

Questions for the Record from Senator Charles E. Grassley
Hearing on “Constitutional and Common Sense Steps to Reduce Gun Violence”
March 23, 2021

Ms. Amy Swearer
Legal Fellow
The Heritage Foundation
Washington, D.C.

- 1. Are you aware whether either H.R. 8 or H.R. 1446 would have prevented the recent tragic murders in Atlanta or Boulder, especially given that the alleged killers reportedly passed background checks?**

Neither H.R. 8 nor H.R. 1446 would have prevented the mass public shootings that occurred in Atlanta and Boulder in 2021, nor are they realistically designed in a way to prevent future mass public shootings from occurring. The problem was not that these shooters circumvented background checks or that the FBI needed more time to determine whether they were prohibited persons—they both passed NICS background checks prior to purchasing their firearms, and Colorado already requires universal background checks at a state level. The problem is that both of these individuals were perfectly capable of passing background checks and lawfully acquiring their weapons, despite recently exhibiting clear signs of mental instability. The Boulder shooter, in particular, had a years-long history of paranoia, anti-social behavior, and violent tendencies.

- 2. Sen. Durbin compared guns to opioids by stating they are “lawful products with legitimate uses... but Congress recognized the public health catastrophe that result from the misuse of opioids, and we did something.” Does gun violence compare with opioids, especially given that there is no constitutional right to opioids?**

The Constitution explicitly protects a right of the people to keep and bear arms, and insists that this right “shall not be infringed.” There is no equivalent protection for the right of the people to keep and consume opioids, nor is Congress prohibited from infringing upon that right. This fundamental difference in constitutional constraints makes Congressional action on stemming opioid abuse a poor starting point for shaping Congressional action on gun violence.

- 3. Sen. Blumenthal stated that an AR-15-style rifle is a “weapon of war,” designed for “brutal efficiency and speed meant for combat.” Do you agree with this characterization?**

A semi-automatic AR-15 is a “weapon of war” only insofar as any and every firearm, knife, or club is a “weapon of war.” Moreover, to any extent that it is a “weapon of war,” it is also a bearable small arm commonly possessed by law-abiding citizens for lawful purposes, and its civilian possession is therefore protected by the Second Amendment. Senator Blumenthal’s statement insinuates that any item useful for military purposes cannot be either simultaneously useful for civilian purposes or protected by the Constitution. Both insinuations are incorrect.

There is a reason bans on so-called assault weapons routinely exempt law enforcement officials, including in their off-duty and private capacities. This is not because the average beat cop is waging offensive warfare against a military threat, but because these weapons are incredibly useful when responding to common threats in a civilian context.

Ironically, bans on so-called “assault weapons” do not prohibit the possession of many firearms that were, quite literally, used in combat by millions of soldiers. For example, the M1 Garand was the U.S. Army’s standard service rifle through World War II and the Korean War, and General George Patton called it “the greatest battle implement ever devised.” Like the AR-15, it is a semi-automatic rifle that fires only as fast as the shooter can pull the trigger. Unlike the AR-15, which is typically chambered in .223/5.56, the M1 Garand fires a much larger, more powerful .30-06 Springfield. And while the M1 Garand does not have a detachable magazine, its *en bloc* clip system allows it to be reloaded just as quickly as any modern AR-15. And yet, despite being a literal weapon of war utilized by the military for decades, the M1 Garand is not an “assault weapon” under any existing definition. This is also true of the Colt 1911 handgun, which was the standard service pistol for over 70 years, used by American soldiers everywhere from the Somme to Ia Drang.

4. What is the difference between a semi-automatic rifle and an automatic rifle?

Both are “autoloading,” meaning that, once a round is fired, the internal mechanics of the gun will automatically load the next round into the chamber without additional manual action by the shooter. However, an automatic firearm is designed to fire bullets continuously for as long as the trigger is depressed, while a semi-automatic firearm requires the shooter to manually pull the trigger to fire each individual round. Automatic firearms therefore typically have a much faster rate of fire than do semi-automatic firearms, and the mechanics of automatic firearms often make them more difficult than semi-automatic firearms to fire accurately.

5. What is the standard service rifle (or carbine) currently used by most infantry soldiers in the U.S. Army? Can civilians legally purchase that rifle (or carbine) in the form used by infantry soldiers in the U.S. Army? How is this rifle (or carbine) different from a common AR-15-style rifle?

In March of 2021, the standard combat rifle issued by the United States Army to its infantry Soldiers was the Colt M4A1, although in 2022, the Army began transitioning to the SIG Sauer XM5.¹ Both M4A1 and XM5 are assault rifles, capable of select fire (meaning that they can quickly switch between automatic, burst-automatic, and semi-automatic configurations). The M1A4, as employed by the Army, has a 14.5-inch barrel, while XM5 has a 13-inch barrel.

As explained in more detail in the answer to question 8 below, federal law prohibits civilians from possessing firearms capable of automatic fire if they were manufactured after 1986. Theoretically, there may exist early prototypes of the M1A4’s predecessor, the M4, that were

¹ Press Release, Army Awards Next Generation Squad Weapon Contract, U.S. Army Public Affairs (Apr. 19, 2022), https://www.army.mil/article/255827/army_awards_next_generation_squad_weapon_contract.

manufactured prior to the 1986 deadline and that could be legally possessed by civilians if registered in compliance with applicable federal laws. However, the M4A1 variant was not introduced until 1991 and the XM5 was not designed until 2019. Therefore, they may not be purchased or possessed by civilians and do not qualify as firearms that may be registered for civilian possession under the National Firearms Act. Because the M4A1 and XM5 both have barrel lengths of less than 16-inches, they would additionally qualify as short-barreled rifles under the National Firearms Act and be subject to far more regulations than typical civilian firearms, even if their possession was not already prohibited under the Firearm Owners Protection Act.

The M4A1 and XM5 are functionally different from their civilian counterparts, which only operate in a semi-automatic capacity and typically have barrel lengths of at least 16-inches to avoid being regulated as a “short-barreled rifle” under the National Firearms Act.

6. What is the standard service rifle (or carbine) currently used by most infantry Marines? Can civilians legally purchase that rifle (or carbine) in the form used by infantry soldiers in the U.S. Army? How is this rifle (or carbine) different from a common AR-15-style rifle?

In 2017, the Marine Corps announced that it would begin replacing the M16A4 and M4A1 with the M27 as its standard infantry rifle, with the goal of having an M27 in the hands of every member of its infantry squads by mid-2021. Like the previous rifles, the M27 is chambered in 5.56x45mm NATO. It has a 16.5-inch barrel and select-fire capabilities, meaning it can quickly alternate between automatic and semi-automatic fire. Like the M4A1 and XM5 above, the M27 is functionally different from its civilian counterpart, which can only operate with semi-automatic capabilities.

8. Is it legal for civilians to own automatic rifles in the United States?

Yes, subject to the limitations and regulations found in the National Firearms Act of 1936 (NFA) and the Firearm Owners’ Protection Act of 1986 (FOPA). Machine guns, guns capable of select-fire, and short-barreled rifles and shotguns are far more heavily regulated than other small arms but may be purchased and possessed by civilians who comply with the NFA’s taxing and registration scheme. Additionally, under FOPA, civilians may not purchase or possess automatic firearms that were manufactured after 1986. FOPA’s prohibition artificially limits the supply of automatic firearms that may be lawfully possessed by civilians, thereby substantially driving up the costs of acquiring them and creating far more of a practical barrier to civilian possession than the original NFA. As of 2020, more than 720,000 machine guns were registered under the NFA with the Bureau of Alcohol, Tobacco, and Firearms.²

² Firearms Commerce in the United States: Annual Statistical Update 2020, Bureau of Alcohol, Tobacco, and Firearms (2020), <https://www.atf.gov/file/149886/download>.

Importantly, semi-automatic rifles (including those labeled by gun control advocates as so-called “assault weapons”) are functionally distinct from the machine guns and select-fire weapons that require registration under the NFA. In *Staples v. United States*, the Supreme Court recognized that the possession of semi-automatic rifles have, unlike NFA firearms, been traditionally accepted as lawful.³

9. Sen. Feinstein suggested that the drop in gun crime in the 1990s and early 2000s was due to the original federal assault weapons ban. Did the ban cause a drop in gun crime? Are there studies that would rebut this claim?

The official analysis of the 1994 federal ban on so-called “assault weapons” concluded that “should it be renewed, the ban’s effects on gun violence are likely to be small at best and perhaps too small for reliable measurement. [Assault weapons] were rarely used in gun crimes even before the ban.”⁴

10. Sen. Leahy stated that federal law does not adequately address straw purchases of firearms. What existing federal laws prohibit straw purchases by individuals who are not prohibited from buying a gun on behalf of individuals who are prohibited from buying a gun?

At the time of this hearing (March 2021), federal law did not define or prohibit “straw purchasing,” as that term is commonly understood (buying a firearm on behalf of another person, often because that person is legally prohibited from buying the gun). However, anyone buying a gun from a federal firearms licensee must complete and sign ATF Form 4473, wherein the person must attest that he or she is the actual buyer of the gun and is not acquiring the gun on behalf of another person. Lying on that form is a felony punishable by up to 10 years in prison. So while federal prosecutors could not pursue criminal convictions for straw purchasing, per se, they could (and often successfully did) bring charges against straw purchasers for lying on the gun purchase form. Additionally, it is unlawful to transfer a firearm to any person that the transferer knows or has reasonable cause to believe is not a resident of their same state or is prohibited from possessing a firearm under federal law.

In 2022, Congress passed the Bipartisan Safer Communities Act, which explicitly made it a felony to purchase a firearm on behalf of any other person that the buyer knows or has reasonable cause to believe intends to use the gun in furtherance of certain crimes.

11. Sen. Leahy also implied the Dickey Amendment prohibits federal funding for gun violence research. Do you agree with this characterization?

Senator Leahy’s characterization of the Dickey Amendment is erroneous. It does not in any way

³ 511 U.S. 600, 611–12 (1994).

⁴ Christopher S. Koper, An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994–2003 (June 2004), <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf>.

prohibit the federal funding of gun violence research. It merely provides that certain government agencies may not use public funds to “advocate or promote gun control.”

12. Sen. Padilla argued that it is easier in some states to buy a gun than to vote. Is this accurate?

Assuming Sen. Padilla was referring to lawful gun purchases, the assertion is false. Moreover, the fundamental differences in how one necessarily exercises the right to vote and how one exercises the right to keep and bear arms renders laws regarding these respecting actions difficult to meaningfully compare.

Under federal law, every person attempting to buy a gun from a federal firearms licensee, or attempting any interstate transfer of a firearm, is subject to certain laws regardless of the state in which the purchase or transfer takes place. At a bare minimum, the buyer must produce a form of photo identification, complete and sign forms (under penalty of felony conviction) attesting to their identity and ability to lawfully possess a gun, and pass a background check verifying their lack of disqualifying criminal history. The process for completing this background check often takes no more than an hour but can take up to three business days. Even with respect to intrastate private sales, which do not require a background check to be conducted, it is a serious federal felony to sell a gun to a person you know or have reason to believe is not a resident of your state, unable to lawfully possess the gun, or intending to use the gun in furtherance of criminal activity. There is no equivalent to the “private sale” exception when exercising one’s right to vote, but neither must voters first ensure that they have sufficient funds to pay a private entity for their ballot in the same way they must be able to first afford the price of a firearm set by a private business.

13. Are waiting periods effective at preventing gun violence? Are there data-driven studies on this issue that the committee should consider?

According to the RAND Corporation, evidence that waiting periods reduce either overall suicide rates or firearm homicide rates is limited, at best.

Additionally, even where some studies purport to find a connection between waiting periods and decreases in certain types of gun violence, there is little plausible causal nexus between the waiting period and the alleged decrease. This is particularly true in states that only require a waiting period for certain types of firearms, such as handguns, as any homicidal or suicidal individual would nonetheless have immediate access to other types of firearms.

And some states that do not impose waiting periods nonetheless require would-be gun buyers to first obtain either a gun purchase permit or a gun owners license, both of which act as barriers to “impulse” gun purchases in the exact same manner as waiting periods. Any studies purporting to show a causal connection between waiting periods and reduced gun violence rates must be

capable of explaining why that causal connection would not also exist for states that require gun licenses prior to purchase or must account for such laws in the original analysis.

Moreover, none of these studies has yet to explain why or how the implementation of a waiting period for non-first-time gun buyers would plausibly reduce homicides or suicides. If an individual already has access to a firearm, it is difficult to see how preventing him or her from obtaining an additional firearm could serve as a “cooling off” period with respect to the gun already in his or her possession.

The best available evidence indicates that most acts of criminal gun violence are not committed by individuals in lawful possession of a recently purchased gun. According to the ATF, the national average “time-to-crime”—that is, the time between when the gun was last known to have been purchased and when it was used in a crime—for guns traced from crime scenes in 2020 was just over 7 years.⁵ While the ATF does not, to my knowledge, track data on how many firearms are used to commit crimes within 10 days of a lawful purchase, the majority of recovered crime guns have a time-to-crime of more than 0-3 months, which is the closest category of data tracked.

Most mass public shooters plan their crimes weeks, sometimes even months, in advance and bring multiple firearms purchased over an extended period of time. They are highly motivated to commit these acts of mass murder and it is unclear how the implementation of a waiting period would plausibly act as either a deterrent or an effective “cooling off” period.

Even given these problems of a logical causal nexus, it is possible that waiting periods may slightly reduce rates of some subsets of gun violence carried out by individuals who do not already own guns. However, any potential benefit must then be balanced with the potential cost to the overwhelming majority of lawful gun purchasers, who were never at risk of harming themselves or others with their guns during the waiting period. These waiting periods can be acutely problematic at the precise times when the exercise of the right to keep and bear arms is most important—for example, during times of sudden civil unrest, or when an abusive former dating partner begins making threats.

14. Sen. Booker referred to the Constitution’s preamble as evidence that Congress can take action on gun violence “in [o]rder to form a more perfect union, establish [j]ustice, insure domestic tranquility, and provide for the common defense.” Does the Constitution empower or restrict the government’s ability to enact gun control measures?

As the Supreme Court explained in *Jacobsen v. Massachusetts*:

⁵ See Time-to-Crime – Firearms Recovered and Traced in the United States and Territories, Firearms Trace Data – 2020 (last access Sept. 8, 2022), <https://www.atf.gov/resource-center/firearms-trace-data-2020>.

Although [the] Preamble indicates the general purposes for which the people ordained and established the Constitution, it has never been regarded as a source of any substantive power conferred on the Government of the United States or on any of its Departments. Such powers embrace only those expressly granted in the body of the Constitution or as may be implied from those so granted.⁶

In other words, the Preamble does not grant Congress broad, unfettered authority to pass any gun control laws it believes will “establish justice, insure domestic tranquility, and provide for the common defense.” It merely declares the purposes for which the constitutional framework was established—but the constitutional framework itself only grants Congress specific and limited powers. Moreover, the people, acting within the framework established by the Constitution that they believed formed a more perfect union, ratified an amendment that expressly forbade Congress from infringing on the right of the people to keep and bear arms, even when otherwise acting within the scope of its enumerated powers. The Second Amendment’s protections and limitations on government action are, in that sense, precisely one of the mechanisms that “establish justice, insure domestic tranquility, and provide for the common defense.”

15. Sen. Hirono characterized your arguments against H.R. 8 and other gun bills as the following: “Gun laws don’t work, criminals don’t follow the law, and gun laws just punish law abiding citizens.” Is that your argument? If not, please clarify in writing your argument, if any, against H.R. 8.

My argument against H.R. 8 is that, at best, it offers a low level of reward when it comes to stopping gun violence while simultaneously being so overly broad in its scope that it seriously risks turning otherwise law-abiding citizens into criminals. H.R. 8 does not meaningfully address the ways in which most criminals are already obtaining their firearms, and could be easily circumvented by criminals who know they are statistically unlikely to ever be held accountable. Even if we could ensure 100% success in terms of its enforcement (a dubious proposition), the overwhelming majority of criminals would just continue acquiring firearms through the same channels they already commonly use and that are not addressed by this law. At the same time, H.R. 8’s design makes it highly likely that otherwise law-abiding citizens will routinely but unintentionally violate the law, making it increasingly more likely that they will be prosecuted for low, reasonable, or even life-saving actions. As currently written, H.R. 8 is therefore just bad policy masquerading as a “commonsense gun law.”

16. Sen. Hirono referred to the Lawful Commerce in Arms Act (“LCAA”) as “granting the gun industry broad, almost total immunity from civil liability.” Why was the LCAA enacted, what does it actually do, and would removing this protection meaningfully impact rates of gun violence? Why or why not?

Congress passed the Protection of Lawful Commerce in Arms Act in 2005 with overwhelming bipartisan support. It did so as a direct response to a concerted effort by gun control advocates to sue the lawful gun industry into submission with their policy whims, misusing the court system

⁶ 197 U.S. 11 (1905).

to achieve through abusive litigation tactics what they could not achieve through the democratic process. Gun control advocacy groups, supported by anti-gun public officials and emboldened by the success of these tactics against the tobacco industry, sought to keep gun manufacturers and sellers perpetually bogged down in expensive-but-frivolous civil lawsuits. In this way, they hoped to eventually strongarm the industry into “voluntarily” adopting gun control measures that were either too politically unpopular to be passed into law, or that would be patently unconstitutional if mandated by the government.

While the PLCAA does protect the gun industry against this type of abusive litigation, it does not—contrary to the assertions of many gun control advocates—completely immunize gun manufacturers and sellers from all civil liability. It merely protects them from lawsuits that seek to hold them liable for harm caused by *third parties* who used the guns in an unlawful manner. But gun manufacturers and sellers may still be held liable for a plethora of widely recognized tort claims, such as selling defective products, making false advertisements, or failing to abide by the numerous state and federal laws regarding product safety, sales, and recordkeeping. This includes, at least according to one state court, being held liable for negligent entrustment for selling a gun when the seller has reason to know the buyer intends to use the gun in a crime.⁷

The PLCAA’s explicit protection against liability for criminal third-party actions is uncommon, but it is not unique or even necessarily broad compared to protections received by other industries.⁸ And to whatever extent the protection is unique, it is because the lawful gun industry faced a unique set of threats to its very existence. Repealing the PLCAA would not meaningfully impact gun violence rates. It would, however, risk endangering the right of the people to keep and bear arms by allowing gun control advocacy groups to kneecap the lawful industry responsible for producing and distributing the means by which the right may be exercised.

17. Sen. Hirono stated in the hearing, “The states with the strongest gun laws have less gun violence. The [Giffords] Law Center to Prevent Gun Violence rates Hawaii as having the fourth strongest gun laws in the country. At the same time we have the fourth lowest gun-death rate according to 2019 numbers from the Centers for Disease Control and Prevention. In 2017 we had the lowest gun-death rate in the nation.” What is the relationship between strict gun laws and gun violence?

“Gun violence” rates are not a particularly useful measure for analyzing relative differences in public safety or mortality, as they exclude any type of similarly concerning violence or death carried out with other implements. The more useful relationship is between strictness of gun laws and measures of overall violence or mortality, such as age-adjusted suicide or homicide rates.

⁷ See *Delana v. CED Sales, Inc.*, 486 SW3d 316 (Mo. 2016).

⁸ For example, Section 230 generally gives internet service providers immunity from defamation and copyright infringement claims over content (such as comments, articles, or videos) created and posted by third-party users. After 9/11, Congress passed several laws protecting the airline industry and its employees from civil liability for reporting suspicious behavior to law enforcement officials, and protecting passengers and crew members from lawsuits over actions taken during in-flight emergencies. And the National Childhood Vaccine Injury Act of 1986 and the Public Readiness and Emergency Preparedness Act of 2005 provide vaccine manufacturers and distributors with incredibly broad immunity from liability for any and all harms caused by their products.

Analyses of these relationships show that violence is far too complicated of a phenomenon than Senator Hirono suggests.

In 2019, Hawaii's overall age-adjusted suicide rate was 15.64 deaths per 100,000 residents, significantly higher than the national average of 13.93 and even further behind Texas' rate 13.38. In fact, Hawaii's age-adjusted suicide rate was higher than the national average in seven of the ten years between 2011 and 2020, and higher than Texas' rate in six of those ten years.⁹ In 2019, Hawaii's age-adjusted homicide rate was 2.5 deaths per 100,000 residents, higher than Vermont, Idaho, and Maine, all of which received "F" ratings from Giffords that year. It was also roughly on par with homicide rates in Iowa (C), Minnesota (C+), New Hampshire (F), and Utah (D).¹⁰

⁹ In one of the four years during that time frame where Hawaii had a lower age-adjusted suicide rate than Texas, both states were significantly below the national average and their rates were within .1 deaths per 100,000 individuals. See Suicide Rates in the United States Interactive Feature, American Foundation for Suicide Prevention (last accessed Sept. 8, 2022), <https://afsp.org/suicide-statistics/>.

¹⁰ See Homicide Mortality by State, Centers for Disease Control and Prevention (last accessed Sept. 8, 2022), https://www.cdc.gov/nchs/pressroom/sosmap/homicide_mortality/homicide.htm; See 2019 Gun Law State Scorecard, Giffords Law Center (Jan. 1, 2020), <https://gunviolence.issuelab.org/resource/2019-gun-law-state-scorecard.html>.

Senate Judiciary Committee Hearing
“Constitutional and Common Sense Steps to Reduce Gun Violence”
Questions for the Record
for Amy Swearer
Legal Fellow, The Heritage Foundation, Washington, D.C.
Submitted March 30, 2021

- 1. Who, if anyone, did you consult with in preparing your testimony for the hearing, including your written testimony and answers to any questions for the record you received?**

All Heritage research publications, including Congressional testimony, go through a rigorous, multilayer internal review process prior to publication or submission to ensure the research quality and integrity of the underlying work. It is our mission and long-standing principles alone that guide our research and testimony.

- 2. How much money has the Heritage Foundation received in the last five years from the NRA and its affiliates?**

Heritage takes donor privacy very seriously consistent with the requirements of applicable federal and state laws. As set forth in our policy on research independence and integrity,¹ we unwaveringly represent the interests of the American people based solely on our mission. We pride ourselves on being the nation’s most broadly supported public policy research institute. Our broad base of members guarantees that no donor or group of donors has the ability to direct the views or activities of Heritage. All donors—whether individuals or corporations—are made aware that funds will be used only to advance the mission, principles, and priorities of Heritage.

- 3. How much money has the Heritage Foundation received in the last five years from gun manufacturers?**

Heritage takes donor privacy very seriously consistent with the applicable requirements of federal and state law. As set forth in our policy on research independence and integrity,² we unwaveringly represent the interests of the American people based solely on our mission. We pride ourselves on being the nation’s most broadly supported public policy research institute. Our broad base of members guarantees that no donor or group of donors has the ability to direct the views or activities of Heritage. All donors—whether individuals or corporations—are made aware that funds will be used only to advance the mission, principles, and priorities of Heritage.

¹ *Research Independence and Integrity*, HERITAGE FOUNDATION (last visited Sept. 7, 2022), <https://www.heritage.org/article/research-independence-and-integrity>.

² *Id.*

Senator Josh Hawley
Questions for the Record

Amy Swearer
Legal Fellow, The Heritage Foundation

- 1. During the hearing, the natural trajectory of “universal background check” bills was a prominent theme. In testimony to me, you explained that “it would seem . . . to be the case that if the concern is private transfers, the best way of even sort of retrospectively enforcing that is through a gun registry.” Historically speaking, does gun registration tend to be a precursor to gun confiscation?**

While gun registration does not necessarily result in widespread gun confiscation, it is a necessary condition for any effective gun confiscation effort and historically lends itself to abuse by tyrannical governments. For example, it is well-documented that Nazi officials used gun registration and hunting license lists to disarm residents more effectively in occupied France, Belgium, and the Netherlands.¹ This was not a new tactic for the Nazi regime, as it had previously used mandatory gun registration schemes as the steppingstone to disarm any and all disfavored people groups, including Jews, within German borders.² Decades later, Fidel Castro took advantage of the gun registration lists established by the previous government, using them to facilitate his program of gun confiscation.³

Even where governments have not (at least yet) used gun registration as a means of ultimately imposing tyrannical rule on the people, they have nonetheless used gun registration as a steppingstone to the enforcement of increasingly restrictive gun control policies. Consider, for example, the ways in which New York’s state-level gun owner registration scheme was used to disarm tens of thousands of New Yorkers in 18 months without affording them the slightest semblance of Due Process under the state’s 2013 SAFE Act.⁴ Gun registration lists also played an integral role in the British government’s ability to enact, over the span of several decades, one of the most successful semi-automatic gun ban and confiscation schemes in history.⁵

¹ See generally, STEPHEN HALBROOK, GUN CONTROL IN NAZI-OCCUPIED FRANCE: TYRANNY AND RESISTANCE (2018).

² See generally, STEPHEN HALBROOK, GUN CONTROL IN THE THIRD REICH (2013).

³ See Jose Niño, *A Brief History of Repressive Regimes and Their Gun Laws*, MISES INSTITUTE (Sept. 13, 2018), <https://mises.org/wire/brief-history-repressive-regimes-and-their-gun-laws>.

⁴ Between March 16, 2013, and October 4, 2014, over 34,000 New Yorkers were placed on the state’s “no buy” list and had their Second Amendment rights revoked for five years without so much as a single judicial hearing to determine whether they were, in fact, dangerous. Anemona Hartocollis, *Mental Health Issues Put 34,500 on New York’s No-Gun List*, NY Times (Oct. 19, 2014), <https://www.nytimes.com/2014/10/19/nyregion/mental-reports-put-34500-on-new-yorks-no-guns-list.html>.

⁵ See Joseph E. Olson & David B. Kopel, *All The Way Down The Slippery Slope: Gun Prohibition in England and Some Lessons for Civil Liberties in America*, 22 HAMLINE L. REV. 399 (1999), <https://davekopel.org/2A/LawRev/SlipperySlope.htm#VIII.%20The%20Campaign%20against%20Self-Defense>; David Kopel, *Lost Battles, Lost Rights* (1999), <https://www.nraila.org/articles/19990716/lost-battles-lost-rights-by-david-kopel>.

2. During your testimony, you noted that there are “other problems where the trust is broken down between gun owners and, frankly, the government.” What statements and approaches by politicians and other government officials have most significantly contributed to the breakdown of trust between gun owners and the U.S. federal government?

There are three general types of statements or approaches by politicians that most significantly contribute to the breakdown of trust between gun owners and the federal government. The first are those statements or approaches that evidence a reckless or intentional disregard for acquiring or conveying a basic knowledge of firearms or of history. Some examples of this include:

- Rep. Lucy McBath’s assertion that an “assault rifle” can make a “skull explode,” leave “exit wounds...a foot wide,” and obliterate bodies to the point where they “no longer exist.”⁶
- Rep. Sheila Jackson Lee’s comments that AR-15s are “as heavy as 10 moving boxes” and fire a .50-caliber bullet.⁷
- President Joe Biden’s repeated statements that “you couldn’t own a cannon” at the time the Second Amendment was ratified (insinuating that this is why we should ban AR-15s today).⁸

If politicians advocating for gun control cannot be bothered to make sure that they have a basic working knowledge of firearms and history before undertaking dramatic efforts to regulate them in ways that will impact tens of millions of Americans, why should any gun owner trust any policy crafted by them? They should not. And they do not.

The second type of statement or approach that contributes to the breakdown in trust are those that, either explicitly or by implication, seek to cast moral, ethical, or legal blame for gun violence on the vast majority of law-abiding gun owners, or that belittle, denigrate, or mock those who voice reasonable opposition so such policies. Examples of these types of statements include President Biden’s mocking “are you afraid of deer in Kevlar vests?” quips, as well as the various insinuations by various politicians that those who disagree with a given gun control policy care more about their guns than their children, are “extremists,” or are beholden to the “gun lobby.”

⁶ Twitter, @RepLucyMcBath 12:16 PM (July 20, 2022), <https://twitter.com/RepLucyMcBath/status/1549790416614064137>.

⁷ Zachary Halaschak, *Congresswoman Mocked for Saying AR-15s Are ‘As Heavy As’ 10 Moving Boxes and Fire .50 Caliber Bullets*, WASHINGTON EXAMINER (Sept. 23, 2019), <https://www.washingtonexaminer.com/news/congresswoman-mocked-for-saying-ar-15-is-as-heavy-as-10-moving-boxes-fires-50-caliber-bullets>.

⁸ Yacob Reyes, *Fact-Check: Does the Second Amendment Place Limits On Individual Ownership of Cannons?*, AUSTIN AMERICAN-STATESMAN (Updated April 19, 2022), <https://www.statesman.com/story/news/politics/politifact/2022/04/18/politifact-biden-recycles-false-claim-second-amendment-limitations/7337347001/>.

Finally, statements or approaches that indicate the individual would abuse a given gun violence prevention policy are incredibly harmful to any remaining trust between gun owners and the government. Perhaps the worst recent example of this is Rep. Eric Swalwell’s insinuation that red flag laws should be used to disarm Ben Shapiro, a popular and well-respected conservative commentator.⁹

3. Is Americans’ ownership of popular sporting and self-defense rifles, such as AR-style firearms, protected under the original public meaning of the Second Amendment?

Yes. As the Supreme Court articulated in *Heller* (and reiterated in *Caetano*, and *Bruen*), the Second Amendment protects all arms that are typically possessed by law-abiding citizens for lawful purposes.¹⁰ Arms that are “dangerous and unusual” may be subject to more burdensome regulation, but “the relative dangerousness of a weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful purposes.”¹¹ Moreover, semi-automatic rifles “traditionally have been widely accepted as lawful possessions.”¹²

The Supreme Court’s framework for analyzing which types of arms are protected fits well within the original public meaning of the Second Amendment and Fourteenth Amendments.¹³ The right to keep and bear arms is premised on the underlying natural right of self-defense, ensuring that the people—both individually and collectively—have the means to forcibly resist any attempt to infringe on their inalienable rights. At the time of ratification of the Second and Fourteenth Amendments, civilians routinely possessed in their own homes firearms that could be employed for a variety of lawful purposes, including hunting, personal defense, and community defense. The AR-15 is the modern equivalent of the precise type of versatile, bearable small arm that stands at the heart of the Second Amendment’s protections.

4. What steps, if any, should Congress take to rebuild trust between law-abiding gun owners and the U.S. federal government?

The primary step Congress can take is to refrain from politicizing every single high-profile tragedy and turning it into a rallying cry for gun control measures that would not have prevented that tragedy or saved a single life.

⁹ Twitter, @RepSwalwell 8:11PM (Oct. 11, 2019), <https://twitter.com/repswalwell/status/1182810984408387586>.

¹⁰ See *District of Columbia v. Heller*, 554 U.S. 570, 625 (2008); *Caetano v. Massachusetts*, 577 U.S. 411 (2016); *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022).

¹¹ *Caetano*, at 418 (Alito, J., concurring).

¹² *Staples v. United States*, 511 U.S. 600, 611–12 (1994).

¹³ The Second Amendment’s meaning cannot properly be understood today apart from its connection to the Fourteenth Amendment. See generally *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

5. What steps, if any, should Congress take to strengthen and build upon the legal protections for firearms manufacturers contained in the Protection of Lawful Commerce in Arms Act (PLCAA)?

Congress should consider addressing the ways in which some courts have utilized overly broad interpretations of the PLCAA’s “predicate exception” for state law violations, allowing states to circumvent the primary purpose of the PLCAA by relying on alleged violations of vague “contrary to public policy” advertising laws.¹⁴

¹⁴ *See, e.g.,* Soto v. Bushmaster Firearms International, LLC, 331 Conn. 53 (Conn. 2019).