

TESTIMONY OF JOSHUA HORWITZ
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“WHAT SHOULD AMERICA DO ABOUT GUN VIOLENCE?”
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Mr. Chairman and Members of the Committee,

I greatly appreciate this opportunity to provide written testimony on behalf of the Coalition to Stop Gun Violence (CSGV), a coalition of more than 48 national organizations dedicated to reducing gun death and injury in the United States. We seek to secure freedom from gun violence through research, strategic engagement and effective policy advocacy.

As the committee considers the gun policy reform proposals recently put forward by the White House, I would like to take this opportunity to comment on several relevant and important issues:

Assault Weapons and High-Capacity Ammunition Magazines

The mass shooting tragedies of the past few years have highlighted the destructive power of assault weapons and high-capacity ammunition magazines in the hands of criminals and dangerous mentally ill individuals. From a macro-level analysis, there is evidence to suggest that attacks using semiautomatic firearms “tend to result in more shots fired, more persons wounded, and more wounds inflicted per victim than do attacks with other firearms” (Koper et al. 2013, 166-167). Semiautomatic assault rifles are not our Founding Fathers’ muskets or even your grandfather’s hunting rifle. They are designed with military-grade features such as pistol grips and detachable magazines; and for the sole purpose of killing quickly and en masse (Koper et al. 2013, 160).

Previous attempts to restrict assault weapons were simply not stringent enough to affect the supply of the weapons. The two-feature test that was the standard under the 1994 Assault Weapons Ban made it possible for the gun industry to manufacture “copycat rifles” that violated the spirit and intent of the law. Senator Feinstein’s inclusion of a one-feature test in the “Assault Weapons Ban of 2013” is a significant improvement in comparison to the 1994 law.

Nonetheless, Christopher Koper, an associate professor at George Mason University, has investigated the effectiveness of the 1994 Assault Weapons Ban and noted some positive results. His findings indicate the law’s provision banning high-capacity magazines had the greatest effect on decreasing gun crime (Koper et al. 2013, 168). This is supported by a *Washington Post* investigation in Richmond, Virginia that demonstrated the use of high-capacity ammunition magazines in gun crimes decreased from 18-20% in the early years of the ban to 10% by 2004—and then increased back to pre-ban levels by 2008 (Koper et al. 2013, 165).

After bearing witness to the mass shooting tragedies in Aurora, Colorado; Oak Creek, Wisconsin; and

Newtown, Connecticut; the American people are showing increased support for meaningful reforms to reduce gun violence. A recent poll conducted by researchers at Johns Hopkins University investigated how the public felt about specific gun violence prevention policy measures (Barry et al. 2013, 240). Their data showed overwhelming support for both banning assault weapons (69%) and the sale of high-capacity ammunition magazines (68%) (McGinty et al. 2013, 241).

Universal Background Checks and Gun Trafficking

Universal background checks represent another simple yet meaningful intervention that research indicates could reduce gun violence. In 1994, the Brady Act established the National Instant Background Check System (NICS) and mandated that all federally licensed firearm dealers perform a background check before selling a firearm. Since the NICS went into effect in 1998 there have been 161,836,595 checks performed and 996,558 federal denials (FBI 2013). This denial number does not include the hundreds of thousands of persons denied by the states that maintain their own databases for state prohibitions (known as point of contact states) (Bowling 2010, 2). Meanwhile, surveys estimate that 40% of firearm sales are made by private individuals, who are not required to conduct background checks under federal law (Wintemute 2013b, 96). These private transactions create an opportunity for criminals and other prohibited persons to purchase firearms without accountability or oversight (Cook and Ludwig 2013, 28).

Garen Wintemute, a professor at the University of California-Davis School of Medicine, has examined California state law, which not only mandates universal background checks on all gun sales, but also prohibits individuals who have violent misdemeanor convictions from purchasing a firearm (Cook and Ludwig 2013, 29; Wintemute 2013a, 85). He found evidence that universal background checks decrease the criminal acquisition of guns through private transactions in California (Wintemute 2013a, 85). Interestingly, Wintemute also found that these regulations have not harmed the gun industry in California (Wintemute 2013a, 90). Finally, Wintemute highlights that of the 927 persons who sought to purchase handguns in his study, “denial appears to reduce risk for new criminal activity among those persons who are denied [through a criminal background check]” (Wintemute 2013a, 85).

Ensuring that all firearm transactions include a background check would also make it easier for law enforcement to identify the original purchasers of firearms that are used in crimes, including straw purchasers and firearm traffickers (Wintemute 2013b, 104). According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), “about 85% of criminal possessors [of firearms] were not the [original] retail purchaser” (Webster and Vernick et al. 2013, 110). By allowing ATF to accurately trace crime guns and prosecute corrupt firearms sellers, we can curtail the criminal acquisition of firearms (Barga and Gagliardi 2013, 150). Wintemute also investigated straw purchases at gun shows in California and in neighboring states and found that where universal background checks were not required, straw purchases “were six times as common” (Wintemute 2013b, 103).

Finally, universal background checks will only be successful if there are strong federal incentives for states to submit disqualifying records to the FBI’s NICS database. According to Mayors Against Illegal Guns, a total of ten states have yet to submit any disqualifying mental health records to NICS

(Mayors Against Illegal Guns, 2013). This suggests that measures need to be taken to alleviate the barriers that make state compliance difficult.

Mental Illness and Gun Violence

Most Americans struggling with mental illness are not violent and never will become violent (Swanson et al. 2013, 36). However, the deluge of recent mass shootings perpetrated by mentally ill individuals beckons us to re-examine the current mental health standards for gun buyers. That said, when considering potential policies to prevent dangerous mentally ill individuals from gaining easy access to firearms, it is critical to address patient concerns about privacy and stigmatization with equal concern and vigilance (Swanson et al. 2013, 34).

The specific disqualifications related to mental health are quite narrow. Under federal law, an individual is prohibited from buying or possessing firearms if they have been "adjudicated as a mental defective" or "committed to a mental institution." A person is "adjudicated as a mental defective" if a court—or other entity having legal authority to make adjudications—has made a determination that an individual, as a result of mental illness: 1) Is a danger to himself or to others; 2) Lacks the mental capacity to contract or manage his own affairs, or; 3) Is found insane by a court in a criminal case, or incompetent to stand trial, or not guilty by reason of lack of mental responsibility pursuant to the Uniform Code of Military Justice. A person is "committed to a mental institution" if that person has been involuntarily committed to a mental institution by a court or other lawful authority. This expressly excludes voluntary commitment. If a person falls under one of these two categories, they are prohibited from purchasing and possessing firearms for life—although federal law now allows states to establish procedures for such individuals to restore their right to purchase or possess firearms.

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 restricts what information about a patient's medical care can be disseminated to those not directly involved in that care. Mental health records *can*, however, be reported to NICS by state authorities in order to deny potential gun buyers at the point of purchase. As U.S. Secretary of Health and Human Services Kathleen Sebelius recently affirmed in an August 8, 2012 letter to Virginia Senator Mark Warner:

It is our understanding that in many states, the state court system or other parts of the state government that are not covered by HIPAA hold the mental health or other information DOJ seeks to have reported to the NICS database. In these cases, the HIPAA Privacy Rule does not affect reporting to the NICS database. However, the Privacy Rule would apply to the disclosure of mental health information held by a HIPAA covered entity. In these circumstances, the state can, though statute or regulation, require HIPAA covered entities to report the necessary information for NICS purposes, which would make the disclosure permissible under the HIPAA Privacy Rule.

Jeffrey Swanson, a professor at the Duke University School of Medicine and leading expert on the mental health aspects of gun violence prevention, examined the effectiveness of including individuals with a dangerous mental illness in a Connecticut state database used to screen gun buyers (Swanson et al. 2013, 33). Swanson looked specifically at individuals who were disqualified under federal law from buying firearms based on their mental health background, but who did *not* have a criminal record. The

inclusion of their records in the Connecticut state database, Swanson found, resulted in a decreased risk of violent crime, particularly for first-time offenders (Swanson et al 2013, 45). Swanson noted, however, that without concurrent measures requiring universal background checks, dangerously mentally ill individuals will still be able to purchase firearms from private party sellers without undergoing screening (Swanson et al. 2013 45).

Although the intersection between mental illness and violent crime is important, a greater population could be served through interventions to prevent suicidal individuals from purchasing firearms (Swanson et al. 2013, 49). According to the Centers for Disease Control and Prevention, suicides accounted for 61% of firearm fatalities in 2010; for a total of 19,392 deaths (Swanson 2013, 49). In particular, gun-related suicides are prominent in rural communities where firearms ownership is more prevalent (Miller et al. 2013, 5). Depression, however, is not a mental illness that will normally prohibit individuals from purchasing firearms (Swanson et al. 2013, 49). Furthermore, expanding federal law to preclude all individuals diagnosed with depression from buying guns would affect many non-violent patients and could deter some from seeking mental health care (Swanson 2013, 50).

With this in mind, there needs to be serious dialogue between mental health professionals and gun violence prevention experts concerning the mental health criteria that should be used to prohibit individuals from purchasing firearms. This dialogue should also consider which professionals are in the best position to identify and report dangerously mentally ill individuals to the NICS (Swanson 2013, 48).

Finally, when considering potential fixes to federal law, it is important to note that novel models for intervention have already been implemented at the state level (Swanson 2013, 48). Indiana, for example, prohibits access to guns based on a “dangerous individual” designation that does not depend on a previous involuntary commitment (Swanson 2013, 48). California prohibits the purchase and possession of firearms by individuals who have been voluntarily admitted to a psychiatric facility and are receiving inpatient treatment for a mental illness when an attending mental health professional states that the individual is a danger to self or others. Such state interventions could be considered as potential models for a new federal standard.

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