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*Legislative Testimony*

*What Economists Can't Tell You About The Costs of Gun Violence*

The Economic Toll of Gun Violence: How Our Nation Bears the Costs  
Hearing before the U.S. Congress Joint Economic Committee  
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Chairman Beyer, Ranking Member Lee, and distinguished members of Congress,

My name is Amy Swearer, and I am a Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies at the Heritage Foundation.<sup>1</sup> My areas of scholarship and study include, among other things, the Second Amendment, school safety, and the intersection of gun violence and mental health. I help run the Heritage Foundation's Defensive Gun Use Database and am heavily involved in the organization's School Safety Initiative, which was developed after the tragic 2018 school shooting in Parkland, Florida, to ensure that conservative voices played a prominent role in national conversations on gun control and student safety. I have testified on firearms policy at both the state and federal level, including before the House Judiciary Committee in 2019 on a bill to ban so-called "assault weapons," the Virginia State Crime Commission on the heels of the 2019 Virginia Beach mass shooting, and the Texas House Committee on Mass Violence and Community Safety following the 2019 mass shooting in an El Paso Walmart. I have more recently testified before the Senate Judiciary Committee and the House Judiciary Committee on an array of proposed gun control measures, recent nationwide spikes in violent crime, and keeping the nation's children safe from gun violence.

As may be obvious by that introduction, I am not an economist.

So why am I here, testifying before the Joint Economic Committee on the economic toll of gun violence? Why are any of my fellow witnesses, none of whom are economists or anything close to economists, here?

This committee on economic impact and policy has not called any economists to testify because it does not take anyone particularly skilled at math to tell you that gun violence imposes tremendous economic burdens every year. We may not be able to nail down its exact cost to taxpayers. We may disagree on the specifics of how best to calculate its annual price tag. But you did not call us because you are unsure whether gun violence is expensive or whether that expense is bad for the economy.

You called us because you need to know what to do about it.

This panel of witnesses and the testimony we give will sound very much like every other set of testimonies given by every other panel of witnesses at every other hearing on gun violence because it *is* the same problem, with the same solutions. There is nothing new or profound here. And it is time to stop pretending like we are not having the exact same discussion on the exact same policy disagreements about the exact same problems at these hearings. To summarize, lawful gun owners are largely not at fault for the problems of gun violence, while at the same time lawful gun ownership provides significant but underacknowledged protective economic value. Commonly proposed gun control policies are very unlikely to offer effective solutions because they either fail to understand or account for basic underlying realities of gun violence, or because they are patently unconstitutional. Often, they are both. Many of the

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policies that would be most effective at combating gun violence must be done at a state and local level, but Congress is not without methods or means of keeping the public safe and lowering the annual costs associated with gun violence.

## **I. Gun Violence Imposes A Significant Economic Burden, But Lawful Gun Owners Are Largely Not At Fault For These Costs.**

There are many ways of measuring the economic toll of gun violence. Some of these costs are obvious, direct, and easily calculable, like annual emergency medical costs associated with treating gun injuries (\$1 billion),<sup>2</sup> or lost wages and productivity from victims (\$49 billion).<sup>3</sup> Some costs are less direct and less readily calculable, such as depressed home values and stunted economic growth rates in communities that experience surges in gun violence, or the costs borne by the criminal justice system.<sup>4</sup> And some costs are simply too intangible to measure at all. How does one even begin to put a price tag on the mental and emotional toll of gun violence? In total, many analyses—though they are just best guesses that almost certainly undercount the true impact—estimate that gun violence costs this nation several hundred billion dollars every year.<sup>5</sup>

That is, on the one hand, an economic cost that is not particularly high compared to other types of social ills unassociated with a constitutionally protected right. Alcohol-attributed crimes alone are estimated to cost this country over \$85 billion a year.<sup>6</sup> The true overall cost of excessive drinking in 2010 was estimated to be over \$220 billion, and the Centers for Disease Control and Prevention has determined that excessive drinking kills more than 140,000 Americans every year.<sup>7</sup> The same detrimental economic impact is felt from vehicle crashes, with the National Highway Traffic Safety Administration estimating that the nation's economy suffered \$277 billion in direct economic losses because of car crashes in 2010, with an additional \$594 billion lost in indirect costs, for a total cost of just under \$1 trillion that must then be adjusted for inflation.<sup>8</sup> Total crime, committed with or without firearms, is estimated to cost nearly \$2.6 trillion every year.<sup>9</sup> But on the other hand, the fact that the nation bears significant costs from other

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<sup>2</sup> UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, FIREARM INJURIES: HEALTH CARE SERVICE NEEDS AND COSTS. GAO-21-515 (June 2021), <https://www.gao.gov/assets/gao-21-515.pdf>.

<sup>3</sup> Mark Follman et al., *The True Cost of Gun Violence in America*, MOTHER JONES (April 15, 2015), <https://www.motherjones.com/politics/2015/04/true-cost-of-gun-violence-in-america/>.

<sup>4</sup> See, e.g., Yasemin Irvin-Erickson et al., *Gun Violence Affects the Economic Health of Communities*, URBAN INSTITUTE (June 2017), [https://www.urban.org/sites/default/files/publication/90666/eigv\\_brief\\_0.pdf](https://www.urban.org/sites/default/files/publication/90666/eigv_brief_0.pdf);

<sup>5</sup> See Ivan Pereira, 'We All Bear A Burden': How Gun Violence Costs America \$280 Billion A Year, ABC News (Nov. 2, 2021), <https://abcnews.go.com/US/bear-burden-gun-violence-costs-america-280-billion/story?id=80245349>; Mark Follman et al., *The True Cost of Gun Violence in America*, Mother Jones (April 15, 2015), <https://www.motherjones.com/politics/2015/04/true-cost-of-gun-violence-in-america/>.

<sup>6</sup> Conor Harris & Charles Fain Lehman, *Fixing Drinking Problems: Evidence and Strategies for Alcohol Control as Crime Control*, MANHATTAN INSTITUTE (May 2022), <https://media4.manhattan-institute.org/sites/default/files/harris-lehman-evidence-and-strategies-for-alcohol-control-as-crime-control.pdf>.

<sup>7</sup> Centers for Disease Control and Prevention, *Excessive Drinking is Draining the U.S. Economy* (last updated Apr. 14, 2022), <https://www.cdc.gov/alcohol/features/excessive-drinking.html>; Jeffrey Sacks et al., *2010 National and States Costs of Excessive Alcohol Consumption*, 49 AM. J. PREVENTATIVE MED. E-73 (Nov. 1, 2015), [https://www.ajpmonline.org/article/S0749-3797\(15\)00354-2/fulltext](https://www.ajpmonline.org/article/S0749-3797(15)00354-2/fulltext).

<sup>8</sup> L.J. Blincoe et al., *The Economic and Societal Impact of Motor Vehicle Crashes, 2010*, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (Revised May 2015), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812013>.

<sup>9</sup> *New Research Examines the Cost of Crime in the U.S., Estimated to be \$2.6 Trillion in a Single Year*, Vanderbilt University (Feb. 5, 2021), <https://news.vanderbilt.edu/2021/02/05/new-research-examines-the-cost-of-crime-in-the-u-s-estimated-to-be-2-6-trillion-in-a-single-year/>.

social problems does not make gun violence any less worth addressing, especially considering the intensity of the emotional and mental impact associated with it.

To understand how best to address gun violence, we must first understand both its complexity and its underlying causes—including, importantly, the extent to which lawful gun owners perpetuate any specific type of gun violence.

### **A. Criminal Gun Violence Is Not Substantially Driven by Lawful Gun Owners**

Most of the costs of gun violence are associated with criminal gun violence, as opposed to gun suicides or accidental firearm deaths or injuries. Even though suicides account for roughly 60 percent of all gun deaths, there are hundreds of thousands of nonfatal criminal firearm victimizations every year, resulting in tens of thousands of nonfatal firearm injuries that require emergency department medical care.<sup>10</sup> Additionally, even where such criminal uses of firearms do not result in any injuries, they directly impact the economy through, for example, the value of stolen items or costs imposed on the criminal justice system. Unintentional firearm injuries and deaths together make up only about 1 percent of all gun deaths and injuries every year, and the problem has actually been steadily decreasing over the last two decades.<sup>11</sup>

There is little overlap between individuals who add to the negative economic cost of criminal gun violence and individuals whose lawful gun ownership adds a tremendous protective counterweight. While a small minority of lawful gun owners will, at some point, use their legally purchased and possessed firearms for criminal purposes, the overwhelming majority of them will never harm themselves or others with their firearms. There is no evidence that lawful gun owners are a substantial driving force behind criminal gun violence. Violent crime and homicide rates plummeted during the 1990s and early 2000s, despite the fact that the number of guns per capita increased by about 50 percent during that time.<sup>12</sup> Moreover, to whatever extent violent crime and lawful gun ownership rates are correlated, it is exceedingly difficult to show how a causal connection is possible given the evidence that most gun crimes are committed by individuals who are not in lawful possession of their firearms.<sup>13</sup> On the contrary, the

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<sup>10</sup> Grace Kena & Jennifer L. Truman, *Trends and Patterns in Firearm Violence, 1993–2018*, BUREAU OF JUSTICE STATISTICS NCJ 251663 (April 2022), <https://bjs.ojp.gov/content/pub/pdf/tpfv9318.pdf>. Importantly, nonfatal firearm crimes and injuries, just like firearm homicides, began declining dramatically during the 1990s and remained relatively stable during the first two decades of the 2000s, despite equally significant increases in the numbers of guns per capita.

<sup>11</sup> *Firearm Injury and Death in the United States*, VIOLENCE PREVENTION RESEARCH PROGRAM UNIVERSITY OF CALIFORNIA DAVIS at slide 5 (May 2021), [https://health.ucdavis.edu/what-you-can-do/FirearmInjurySlides\\_WYCD\\_May21.pdf](https://health.ucdavis.edu/what-you-can-do/FirearmInjurySlides_WYCD_May21.pdf); Centers for Disease Control & Prevention, WISQARS Data on Unintentional Firearm Deaths by Year (last visited July 18, 2022), <https://wisqars.cdc.gov/fatal-reports> (showing that the rate of over unintentional firearm deaths fell by roughly 50 percent between 1999 and 2019).

<sup>12</sup> Michael Planty & Jennifer L. Truman, *Firearm Violence, 1993–2011*, Bureau of Justice Statistics NCJ 241730 (May 2013), <https://www.bjs.gov/content/pub/pdf/fv9311.pdf>; Christopher Ingraham, *There Are More Guns Than People in the United States, According to A New Study of Global Firearm Ownership*, WASH. POST (June 19, 2018), <https://www.washingtonpost.com/news/wonk/wp/2018/06/19/there-are-more-guns-than-people-in-the-united-states-according-to-a-new-study-of-global-firearm-ownership/>.

<sup>13</sup> CITY OF CHICAGO OFFICE OF THE MAYOR, GUN TRACE REPORT (2017), <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/October/GTR2017.pdf> (finding that in 95 percent of cases where the Chicago Police Department was able to identify the possessor of the crime gun, “that individual was not the original, lawful possessor of the firearm based upon the ATF record at the initial point of purchase”); Megan E. Collins et al., *A Comparative Analysis of Crime Guns*, 5 RSF 96 (2017), <https://ccjs.umd.edu/sites/ccjs.umd.edu/files/pubs/COMPLIANT2->

best available evidence indicates that a small number of serial offenders are responsible for a majority of violent crimes, including of those carried out with firearms.<sup>14</sup> Many perpetrators of serious gun crimes are already prohibited from possessing firearms and obtained their firearms through illegal or informal channels.<sup>15</sup>

## B. Non-Criminal Gun Violence

Perhaps the most substantial overlap between lawful gun owners and gun violence occurs in the space of gun suicide. Gun suicides account for roughly 60 percent of all gun deaths every year, but only about half of all suicides involve the use of a firearm.<sup>16</sup> While the United States has a comparatively high rate of gun suicide, its overall age-standardized suicide rate is slightly lower than the European average, slightly higher than the OECD average, and is far lower than several countries with incredibly restrictive gun laws.<sup>17</sup> Importantly, it is not that gun ownership in and of itself increases the risk of suicide, but rather that individuals who are suicidal are far more likely to fatally harm themselves if they have ready access to lethal means.<sup>18</sup>

To a much lesser extent than with suicides, lawful gun owners contribute to the overall gun violence burden when they are used in negligent or reckless ways to cause accidental deaths or injuries, many times through irresponsible storage or unsafe handling practices. These unintentional deaths and injuries

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[Megan%20E.%20Collins%2C%20Susan%20T.%20Parker%2C%20Thomas%20L.%20Scott%2C%20and%20Charles%20F.%20Wellford.%20A%20Comparative%20Analysis%20of%20Crime%20Guns.pdf](#) (analyzing trace report data that generally shows crime guns are most typically not possessed by the initial lawful purchase at the time they are used in crimes).

<sup>14</sup> United States Sentencing Commission, *Recidivism Among Federal Firearm Offenders* (June 2019), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190627\\_Recidivism\\_Firearms.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/20190627_Recidivism_Firearms.pdf); Philip J. Cook, et al., *Criminal Records of Homicide Offenders*, 294 JAMA 598 (2005), <https://jamanetwork.com/journals/jama/fullarticle/201308>; Keith Daniels, *Vicious Cycle of Repeat Offenders Fueling Crime in Baltimore*, Fox 5 News (Mar. 11, 2022), <https://foxbaltimore.com/news/local/vicious-cycle-of-repeat-offenders-fueling-crime-in-baltimore-attorney-suggests-solution>; NATIONAL INSTITUTE FOR CRIMINAL JUSTICE REFORM, GUN VIOLENCE PROBLEM ANALYSIS SUMMARY REPORT (Dec. 2021), [https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/release\\_content/attachments/DC%20Gun%20Violence%20Problem%20Analysis%20Summary%20Report.pdf](https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/release_content/attachments/DC%20Gun%20Violence%20Problem%20Analysis%20Summary%20Report.pdf).

<sup>15</sup> See, e.g., Mariel Alper & Lauren Glaze, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016*, NCJ 251776 (Jan. 2019), <https://www.bjs.gov/content/pub/pdf/suficspi16.pdf> (finding, in a study of over 287,000 prisoners who possessed a firearm during their offense, 43 percent obtained it “off the street or from the underground market,” 14 percent obtained it via theft or found it at the location of the crime, while 25 percent had “obtained it from a family member or friend, or as a gift”);

<sup>16</sup> Centers for Disease Control & Prevention, *Suicide and Self-Harm Injury* (last reviewed July 13, 2022), <https://www.cdc.gov/nchs/fastats/suicide.htm> (showing that out of 45,979 suicides in 2020, 24,292 involved the use of a firearm compared to 21,687 that involved other lethal means).

<sup>17</sup> See *Death Rate from Suicides, 1990 to 2019*, OUR WORLD IN DATA (last visited July 17, 2022), <https://ourworldindata.org/grapher/suicide-death-rates?tab=chart&country=USA~GBR~European+Region+%28WHO%29~OECD+Countries~BEL~KOR~JPN~LTU~DEU>; This is consistent with findings that gun prevalence, while associated with increases in gun suicide rates, is not associated with increases in overall suicide rates. See Gary Kleck, *Macro-Level Research on the Effect of Firearms Prevalence on Suicide Rates: A Systematic Review and New Evidence*, Social Science Quarterly (2019), <https://www.hoplophobia.info/wp-content/uploads/2015/08/2019-The-Effect-of-Firearms-Prevalence-on-Suicide-Rates.pdf>.

<sup>18</sup> Eric W. Fleegler, *Our Limited Knowledge of Youth Suicide Risk and Firearm Access*, JAMA Network (October 8, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2784797>).

account for only about 1 percent of all gun deaths or injuries in any given year, though they appear to be the type of gun violence most likely to involve death or injury to children. However, it is difficult to know how many of these unintentional deaths and injuries involve lawful, as opposed to unlawful, gun owners. For example, the gun control group Everytown for Gun Safety tracks the number of accidental shootings by juveniles. Through the first five months of 2022, the group recorded 126 such shootings, resulting in 55 deaths and 78 injuries.<sup>19</sup> While some of these instances clearly involve guns that were lawfully owned (though sometimes illegally carried), the news reports and summaries often fail to indicate where the firearms at issue came from and whether they were lawfully possessed by the person whose reckless or negligent conduct led to the death or injury. A quick analysis of similar cases in recent months shows that, where such information is available, a meaningful percentage involve unlawful owners.<sup>20</sup>

A major driving force behind criminal gun violence in this country is illegal firearm trafficking and the robust black market for firearms. Unfortunately, a significant source of these illegally trafficked and black market firearms is the mind-blowing number of guns that are stolen from lawful gun owners every year. The best available estimates suggest that tens of thousands, if not hundreds of thousands, of firearms are stolen annually from lawful gun owners, often finding their way into the hands of criminals through illegitimate channels.<sup>21</sup> Many of these firearms are taken from unattended vehicles.<sup>22</sup>

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<sup>19</sup> #NotAnAccident, EVERYTOWN FOR GUN SAFETY (Updated May 28, 2022), <https://everytownresearch.org/maps/notanaccident/>.

<sup>20</sup> See, e.g., *Minneapolis Parents Charged in Shooting of 3-Year-Old Boy*, FOX 9 KMSP (June 13, 2022), <https://www.fox9.com/news/minneapolis-parents-charged-in-shooting-of-3-year-old-boy> (alleging that child shot and injured himself with loaded firearm left unattended in a bedroom by the father, who was prohibited from possessing guns or ammunition because of an ongoing court case); Associated Press, *Milwaukee Man Charged in Death of Child Who Discovered Gun*, News 8000 (July 8, 2022), <https://www.news8000.com/milwaukee-man-charged-in-death-of-child-who-discovered-gun/> (alleging that child shot himself with loaded firearm left unattended by prohibited possessor who was already convicted of reckless homicide in a previous case); Noah Feit, *Pregnant Woman Shot by Son While Waiting in Rush's Drive-Thru, Lexington County Cops Say*, THE STATE (June 9, 2022), <https://www.thestate.com/news/local/crime/article262346307.html> (autistic boy found firearm in car that the mother alleges belongs to one of her boyfriend's friends, who may or may not have been carrying illegally); Report: *Jacksonville Felon Wasn't Home When 3-Year-Old Died by Self-Inflicted Gunshot Wound*, First Coast News (Apr. 5, 2022), <https://www.firstcoastnews.com/article/news/crime/reports-shed-new-light-what-led-jacksonville-mans-arrest-connection-toddlers-death-self-inflicted-gunshot/77-93bf40b8-f226-448b-a3b5-08b195faa2db> (gun used in accidental shooting belonged to a prohibited possessor); Jim Melwert, *DA: 4-year-old Accidentally Shot, Killed Self With 18-year-old Brother's Loaded Gun in Coatesville*, KYP NEWS RADIO (March 15, 2022), <https://www.audacy.com/kywnewsradio/news/local/victor-lara-ortiz-charged-brother-shot-self-gun-coatesville> (gun belonged was bought via straw purchase by individual who lied on his firearm application and then illegally transferred to 18-year-old who was not old enough to buy it himself); Gabriella Killet, *Toddler Shot at Costco Wounded Self With Stolen Gun His Brother Left in Car, Police Say*, NOLA.com (July 13, 2022), [https://www.nola.com/news/crime\\_police/article\\_98d09452-02d2-11ed-abae-6bc9342695f1.html](https://www.nola.com/news/crime_police/article_98d09452-02d2-11ed-abae-6bc9342695f1.html) (firearm at issue was stolen by teenager too young to legally purchase it).

<sup>21</sup> See Lynn Langton, *Firearms Stolen During Household Burglaries and Other Property Crimes, 2005-2010*, Bureau of Justice Statistics NCJ Number 239436 (Nov. 2012), <https://bjs.ojp.gov/library/publications/firearms-stolen-during-household-burglaries-and-other-property-crimes-2005>; David Hemenway et al., *Whose Guns Are Stolen? The Epidemiology of Gun Theft Victims*, 4 Injury Epidemiology 1 (2017).

<sup>22</sup> See, e.g., Martin Kaste, *More Guns in Cars Means More Guns Stolen From Cars*, NPR (May 9, 2019), <https://www.npr.org/2019/05/09/717178960/more-guns-in-cars-mean-more-guns-stolen-from-cars>; Catherine Catoura, *Atlanta Police Ask For Public's Help Reducing Number of Guns Stolen From Cars*, CBS 46 (Nov. 27, 2021), [https://www.cbs46.com/news/atlanta-police-ask-for-publics-help-reducing-number-of-guns-stolen-from-cars/article\\_1dc29130-4fcb-11ec-8f74-4f24fd0c082b.html](https://www.cbs46.com/news/atlanta-police-ask-for-publics-help-reducing-number-of-guns-stolen-from-cars/article_1dc29130-4fcb-11ec-8f74-4f24fd0c082b.html); Julie Moreno, *SAPD Urges People Not To Leave Firearms In Unattended Vehicles After 1,500 Guns Stolen From Cars in 2021*, KSAT 12 (Nov. 30, 2021), <https://www.ksat.com/news/local/2021/11/30/sapd-urges-people-not-to-leave-firearms-in-unattended-vehicles-after-1500-guns-stolen-from-cars-in-2021/>.

## II. Lawful Gun Ownership Provides An Equally Significant Protective Economic Impact

To the extent that lawful gun ownership has a negative impact on the economy by contributing to the overall burden of gun violence, it also has an equally significant protective impact on the economy. One way in which lawful gun ownership offers significant protective economic value is through the regular successful interruption of criminal activity. According to almost every major study on the issue, Americans use their firearms in legitimate self-defense between 500,000 and 3 million times a year, substantially decreasing costs associated with crime.<sup>23</sup> Because most of these defensive gun uses do not involve a gun being fired and are therefore not likely to be reported in publicly available outlets, if officially reported at all, it is difficult to even construct a framework for assessing the protective value based on lives saved, injuries prevented, property retained, or criminal justice burdens reduced as a result of these defensive gun uses. If it is assumed that the general distribution of thwarted crimes is similar to the distribution of completed crimes,<sup>24</sup> then the probable protective value for even 1 million defensive gun uses is considerable.<sup>25</sup>

This protective impact largely comes with little statistical risk to gun owners. In fact, the best, most comprehensive studies on crime victimization in the United States have found that victims who forcefully resist crimes are less likely to suffer serious injury or property loss than those who do not offer resistance.<sup>26</sup> This is true even though victims who defend themselves with weapons often resort to such armed resistance precisely because they faced disadvantageous circumstances, such as being outnumbered or confronted by armed assailants.<sup>27</sup> These conclusions are consistent with my own analysis of, and experiences interacting with, the Heritage Foundation's internal data from our Defensive Gun Use Database, which contains thousands of media-verified reports of defensive gun uses since January 1, 2019. Analysis of these media-verified defensive gun uses indicates that individuals who use firearms in

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<sup>23</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, PRIORITIES FOR RESEARCH TO REDUCE THE THREAT OF FIREARM-RELATED VIOLENCE, at 15 (2013), <https://www.nap.edu/read/18319/chapter/3#15>.

<sup>24</sup> In recent years, property crimes have accounted for roughly 85 percent of all crimes, compared to 15 percent for violent crimes. See, e.g., Federal Bureau of Investigation, Uniform Crime Report 2019: Violent Crime, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/violent-crime>; Federal Bureau of Investigation, Uniform Crime Report 2019: Property Crime, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/property-crime>.

<sup>25</sup> Using the RAND Corporation's 2010 Cost of Crime Calculator and adjusting for inflation using readily available inflation calculators, one can roughly estimate the value of 1 million defensive gun uses in an assumed reality of similar distribution to completed crimes. See RAND Corporation, Cost of Crime Calculator, <https://www.rand.org/well-being/justice-policy/centers/quality-policing/cost-of-crime.html>. For example, the inflation-adjusted estimated cost of murder under the RAND calculator is \$11.8 million per offense, with the assumed distribution resulting in 2100 thwarted murders (1.4 percent of the estimated 150,000 violent crimes prevented), for an approximate protective value of \$24 billion in prevented murders alone.

<sup>26</sup> See, e.g., Gary Kleck & Jongyeon Tark, *Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes*, 42 CRIMINOLOGY 861 (2004); Stephen M. Schnebly, *An Examination of the Impact of Victim, Offender, and Situational Attributes on the Deterrent Effect of Defensive Gun Use: A Research Note*, 19 JUSTICE QUARTERLY 377 (2002); Lawrence Southwick Jr., *Self-defense with Guns: The Consequences*, 28 J. CRIM. JUSTICE 351 (2000); Studies with contrary findings universally rely on irrelevant tests and fail to control for key confounders that consistently bias results against the effectiveness of armed resistance. See Gary Kleck, *How Hemenway and Solnick Distorted the Effectiveness of Defensive Gun Use* (Last revised June 28, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3659333](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3659333).

<sup>27</sup> Gary Kleck & Jongyeon Tark, *Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes*, 42 CRIMINOLOGY 861, 897 (2004).

self-defense rarely incur injuries, and of those who are injured, a majority sustain only minor or moderately severe injuries that do not require inpatient hospitalization. Importantly, almost all injuries in our records occurred before the defensive gun use, or during the defensive gun use but after the assailant made his or her violent intentions clear. In other words, it was not the defensive gun use that caused the assailant to physically harm the victim, but the defensive gun use that stopped the scenario from becoming worse.

Even during the minority of completely unsuccessful gun uses, in many cases, the victim had nothing to lose by acting defensively, because the offender's intent to harm them was already manifest. Consider just one example from the small minority of unsuccessful defensive gun uses since January 1, 2021. In Arizona, two men—one of them wielding a baseball bat—forced their way into a hotel room and began hitting one victim with the bat. A second victim walked out of the bathroom with a firearm and fatally shot one of the assailants before running out of ammunition. The second assailant then beat the armed but now-defenseless victim to death.<sup>28</sup> Additionally, contrary to common talking points by some gun control activists, lawful gun owners who use their firearms in self-defense are rarely overpowered by assailants who take their guns and use them against the victims, especially compared to the number of times guns are successfully used in self-defense.<sup>29</sup>

Not only are armed civilians better able to resist criminal activity when it occurs, but according to criminals themselves, knowing that potential victims might be armed effectively deters many crimes in the first place. According to one survey of imprisoned felons, roughly one-third reported being “scared off, shot at, wounded or captured by an armed victim,” while forty percent admitted that they had refrained from attempting to commit a crime out of fear that the victim was armed.<sup>30</sup> Well over half of the surveyed felons acknowledged that they would not attack a victim they knew was armed and almost three-quarters agreed that “one reason burglars avoid houses where people are at home is that they fear being shot.”<sup>31</sup> Importantly, the study also found that felons from states with the greatest relative number of privately owned firearms registered the highest levels of concern about confronting an armed victim.<sup>32</sup>

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<sup>28</sup> Nienke Onneweer, *Phoenix Police Arrest Suspect in Deaths of 2 Men in Phoenix Hotel Confrontation*, ARIZONA REPUBLIC (Feb. 19, 2021), <https://www.azcentral.com/story/news/local/phoenix-breaking/2021/02/19/leonard-haggiu-arrested-deaths-gerald-feistner-rafed-al-izawi/4503050001/>.

<sup>29</sup> See, e.g., Amy E. Swearer, *Defensive Gun Use in the Context of Intimate Partner Domestic Violence*, Heritage Foundation (June 21, 2022), <https://www.heritage.org/testimony/defensive-gun-use-the-context-intimate-partner-domestic-violence> (finding only one case since January 1, 2021, where, in a domestic violence context, a defensive gun user was overpowered and had her gun taken then immediately used against her). Outside of a domestic violence context, there are several more available examples where victims had their firearms taken and used against them. Zak Wellerman, *Marshall Man Accused of Killing East Texas Pastor Declared Incompetent to Stand Trial*, MARSHALL NEWS MESSENGER (updated Dec. 31, 2021), [https://www.marshallnewsmessenger.com/news/marshall-man-accused-of-killing-east-texas-pastor-declared-incompetent-to-stand-trial/article\\_6e53c0fe-8cb4-5e23-8ff8-e496dd723d90.html](https://www.marshallnewsmessenger.com/news/marshall-man-accused-of-killing-east-texas-pastor-declared-incompetent-to-stand-trial/article_6e53c0fe-8cb4-5e23-8ff8-e496dd723d90.html); Bill Gluber et al., *A Man's Shocking Downward Spiral Ended In Shocking Shooting*, MILWAUKEE JOURNAL SENTINEL (Feb. 15, 2021), <https://www.jsonline.com/story/news/2021/02/15/reports-interviews-reveal-tragic-steps-leading-kewaskum-tragedy/6713561002/>; Jonathan Cotto, *2 Men Wounded in Shooting During Altercation At RV Park, Police Say*, KSAT 12 (Aug. 27, 2021), <https://www.ksat.com/news/local/2021/08/27/2-men-wounded-in-shooting-during-altercation-at-rv-park-police-say/>. But these must be compared against well over 1,000 successful media-verified gun uses, compared to only 137 in the context of intimate partner domestic violence.

<sup>30</sup> James D. Wright & Peter H. Rossi, *The Armed Criminal in America: A Survey of Incarcerated Felons*, NATIONAL INSTITUTE OF JUSTICE 26 (July 1985), <https://www.ojp.gov/pdffiles1/Photocopy/97099NCJRS.pdf>.

<sup>31</sup> *Id.* at 27.

<sup>32</sup> *Id.*



This is consistent with the conclusions of a study that analyzed the effect of a Memphis newspaper listing all Tennessee residents with a handgun carry permit in a publicly accessible database, locating them within their five-digit zip code. The database received more than a million views in 2009.<sup>33</sup> The study's authors concluded that, in the months following a newspaper article that dramatically increased online traffic to the database, zip codes with higher densities of carry permit holders experienced a 20 percent relative decrease in burglaries compared to zip codes with lower densities of carry permit holders.<sup>34</sup>

International data, too, seems to indicate that criminals generally consider the likelihood of armed resistance and adapt their behavior accordingly. According to one study, only about 13 percent of burglaries in the United States take place when then occupants are home, a rate far lower than in many other developed countries like Canada, Great Britain, and the Netherlands.<sup>35</sup> Because these “hot burglaries” are far more likely to result in an assault against a victim than are burglaries of unoccupied homes, it is relatively easy to predict—as several researchers have—that the lower percentage of hot burglaries in the United States results in over half a million fewer assaults every year than would otherwise occur if the percentage of hot burglaries was on par with these other countries, saving the nation billions of dollars in avoided crime costs.<sup>36</sup>

Finally, armed civilians played a significant but underacknowledged role in stopping active shooters, including those bent on acts of mass public violence. While mass public shootings account for only a fraction of a percent of gun deaths every year, they have an oversized role in both gun policy discussions and general feelings of safety in public spaces. Despite the common suggestion from gun control activists that “good guys with guns never stop mass shootings,” the reality is that many mass public shootings occur in locations where law-abiding civilians are prohibited from being armed. However, of those mass public shootings that occur in areas where law-abiding civilians may be armed, armed citizens successfully intervene in almost half of them.<sup>37</sup> In the last five weeks, three armed civilians have stopped active shooters long before law enforcement arrived on the scene, saving countless numbers of lives.<sup>38</sup>

Not only do lawful gun owners have a protective impact on the economy by thwarting and deterring crime, but the lawful gun industry contributes to the economy in significant ways. In 2021, it was estimated that the firearm and ammunition industry generated over \$70 billion dollars in total economic activity.<sup>39</sup> It directly employed almost 170,000 Americans in the manufacture, distribution, and sales of

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<sup>33</sup> Alessandro Acquisti & Catherine Tucker, *Guns, Privacy, and Crime*, National Bureau of Economic Research Working Paper 29940 (April 2022), <https://www.nber.org/papers/w29940>.

<sup>34</sup> *Id.*

<sup>35</sup> David B. Kopel, *Lawyers, Guns, and Burglars*, 43 ARIZONA L. REV. 345 (2001), <https://davekopel.org/2A/LawRev/LawyersGunsBurglars.htm#FN:F107>.

<sup>36</sup> *Id.* Importantly, these dollar amounts likely increase significantly when accounting for inflation.

<sup>37</sup> John R. Lott, *Corrections to the FBI's Reports on Active Shooting Incidents*, CRIME PREVENTION RESEARCH CENTER (June 1, 2022), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3857331](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3857331).

<sup>38</sup> *Police: Woman Killed Man Who Fired Rifle Into Party Crowd*, ABC NEWS (May 26, 2022), <https://abcnews.go.com/US/wireStory/police-woman-killed-man-fired-rifle-party-crowd-85002437>; Sam Burdette, *Surprise Shooter Acted in Self-Defense During Home Attack, Police Say*, ARIZONA REPUBLIC (July 11, 2022), <https://www.azcentral.com/story/news/local/surprise-breaking/2022/07/11/shooter-surprise-fatal-shooting-killed-self-defense-police-say/10034340002/>; Cheney Orr & Brendan O'Brien, *Witness to Indiana Mall Shooting Praised for Killing Gunman*, REUTERS (July 18, 2022), <https://www.reuters.com/legal/government/indiana-passer-by-hailed-after-shooting-mall-gunman-2022-07-18/>.

<sup>39</sup> NATIONAL SHOOTING SPORTS FOUNDATION, FIREARM AND AMMUNITION INDUSTRY ECONOMIC IMPACT REPORT 2022 (2022), <https://www.nssf.org/wp-content/uploads/2022/03/2022-Firearm-Ammunition-Industry-Economic-Impact.pdf>.

firearms and ammunition, with an additional 206,000 jobs generated in supplier and ancillary industries. All of this generates sizeable tax revenue—the industry and its employees paid over \$7.8 billion in property, income, and sales taxes in 2021.<sup>40</sup>

### **III. Policymakers Can and Should Address the Costs of Gun Violence Without Undermining the Protective Economic Impact of Lawful Gun Ownership**

Fortunately for policymakers, this does not come down to a choice between the costs of gun violence versus the protective economic benefits of lawful gun ownership.

#### **A. Policy Assessment: What Doesn't Work**

All of these proposals would impose significant enforcement costs on the economy while proving to be either constitutionally problematic or failing to meaningfully address gun violence in a way that lowers the economic costs associated with it.

##### *Red Flag Laws*

Red flag laws—also known as extreme risk protection orders—have come into the national spotlight over the last four years as a potential method of addressing a real and serious concern with respect to mass public shooters. With perhaps one notable exception, every mass public shooter in recent history passed a background check and legally procured firearms, often despite showing very alarming signs of being a danger to self or others.<sup>41</sup> This is also unfortunately the case for many people who commit suicide with a firearm, which accounts for nearly 6-in-10 gun deaths every year.

Many individuals who are either suicidal or considering acts of mass public violence are able to pass background checks largely because federal law provides only a limited number of ways in which individuals lose their Second Amendment rights, most commonly by conviction of a felony or domestic violence misdemeanor, or by involuntary commitment to an inpatient mental health facility. People who have their Second Amendment rights revoked in this manner face a real likelihood of never having them restored, and these are, therefore, severe measures requiring that very high legal thresholds be met. Involuntary commitment, in particular, is often reserved for only the most serious of mental health crises, a problem often compounded by a lack of adequate inpatient mental health infrastructure in many states.

There are, at least in theory, constitutional ways of temporarily restricting gun ownership for individuals who are clearly a danger to themselves or others, regardless of whether they suffer from a diagnosable mental illness or have yet to commit a disqualifying felony. That said, the right to keep and bear arms is a fundamental constitutional right, and any deprivation of that right—even temporarily and for compelling

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<sup>40</sup> *Id.*

<sup>41</sup> The one possible exception is the individual who fatally shot seven people and wounded two dozen others during a shooting spree in Odessa, Texas, in August of 2019. That individual had, in fact, previously failed a background check and utilized an intrastate private sale to acquire his weapon. Dan Frosch & Sadie Gurman, *Texas Shooter Had Been Banned From Buying Firearms Because He Was Mentally Unfit*, Wall St. J. (Sept. 4, 2019). Of note, however, is the fact that the private seller from which he purchased the gun later pled guilty to violating federal law, and should have been required under the circumstances to obtain a Federal Firearms License and conduct a background check on prospective purchasers. Associated Press, *Seller of Gun Used in 2019 Texas Mass Shooting Gets 2 Years* (Jan. 7, 2021), <https://apnews.com/article/seth-aaron-ator-shootings-lubbock-texas-odessa-c18dce36fe8a5df583bdf5505ee8509b>.

reasons—requires the highest standards of due process. The closest corollary to red flag laws is the civil mental health commitment process for individuals alleged to be mentally ill and dangerous. While red flag laws raise additional concerns and aren't perfectly analogous, the civil commitment process provides at least a starting point for bare minimum due process standards—the right to an attorney, to cross-examine witnesses, and to testify on one's own behalf; the burden of the state to continually prove its case by clear and convincing evidence; ex parte or emergency orders limited only to serious threats of imminent harm; and principles limiting deprivations to the least restrictive means necessary.

Moreover, from the perspective of sound public policy, any red flag law should include comprehensive and detailed practical considerations, like specifying the methods for notifying defendants of the allegations and their rights, for storing seized firearms and returning them to their owners, for immediately remedying clear mistakes (such as cases of mistaken identity), and for promptly restoring a person's Second Amendment rights after orders expire. Just as importantly, any palatable law should be fully integrated with existing mental health, domestic violence, and addiction treatment infrastructures, and otherwise ensure that the process adequately addresses the underlying problems that led a person to be dangerous in the first place. It should never be about simply disarming people, but about restoring them to a point where they are no longer dangerous.

These are very important aspects of the theory behind red flag laws. Unfortunately, of the more than 20 red flag laws already on the books at the state level, not one adequately addresses all of the very real concerns that come with deprivations of a fundamental right. Some states have admittedly done a better job addressing these concerns than others—for example, Colorado's law is far less objectionable than New Mexico's—but all of them come up short in key areas, such as authorizing the use of low burdens of proof or failing to provide any mechanism for ensuring those deemed dangerous receive help. In short, states have proven themselves either unable or unwilling to ensure that red flag laws pass constitutional muster in practice, undermining the theory as a whole.

Worse, as advocates push for these laws at a federal level, there are even greater concerns about the federal government's role. There are two methods regularly floated by advocates of federal intervention on red flag laws: a "true" federal red flag law and a federal law that financially incentivizes states to adopt red flag laws that meet certain minimum standards outlined by Congress. Both ideas suffer from serious theoretical and practical problems.

Any "true" federal red flag law—one that enables red flag petitions to be filed through the federal court system—would likely suffer from a serious constitutional flaw. The federal government, unlike state governments, lacks general "police powers" and cannot broadly regulate the public safety, except in those limited scenarios specified by the Constitution.

While courts have broadly construed the federal government's ability to regulate "interstate commerce," they have also drawn a line at comparable laws criminalizing gun possession on school grounds. This is part of the reason why similar restraining orders based on violent behavior are exclusively issued at a state level. Additionally, there is no widely available mental health or addiction treatment framework at a federal level, nor is there a true federal equivalent of a local police force authorized to enforce federal red flag orders. That creates substantial practical barriers that all but ensure a "true" federal red flag law would fall short of providing dangerous or suicidal individuals with the help they desperately need.

As for a federal bill that attaches federal funding to the adoption of state red flag laws, that raises its own concerns. It is very unlikely that any set of minimal federal standards would compel states to provide either adequate due process protections or the sort of comprehensive, detailed approach necessary to avoid objection. That is especially true if the Justice Department’s recently issued “model red flag law” is any indication of where federal advocates stand on this issue. The model law contains numerous nonstarters, including allowing a defendant’s rights to be revoked at one-sided, ex parte hearings based on nothing more than “reasonable cause,” an incredibly low burden of proof when dealing with fundamental constitutional rights.

The federal government should not bribe states into adopting a bare-bones framework for red flag laws, especially when states thus far have a less-than-stellar track record of writing and implementing them on their own. There is, frankly, no reason to believe that states desiring this federal funding would go through the rigorous process of fleshing out the federal minimum standards with sufficient safeguards. Any red flag laws would have to be much better than they are in states that have already taken a swing at them. The federal government in all likelihood will not improve upon laws passed at the state level and has other constitutional restraints on its ability to legislate in this area.

### *Universal Background Checks*

Most people agree that it is both constitutional and reasonable to prohibit certain individuals from possessing firearms because they have demonstrated a high risk of danger to themselves or others.<sup>42</sup> Federal law reflects this consensus by barring convicted felons and those with histories of serious mental health problems from legally purchasing or possessing firearms unless their civil rights have been restored.<sup>43</sup> In 1993, Congress strengthened the means of enforcing these prohibitions by establishing the National Instant Criminal Background Check System (NICS index) and requiring that Federal Firearms Licensees (FFLs) request FBI background checks through this index on all prospective firearm purchasers. Moreover, any person or entity “engaged in the business of dealing firearms” must go through the arduous process of obtaining a federal firearms license.<sup>44</sup>

Under current federal law, then, it does not matter whether the gun sale or transfer takes place at a gun show, in a brick-and-mortar store, or over the internet. The vast majority of lawful gun transfers require a background check. The only time federal law does not mandate a background check is when a non-FFL sells or transfers a gun to a resident of the same state. Even then, it is unlawful for a person to sell or transfer a gun to anyone he or she “know[s] or [has] reasonable cause to believe” is prohibited from possessing that firearm.<sup>45</sup> Importantly, part of the reason for this limited exception for the background

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<sup>42</sup> This general agreement does not necessarily extend to laws that permanently disarm non-violent felons or fail to restore the rights of individuals who previously suffered from serious mental health issues but have been of sound mind for many years. See Amy Swearer, *Long-standing and Presumptively Lawful? Heller’s Dicta vs. History and Dicta*, HERITAGE FOUND. LEGAL MEMORANDUM NO. 238 (Nov. 5, 2018), <https://www.heritage.org/sites/default/files/2018-11/LM-238.pdf>.

<sup>43</sup> See 18 U.S.C. § 922(g).

<sup>44</sup> See generally FEDERAL BUREAU OF INVESTIGATION, ABOUT NICS (last accessed Mar. 20, 2021), <https://www.fbi.gov/services/cjis/nics/about-nics>; Amy Swearer, *Let Us Reason Together: A More Effective, Less Partisan Approach to Gun-Related Violence*, 44 SIU L. J. 1, 18–19 (2019), <https://law.siu.edu/common/documents/law-journal/articles%20-%202019/fall-2019/1---Swearer-jr.pdf>.

<sup>45</sup> For a more in-depth analysis of the fact-specific tests determining who does or does not require a federal firearms permit, see BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, DO I NEED A LICENSE TO BUY AND SELL FIREARMS?, ATF Publication 5310.2 (Jan. 2016), <https://www.atf.gov/file/100871/download>.

check mandate is that only FFLs can request NICS background checks. Private citizens cannot simply call up the FBI and easily determine the status of prospective buyers.

Nevertheless, universal background checks are centered on a legitimate concern: would-be criminals can plausibly use private intrastate sales by non-FFLs to circumvent background checks that would catch their prohibited status. Recent decades have given rise to online gun advertising platforms for stranger-to-stranger sales—situations where the seller is unlikely to have sufficient knowledge of the buyer to believe he or she is anything other than a law-abiding citizen. It is not inherently unreasonable to be concerned about how criminals in general might abuse these types of publicly advertised private gun sales.

The problem is that, in practice, bills put forward to address this legitimate concern have been poorly written and routinely suffer from far more problems than they could ever hope to address. Requiring background checks on private intrastate gun sales is, at best, a low-reward endeavor. Even in a best-case scenario where everyone willing to abide by the law does so, universal background checks fail to meaningfully address the primary ways in which would-be criminals obtain firearms. Most would-be criminals do not get their firearms through legitimate or formal sources but through black market gun sales, straw purchases, and informal transfers by friends or family members who likely already know the gun could be used for criminal purposes.<sup>46</sup> When would-be criminals do go through licensed dealers, it is presumably because they do not have disqualifying criminal or mental health histories and can pass a background check.<sup>47</sup> To whatever extent universal background checks may make it more difficult for prohibited people to obtain guns from strangers, they do nothing to address the plethora of other avenues available for the same purpose. There is a reason why studies routinely show that universal background checks, in and of themselves, have no effect on crime or suicide rates.<sup>48</sup>

Despite this low-reward reality, universal background check bills—including many of the ones considered by this very body in recent years—seemingly go out of their way to impose heavy burdens on law-abiding gun owners making common, low-risk transfers, or temporary transfers. Perhaps worse, they have been written in ways that deter gun owners from taking some of the most commonsense, responsible, and even life-saving measures with their firearms. The fact that these bills keep getting traction without these very real concerns being addressed only underscores a very real fear by many gun owners that universal background checks will be used as the gateway to a de facto national gun registry.

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<sup>46</sup> See, e.g., Mariel Alper & Lauren Glaze, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016*, NCJ 251776 (Jan. 2019), <https://www.bjs.gov/content/pub/pdf/suficspi16.pdf> (finding, in a study of over 287,000 prisoners who possessed a firearm during their offense, 43 percent obtained it “off the street or from the underground market,” while 25 percent had “obtained it from a family member or friend, or as a gift”).

<sup>47</sup> See *id.* at 8. Only 7 percent of prisoners had purchased their gun under their own name from a licensed dealer, while only 1 percent “purchased a firearm from a licensed dealer at a retail store but did not purchase it under their own name”).

<sup>48</sup> See, e.g., Alvaro Castillo-Carniglia et al., *California’s Comprehensive Background Check and Misdemeanor Violence Prohibition Policies and Firearm Mortality*, 30 ANNALS OF EPIDEMIOLOGY 50 (Feb. 2019), <https://www.sciencedirect.com/science/article/abs/pii/S1047279718306161> (concluding that these policies were not associated with changes in firearm homicides in California, that changes in firearm suicides were similar to changes in non-firearm suicides, and that these findings in California are consistent with other recent evaluations of extended background check policies); Rose Kagawa et al., *Repeal of Comprehensive Background Check Policies and Firearm Homicide and Suicide*, 29 EPIDEMIOLOGY 494 (July 2018), <https://pubmed.ncbi.nlm.nih.gov/29613872/> (finding no evidence of an association between the repeal of comprehensive background check policies and firearm homicide and suicide rates in Indiana and Tennessee).

If Congress wants to pursue background checks for intrastate private sales, it should do so only with bills that are narrowly tailored to address the underlying problem without creating new and more significant problems. Instead of expanding the background check mandate to a variety of low-risk or temporary transfers, expansion could be limited to all publicly advertised sales regardless of the seller's FFL status. Congress could also consider modifying the existing background check system to allow non-FFLs some means of accessing the NICS system when conducting publicly advertised sales. Finally, the language for the “danger” exemptions could be significantly broadened to ensure the bill does not create needless and irrational barriers to potentially life-saving gun transfers.<sup>49</sup>

### Mandatory “Safe Storage” Requirements

Another common proposal is that of mandatory “safe storage” requirements for gun owners with juveniles in their homes. At their core, these laws seek to address a common theme among juvenile gun deaths—juvenile access to family firearms, which plays a role in both juvenile suicides and accidental deaths or injuries that result from juveniles handling firearms without supervision. Importantly, a person does not become more or less suicidal, or more or less prone to violence, based on mere access to a firearm.<sup>50</sup> However, when individuals who are already suicidal or prone to violence have access to a firearm, it increases the likelihood they will be able to seriously harm themselves or others.<sup>51</sup>

From a fundamental level, the federal government does not have either the constitutional authority to pass such laws or the practical capacity to enforce safe storage requirements. As with “true” federal red flag laws, the federal government lacks the general police power reserved to the states under the 10th Amendment, as well as any general police force to ensure these laws are followed. Even at a state level, pre-emptive enforcement is a practical impossibility. Even in an absurd (and blatantly unconstitutional) scenario where law enforcement officers could go door-to-door conducting mass warrantless searches for violations, the negative criminal justice implications of having their parents arrested would far outweigh any potential benefit to at-risk children.

These laws also suffer from practical problems, namely, that they may not actually work nearly as well as proponents suggest. While “child access prevention laws are associated with lower fatality rates among younger children,” they “may not alter the risk among older youth” who are far more likely to experience suicidality or engage in criminal behaviors.<sup>52</sup> As the same time, many gun owners teach their children principles of marksmanship, gun safety, and responsible gun ownership from an early age, and those juveniles—especially older ones—routinely access family firearms to save lives.<sup>53</sup> Moreover, these laws

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<sup>49</sup> See also David B. Kopel, *Background Checks for Firearms Sales and Loans: Law, History, and Policy*, 53 HARV. J. LEGISLATION 303 (2016); David B. Kopel, *Textual Analysis of H.R. 8, Bill to “Require A Background Check for Every Firearm Sale”*, REASON (Jan. 9, 2019), <https://reason.com/volokh/2019/01/09/textual-analysis-of-hr8-bill-to-to-requi/>.

<sup>50</sup> Eric W. Fleegler, *Our Limited Knowledge of Youth Suicide Risk and Firearm Access*, JAMA NETWORK (October 8, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2784797>).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Shooting Death Rule Justifiable After Juvenile Shoots Back At Intruder*, WLXT NEWS 19 (Feb. 8, 2022), <https://www.wltx.com/article/news/local/shooting-death-ruled-justifiable-juvenile-shoots-back-intruder/101-555af968-f223-4860-826a-00c490af33b3>; *Video Shows 14-Year-Old Open Fire On Robbery Suspect in Family’s Philly Pizza Shop*, WPVI-TV ABC 6 (Dec. 16, 2021), <https://6abc.com/teenager-shoots-suspect-philadelphia-pizza-shop-robbery-spring-garden-street-bolds/11347225/>; *La Porte Juvenile Shoots Family Member To Death To Prevent*

can seriously delay the ability of lawful gun owners to access loaded firearms in an emergency, with devastating consequences.<sup>54</sup> Additionally, it is unclear what, if any, potential benefits these laws would have with respect to preventing adult suicides and accidental gunshot wounds, or accidental gunshot wounds associated with adults mishandling firearms and unintentionally harming children.

### *Bans on So-Called “Assault Weapons” and Standard Capacity Magazines*

Particularly on the heels of high-profile mass public shootings, almost without fail come calls to ban the civilian purchase or possession of certain semi-automatic firearms (mostly rifles) inappropriately mislabeled as “assault weapons.” These firearms are not—despite intentional attempts to frame them as such—fully automatic machine guns or “assault rifles” with select-fire capabilities, both of which are heavily regulated under the National Firearms Act. The features that separate “assault weapons” from “non-assault weapons” are not functional, and do not affect any meaningful measure of lethality, such as rate of fire, caliber, or muzzle velocity. No, the differences between semi-automatic “assault weapons” and semi-automatic “non-assault weapons” essentially boil down to cosmetic features like pistol grips, collapsing stocks, or barrel shrouds. In fact, the Associated Press recently updated its Stylebook with

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Assault, ABC 13 (Sept. 18, 2021), <https://abc13.com/juvenile-shoots-family-member-to-death-11000-block-of-deaf-smith-road-deadly-shooting-protects-from-assault/11029782/>; Kaelan Deese, *12-Year-Old Boy Defending Mother Fatally Shoots Armed Home Intruder*, YAHOO NEWS (July 9, 2021), <https://www.yahoo.com/video/12-old-boy-defending-mother-190300013.html>; Janelle Griffith, *12-Year-Old Boy Fatally Shoots Intruder Who Tried to Rob Grandmother, Family Says*, NBC NEWS (Feb. 15, 2021), <https://www.nbcnews.com/news/us-news/12-year-old-boy-fatally-shoots-intruder-who-tried-rob-n1257955>; Emma Colton, *Teenager Opens Fire On Three Armed Men After Attempted Burglary, Killing One*, WASHINGTON EXAMINER (March 24, 2020), <https://www.washingtonexaminer.com/news/teenager-opens-fire-on-three-armed-men-after-attempted-burglary-killing-one>; Laura Gutschke, *Brown County 13-Year-Old Shoots Man Assaulting Teen’s Grandmother*, ABILENE NEWS REPORTER (Jan. 27, 2020), <https://www.reporternews.com/story/news/crime/2020/01/27/brown-county-13-year-old-shoots-man-assaulting-teens-grandmother/4591841002/>; *With 12-Year-Old Daughter’s Help, Salina Man Fends Off Intruder*, KWCH 12 (Sept. 20, 2019), <https://www.kwch.com/content/news/With-12-year-old-daughters-help-Salina-man-fends-off-intruder-560936071.html>; John Lowe, *14-Year-Old Girl Fires Gun To Save Sisters From Intruder*, WSAZ 3 (Aug. 7, 2019), <https://www.wsaz.com/content/news/Teenager-saves-sisters-from-intruder-526277011.html>; Karma Allen, *California 16-Year-Old Fatally Shoots Father While Defending His Mother, Police Say*, ABC News (Oct. 16, 2018), <https://abcnews.go.com/US/california-16-year-fatally-shoots-father-defending-mother/story?id=58525535>; *Teen Girl Fires Shot At Armed Intruder In Spanaway*, KOMO News (Sept. 8, 2018), <https://komonews.com/news/local/teen-girl-fires-shot-at-armed-intruder-in-spanaway>; *Woman Being Choked By Boyfriend Is Saved When Son Gets Gun, Daughter Shoots, Kills Man*, WBTV 3 (Updated Aug. 10, 2018), <https://www.wbtv.com/story/38860970/woman-being-choked-by-boyfriend-is-saved-when-son-gets-gun-daughter-shoots-kills-man/>; *Alone With Younger Sister, Teen Fires Shotgun At Would-Be Intruder*, WRIC (July 1, 2018), <https://www.wric.com/news/alone-with-younger-sister-teen-fires-shotgun-at-would-be-intruder/>; Peter Holley, *Alabama 11-Year-Old Shoots Suspected Home Invader*, CHICAGO TRIBUNE (May 1, 2016), <https://www.chicagotribune.com/nation-world/ct-alabama-boy-shoots-intruder-20160501-story.html>.

<sup>54</sup> Stephen Willeford’s attempt to stop the Sutherland Springs church shooter in 2017 was hindered by the time it took him to unlock his safe and load several rounds into an empty magazine. When he did get up to confront the shooter, the first thing he did was ask his wife to load more ammo and bring it to him. Willeford’s ensuing confrontation with the shooter caused him to stop attacking those inside the church and ultimately led to him fleeing the area. Michael J. Mooney, *The Hero of Sutherland Springs Shooting Is Still Reckoning With What Happened That Day*, TEXAS MONTHLY (Nov. 2018), <https://www.texasmonthly.com/articles/stephen-willeford-sutherland-springs-mass-murder/>.

guidance that that journalists avoid the term “assault weapon” altogether precisely because it is a “highly politicized term...[that] convey[s] little meaning about the actual function of the weapon.”<sup>55</sup>

These features exist for the purpose of making the firearm safer to operate and easier to fire in a more accurate manner. For instance, barrel shrouds are a component of “assault weapons” that protect the operator’s hand by partially or completely covering the rifle barrel, which can often become hot enough to cause serious burns after as little usage as shooting through one standard magazine at a range.<sup>56</sup> The protective function of the barrel shroud is so fundamental to its existence that recently proposed legislation to ban its use defined the feature as: “a shroud that is attached to, or partially or completely encircles, the barrel of a firearm so that the shroud protects the user of the firearm from heat generated by the barrel.”<sup>57</sup> And yet, despite the fact that the entire function of a barrel shroud is to protect lawful users from injury during lawful use, gun control advocates routinely point to this feature as something that must be banned because it also protects unlawful users from injury.<sup>58</sup>

Any ban on these firearms would suffer from a host of constitutional and practical problems. Semi-automatic rifles, with or without these cosmetic features, are the exact type of bearable small arm whose civilian possession is protected by the Second Amendment. They are the type of firearm least often used to perpetuate gun-related violence in the United States. In fact, they play such a minimal role in gun-related violence that, even if their prohibition could be immediately implemented with 100 percent effectiveness and no other firearms were ever substituted in their place, the law would fail to have a meaningful impact on overall rates of gun violence.

The Supreme Court has never reviewed a challenge to these types of prohibitions, including the federal prohibition on “assault weapon” sales between 1994 and 2004, and it is difficult to see how a post-*Heller* Court could uphold these laws while also remaining faithful to *Heller* and *McDonald*. Some lower courts have upheld challenges to these laws, but they have done so in ways that blatantly undermine core elements of *Heller* and *McDonald*.

From a practical perspective, these bans are also fraught with challenges. Without a doubt, the type of firearm most commonly used in suicides is the handgun, and even where semi-automatic rifles are used to commit suicide, the nature of suicide renders the type of firearm irrelevant. Far from being the weapon of choice for would-be criminals, semi-automatic rifles are statistically the type of firearm least likely to be used for unlawful purposes, particularly compared to handguns. Over the last decade, rifles of any kind were definitively used in only 3-4 percent of gun homicides, and it is not clear how many of those deaths actually involved the use of “assault weapons” compared to other types of rifles.<sup>59</sup> The average American

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<sup>55</sup> Twitter, @APStylebook, July 13, 2022, 3:58 PM,

[https://twitter.com/APStylebook/status/1547309549488640000?s=20&t=7vTIWgZF5g\\_jBMZBkauwDw](https://twitter.com/APStylebook/status/1547309549488640000?s=20&t=7vTIWgZF5g_jBMZBkauwDw).

<sup>56</sup> See Dennis P. Chapman, *Features and Lawful Common Uses of Semi-Automatic Rifles*, Working Paper, at 63–68 (last revised Aug. 29, 2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3436512](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3436512).

<sup>57</sup> Assault Weapons Ban of 2013, S. 150, 113th Cong. § 2(b)(38) (2013).

<sup>58</sup> See Chapman, *supra* note 61, at 37–38; E. Gregory Wallace, “Assault Weapons” Myths, 43 S. Ill. U. L.J. 193, 211–212 (2018).

<sup>59</sup> Federal Bureau of Investigation, *Crime in the United States 2019, Expanded Homicide Data Table 8*, Federal Bureau of Investigation: Uniform Crime Reports (Last Reviewed June 6, 2022) <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/expanded-homicide-data-table-8.xls>; Federal Bureau of Investigation, *Crime in the United States 2014, Expanded Homicide Data Table 8*, Federal Bureau of Investigation: Uniform Crime Reports (Last Reviewed June 6, 2022), <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.->



is, in fact, several times more likely to be stabbed to death than he or she is to be shot to death with a rifle of any kind.<sup>60</sup>

Even where semi-automatic rifles were used to commit homicide, it is nearly impossible to determine how many of those homicides would not have been successfully committed if the perpetrator had relied on a different type of firearm. This same low estimate of rifle usage holds true across non-fatal firearm crimes, where 90 percent are attributable to handguns and only 10 percent are attributable to long guns of any kind.<sup>61</sup> The official analysis of the 1994 federal assault weapons ban only underscores the reality that the prohibition of firearms least likely to be used in violent crime is an ineffective way of combating that violent crime. It concluded that “[s]hould 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.”<sup>62</sup>

Gun control advocates, politicians, and the media routinely characterize semi-automatic rifles, specifically the AR-15, as the “weapon of choice” for mass public shooters. This is far from an accurate depiction of the facts. Many mass shooters over the last decade have used handguns alone, and most in fact bring several different types of firearms.<sup>63</sup> To the extent that semi-automatic rifles are utilized by mass shooters, it is because they are popular among all Americans, the vast majority of whom will never use them for unlawful purposes.

The reality is that, even if all would-be mass public shooters were successfully diverted to the use of “non-assault weapons,” it would likely have no meaningful impact on their ability to kill large numbers of unarmed civilians. With only a few notable exceptions, such as the Las Vegas shooting in 2018, the type of firearm was simply not a major factor in the ability of mass shooters to cause significant casualties, particularly compared to other important factors such the time the shooter remained unopposed by an armed response.<sup>64</sup> While it is deeply unsettling to consider, when individuals intent on evil have several

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[2014/tables/expanded-homicide-data/expanded\\_homicide\\_data\\_table\\_8\\_murder\\_victims\\_by\\_weapon\\_2010-2014.xls](https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/expanded-homicide-data-table-8.xls).

<sup>60</sup> Federal Bureau of Investigation, *Crime in the United States 2019, Expanded Homicide Data Table 8*, Federal Bureau of Investigation: Uniform Crime Reports (Last Reviewed June 6, 2022) <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/expanded-homicide-data-table-8.xls>; Federal Bureau of Investigation, *Crime in the United States 2014, Expanded Homicide Data Table 8*, Federal Bureau of Investigation: Uniform Crime Reports (Last Reviewed June 6, 2022), [https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded\\_homicide\\_data\\_table\\_8\\_murder\\_victims\\_by\\_weapon\\_2010-2014.xls](https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded_homicide_data_table_8_murder_victims_by_weapon_2010-2014.xls).

<sup>61</sup> Michael Planty & Jennifer L. Truman, *Firearm Violence, 1993–2011*, Bureau of Justice Statistics NCJ 241730 (May 2013), <https://www.bjs.gov/content/pub/pdf/fv9311.pdf>.

<sup>62</sup> 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>

<sup>63</sup> See John R. Lott, Jr., & Rebekah C. Riley, *The Myths About Mass Public Shootings: Analysis*, Crime Research Prevention Center (Sept. 30, 2014), <https://crimeresearch.org/wp-content/uploads/2014/10/CPRC-Mass-Shooting-Analysis-Bloomberg1.pdf>. More recent data compiled by the Mother Jones mass public shooting database for the 62 mass shootings between January 1, 2014, and June 6, 2022, shows that handguns continue to be the firearm of choice for mass public shooters, with the data showing 28 cases where the shooter used handguns alone but only 18 where the shooter used rifles alone. Mother Jones Mass Public Shooting Database, 1982–2019 <https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/>. The remaining shooters used some combination of handguns, shotguns, and rifles.

<sup>64</sup> Consider, for example, that just weeks after the shooter at Marjory Stoneman Douglas High School in Parkland, Florida, killed 17 people over the span of six minutes with a semi-automatic rifle, a shooter at Santa Fe High School,

minutes to hunt down and kill unarmed civilians confined together as “soft targets,” it does not matter whether the person has a shotgun, a handgun, or a rifle. It certainly does not matter whether he has straight, fixed stock instead of a pistol grip and collapsing stock. As the nation saw just last month in Buffalo, New York, “non-assault weapons” can be used to great effect by mass shooters precisely because those cosmetic features make little difference in those contexts.<sup>65</sup>

Some of the deadliest mass public shootings in United States history have been carried out with nothing more than handguns. This includes the worst school shooting in U.S. history, at Virginia Tech in 2006, where the shooter was able to fire 174 rounds in roughly 11 minutes, killing 30 people and wounding 17 others with nothing more than common, relatively low-caliber handguns.<sup>66</sup> Similarly, in 1991, a shooter at a Luby’s Cafeteria in Killeen, Texas, fatally shot 23 and wounded another 19 with two handguns.<sup>67</sup>

All of this must be factored in light of the incredibly small role mass public shootings play in the overall number of firearm-related violence, accounting for only a fraction of a percent of all gun deaths every year.<sup>68</sup> This is not to minimize the devastating impact such events can have on the families and communities impacted by them, and these acts certainly affect important public perceptions of overall safety from gun-related violence. It is, rather, to give important perspective to a policy proposal that, even if perfectly implemented without any risk of shooters substituting other firearms, would have a statistically insignificant impact on gun violence rates in this country.

A second commonly proposed gun control measure in the wake of many high-profile mass shootings is the implementation of bans on so-called “high capacity magazines,” or magazines capable of holding more than 10 rounds. As with bans on so-called “assault weapons,” any bans would suffer from serious constitutional and practical problems.

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in Santa Fe, Texas, was able to kill 10 people in under four minutes with a shotgun and revolver. *See Unprepared and Overwhelmed*, SUN SENTINEL (Dec. 28, 2018), <https://projects.sun-sentinel.com/2018/sfl-parkland-school-shooting-critical-moments/#nt=oft09a-2gp1>; Jack Healy and Manny Fernandez, *Police Confronted Texas School Gunman Within 4 Minutes, Sheriff Says*, N.Y. TIMES (May 21, 2018), <https://www.nytimes.com/2018/05/21/us/santa-fe-officer-wounded-john-barnes.html>.

<sup>65</sup> The Buffalo shooter used a semi-automatic rifle that he legally purchased and that was compliant with New York’s ban on “assault weapons.” Without the slightest hint of irony, media outlets nonetheless referred to the weapon as an “assault-style rifle,” despite the fact that this firearm was, according to New York law, a “non-assault weapon.” The only illegal modification made was to the 10-round magazine—the shooter removed a device known as a “magazine block” that initially been used to make the standard 30-round magazine compliant with state law. Sarah Taddeo, *What Kind of Gun Was Used in the Buffalo Shooting? What We Know*, Democrat & Chronicle (Updated May 16, 2022), <https://www.democratandchronicle.com/story/news/2022/05/15/buffalo-shooting-gun-used-ar-15-suspect-payton-gendron-purchased-vintage-firearms-endicott/9786647002/>; Craig Whitlock et al., *Massacre Suspect Said He Modified Bushmaster Rifle to Hold More Ammunition*, WASHINGTON POST (May 15, 2022), <https://www.washingtonpost.com/investigations/2022/05/15/buffalo-shooting-gun-bought-bushmaster/>.

<sup>66</sup> The shooter used a .22 caliber Walther P22 and a 9mm Glock 10. TriData Division, MASS SHOOTINGS AT VIRGINIA TECH: ADDENDUM TO THE REPORT OF THE REVIEW PANEL, at 30-A (Nov. 2009), <https://scholar.lib.vt.edu/prevail/docs/April16ReportRev20091204.pdf>.

<sup>67</sup> *See* Thomas C. Hayes, *Gunman Kills 22 and Himself in Texas Cafeteria*, N.Y. TIMES (Oct. 17, 1991), <https://www.nytimes.com/1991/10/17/us/gunman-kills-22-and-himself-in-texas-cafeteria.html>; Paula Chin, *A Texas Massacre*, PEOPLE MAGAZINE (Nov. 4, 1991), <https://people.com/archive/a-texas-massacre-vol-36-no-17/>.

<sup>68</sup> *See* Amy Swearer, *Testimony before the U.S. House of Representatives “Protecting America from Assault Weapons,”* Appendix A, Heritage Found (Sept. 28, 2019) (breaking down the number of annual gun deaths attributable to mass public shootings and analyzing those numbers as a percent of total firearm deaths every year from 2010 through 2017). Since that time, mass public shooting deaths accounted for 0.203 percent of total firearm deaths in 2018, 0.180 percent in 2019, and 0.018 percent in 2020 (the last year for which complete data is available).

Magazines capable of holding more than 10 rounds are not “high capacity” in any meaningful sense. They are, rather, factory-standard components for the majority of firearms manufactured and sold in this country, and their common use by American civilians predates the ratification of the 14<sup>th</sup> Amendment. Like the semi-automatic rifles and handguns with which they are designed to work, these magazines are commonly possessed by law-abiding citizens for lawful purposes.

Most firearm-related deaths in the United States are suicides, where a firearm’s magazine capacity is effectively a moot point—one round is all that is necessary. The policy therefore fails to meaningfully address the major driving force behind American gun violence. As for the impact of these bans on overall rates of violent crime or gun homicide rates, few methodologically sound studies exist, and a recent review of that literature by RAND found that the evidence is, at best, inconclusive as to whether the bans have any effect whatsoever.<sup>69</sup>

Indeed, the primary concern raised by advocates of banning these factory-standard magazines is related to the least common type of firearm violence—mass public shootings. The argument is that standard capacity magazines may increase the ability of would-be mass public shooters to inflict high numbers of casualties by decreasing the number of times they need to reload during the shootings. Even assuming that it is practical as a matter of policy to confiscate the tens of millions of these magazines already owned by law-abiding citizens, without any means of replacement for would-be criminals, limiting magazine capacity is still not likely to meaningfully lower casualty rates for mass public shootings. First, shooters can (and routinely do) side-step these laws by bringing several firearms and extra loaded magazines, easily replacing expended magazines within seconds. Second, at least one study has shown that mass public shooters typically do not fire at a fast enough rate for casualty counts to be attributed to magazine capacity. This conclusion is supported by the findings of various panels analyzing the effect of magazine capacity for individual mass shootings, as well as by the reality that high casualty counts have occurred during shootings where only “limited-capacity” magazines were used.

But, even beyond this, we simply do not live in a world where we can or should reasonably expect Americans to widely comply with these laws,<sup>70</sup> that the laws will be meaningfully enforced in a non-police state, or that widespread enforcement against even a fraction of non-compliant citizens would not have devastating consequences from a criminal justice perspective. Additionally, many “acceptable” low-capacity magazines can be illegally modified within a matter of minutes by anybody with access to the internet and a screwdriver—a reality that we saw had horrific effect in Buffalo, New York, where the shooter easily modified his magazines.

### *Raising the Minimum Age of Gun Purchase to 21*

A third commonly proposed policy on the heels of mass public shootings is some variation on the idea that those under the age of 21 should have their access to firearms restricted, either by prohibiting future purchases of some or all long guns, or by outright banning the possession of most firearms for most young adults under most circumstances.

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<sup>69</sup> RAND Corporation, *Effects of Assault Weapon and High-Capacity Magazine Bans on Violent Crime* (Updated April 22, 2020), <https://www.rand.org/research/gun-policy/analysis/ban-assault-weapons/violent-crime.html>.

<sup>70</sup> See, e.g., Jacob Sullum, *Gun Owners Don’t Seem Eager to Comply With New Jersey’s New Magazine Capacity Ban*, REASON (Dec, 20, 2018), <https://reason.com/2018/12/20/new-jerseys-gun-owners-do-not-seem-eager/>.

These individuals are in all other respects legal adults who, as full-fledged members of the American public, are endowed with all the rights and duties of citizenship.<sup>71</sup> They can vote, serve on juries, sign legally binding contracts, and marry without permission. They may be drafted into the armed forces or called upon for state militia service. They are held fully accountable before the law for criminal actions, up to and including execution. There is, quite simply, little constitutional basis for divesting all law-abiding young adults of a fundamental constitutional right (or even for limiting their exercise of that right), solely because a small minority of their peers might commit crimes with those firearms.

Moreover, from a practical perspective, while young adults are statistically more likely than older adults to engage in criminal behaviors, they are also more likely to be victims of violent crime.<sup>72</sup> To the extent that such laws limit the ability of young adults to engage in criminal behavior, they also limit the ability of the most vulnerable population of adults to engage in the core exercise of the Second Amendment—self-defense.<sup>73</sup> And it seems far from likely that young adults bent on crime would be meaningfully prevented from accessing firearms, given the prevalence of handgun-related homicides committed by young offenders despite federal prohibitions on handgun sales to those under 21.

It appears, once again, that the primary motivation behind this prohibition is the shocking nature of a handful of mass public shootings carried out by young adults in recent years, including two in just the last month. Put aside, once again, the fact that these shootings account for a fraction of a percent of all gun deaths. Even if the goal is simply to address mass public shootings due to their outsized impact on the national psyche, most of those shootings are not carried out by individuals under the age of 21. The Mother Jones Mass Shooting Database records 31 mass public shootings since Parkland in 2018. Of those, only six were carried out by individuals under the age of 21. In two of those cases, the individual was under 18, could not legally buy any firearms, and stole the weapons from his parents. In two more cases, the individual showed clear signs of being a danger to self or others and should have been rendered legally prohibited from purchasing firearms under existing laws, but those legal mechanisms were never pursued.

#### *Mandatory Gun Owner Liability Insurance*

In recent years, it has become increasingly popular to suggest that one way of forcing gun owners to shoulder the costs associated with gun violence is by mandating that they acquire some form of gun owner liability insurance. In 2021, the city of San Jose, California, became the first in the nation to implement this policy, roundly touting it as a viable solution for combating the costs of gun violence.

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<sup>71</sup> A common retort here is that young adults under the age of 21 may not legally purchase or consume alcohol in public. Alcohol consumption, unlike jury service, voting, and militia service, has never been considered a fundamental right or duty of citizenship. It is certainly not an enumerated individual right explicitly protected by constitutional amendment.

<sup>72</sup> See, e.g., FBI Crime Data Explorer, All Violent Crime Offender v. Victim Demographics (last accessed June 6, 2022), <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/crime-trend>.

<sup>73</sup> See Craig A. Perkins, *Age Patterns of Victims in Serious Violent Crime*, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT NCJ-162031 (July 1997), <https://www.bjs.gov/content/pub/pdf/apvsvc.pdf>; Sofi Sinozich & Lynn Langton, *Rape and Sexual Assault Victimization Among College-Age Females, 1995–2013*, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT NCJ 248471 (Dec. 2014), <https://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf>.

This idea, however, suffers from a plethora of practical problems that limit coverage to the point of being effectively useless as a policy tool to lower costs associated with gun violence.<sup>74</sup> First, as a general rule, states currently prevent insurance policies from covering intentional or criminal actions, which together comprise the vast majority of annual acts of gun violence. Insurance would only be used to cover the much rarer acts of reckless, negligent, or accidental conduct, and even then, only when such acts are committed by an insured individual and injure innocent third parties. Moreover, policies covering liability for reckless or negligent conduct perversely risk disincentivizing gun owners from acting responsibly, because they would be indemnified against any financial consequences stemming from irresponsible actions.

Finally, the effectiveness of any such mandate would depend largely on widespread enforcement. But a majority of gun crimes and at least some portion of accidental deaths and injuries are the fault of unlawful gun owners, who could not obtain liability insurance even if they were inclined to comply with this specific gun law in ways they are not inclined to follow other gun laws. And unless a state has a gun owner registry, requires gun owners to submit proof of insurance on a regular basis, actively monitors which lawful gun owners have not obtained insurance, then meaningfully sanctions them for noncompliance, it cannot ensure the type of widespread compliance necessary to render such a mandate even remotely effective for the limited scenarios in which insurance policies would apply in the first place.

### *Waiting Periods*

According to the RAND Corporation, evidence that waiting periods reduce overall suicides is limited, at best.<sup>75</sup> It is not at all clear why such waiting periods should apply to subsequent purchases, as suicidal individuals who already own firearms presumably already have those lethal means at their disposal. Meanwhile, individuals who are in immediate fear for their lives are delayed in their ability to exercise their Second Amendment rights precisely when it may be most important for purposes of self-defense.

## **B. Effective Strategies for Reducing the Toll of Gun Violence**

### *(1) Increase Social Capital by Promoting Economic Growth and Family Stability*

There is a plethora of evidence that social capital is inextricably linked to gun violence, whether that gun violence is related to suicide or criminal activity.<sup>76</sup> Communities with higher levels of social capital are

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<sup>74</sup> See generally, Amy Swearer & Abby Kassal, *8 Problems With San Jose's Gun Insurance Mandate and Gun Ownership Tax*, HERITAGE FOUNDATION (Feb. 2, 2022), <https://www.heritage.org/firearms/commentary/8-problems-san-joses-gun-insurance-mandate-and-gun-ownership-tax>.

<sup>75</sup> RAND Corporation, *Effects of Waiting Periods on Suicides* (April 22, 2020), <https://www.rand.org/research/gun-policy/analysis/waiting-periods/suicide.html>.

<sup>76</sup> JOINT ECONOMIC COMMITTEE REPUBLICANS, AN OVERVIEW OF SOCIAL CAPITAL IN AMERICAN SOCIETY (June 2021), <https://www.jec.senate.gov/public/cache/files/8cb559c4-3764-4706-9009-b4d8565ec820/scp-volume-1-digital-final.pdf>; Nathan Daniel Lucia Smith & Ichiro Kawachi, *State-Level Social Capital and Suicide Mortality in the 50 U.S. States*, 120 SOCIAL SCIENCE & MED. 269 (2014), <http://faculty.washington.edu/matsueda/courses/590/Readings/Smith%20and%20Kawachi%202014%20suicide.pdf>; Matthew D. Moore & Nicholas L. Recker, *Social Capital, Type of Crime, and Social Control*, 62 J. RESEARCH IN CRIME & DELINQUENCY 728 (2013), [https://www.researchgate.net/publication/265727202\\_Social\\_Capital\\_Type\\_of\\_Crime\\_and\\_Social\\_Control](https://www.researchgate.net/publication/265727202_Social_Capital_Type_of_Crime_and_Social_Control);

also less likely to be victimized by mass public shooters.<sup>77</sup> Many aspects of rebuilding civil society and increasing social capital inherently involve private voluntary associations, and Americans are often better served by government “getting out of the way.”<sup>78</sup> From a federal policy perspective, one important way of addressing social capital concerns is through promoting economic growth and employment, which increases family stability and individual connectedness through the workplace.<sup>79</sup> As many of my colleagues at the Heritage Foundation have pointed out, there are plenty of specific, concrete measures Congress can take to ease the crushing effects of inflation on American families and provide a stable economy, which would promote family stability and lower the risks of suicide and crime associated with increased economic stress, divorce, and poverty.<sup>80</sup> There are also steps Congress can take to promote financial stability in working families, offer more educational opportunities that families control, and increase wages through pro-jobs tax policies.<sup>81</sup>

## (2) *Combat Violent Crime by Fully Funding the Police and Prosecuting Offenders*

The presence of law enforcement officers has a major deterrent effect on criminals.<sup>82</sup> Reducing police presence and pro-active, officer-initiated activity within communities has a devastating impact, including most markedly for poorer, minority communities.<sup>83</sup> A small number of serial offenders are responsible for a majority of violent crimes in many cities.<sup>84</sup> Focusing enforcement and prosecution resources on removing the worst offenders from communities for lengthy periods of time has a significant and positive impact on community safety.<sup>85</sup>

On the surface, bolstering police activity and enforcing existing laws may seem like an easy solution. After all, it is already illegal to traffic in firearms, to sell or lend guns to prohibited persons, or for violent

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<sup>77</sup> Roy Kwon & Joseph F. Cabrera, *Social Integration and Mass Shootings in U.S. Counties*, 42 J. CRIME & JUSTICE 121 (2019).

<sup>78</sup> See, e.g., JOINT ECONOMIC COMMITTEE REPUBLICANS, A POLICY AGENDA FOR SOCIAL CAPITAL (Dec. 2021), [https://www.jec.senate.gov/public/\\_cache/files/f8f8bea06-cfc6-48da-9369-db9906710e9b/a-policy-agenda-for-social-capital.pdf](https://www.jec.senate.gov/public/_cache/files/f8f8bea06-cfc6-48da-9369-db9906710e9b/a-policy-agenda-for-social-capital.pdf).

<sup>79</sup> *Id.*

<sup>80</sup> Daren Bakst et al., *Inflation: Policymakers Should Stop Driving It and Start Fighting It*, HERITAGE FOUNDATION SPECIAL REPORT NO. 252 (Jan. 20, 2022), <https://www.heritage.org/markets-and-finance/report/inflation-policymakers-should-stop-driving-it-and-start-fighting-it>.

<sup>81</sup> Marie Fishpaw et al., *Being A Parent Is Hard Enough: It's Time for Congress to Help Families Thrive*, HERITAGE FOUNDATION BACKGROUNDER NO. 3647 <https://www.heritage.org/marriage-and-family/report/being-parent-hard-enough-its-time-congress-help-families-thrive>

<sup>82</sup> Robert VerBruggen, *De-Policing and What to Do About It*, MANHATTAN INSTITUTE ISSUE BRIEF (Oct. 2021), <https://media4.manhattan-institute.org/sites/default/files/MI-VerBruggen-depolicing.pdf>.

<sup>83</sup> See *supra*, note 15.

<sup>84</sup> Aaron Chafflin et al., *When Cities Add Cops, Black Residents Could Have The Most To Gain – And The Most To Lose*, NISKANEN CENTER (May 18, 2021), [https://www.nber.org/papers/w28202?utm\\_source=npr\\_newsletter&utm\\_medium=email&utm\\_content=20210419&utm\\_term=5326149&utm\\_campaign=money&utm\\_id=49355949&orgid=&utm\\_attl=money](https://www.nber.org/papers/w28202?utm_source=npr_newsletter&utm_medium=email&utm_content=20210419&utm_term=5326149&utm_campaign=money&utm_id=49355949&orgid=&utm_attl=money); Aaron Chalfin & Justin McCrary, *Are U.S. Cities Underpoliced? Theory and Evidence*, 167 REV. OF ECON. & STATS. (2018), <https://direct.mit.edu/rest/article-abstract/100/1/167/58429/Are-U-S-Cities-Underpoliced-Theory-and-Evidence?redirectedFrom=fulltext>; Peter Moskos, *The Murder Spike of 2020: When Police Pull Back*, WSJ (Updated July 23, 2021), <https://www.wsj.com/articles/the-murder-spike-of-2020-when-police-pull-back-11626969547>; Paul G. Cassell, *Explaining the Recent Homicide Spikes in U.S. Cities: The ‘Minneapolis Effect’ and the Decline in Proactive Policing*, 33 FED. SENT’G REP. 83 (Dec. 2020) (last revised May 4, 2021, as University of Utah College of Law Research Paper No. 377).

<sup>85</sup> Thomas Hogan, *Crime Control in Cleveland*, CITY JOURNAL (Feb. 1, 2022), <https://www.city-journal.org/crime-control-in-cleveland>;

felons to possess firearms. It does not necessitate new laws. But to meaningfully enforce laws, many cities will need to change their policy approaches when it comes to law enforcement. Unfortunately, much of this task falls to states and local governments. It is shameful that so many of the federal government’s state and local counterparts have singled out the rights of peaceable gun owners while at same time refusing to hold violent criminals—including those who unlawfully use firearms to harm innocent people—fully accountable for their actions.

But the federal government, for its part, is not left without recourse. It can encourage and even help states re-fund and re-invigorate local police departments after several years of morale-devastating cuts. It can continue cracking down on illegal gun trafficking and ensure that, at least at the federal level, those who are caught illegally trafficking firearms face swift, certain, and severe punishment. And while it cannot force rogue “progressive” prosecutors to fully enforce laws at a state or local level, it can publicly promote best practices for the prosecution of violent offenders that reflect an attitude of taking violence crime seriously.

### (3) *Invest in School Choice*

School choice reduces the costs associated with gun violence in the short and medium term by helping students escape communities where bullying, gang-related violence, and other forms of school violence are common. Especially for at-risk males, persistently attending private schools through school voucher programs lowers their risks of participating in or being arrested for criminal behaviors.<sup>86</sup> The ability of parents to more easily remove their children from schools where they are bullied or face violent threats also helps alleviate the increased risks of suicide that come with those realities.<sup>87</sup> In the long run, better educational opportunities increase social capital, thereby decreasing the likelihood that an individual will either commit or be victimized by acts of gun violence.

The bulk of school choice initiatives should be conducted at the state level.<sup>88</sup> That said, the federal government is not without means to act in support of this crucial aspect of combating violence. Congress can put the D.C. Opportunity Scholarship Program on a permanent and expanded footing, instead of

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<sup>86</sup> Corey DeAngelis & Patrick J. Wolf, *The School Choice Voucher: A “Get Out of Jail Free” Card?*, EDRE Working Paper 2016-03 (Mar. 8, 2016), <http://www.uaedreform.org/downloads/2016/03/the-school-choice-voucher-a-get-out-of-jail-card.pdf>; M. Danish Shakeel, *Can Private Schools Improve School Climate? Evidence From A Nationally Representative Sample*, 12 J. OF SCHOOL CHOICE 426 (Aug. 8, 2018), <https://www.tandfonline.com/doi/abs/10.1080/15582159.2018.1490383>; Andrew McEachin et al., *Social Returns to Private Choice? Effects of Charter Schools on Behavioral Outcomes, Arrests, and Civic Participation*, EDWORKING PAPER NO. 19-90 (2020), <https://www.edworkingpapers.com/ai19-90>.

<sup>87</sup> Jonathan Butcher & Chloe Shoemaker, *Youth Mental Health Crisis Gives More Urgency To School Choice Movement*, HERITAGE FOUNDATION (Mar. 31, 2021), <https://www.heritage.org/education/commentary/youth-mental-health-crisis-gives-more-urgency-school-choice-movement>; Corey A. DeAngelis & Angela K. Dills, *The Effects of School Choice on Mental Health*, 32 SCHOOL EFFECTIVENESS & SCHOOL IMPROVEMENT 326 (Dec. 3, 2020), <https://www.tandfonline.com/doi/abs/10.1080/09243453.2020.1846569?journalCode=nses20>; Editorial Board, *School Choice: Better Than Prozac*, WSJ (Dec. 17, 2020), <https://www.wsj.com/articles/school-choice-better-than-prozac-11608248279>.

<sup>88</sup> Lindsey Burke, *Why A Federal Tax-Credit Scholarship Program Will Not Advance School Choice In America*, HERITAGE FOUNDATION BACKGROUNDER NO. 3395 (Mar. 13, 2019), <https://www.heritage.org/education/report/why-federal-tax-credit-scholarship-program-will-not-advance-school-choice-america>.

perpetually trying to phase it out.<sup>89</sup> It can also expand school choice to military families and children attending Bureau of Indian Education Schools, the latter routinely being deemed some of the worst-performing schools in the nation.<sup>90</sup> Congress can also use its bully pulpit to promote these initiatives in a more high-profile manner, bringing attention to the positive impacts they have on the nation's young people.

#### (4) *Additional Opportunities for Federal Intervention*

- Fund anti-gang violence and other community initiatives that have proven to be incredibly effective at lowering rates of gun crime.<sup>91</sup>
- Remove unnecessary barriers to the exercise of Second Amendment rights by law-abiding citizens, who use their firearms in lawful defense of self or others somewhere between 500,000 to 3,000,000 times every year.<sup>92</sup>
- Invest in genuine risk assessment training for state and local communities, better enabling them to prevent acts of targeted and mass violence.<sup>93</sup>

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<sup>89</sup> Jude Schwallbach, *D.C.'s Opportunity Scholarship Program Giving Students Access to In-Class Education*, HERITAGE FOUNDATION (Sept. 9, 2020), <https://www.heritage.org/education/commentary/dcs-opportunity-scholarship-program-giving-students-access-class-education>; Jude Schwallbach, *Military Families Deserve Flexible Education Options*, HERITAGE FOUNDATION (Apr. 14, 2021),

<https://www.heritage.org/education/commentary/military-families-deserve-flexible-education-options>; Lindsey M. Burke, *School Choice for Military Families Will Save DOD Money*, HERITAGE FOUNDATION (Mar. 1, 2018), <https://www.heritage.org/education/commentary/school-choice-military-families-will-save-dod-money>.

<sup>90</sup> Native American youths are also at an elevated risk of violent victimization, and are overrepresented in the criminal justice system. Preventing delinquency and increasing educational outcomes is a vital component of lowering violent crime, violent victimization, and suicide rates for this often-overlooked population.

<sup>91</sup> For example, initiatives like Operation Ceasefire have not only been incredibly successful at reducing rates of gun crime, but that success has been replicated across a number of very diverse cities. See Anthony A. Braga et al., *Problem-Oriented Policing, Deterrence, and Youth Violence: An Evaluation of Boston's Operation Ceasefire*, 38 J. Research in Crime & Delinquency 195 (2001),

[https://www.d.umn.edu/~jmaahs/Correctional%20Assessment/Articles/Braga\\_problem\\_oriented%20policing\\_deterrence.pdf](https://www.d.umn.edu/~jmaahs/Correctional%20Assessment/Articles/Braga_problem_oriented%20policing_deterrence.pdf); Operation Ceasefire and the Safe Community Partnership, U.S. Attorney's Office for the Northern District of California (Dec. 29, 2014), <https://www.justice.gov/usao-ndca/operation-ceasefire-and-safe-community-partnership>.

On the other hand, initial data on acute 2020 crime spikes suggest that declines in "proactive policing" can play a major factor in violent crime increases. See Paul Cassell, *Explaining the Great 2020 Homicide Spike*, REASON (Feb. 1, 2021), <https://reason.com/volokh/2021/02/01/explaining-the-great-2020-homicide-spike/>.

<sup>92</sup> A 2013 report by the Centers for Disease Control and Prevention concluded that "almost all national survey estimates indicate that defensive gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from about 500,000 to more than 3 million." CENTERS FOR DISEASE CONTROL AND PREVENTION, *PRIORITIES FOR RESEARCH TO REDUCE THE THREAT OF FIREARM-RELATED VIOLENCE*, at 15 (2013), <https://www.nap.edu/read/18319/chapter/3#15>. Importantly, "Studies that directly assessed the effect of actual defensive uses of guns (i.e., incidents in which a gun was "used" by the crime victim in the sense of attacking or threatening an offender) have found consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies." *Id.* at 15–16. Last year, The Heritage Foundation created an interactive Defensive Gun Use Database to highlight just a fraction of the times Americans rely on the Second Amendment to protect their inalienable rights every year. *Defensive Gun Uses in the U.S.*, HERITAGE FOUND. (Updated May 9, 2022), <https://www.heritage.org/data-visualizations/firearms/defensive-gun-uses-in-the-us/>.

<sup>93</sup> See, e.g., Amy Swearer, *The Kids Are Not Alright—But Not For The Reasons You Think*, HERITAGE FOUNDATION (June 21, 2022), <https://www.heritage.org/testimony/the-kids-are-not-alright-not-the-reasons-you-think>.



- Expand access to alternative healthcare options and give low-income Americans a choice in their own healthcare—including their mental healthcare. Refuse to underwrite anti-competitive state healthcare policies that raise the costs of healthcare—including mental healthcare—and reduce options for patients.
- Promote and encourage safe storage practices and responsible gun ownership without preemptively criminalizing gun owners for making reasonable decisions or inhibiting their ability to immediately respond to violent threats. Similar efforts to reduce unintentional gun deaths among children have proved incredibly successful.

#### **IV. Conclusion**

I am not an economist. But it does not take an economist to tell you that gun violence imposes a tremendous economic burden every year, or that lawful gun ownership is largely not to blame for the bulk of it. To any extent that lawful gun ownership does facilitate the costs of gun violence, it offers an equally significant protective value in the form of crime interference and deterrence, as well as through the economic value of a lawful multi-billion-dollar industry. This is, at its core, a very old conversation about gun policy, with the same easily refuted gun control talking points from the same advocates. It is far past time for Congress to stop having these same tired discussions focusing on the same utterly ineffective “solutions,” and to start actually implementing policies that will address the underlying problems that lead Americans to kill themselves and others with firearms in the first place.