

1995

## The Battle Over the Brady Bill and the Future of Gun Control Advocacy

Richard M. Aborn

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>



Part of the [Criminal Law Commons](#)

---

### Recommended Citation

Richard M. Aborn, *The Battle Over the Brady Bill and the Future of Gun Control Advocacy*, 22 Fordham Urb. L.J. 417 (1995).  
Available at: <https://ir.lawnet.fordham.edu/ulj/vol22/iss2/7>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

---

# The Battle Over the Brady Bill and the Future of Gun Control Advocacy

## **Cover Page Footnote**

Handgun Control, Inc. Center to Prevent Handgun Violence Robin Terry

# THE BATTLE OVER THE BRADY BILL AND THE FUTURE OF GUN CONTROL ADVOCACY

Richard M. Aborn\*

## I. Introduction

The United States of America has earned the ignoble distinction of being considered the most violent country in the world. All too often the major dailies chronicle killings that take place in war torn regions of the world. Those dailies do not report, however, that fifteen children lose their lives to gunfire each and every day in the United States.<sup>1</sup> Among all age groups, approximately 103 persons are killed each day by gunfire.<sup>2</sup> The violence is now so widespread that we have almost become numb to the numbers and the statistics.

On a per capita basis, United States citizens kill each other with firearms at a rate of 14.8 per hundred thousand.<sup>3</sup> Among American males aged 15-24, the firearm death rate is much higher, skyrocketing to an astonishing 50.9 per hundred thousand.<sup>4</sup> In fact, firearm homicide is now the leading cause of death for African-American males between the ages of 15 and 34,<sup>5</sup> as well as the second leading cause of death for all persons between the ages of

---

\* Richard M. Aborn has been involved with the gun violence issue since 1979. From 1979-1984 he served in the Manhattan District Attorney's Office, where he investigated and prosecuted homicide and large scale gun distribution cases. Upon leaving the government, Mr. Aborn began serving as a volunteer for Handgun Control, Inc., and in 1988 was elected to the Board of Trustees of Handgun Control by the organization's national membership. He was elected president of Handgun Control in June of 1992. The author wishes to thank the staffs of Handgun Control, Inc., and the Center to Prevent Handgun Violence for their assistance in the preparation of this Essay, especially the help of Robin Terry.

1. NATIONAL CENTER FOR HEALTH STATISTICS, DEATHS FROM EACH CAUSE BY FIVE-YEAR AGE GROUPS, RACE AND SEX: UNITED STATES, 1992. In 1992, 5,336 persons between the ages of birth and nineteen years of age died as a result of handgun fire. Five hundred and one of those deaths were accidental, 1,429 were through suicide, 3,336 were direct assaults, and 90 were undetermined. *Id.*

2. *Id.* In 1992, handguns killed 37,502 persons.

3. 43 CENTERS FOR DISEASE CONTROL AND PREVENTION, NAT'L CENTER FOR HEALTH STATISTICS, MONTHLY VITAL STATISTICS REPORT, No. 6, Tbl. 18 (Dec. 8, 1994).

4. *Id.*

5. HHS News, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, at 2 (March 23, 1993).

10 and 34.<sup>6</sup> If current trends continue, firearms will cause more deaths than automobiles by the year 2003.<sup>7</sup>

Additionally, handguns are the principal instrumentality responsible for the increase in homicides in the country. From 1987 to 1992, murders committed with all weapons other than handguns actually declined by 7%, while murders with handguns rose 52%.<sup>8</sup> In addition to the 15,377 murders that occurred, nearly 1 million Americans had the horrifying experience of being the victim of a violent gun crime in 1992; this number is almost 50% higher than the average for the previous five years.<sup>9</sup> In comparison, the rate of violent crime committed with other weapons has steadily declined.<sup>10</sup>

Despite this phenomenon, which is by no means recent, the purchase of a handgun was a relatively simple endeavor until late 1993. Prior to that date, nothing in the federal law prevented an individual from obtaining a gun simply by filling out a form which stated that the potential purchaser was not a felon, ever dishonorably discharged from a branch of the armed services, under indictment, or a fugitive. A purchaser would then be permitted to purchase as many handguns as he or she wished—prior to and without any verification of this information whatsoever.<sup>11</sup>

Congress finally limited handgun purchases on November 30, 1993, when President Clinton signed the Brady Handgun Violence Prevention Act (the Brady Bill)<sup>12</sup> into law.<sup>13</sup> This law requires that up to five business days pass between the time an individual seeks

---

6. *Id.*

7. LOIS A. FINGERHUT, ET AL., U.S. DEP'T OF HEALTH AND HUMAN SERVICES NO. 242, *Variations by State, Race and Ethnicity: United States, 1990-91* (1994).

8. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES OF AMERICA 18, tbl. 2.9 (1993) [hereinafter, UNIFORM CRIME REPORTS]. Murders committed with firearms rose from 10,895 in 1988, to 15,377 in 1992. *Id.*

9. The Bureau of Justice Statistics reports that in 1992 there were 930,700 handgun crimes, as compared to the annual average between 1987-91 of 667,000. MICHAEL R. RAND, U.S. DEP'T OF JUSTICE, Brief No. NCJ-147603, *Guns and Crime* 1 (1994).

10. UNIFORM CRIME REPORTS, *supra* note 8, at 11. In 1992, firearms were used in 31% of all murders, robberies and aggravated assaults. In 1988, that figure had only been 26%. *Id.*

11. At the time of the passage of the Brady Bill, twenty-two states required some form of background check for would-be handgun purchasers.

12. The Brady Bill is named for James Brady, the former White House Press Secretary who was shot and left partially paralyzed in the assassination attempt on President Ronald Reagan on March 30, 1981. Following his recovery, Brady and his wife Sarah became passionate gun control advocates and lobbyists for the Brady Bill. See Steven A. Holmes, *Old Ally Wounds Gun Control Foes*, N.Y. TIMES, March 20, 1991,

to buy a handgun and the time that the purchase transpires. During those five days, local law enforcement officials must conduct a "reasonable background check" of the applicant.<sup>14</sup> Given the ever-escalating state of handgun violence in this country, one would think that the Brady Bill, a reasonable and mild step toward the control of such violence, would have very quickly passed through Congress and been signed into law. This sequence of events, however, did not occur. Although the measure was immensely popular in the polls, an arduous political struggle ensued before Congress finally passed it.

The battle over the Brady Bill was a long and torturous struggle from its introduction in 1987, to its final passage on November 24, 1993. During that period, the Brady Bill became one of the most contested issues in the country, dividing gun control supporters and opponents with a vehemence generally reserved for the most contentious social issues. The debate that surrounded the Bill provided the country with the opportunity to discuss numerous issues related to gun control, such as the need for a background check of a would-be handgun purchaser, bans on semi-automatic assault weapons and Saturday Night Specials, and the licensing and registration of handguns.

The debate also irrefutably framed the issue as a political one. Gun control opponents were far better organized and financed than gun control advocates. As a result, the opponents convinced many members of Congress that, although those opposed to gun control represented a minority view, they were a zealous single issue constituency that posed a political threat to any member who might support gun control laws.

---

§ 1, at 1; *Reagan Echoes: Gunshots—and Silence*, N.Y. TIMES, Dec. 14, 1990, at A38; see also 139 CONG. REC. S16,417 (daily ed. Nov. 19, 1993).

13. 18 U.S.C. § 922 (1993).

14. *Id.* As of the date of this Essay, eight lawsuits challenging the constitutionality of the Brady Law have been filed in various federal district courts. All challenge the constitutionality of the Brady Law on Tenth Amendment grounds. The various plaintiffs all argue essentially that Congress lacks the authority to mandate either state or local law enforcement to conduct background checks. Four courts have struck down the background check provision, 18 U.S.C. § 922(s)(2), as unconstitutional. See *McGee v. United States*, 863 F. Supp. 321, 327 (S.D. Miss. 1994) (limiting injunction as to plaintiff only); *Frank v. United States*, 860 F. Supp. 1030, 1044 (D. Vt. 1994); *Mack v. United States*, 856 F. Supp. 1372 (D. Ariz. 1994); *Printz v. United States*, 854 F. Supp. 1503 (D. Mont. 1994). Only the Western District of Texas has upheld the provision, noting that it places only minimal duties upon state law enforcement officials and that it will be phased out when a nationwide instant-check system is developed. *Koog v. United States*, 852 F. Supp. 1376, 1388 (W.D. Tex. 1994).

In light of the above, this Essay reviews the current state of gun control in this country. Part II chronicles the long legislative history of the Brady Law, including the lessons that gun control advocates learned from that struggle. Part III examines the regulatory changes that the Clinton Administration has instituted in order to broaden gun control beyond the Brady Law. Part IV summarizes gun control legislation that has been introduced since the passage of the Brady Law. Finally, Part V concludes with a proposal for future gun control advocacy.

## II. The History of the Brady Bill

### A. The 100th, 101st & 102d Congresses

Two Ohio Democrats, Representative Edward F. Feighan and Senator Howard M. Metzenbaum, introduced the Brady Bill for the first time in the 100th Congress on February 4, 1987.<sup>15</sup> As originally structured, the Bill required a seven-day waiting period between the time a person applies for a handgun and the time the sale may be consummated.<sup>16</sup> In June of the following year, the House Judiciary Committee passed the Bill on a voice vote as an amendment to the Omnibus Drug Initiative Act.<sup>17</sup> In its first floor vote on September 15, 1988, however, the Brady Bill failed in the House by a vote of 228-182.<sup>18</sup>

Representative Feighan and Senator Metzenbaum reintroduced the Brady measure in the 101st Congress, on January 4, 1989.<sup>19</sup> The 1989 version of the Bill provided that the mandatory waiting period would cease once a nationwide instant felon identification system becomes operational.<sup>20</sup> On July 24, 1990, the House Judiciary Committee again approved the Bill,<sup>21</sup> but it never reached the floor for a vote by the full House.

In an effort to get the Bill to the floor of the House for a vote, supporters attempted to attach it to an omnibus anti-crime bill that was certain to receive a floor vote. This strategy failed, however, when Speaker of the House Thomas Foley implied that the legislation was too controversial to bring to the floor. The Speaker was

---

15. H.R. 975, 100th Cong., 1st Sess. (1987); S. 466, 100th Cong., 1st Sess. (1987).

16. *Id.*

17. H.R. 4916, 100th Cong., 2d Sess. (1988) As soon as a member of Congress submits a bill, it is referred to the appropriate committee, and when it clears the committee, it returns to the appropriate chamber for a vote.

18. 134 CONG. REC. D1144, 1148 (daily ed. September 15, 1988).

19. H.R. 467, 101st Cong., 1st Sess. (1989); S. 1236, 101st Cong., 1st Sess. (1989).

20. *Id.*

21. H.R. REP. NO. 691, 101st Cong., 2d Sess. (1990).

criticized for this action, which was perceived by some to be a favor to gun control opponents, notably the National Rifle Association (the NRA). The Brady Bill again died when the 101st Congress adjourned.

Buoyed by the growing support for the Brady Bill among the general public, Representative Feighan and Senator Metzenbaum reintroduced the Bill in the 102d Congress.<sup>22</sup> Once again, the Bill moved successfully through the House Judiciary Committee,<sup>23</sup> and finally, on May 8, 1991, the House of Representatives passed the Brady Bill by a vote of 239-186.<sup>24</sup> In less than three years, the Brady Bill had picked up an additional forty-two votes. Obviously, support for the gun control movement was growing, and the country was demanding a Congressional response. This growing support, however, did not deter those opposed to handgun control. The anti-control proponents not only rallied supporters, but also used effective lobbying to capitalize on Congressional procedural rules. The gun lobby clearly understood that the fight for the Brady Bill was anything but over.

The Bill that was passed by the House in 1991 required a seven-day waiting period before a purchaser could take possession of a handgun.<sup>25</sup> During that period, local law enforcement officials would have the opportunity to conduct a background check to ensure that federal or state law would not bar that individual from purchasing a gun.<sup>26</sup>

In the Senate, the Brady Bill was considered as part of an omnibus anti-crime bill (the Crime Bill) that had been introduced by Democrat Senator Joseph Biden of Delaware on June 6, 1991.<sup>27</sup> Concerned that it no longer had the votes to defeat the Bill, the NRA tried to block its consideration. When this effort began to fail, the NRA offered to cease its opposition in exchange for weakening the Bill. Unsuccessful at this strategy as well, the NRA tried a last-ditch effort to stop the Bill's passage. In the early morning hours of June 28, 1991, Senator Ted Stevens, a Republican from Alaska, offered a substitute amendment to the Crime Bill called the Stevens amendment to replace the Brady Bill with an "instant

---

22. H.R. 7, 102d Cong., 1st Sess. (1991); S. 257, 102d Cong., 1st Sess. (1991).

23. H.R. REP. NO. 47, 102d Cong., 1st Sess. (1991).

24. 137 CONG. REC. H2879 (daily ed. May 8, 1991).

25. H.R. 7, 102nd Cong., 1st Sess. (1991).

26. *Id.*

27. 137 CONG. REC. S7321 (daily ed. June 6, 1991).

check" bill.<sup>28</sup> The fatal flaw in the instant check bill was that there was no technology available to conduct the background check instantaneously. The instant check bill would have completely gutted the Brady Bill by eliminating the waiting period, thereby depriving law enforcement officials of the time necessary to conduct a background check of the purchaser. Fortunately, this amendment failed by a critical 54-44 vote.<sup>29</sup>

The vote on the Stevens amendment, which occurred in the very early morning hours of the June 28, 1992, was followed that afternoon by an announcement by Senators Robert Dole of Kansas, an opponent of the Bill, and Howard Metzenbaum of Ohio, the Bill's sponsor; they had reached a compromise.<sup>30</sup> This compromise changed the waiting period from seven days to five "working days" and then provided that the waiting period would no longer apply once an accurate instant background check system becomes feasible.<sup>31</sup> This measure, which was substantially different from the version of the Brady Bill approved by the House, was passed by the Senate 67-32.<sup>32</sup> The Bill was referred to a House-Senate Conference Committee to reconcile the differences in the two versions of the Bill.<sup>33</sup>

In its final Conference Report, the Conference Committee agreed to accept the version of the measure that was passed by the Senate. Once the Committee issued the Report, it was put once again to the House and the Senate for approval. Although obtaining this approval is normally a perfunctory process, nothing in the process of the passage of the Brady Bill had been perfunctory—including ratification of the Conference Report. While the House of Representatives approved the Conference Report on November 26, 1991,<sup>34</sup> the Senate did not vote on final passage of the Report, because it could not muster sufficient votes to end the debate on the Report.

Under the Senate Rules, which are designed to encourage debate, the Senate may not vote on a bill or amendment until 60% of

---

28. 137 CONG. REC. S9091-92 (daily ed. June 28, 1991). Interestingly, former Senator Stevens now sits on the Board of Directors of the NRA.

29. 137 CONG. REC. S8946 (daily ed. June 28, 1991)(rollcall vote).

30. CONG. REC. (June 28, 1991) (Dole-Metzenbaum compromise).

31. *Id.*

32. 137 CONG. REC. S9086 (June 28, 1991)(rollcall vote).

33. Upon reaching agreement on the final language of a bill, the Conference Committee issues a Conference Report. Each chamber must vote on and approve the bill as set forth in the Conference Report before it can be sent to the President for signature.

34. 137 CONG. REC. H11,756-57 (1991).



the body agrees to end the debate.<sup>35</sup> This gives a minority of senators the power to block consideration of a measure by invoking what has come to be known as a "gentlemen's filibuster."<sup>36</sup> Lest one has visions of weary-eyed senators speaking in a continuous dialogue through the day and night, a "gentlemen's filibuster" permits the Senate to consider any other matter while the "filibuster" continues.<sup>37</sup> Sixty senators must agree to end the debate in order to "invoke cloture" and end the filibuster.<sup>38</sup>

A sixty-vote threshold is required to put contested legislation to a final vote, even though the vote on the vast majority of legislation that comes before the Senate requires only a simple majority. Stated another way, it takes nine more votes to end debate than are required to pass a bill. This ability to filibuster has often been used by a minority to thwart the will of the majority.<sup>39</sup>

The first attempt in the Senate to invoke cloture on the Crime Bill Conference Report occurred on November 27, 1991.<sup>40</sup> Because of partisan bickering and the inclusion of the Brady handgun control language in the Crime Bill, supporters were able to garner only 49 votes out of the required 60, and thus the motion to end the debate failed.<sup>41</sup> The crime issue remained stalemated until March of the following year.

---

35. CONGRESSIONAL QUARTERLY'S GUIDE TO CONGRESS, 4TH ED., STANDING RULES OF THE UNITED STATES SENATE, RULE XXII 68-A (4th ed. 1991)[hereinafter "GUIDE TO CONGRESS"]. There is no parallel procedure in the House. Under the House rules, the Rules Committee schedules and sets the amount of time for debate and sets the dates for votes. *Id.* at 90.

36. See Karen Hosler, *Senators Vote 76-19 to Maintain Filibuster*, BALTIMORE SUN, Jan. 6, 1995, at 1A.

37. GUIDE TO CONGRESS, *supra* note 35, at 91.

38. *Id.*

39. See, e.g., Adam Clymer, *Congress Winds Down*, N.Y. TIMES, Oct. 8, 1994, at 9 (chronicling the Republican minority's effective use of the filibuster in the 103d Congress). Additionally, as difficult as it is to garner the sixty votes necessary to invoke cloture, the Senate Rules make it even more difficult to reach a final vote by allowing a filibuster to be invoked at a number of different places throughout legislative process. GUIDE TO CONGRESS, *supra* note 35, at 68-A. One must understand the relevant Rules of the Senate in order to appreciate fully how effectively a filibuster can block final passage of legislation.

40. 137 CONG. REC. S18,580 (daily ed. Nov. 27, 1991).

41. 137 CONG. REC. S18,616 (daily ed. Nov. 27, 1991).

When the filibuster persisted in March, 1992,<sup>42</sup> it appeared that the approaching presidential election<sup>43</sup> and the inclusion of the Brady language made it very unlikely that the Crime Bill, including the Brady Bill, would become law. Some unusual action would be necessary to pass the Bill before the 102d Congress adjourned in the fall and before the presidential election.

One of the principal obstacles to the passage of the Brady Bill was that opponents continually linked it to some form of comprehensive crime legislation, in order to use purported opposition to the underlying bill as a subterfuge to vote against the Brady Bill.<sup>44</sup> Additionally, it became apparent that comprehensive gun control legislation might be easier to pass if gun control assumed an independent identity as a political issue. According to the polls, this approach was feasible. Therefore, in order to prompt a vote on the Brady Bill and to force the presidential candidates to take a position on it, Handgun Control, Inc. mounted an effort to split the Brady Bill from the Crime Bill.

On September 1, 1992, Handgun Control launched a national campaign called "Free the Brady Bill." Conducting simultaneous press conferences in thirteen states, Brady Bill supporters urged Congress to separate the Brady Bill from the Crime Bill and vote on it immediately. Then-candidate Clinton immediately endorsed over our efforts. President Bush remained silent.

Although the "Free the Brady Bill" campaign received enormous attention throughout September, 1992, and lasted until the 102d Congress adjourned in early October, ultimately the campaign to pass the Brady Bill failed. Nonetheless, the campaign succeeded in defining gun control as a key issue in the 1992 presidential election. Most importantly, when Bill Clinton was elected President, the gun control movement had a supportive occupant in the White House for the first time in history. This would

---

42. On March 3, 1992, Senator Strom Thurmond of South Carolina introduced a new Republican crime bill that did not contain the Brady language. 138 CONG. REC. S2680 (daily ed. March 3, 1992). On March 19, 1992, Senator George Mitchell of Maine once again attempted to invoke cloture on the Conference Report of the original Crime Bill, and once again failed, securing only 54 votes. 138 CONG. REC. S3944 (daily ed. March 19, 1992).

43. The Republicans would never allow the Crime Bill to pass prior to the 1992 Presidential election out of fear that they would cede the issue to the Democrats.

44. Gwen Hill, *The 1992 Campaign: The Democrats Clinton, In House Speech, Assaults Bush on Crime Issue*, N.Y. TIMES, July 24, 1992, at A13; *Clinton's Economic Plan: The Speech; Text of the President's Address to a Joint Session of Congress*, N.Y. TIMES, Feb. 18, 1993, at A20 [hereinafter *The Speech; Text of the President's Address to a Joint Session of Congress*].

lead to significant progress, both legislatively and from a regulatory standpoint, in the coming two years.

## B. The 103d Congress: The Effect of the Clinton Election

When the 103d Congress convened, a record number of sponsors reintroduced the Brady Bill into Congress. This time the House sponsor was Congressman Charles Schumer, a Democrat from New York, and Senator Howard Metzenbaum once again introduced the Bill in the Senate.<sup>45</sup> A week earlier in his State of the Union Address, President Clinton had declared to rousing applause: "If you'll pass the Brady Bill, I'll sure sign it."<sup>46</sup> For the first time, a sitting President had stated that he was willing to sign such a bill. In addition, in the 103d Congress, unlike in previous Congresses, the Brady Bill would finally stand on its own, unencumbered by any crime legislation.

On October 29, 1993, the House Judiciary Subcommittee on Crime and Criminal Justice met to consider Representative Schumer's proposed bill.<sup>47</sup> The Subcommittee adopted an amendment to clarify that the instant check system would be based on the Interstate Identification Index,<sup>48</sup> unless the Attorney General determined that another system would be preferable.<sup>49</sup> The Subcommittee then favorably reported the Bill out of committee by a vote of 10-3.<sup>50</sup>

On November 4, 1993, the full Judiciary Committee of the House passed the Bill. In the process, it also adopted an amendment to it permitting persons who had been denied the opportunity to purchase a firearm on account of an error in criminal history records to sue the appropriate government agency to force it to correct the records.<sup>51</sup> Although this amendment was adopted, sev-

---

45. H.R. 1025, 103d Cong., 1st Sess. (1993); S. 414, 103d Cong., 1st Sess. (1993). Ninety-nine Representatives and 29 Senators sponsored the Bill.

46. *The Speech; Text of the President's Address to a Joint Session of Congress*, *supra* note 44, at A20.

47. *See supra* note 17 and accompanying text.

48. The Interstate Identification Index is the computerized system used by the FBI to track the criminal records of would-be handgun purchasers. It can provide a gun dealer with the necessary background information about a purchaser in under two minutes, but is not yet fully operational because not all states are hooked up to the system. When the system does become fully operational, the five-day waiting period imposed by the Brady law will no longer be necessary. Peter Baker, *Virginia Crime-Fighting Ideas Not New in Other States*, WASH. POST, Oct. 25, 1993, at D1.

49. H.R. REP. NO. 344, 103d Cong., 1st Sess. 14 (1993).

50. *Id.*

51. *Id.* at 14-15.

eral other amendments were defeated both by voice vote and roll call vote.<sup>52</sup> The Committee then favorably reported out the Bill by a roll call vote of 23-12.<sup>53</sup>

On November 10, 1993, the full House debated and voted on the Brady Bill. Bill McCollum, a Republican Representative from Florida, offered an amendment that would preempt all state and local waiting periods and licensing laws. This amendment was defeated, 175-257.<sup>54</sup> Another amendment, offered by Representative George Gekas of Pennsylvania, required that the waiting period sunset in five years—whether or not the instant check system was operational. This sunset provision was adopted, 236-198,<sup>55</sup> and the Brady Bill, as amended, passed the House, 238-189.<sup>56</sup>

After intense negotiations, the Senate agreed to vote on a compromise Brady Bill on November 19, 1993. That Bill included language similar to the two amendments to the House bill: preemption of all state and local waiting periods and licensing laws, and sunset of the waiting period in five years whether or not the national instant check system was operational.<sup>57</sup> The agreement allowed two separate votes to delete the sunset and preemption provisions from the Bill. The amendment to delete the sunset language was offered by Senator Howard Metzenbaum, and it failed, 43-56.<sup>58</sup> The amendment to delete the preemption language was sponsored by Senator George Mitchell, and it passed, 54-45.<sup>59</sup> Two attempts to obtain cloture later that day both failed, 57-42 and 57-42.<sup>60</sup> After another day of negotiations between Majority Leader George Mitchell and Minority Leader Robert Dole, the Senate finally voted on the amended Brady Bill, and on November 20, 1993, the Brady Bill passed the Senate by a vote of 63-36.<sup>61</sup>

---

52. Among the amendments rejected by the Committee were one which would have informed potential purchasers of the reasons that they were denied the right to purchase a firearm, two that would have eliminated the waiting provisions of the bill, one that would have preempted state waiting period laws after the national check system had been developed and one to provide local cost reimbursement. *Id.* at 14-15.

53. *Id.* at 15.

54. 139 CONG. REC. D1285, D1292 (daily ed. November 10, 1993).

55. *Id.*

56. *Id.* at D1291.

57. 139 CONG. REC. S16,417 (daily ed. Nov. 19, 1993).

58. *Id.*

59. *Id.*

60. 139 CONG. REC. S16,332-33 (daily ed. Nov. 19, 1993); 139 CONG. REC. S16,417 (daily ed. Nov. 19, 1993).

61. 139 CONG. REC. S16,712 (daily ed. Nov. 20, 1993).

The House-Senate Conference Committee agreed on final language on Monday, November 22, 1993. The House Rules Committee scheduled a final vote on the Conference Report for later that day. That evening, the House passed the Brady Bill Conference Report, by a vote of 238-188.<sup>62</sup> The Senate still needed to confirm the Conference Report; unfortunately, even this seemingly ministerial act was delayed in a final, desperate effort on the part of NRA backers to defeat the Brady Bill.

Senator Dole refused to allow the Senate to act on the Conference Report. Once again, the gun control opposition mounted a filibuster that stymied the Senate. Thanksgiving was approaching, and, as was tradition, the Senate was going to adjourn the week prior to Thanksgiving until after the first of the new year. Brady opponents viewed this as an opportunity to delay final consideration of the legislation in the hope that during the month-long break, the pressure to pass the Bill would abate.

Both the Democratic leadership in the Senate and the Clinton White House, however, were confident that they had secured a sufficient number of votes to pass the Bill, and refused to comply with this strategy. With Senator Dole blocking consideration of the Bill, Senate Majority Leader Mitchell announced that the Senate would reconvene after the Thanksgiving weekend, and continue its consideration of the Brady Bill. Two days of intense negotiations followed, under extreme pressure. The notion that the entire Senate would have to return to Washington after Thanksgiving and stay until the Brady issue was resolved was not terribly inviting. Additionally, and far more importantly, there was a tremendous outburst of anger from Americans across the country. Supporters of the legislation could not believe that, despite the passage of the Brady Bill and the compromises reached, Senator Dole would continue to delay final passage of the Conference Report. The pressure proved to be too much, and Senator Dole relented. Finally, on November 24, 1993, the Senate voted on the Conference Report and passed the Brady Bill by unanimous consent.<sup>63</sup>

In a very emotional ceremony in the East Room of the White House on November 30, 1993, President Clinton signed the Brady Bill into law.<sup>64</sup> The law took effect on February 28, 1994, and its effects were felt immediately.

---

62. 139 CONG. REC. H10,907-08 (daily ed. Nov. 22, 1993).

63. 139 CONG. REC. S17,084 (daily ed. Nov. 24, 1993).

64. Brady Handgun Violence Prevention Act, 18 U.S.C. § 922 (1993).

In its report, *The Brady Law: The First 100 Days*, the Bureau of Alcohol, Tobacco and Firearms reported that the Brady Law prevented approximately 5% of all attempted handgun purchases because the purchaser was a felon or otherwise prohibited from buying a firearm.<sup>65</sup> Based on this rate and the fact that over two million handguns are sold every year, background checks will likely prevent more than 100,000 criminals from purchasing handguns at retail outlets each year. Clearly, this is not an insignificant number. Additionally, it is impossible to determine the number of criminals who have been dissuaded from attempting to purchase a handgun because they feared a background check.

With the Brady Law, the nation established an affirmative gun control measure for the first time in thirty years. As a result, the nation would stop distributing our society's most deadly consumer product, the handgun, without even verifying whether the would-be purchaser had a criminal record. Through this legislation, the United States had clearly crossed a threshold. Gun control supporters had shown that they could defeat the much vaunted NRA, and the President was now openly challenging the nation to confront the epidemic of gun violence engulfing the entire country. No one was arguing, however, nor had anyone argued, that the Brady Bill alone would be sufficient to end gun violence. While the next great legislative fight would focus on the issue of banning semi-automatic assault weapons,<sup>66</sup> other gun control efforts were also underway on the regulatory front.

### III. Regulatory Changes to Gun Control

In May, 1993, the Center to Prevent Handgun Violence, the research, legal advocacy and education affiliate of Handgun Control, submitted a memorandum to the Clinton Administration outlining a number of regulatory steps that could be taken by the Bureau of Alcohol, Tobacco and Firearms to reduce gun violence pursuant to

---

65. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEP'T OF THE TREASURY, *THE BRADY BILL: THE FIRST 100 DAYS* 10 (1994).

66. The ban of automatic weapons was a major issue in the debate over the Crime Bill passed by Congress in 1994. See generally Katherine Q. Seelye, *As Senate Debates Crime Bill, Weapons Ban is the Focus*, N.Y. TIMES, Aug. 23, 1994, at A14 (describing attempts to weaken the crime bill by opponents of the assault weapon ban); Katherine Q. Seelye, *Assault Weapons Ban Allowed To Stay in Anti-Crime Measure*, N.Y. TIMES, July 28, 1994, at A12 (describing failed last-minute attempt by Representative Jack Brooks to force the assault weapon ban out of the crime bill); *House Panel Backs Bill to Outlaw Assault Guns*, N.Y. TIMES, April 29, 1994, at A18 (reporting approval by House Judiciary Committee of assault weapon ban).

the Bureau's broad regulatory authority.<sup>67</sup> Two of these proposals were put into effect by Presidential Directive on August 11, 1993, in a White House ceremony. The first Directive extended the ban on the importation of semi-automatic assault rifles, which had been signed by President Bush in March, 1989, to include semi-automatic pistols, such as the UZI.<sup>68</sup> The second Presidential Directive required that applications for federal licenses to sell guns be accompanied by a fingerprint check and a photo identification.<sup>69</sup>

Secretary of the Treasury Lloyd Bentsen put into effect on March 1, 1994, a third proposal of the Center to Prevent Handgun Violence. On that date, Bentsen announced that the Department of the Treasury had reclassified combat shotguns, such as the Streetsweeper,<sup>70</sup> Striker-12 and USAS-12,<sup>71</sup> as "destructive devices" under the National Firearms Act, thereby restricting future sales of those weapons.<sup>72</sup>

Finally, on May 27, 1994, President Clinton stopped the importation of Chinese-made guns<sup>73</sup> that had been modified slightly in or-

---

67. See CENTER TO PREVENT HANDGUN VIOLENCE, PROPOSALS FOR THE CLINTON ADMINISTRATION TO IMPLEMENT NEW GUN CONTROL INITIATIVES WITHOUT PASSING NEW LEGISLATION (1993)[hereinafter PROPOSALS].

The Bureau of Alcohol, Tobacco and Firearms (ATF) has broad authority to issue regulations pursuant to 18 U.S.C. § 926(a). See *NRA v. Brady*, 914 F.2d 475 (4th Cir. 1990).

68. See PROPOSALS, *supra* note 67, at 3. The Center urged the Clinton Administration to ban assault pistols in accordance with the general prohibition on the importation of firearms provided for in § 922(l) of the Gun Control Act. 18 U.S.C. § 922(l). The center argued that because such pistols were not "suitable for or readily adaptable to sporting purposes," and they fit within none of the exceptions to the importation ban specified in § 925(d). 18 U.S.C. § 925(d)(3).

69. This requirement would enable the ATF to determine whether an applicant is a member of a class already prohibited by federal law from possessing firearms. 18 U.S.C. § 923(d)(1)(B) grants to ATF the authority to refuse licenses to those prohibited from transporting, shipping or receiving firearms in interstate commerce under 18 U.S.C. § 922(g) and (n). PROPOSALS, *supra* note 67, at 7.

70. The "Streetsweeper" is a revolving cylinder shotgun that fires twelve blasts in less than three seconds without reloading. It fails the "sporting purposes" test of 18 U.S.C. § 925(d)(3). See *supra* note 68, for an explanation of the "sporting purposes" test; see also PROPOSAL, *supra* note 67, at 2.

71. The Striker-12 and USAS-12 are, like the Streetsweeper, both non-sporting twelve gauge shotguns. PROPOSALS, *supra* note 67, at 2.

72. Steven Holmes, *Treasury Imposes New Regulations on Some Shotguns*, N.Y. TIMES, March 1, 1994, at A1, A20.

Congress enacted the National Firearms Act, 26 U.S.C. §§ 5801-5872 (NFA), in 1934 to place severe restrictions on "gangster" weapons such as machine guns, sawed-off rifles and shotguns, and silencers. In 1968, the Gun Control Act amended the NFA to cover other ultrahazardous weapons. PROPOSALS, *supra* note 67, at 1.

73. The importation ban was imposed as a condition to the grant of most-favored nation status to China. According to the Bureau of Alcohol, Tobacco and Firearms,

der to avoid the assault weapon import ban, which had permitted the importation of non-sporting long guns.

The Center to Prevent Handgun Violence proposed a number of other regulations in its memorandum to the Administration that still need to be enacted in order to further diminish the illegal supply of guns. These proposals include, first, implementation of regulations to require gun dealers to meet certain minimum security standards to deter theft. Such a standard could be as simple as locking guns in a vault at night, thus reducing the increasing number of thefts of guns from gun stores.

Second, the Center's memorandum proposed requiring handgun purchasers to present proof of current residency at the time of application to buy a handgun. The necessity of this measure is demonstrated by the fact that Colin Ferguson, the alleged shooter in the Long Island Railroad case,<sup>74</sup> was able to purchase a gun over-the-counter in California. Even though he was a New York resident, he was able to get a California driver's license without showing any proof of residency. He then used the license to purchase the gun that was allegedly used in the shooting. Had he been required to present proof of current residency, he arguably would not have been able to do so, and thus may not have been able to secure that weapon.

Third, the Center's memorandum proposed requiring gun dealers to submit aggregate sales information with a license renewal application. This information would prove that they are actually engaged in the legitimate business of selling firearms as opposed to either stockpiling guns or supplying firearms to the illegal market.

Finally, the Center recommended suspending the licenses of dealers convicted of felonies, pending appeal of their conviction.

While these regulations would reduce the illegal traffic in firearms measurably, gun control advocates should not rely solely on executive action to reach their ultimate goal of comprehensive federal legislation. Advocates must capitalize on the shift in public support toward gun control and use that surge of public opinion to their advantage in the legislative arena.

---

although 108,000 Chinese weapons were imported to the United States in 1991, that number jumped to more than one million by 1993. The most notorious of these weapons were rifles such as the MAC-90. See, e.g., Gregg McDonald, *About-Face: China Keeps Trade Status; Clinton Sees Conciliation as Path to Human Rights*, Hous. CHRON., May 27, 1994, at A1.

74. Seth Faison, *Gunman Kills 5 on L.I.R.R. Train; 19 Are Wounded*, N.Y. TIMES, Dec. 8, 1993, at A1.



#### IV. Politics of the Movement and Recommendations for Future Legislation

The polling data on gun control clearly shows that Americans overwhelmingly support the passage of additional gun control measures. A CNN/USA Today/Gallup poll on December 17, 1993, showed that 81% of the American people support gun registration,<sup>75</sup> and 69% support a limit of one gun purchase per month per person.<sup>76</sup> That same poll also showed that 89% of the American people support mandatory safety training for handgun purchasers.<sup>77</sup> Another poll, conducted by LH Research, Inc. on April 1, 1993, showed that 82% of the American people support the registration of handgun sales,<sup>78</sup> and 67% support one-gun-per-month laws.<sup>79</sup>

On the other hand, one indicator in the gun control area for which public support has decreased is the support for a complete ban on handguns. This support has declined from 43% in 1991 to 39% in 1993.<sup>80</sup> Moreover, there is anecdotal evidence that more and more Americans are buying guns.<sup>81</sup>

Combining this data supports the conclusion that the American people: i) want more gun control; ii) understand that it will not interfere with a law-abiding citizen's ability to acquire a handgun; iii) do not think that it is necessary to ban all handguns; and iv) do not believe that supporting controls over distribution inevitably leads to an outright ban.

Given the amount of gun violence in America and the clear lack of an effective body of federal law regulating the distribution of handguns, as well as the strong support in the polls for gun control, one would think that it would be easy to pass gun control legisla-

---

75. CNN, USA TODAY, GALLUP POLL, GUNS IN THE UNITED STATES 16 (1993)(on file with the *Fordham Urban Law Journal*).

76. *Id.* at 20.

77. *Id.*

78. LH RESEARCH INC. POLL, GUN CONTROL 9 (1993)(on file with the *Fordham Urban Law Journal*).

79. *Id.*

80. David W. Moore and Frank Newport, *Public Strongly Favors Stricter Gun Control Laws*, GALLUP POLL MONTHLY, Jan. 1994, at 22.

81. See John Mintz, *No. 1 With A Bullet, Sales are Booming, but U.S. Gunmakers Fear Legal Curbs and Foreign Rivals*, WASH. POST, Jan. 16, 1994, at H1, H4; Robert Davis, *Gun Ban Triggers Sales Rush*, USA TODAY, May 10, 1994, at 3A; Jeannette Regalado and Tina Daunt, *Proposed Ban Spurs Flurry of Gun Buying*, L.A. TIMES, May 12, 1994, at B1, B4.

tion. But, as we have seen from the difficult journey of the Brady Bill through Congress,<sup>82</sup> this is hardly the case.

Gun control advocates make a serious mistake when they rely on the strength of polls to persuade legislators to vote affirmatively for gun control measures. Politicians are not motivated by support for a particular issue in the polls, unless the polls overwhelmingly show that the topic is of "single issue" importance to the voters. There are few such topics, and certainly gun control has never been one.<sup>83</sup> Gun control supporters must understand that the effort to reduce gun violence in this nation is at its core a political struggle. As such, the effort requires nationwide mobilization and a highly concerted effort with the sole goal being effective political action. The opposition has long understood that the key to political power is organization. Gun control advocates must not be so proud that they fail to learn from their adversaries.<sup>84</sup>

It is the responsibility of gun control advocates to state clearly the goals of the movement. Such a policy statement must lay out both legislative and non-legislative goals, and clarify their position on banning all guns. The prospect of a total ban on firearms is the greatest concern for reasonable gun owners, and is the area where the movement is most frequently, and most effectively attacked. This attack is effective not because of the persuasiveness of the other side, but because it is virtually impossible to prove that proponents of gun control do not support a total ban.

A principal problem that has retarded the development of an effective national gun control policy has been the insistence that

---

82. *See supra* part II.

83. Instead, organized constituencies persuade politicians when they demonstrate the ability to garner support for an issue by regular, repeated and varied contact with the elected official and with the press. Financial support for the issue is also critical. Equally important is the ability to convince a legislator that those who support the issue have the capacity to get people to the polls who will vote for the official. Additionally, targeted public demonstrations of support are helpful, particularly if legislators are present or are likely to hear of the support through the press.

84. Additionally, all too frequently I have heard gun control advocates patronizingly assert that we only have to let our opponents make their outrageous arguments and thus expose themselves as having no rationale for opposing gun control. The thinking is that Members of Congress or Members of a state legislature will implicitly understand that they should vote for a gun control bill because there is no rational reason not to do so. This argument is similar to that now being made by some Democrats who claim that the Democratic Party need not articulate a "vision" of where the Party would like to take the country, or a political agenda, but instead need merely rely on the Republican Party to "self-destruct." This would in fact be a self-destructive strategy, not for the Republicans, but for the Democrats.

gun control legislation move forward incrementally.<sup>85</sup> At this pace, it will be well into the next century before the nation has a comprehensive gun control policy. Therefore, it is the intention of Handgun Control, Inc. to change the debate. We intend to reject the incrementalism of the past and adopt a comprehensive approach.

Handgun Control has made its legislative goals quite clear. These goals are contained in legislation that was introduced in the 103d Congress as the Gun Violence Prevention Act of 1994,<sup>86</sup> which has since become widely known as "Brady II." This bill is designed to confront the complexity of the problem honestly and to construct an effective national body of law that will give the country a measurable means of reducing gun violence.

Any national gun control policy must aim to reduce illegal traffic in guns. Approximately 27% of guns used in crime enter the market from over-the-counter sales. Additionally, another 9% are stolen in burglaries every year.<sup>87</sup> Studies and anecdotal information supplied by law enforcement agencies show that gun traffickers most often go to jurisdictions with very weak or nonexistent gun control laws.<sup>88</sup> They then purchase handguns in bulk, using either straw purchasers or phony identification, and transport the weapons and ammunition to jurisdictions with very strict gun control laws. Nothing in current federal law prevents this. There is no federal requirement that a handgun purchaser be licensed, that the sale be registered, that a limit be placed on the number of handguns or rounds of handgun ammunition that can be purchased at any one time, or that there be any restriction on the resale of the

---

85. Curiously, this is the only area of national policy where such a demand is made. If we were discussing tax reform, environmental policy, health care, welfare reform, or any other major problem confronting this country, we would be discussing comprehensive legislation designed to remedy the full extent of the maladies that concern the given area. Gun control supporters, however, have been required to proceed with single, small, legislative steps.

86. H.R. 3932, 103d Cong. 2d Sess., S. 1882, 103d Cong., 2d Sess. (1993).

87. It is important to note that the above numbers are based on a survey of state prison inmates conducted by the Bureau of Justice Statistics in 1991 and published in 1993. ALLEN BECK ET AL., U.S. DEPARTMENT OF JUSTICE, NCJ-136949, SURVEY OF STATE PRISON INMATES, 1991 (1993). There are no official government figures available based on sales. The reason for this seeming inadequacy is that there is no requirement under federal law that handgun sales be registered. Thus, there is no precise methodology by which to study gun trafficking on a national basis.

88. *Highway of Death*, VIRGINIAN PILOT & LEDGER STAR, Jan. 3, 1993 (citing statistics from Bureau of Alcohol, Tobacco and Firearms; New York City Police Dept.; Washington, D.C. Metro. Police Dept.). See *Nowhere to Hide: Matching Gun Victims to Gun Sellers*, VIRGINIAN PILOT & LEDGER STAR, Jan. 3, 1993, at A9; Bill Montgomery, *Guns Bought in Georgia Arm Northern Criminals*, ATLANTA J., Oct. 11, 1993.

handguns by the purchaser to another private individual or individuals.

The Brady II Bill addresses this trafficking problem by establishing a system of state-based licensing and registration throughout the nation. This system would prohibit anyone from selling a handgun to an individual who does not possess a valid state handgun license, and would require that the sale be registered prior to its consummation.<sup>89</sup> The Bill proposes the establishment of federally mandated minimum standards for the issuance of the state license. Under Brady II, the license would not be issued unless:

- a) the licensee is at least 21 years of age;
- b) the licensee has presented a valid government issued identification card, such as a driver's license or social security card, and proof of current residency within the jurisdiction, such as a utility bill, lease or telephone bill;
- c) the licensee has passed a background check based on a fingerprint; and
- d) the licensee has passed a safety training course.

The license would be valid for a two-year period, and a licensee would be required to report the theft or loss of a handgun to local law enforcement.

The Brady II Bill would also adapt legislation that was passed by the State of Virginia in 1993 for nationwide application. By 1992, Virginia had become the number one source state of guns used in crime in the northeast. In New York City alone, over 40% of the guns used in crime in 1991 had originated in Virginia.<sup>90</sup> In response, then-Governor of Virginia, Douglas Wilder, proposed that the state prohibit the purchase of more than one handgun in a thirty-day period. This proposal, aimed solely at illegal gun trafficking, was opposed adamantly by the gun lobby. This legislative fight garnered national attention, and ultimately it passed.<sup>91</sup> Unfortunately, however, adjacent states continue to permit multiple purchases, and traffickers have simply taken their deadly business elsewhere.

---

89. H.R. 3932, 103d Cong., 2d Sess. (1993).

90. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEP'T OF THE TREASURY, FIREARM STATISTICAL INFORMATION FOR CALENDAR YEAR 1992 1 (1992)(Internal Memorandum on file with the *Fordham Urban Law Journal*).

91. Paul Grant, *Wilder Signs Gun Control Package*, UPI, March 23, 1993, available in LEXIS, Nexis Library, UPI File. See also Bill Rankin, *State No. 1 for Illegal Gun-running*, ATLANTA CONST., Dec. 10, 1994 (quoting U.S. Attorney Kent Alexander, "The law has drastically cut down Virginia's gun trafficking and knocked them off the top rung . . ."); *A State's Claim to Shame*, ATLANTA CONST., Jan. 12, 1995.

The licensing plan outlined in the Brady II Bill, which is significantly less onerous than obtaining a driver's license or registering a car, will help ensure that an individual seeking to purchase a handgun is doing so for legitimate purposes. The plan will reduce the ability to use aliases supported by false identification and, additionally, will make it significantly more difficult to use a "straw man" to purchase a gun. These goals will be achieved by instituting substantial requirements that must be complied with prior to the completion of the sale.

The registration element will provide both a "paper trail" for investigatory purposes and a deterrent to gun traffickers. Once registration is required, traffickers will be aware that law enforcement will learn the ownership history of a handgun. Thus, the largely correct sense that traffickers now have that law enforcement does not have a viable way of identifying them will be greatly diminished. In order to prevent traffickers from stockpiling guns, a special license would be required for anyone other than a dealer to possess more than twenty firearms or one thousand rounds of ammunition at any one time.

The Brady II Bill would prohibit persons who have been indicted or convicted of attempting to use physical force against another from possessing a handgun.<sup>92</sup> Additionally, anyone under the age of twenty-one would be prohibited from possessing a handgun except under certain circumstances.<sup>93</sup> The Bill also contains a number of reforms for the federal licensing system of weapons sellers.<sup>94</sup> These reforms are designed to ensure that federal license recipients engage in legitimate retail sales and do not supply guns to illegal markets.

The proposed legislation would also help prevent the horrific and often tragic problem of children finding their parents' handguns. The Bill would make it illegal to leave a loaded firearm, or unloaded firearm with ammunition, where a juvenile under the age of sixteen is likely to gain access to it.<sup>95</sup> Thirteen states now pro-

---

92. Under current federal law anyone who has been convicted of a felony is prohibited from possessing a handgun. See 18 U.S.C. § 92 (g). There are many states, however, where acts of physical violence toward another result in misdemeanor convictions.

93. The Bill allows temporary possession and use if done so under supervision of someone who may possess a firearm, with consent of legal guardian, and in accordance with state and local law. H.R. 3932, 103d Cong., 2d Sess. (1993).

94. *Id.*

95. *Id.*

vide a penal sanction for anyone who leaves a handgun accessible to a child if the child causes injury with that handgun.

The Brady II Bill also proposes the elimination of another category of guns—Saturday Night Specials.<sup>96</sup> Like semi-automatic assault weapons, Saturday Night Specials are used criminally at an alarming rate and have no legitimate social utility. Semi-automatic assault weapons have now been banned<sup>97</sup> and, under Brady II, Saturday Night Specials would be banned as well. This is the only remaining category of guns that Handgun Control believes should be banned.

Finally, the Bill examines the design and construction of handguns in an effort to reduce the number of unintentional discharges. The Bill requires that all firearms manufactured one year after the Bill is enacted must contain a device or devices to prevent a child under seven from discharging a weapon. Furthermore, if the weapon is a semi-automatic, the safety device must prevent discharge of the weapon once the magazine has been removed.

Additional studies are also evaluating technology that would prevent anyone other than the owner from firing a gun. The technology ranges from a simple mechanical device, i.e., a combination lock built into the handle of the gun, to computer chips that require the shooter to wear an encoded ring that corresponds to the firing mechanism in the handgun.

This technology, if feasible, would do three things. First, it would drastically reduce the number of individuals who improperly use someone else's weapon. Second, it would greatly reduce the value of stealing a gun in a home burglary. Like the car radio that cannot be used in any car other than the one for which it was designed, such guns would have no utility whatsoever in the illegal market. Given that a significant number of guns are stolen in burglaries,<sup>98</sup> such technology would have an impact on trafficking. Third, this technology would make it more difficult to sell guns on the illegal market because the coding device or lock combination would have to accompany each sale down the line of distribution. Should such technology prove technically feasible, Congress should

---

96. The bill defines a Saturday Night Special as (i) any handgun whose barrel, slide, frame or receiver is made of a nonhomogeneous metal which melts or deforms at a temperature of less than 800 degrees; or (ii) any pistol or revolver without a safety that meets certain specifications; or (iii) any pistol or revolver that fails to meet certain minimum length and height requirements. See H.R. 3932, 103d Cong., 2d Sess. (1993).

97. *Id.*

98. See *supra* note 87 and accompanying text.

consider mandating its incorporation into the manufacture of guns. Ample precedent exists for Congress to do so.<sup>99</sup>

As stated earlier this combination of legislative interventions would reduce the amount of gun violence that plagues this nation. How quickly gun control advocates will be able to move this legislation through Congress will depend largely on how much support is mobilized. The current leadership of the Republican party in Congress has not been terribly hospitable to gun control measures in the past. Whether it will be in the future will be a function of the amount of political pressure that can be brought to bear. That of course, will be the responsibility of gun control advocates across the country.

## V. The Second Amendment

The Second Amendment is perhaps one of the most widely misconstrued—and therefore misunderstood—amendments to the Constitution. No federal court has ever used the Second Amendment to overturn a gun control law.<sup>100</sup> In fact, courts have consistently ruled that there is no constitutional right to own a gun for private purposes unrelated to the organized state militia.<sup>101</sup>

Gun control opponents have long argued that the amendment bars gun control laws. In fact, they often couch their inflammatory rhetoric with calls to “protect the constitutional right to own any gun.” They have even claimed that the Constitution protects the right of all Americans to own machine guns.<sup>102</sup>

---

99. See generally RALPH NADER, *UNSAFE AT ANY SPEED XIV* (1990) (25th Anniversary Edition) (discussing the mandatory installation of lap-shoulder belts in motor vehicles on Jan. 1, 1968).

100. See generally *Federal Gun Control and the Second Amendment*, 48 REC. OF N.Y.C. B.A. COMM. ON FED. LEGIS. REP. 993, 997 (Dec. 1993); see also *Lewis v. United States*, 445 U.S. 55 (1980); *United States v. Miller*, 307 U.S. 174 (1939); *United States v. Toner*, 728 F.2d 115, 128 (2d Cir. 1984); *Quilici v. Village of Morton Grove*, 695 F.2d 261, 270 (7th Cir. 1982), cert. denied, 464 U.S. 863 (1983); *United States v. Oakes*, 564 F.2d 384, 387 (10th Cir. 1977), cert. denied, 435 U.S. 926 (1978); *United States v. Trucotte*, 558 F.2d 893 (8th Cir. 1977); *United States v. Graves*, 554 F.2d 65 (3d Cir. 1977)(dictum); *United States v. Warin*, 530 F.2d 103, 106 (6th Cir.), cert. denied, 426 U.S. 948 (1976); *United States v. Swinton*, 521 F.2d 1255, 1259 (10th Cir. 1975), cert. denied 424 U.S. 918 (1976); *United States v. Tomlin*, 454 F.2d 176 (9th Cir.), cert. denied 406 U.S. 924 (1972); *United States v. Johnson*, 441 F.2d 1134, 1136 (5th Cir. 1971); *United States v. Synnes*, 438 F.2d 764, 772 (8th Cir. 1971), vacated on other grounds, 404 U.S. 1009 (1972).

101. *Lewis v. United States*, 445 U.S. 55 (1980); *Burton v. Sills*, 394 U.S. 812 (1969); *United States v. Miller*, 307 U.S. 174 (1939); *United States v. Nelson*, 859 F.2d 1318 (8th Cir. 1988).

102. *National Rifle Association v. Brady*, No. 89-3345 (4th Cir. Sept. 13, 1990).

The Second Amendment, a compromise between the anti-federalists and federalists, was designed to preserve the ability of individual states to maintain state militias. This is clear not only from the cases that have reviewed the issue,<sup>103</sup> but from the language of the amendment itself. The amendment states that, "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."<sup>104</sup>

It is long past time for lawyers and others to speak about the true meaning of the amendment. In an interview with Charlayne Hunter-Gault on The MacNeil/Lehrer Newshour on December 16, 1991, former United States Chief Justice Warren Burger stated that the Second Amendment "has been the subject of one of the greatest pieces of fraud, I repeat the word 'fraud' on the American public by special interest groups that I have ever seen in my lifetime."<sup>105</sup> He continued, "they (the NRA) have mislead the American people."<sup>106</sup> The gun control debate is difficult enough without entering false issues into it.<sup>107</sup>

## VI. Conclusion

No matter how effective a legislative scheme is, legislation alone will not eradicate the deeply rooted culture of gun violence that exists in this country. Accordingly, Handgun Control divides its efforts between legislative and non-legislative efforts.

In this regard, the Center to Prevent Handgun Violence carries out the non-legislative interventions of Handgun Control. These efforts include working with elementary, secondary and high schools to promote a gun violence reduction curriculum; litigating on behalf of gun victims; defending gun control legislation in the courts; working with the entertainment industry concerning the

---

103. See *supra* note 100.

104. U.S. CONST. amend. II.

105. *MacNeil/Lehrer Newshour: Series—First Freedoms* (PBS Television Broadcast, Dec. 16, 1991)(transcript on file with the *Fordham Urban Law Journal*).

106. *Id.*

107. For an excellent examination of the Second Amendment the reader is referred to Keith A. Ehrman & Dennis A. Henigan, *The Second Amendment in the Twentieth Century: Have You Seen Your Militia Lately?*, 15 U. DAYTON L. REV. 5 (1989); Dennis A. Henigan, *Arms, Anarchy and the Second Amendment*, 26 VAL. U.L. REV. 107 (1991); see also Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637 (1989); Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconstruction*, 80 GEO. L.J. 309 (1991); Nicholas Johnson, *Beyond the Second Amendment: An Individual Right to Arms Viewed Through The Ninth Amendment*, 24 RUTGERS L.J. 1 (1992).



messages in popular entertainment about gun violence; and working with the public health profession both to research the causes of and the most effective solutions to gun violence, and to disseminate the message that guns do not make us safer.

It is our belief that only through such a comprehensive, multifaceted approach, can America hope to reduce the gun violence that affects us all.

