, 2009.
- ²⁹ 36 C.F.R. Part 2; 50 C.F.R. Part 27.
- ³⁰ See, e.g., Robert Martin Jr., & Richard Legault, *Systematic Measurement Error with State-Level Crime Data: Evidence From the "More Guns, Less Crime" Debate*, J. RES. IN CRIME & DELINQUENCY, (2005); Tomislav Kovandzic et al., *The Impact of "Shall-Issue" Concealed Handgun Laws on Violent Crime Rates*, HOMICIDE STUD., (2005); John Donohue, *Guns, Crime, and the Impact of State Right-To-Carry Laws*, 73 FORDHAM L. REV. 623, (2004); John J. Donohue, *The Impact of Concealed-Carry Laws*, in EVALUATING GUN POL'Y: EFFECT ON CRIME AND VIOLENCE 289, 320 (2003); Paul H. Rubin & Hashem Deshbakhsh, *The Effect of Concealed Handgun Laws on Crime: Beyond the Dummy Variables*, 23 INT'L REV. L. & ECON. 199 (2003); Kovandzic Tomislav V. & Thomas B. Marvell, *Right-to-Carry Concealed Handguns and Violent Crime: Crime Control Through Decontrol?*, 2 CRIMINOLOGY & PUB. POL'Y. 363 (2003); Ian Ayres & John J. Donohue, *The Latest Misfires in Support of the 'More Guns, Less Crime,' Hypothesis*, 55 STAN. L. REV. 1371 (2003); Ian Ayres & John J. Donohue, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 STAN. L. REV. 1193 (2003); Ian Ayres & John J. Donohue, *Nondiscretionary Concealed Weapons Laws: A Case Study of Statistics, Standards of Proof, and Public Policy*, 1 AM. L. & ECON. ASS'N., 436 (1999); Jens Ludwig, *Concealed-Gun-Carrying Laws and Violent Crime: Evidence from State Panel Data*, 18 INT'L REV. L. & ECON. 239 (1998); DA Black & DS Nagin, *Do Right-To-Carry Laws Deter Violent Crime?*, 27 J. LEGAL STUD. 209 (1998); David McDowall et al., *Easing Concealed Firearms Laws: Effects on Homicide in Three States*, 86 J. CRIM. L. & CRIMINOLOGY 193 (1995).
- ³¹ See Brady Center and Brady Campaign to Prevent Gun Violence comments filed with the Interior Department on June 30, 2008 and August 8, 2008, available at <http://www.bradycampaign.org/xshare/pdf/fedleg/national-park-comments.pdf> and <http://www.bradycampaign.org/xshare/pdf/fedleg/national-park-supplemental.pdf>.
- ³² *Id.*
- ³³ 42 U.S.C. § 4321 et seq.
- ³⁴ Thus it violated the National Park Service Organic Act and the National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 1, 668dd, § 668dd(a)(4)(K).
- ³⁵ 15 U.S.C. §7901, et. seq.
- ³⁶ http://www.change.gov/agenda/urbanpolicy_agenda/#crime-and-law-enforcement.
- ³⁷ Dep't of Just., Bureau of Just. Stat., *Background Checks for Firearm Transfers, 2006*. There have been approximately 130,000 denials per year.

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- ³⁸ Eric Holder, Jr., *With Stakes So High, Close Gun Sales Loopholes*, WASHINGTON POST, Oct. 25, 2001, at A31. *See also* Weekly Media with Deputy Attorney General Eric Holder, Mar. 2, 2000, available at: <http://www.justice.gov/archive/dag/speeches/2000/3200availdag.htm> (calling for closing of gun show loophole).
- ³⁹ ATF, *Gun Shows: Brady Checks and Crime Gun Traces*, at 6 (1999) (“A review of ATF’s recent investigations indicates that gun shows provide a forum for illegal firearms sales and trafficking.”); ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, at xi (June 2000) (identifying gun shows as a “major trafficking channel,” involving the second highest number of trafficked guns per investigation (more than 130) and associated with approximately 26,000 illegally diverted firearms).
- ⁴⁰ Jens Ludwig & Philip Cook, *Impact of the Brady Act on Homicide and Suicide Rates* (Letter), 284 J. AM. MEDICAL ASS’N at 2721 (2000). Among many other victims of the gun show loophole, former Northwestern University basketball coach Ricky Byrdsong and Indiana University student Won Joon Yoon were killed, and 6 others were wounded, by a neo-Nazi spree killer using a gun bought by a prohibited purchaser from an unlicensed seller without a background check.
- ⁴¹ The states include California, Colorado, Connecticut, Florida, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and Rhode Island.
- ⁴² Cal. Penal Code §§ 12072(d), 12802, 12804.
- ⁴³ The Third Way Culture Project, *Missing Records: Holes in Background Check System Allow Illegal Buyers to Get Guns*, at 3 (May 2007).
- ⁴⁴ *See* Brady Campaign to Prevent Gun Violence fact sheets on the National Instant Check System Improvement Amendments Act of 2007 available at <http://www.bradiycampaign.org/issuesarchive/nics/news/>.
- ⁴⁵ Eric Holder, Jr., *With Stakes So High, Close Gun Sales Loopholes*, WASHINGTON POST, Oct. 25, 2001, at A31.
- ⁴⁶ Over roughly a five-month period in 2004, at least 35 known or suspected terrorists were able to purchase guns from gun dealers in the U.S. after passing the background check. U. S. Government Accounting Office, *Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records. Highlights of GAO-05-127*, report to congressional requesters (Jan. 2005). On May 7, 2007, federal law enforcement authorities arrested six “Islamic radicals” who had been planning to obtain AK-47s and use them to attack Fort Dix in New Jersey. *Official: Radicals wanted to create carnage at Fort Dix*, available at: <http://www.cnn.com/2007/US/05/08/fortdix.plot/index.html>. Numerous other incidents of terrorists buying or trying to buy firearms are discussed in the Brady Center report, *Guns and Terror: How Terrorists Exploit Our Weak Gun Laws* (2001) available at: <http://www.bradiycampaign.org/pdf/facts/reports/gandt.pdf>.
- ⁴⁷ *See* S. 1237 and H.R. 2074 introduced in the 110th Congress.
- ⁴⁸ Eric Holder, Jr., *With Stakes So High, Close Gun Sales Loopholes*, WASHINGTON POST, Oct. 25, 2001, at A31.
- ⁴⁹ Rahm Emanuel speech, available at http://www.bradyvoter.org/?bro_issue=aug&bro_year=2008.
- ⁵⁰ Garen J. Wintemute et al., *Subsequent Criminal Activity Among Violent Misdemeanants Who Seek to Purchase Handguns*, J. AM. MEDICAL ASS’N (Feb. 28, 2001), at 1019-20, 1024.
- ⁵¹ As Deputy Attorney General in 2000, Mr. Holder called on Congress “to ban violent felons from ever having the ability to own guns.” Weekly Media with Deputy Attorney General Eric Holder, Mar. 2, 2000, available at: <http://www.justice.gov/archive/dag/speeches/2000/3200availdag.htm>.
- ⁵² As far back as 1976, with the support of the Ford Administration, the U.S. House of Representatives recommended that a national one-handgun-per-month law be enacted. *See* U.S. House of Representatives, *Federal Firearms Act of 1976*, H.R. Rep. No. 94-1103 at 54, 64-65 (1976); *id.* at 73 (“Moreover, it has become evident that this illicit firearms trafficking has been facilitated by the absence of Federal controls upon the multiple sale of handguns.”).
- ⁵³ *See* ATF, Youth Crime Gun Interdiction Initiative, *Crime Gun Trace Reports (2000) National Report (July 2002)*, at ix.
- ⁵⁴ *See* Brian J. Siebel, *Gun Industry Immunity: Why the Gun Industry’s “Dirty Little Secret” Does Not Deserve Congressional Protection*, 73 UMKC L. REV. 931, 916-20 (2005). *See also id.* at 923-27 (citing additional victims of handguns trafficked through multiple sales).
- ⁵⁵ *See* ATF, *Commerce in Firearms in the United States* 22 (Feb. 2000).

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- ⁵⁶ Douglas Weil & Rebecca Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 J. AM. MEDICAL ASS'N 1759, 1760 (1996).
- ⁵⁷ See ATF, *Commerce in Firearms in the United States* 22 (Feb. 2000).
- ⁵⁸ See Brady Center to Prevent Gun Violence, *The NRA: A Criminal's Best Friend — How The National Rifle Association Has Handcuffed Federal Gun Law Enforcement* (Oct. 2006), at 4-10, available at <http://www.bradycenter.org/xshare/pdf/reports/criminals-best-friend.pdf>.
- ⁵⁹ Compare 18 U.S.C. § 924(a) (repealed 1986) (failure to keep proper records punishable as a felony) with 18 U.S.C. § 924(a)(3)(B) (2006) (failure to keep proper records punishable only as misdemeanor).
- ⁶⁰ See ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* at xii (June 2000) (“many [dealer] violations are misdemeanors rather than felonies, presenting a dilemma for prosecutors who understandably give priority to crimes with greater penalties”).
- ⁶¹ See Brady Center to Prevent Gun Violence, *Shady Dealings: Illegal Gun Trafficking from Licensed Gun Dealers* 25 (2007) (discussing example of gun dealer caught on videotape making illegal sale).
- ⁶² ATF, *Crime Gun Trace Reports* (2000) at 29.
- ⁶³ See Philip J. Cook & Jens Ludwig, *Guns in America: Results of a Comprehensive Survey of Gun Ownership and Use* 30 (1996) (estimating number of firearm thefts); ATF, *Following the Gun*, at ix (discussing firearms theft investigations).
- ⁶⁴ 18 U.S.C. § 923(g)(6).
- ⁶⁵ See Brady Center to Prevent Gun Violence, *U.S. Gun Shops “Lost” More Than 30,000 Firearms Last Year*, June 17, 2008, available at <http://www.bradycampaign.org/media/release.php?release=988>.
- ⁶⁶ Matthew Dolan, *No Jail For Gun Dealer, Man Gets Probation For Selling A Felon An Assault Rifle*, BALTIMORE SUN, Jan. 15, 2008.
- ⁶⁷ Stewart Bell, *Canada Gets Tough with Chicago Gun Dealer*, NATIONAL POST, Nov. 16, 2008.
- ⁶⁸ Barack Obama news conference in Milwaukee, WI, Feb. 15, 2008, available at: <http://www.bradyvoter.org/presidential.php>.
- ⁶⁹ See Cal. Penal Code § 12126(b)(7).
- ⁷⁰ ATF, Youth Crime Gun Interdiction Initiative, *Crime Gun Trace Reports* (2000) *National Report* (July 2002), at 68.
- ⁷¹ Barack Obama, Acceptance Speech at the Democratic National Convention (Aug. 28, 2008). The transition agenda also states that “They also support making the expired federal Assault Weapons Ban permanent.” http://www.change.gov/agenda/urbanpolicy_agenda/#crime-and-law-enforcement
- ⁷² Dep’t of Treasury, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles* 38 (1998).
- ⁷³ ATF, *Assault Weapons Profile* at 19-20 (Apr. 1994).
- ⁷⁴ Brady Center to Prevent Gun Violence, *Assault Weapons: “Mass Produced Mayhem”* (2008).
- ⁷⁵ http://www.change.gov/agenda/urbanpolicy_agenda/#crime-and-law-enforcement.
- ⁷⁶ Schuster, et al., *Firearms Storage Patterns in U.S. Homes With Children*, AM. J. OF PUB. HEALTH 90:4 (Apr. 2000).
- ⁷⁷ 15 U.S.C. § 2052(a)(5)(E).
- ⁷⁸ http://www.cdc.gov/od/pgo/funding/grants/additional_req.shtm#ar13.