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FIREARMS CORRECTIONS AND IMPROVEMENTS ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

H.R. 5005

MARCH 28, 2006

Serial No. 109–113

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

26–766 PDF WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
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FIREARMS CORRECTIONS AND IMPROVEMENTS ACT

TUESDAY, MARCH 28, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:55 p.m., in Room 2141, Rayburn House Office Building, the Honorable Howard Coble (Chairman of the Subcommittee) presiding.

Mr. COBLE. The Subcommittee will come to order.

Mr. Gardiner and Ms. Stucko, we appreciate you two for remaining for the second panel. And we welcome the mayor, His Honor. I want to welcome you all to the second panel that has been called to participate in a legislative hearing on H.R. 5005, the "Firearms Corrections and Improvements Act."

H.R. 5005 implements a number of common-sense provisions which clarify, update, and eliminate obsolete language in the gun laws. Recently, Congress passed and the President signed the Protection of Lawful Commerce in Arms Act, which restricted frivolous gun liability suits designed to target the gun industry. H.R. 5005 is consistent with that act and implements some less controversial issues, many of which have already been enacted as part of the appropriations process.

H.R. 5005 enhances the country's national security efforts by eliminating current barriers which prevent private contractors who provide national security from training personnel in the use of firearms, preventing manufacturers from fulfilling Government contracts by restricting access to certain firearms and ammunitions for testing purposes.

H.R. 5005 also eliminates the current double reporting requirement which requires that the same information be provided to the Bureau of Alcohol, Tobacco, Firearms, and Explosives and to the State or local law enforcement when an individual purchases more than one firearm within 5 days. Repealing the duplicative multiple sales reporting requirements serves the dual purposes of protecting individuals' privacy rights and of relieving State and/or local law enforcement agencies from the burden and cost of having to comply with the Federal regulations.

ATF is the national agency responsible for enforcing gun laws and has a proven track record in effectively maintaining duplicative sales data. This provision recognizes ATF's role and eliminates the requirements that hundreds of different local law enforcement

agencies, all of which vary in size, resources, and expertise, maintain this data.

Finally, the bill includes a provision to limit the use of information contained in ATF's Firearm Trace database and protects individual privacy rights without hindering the criminal investigation and prosecution of gun violations. The Firearm Trace system was not established to provide research data for civil litigation. It was established to solve crimes. H.R. 5005 provides the necessary safeguards from the disclosure of private individual information related to gun purchases—informants, suspects, investigating officers, and Federal firearm licensees, which are required to enforce effectively the gun laws.

I am told that the Justice Department will propose modifications to a few of these provisions, and we look forward to working with the Justice Department regarding these changes. I also appreciate that some of today's witnesses do not wholeheartedly support the language in H.R. 5005, and we as well look forward to hearing and considering those views.

Prior to introducing our panel of witnesses and the mayor, I want to recognize the distinguished gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I notice we have the patron of the bill, a Member of the Committee with us, and I'd ask unanimous consent that he be able to participate fully in the hearing.

Mr. COBLE. Without objection. And I apologize to the distinguished gentleman from Texas. I did not see him come in. That's a good suggestion, Mr. Scott. And you're welcome, indeed, Mr. Smith.

Mr. SCOTT. Thank you, Mr. Chairman.

I'm pleased to join in convening the hearing on H.R. 5005, the "Firearms Corrections and Improvements Act." Some of the provisions of this bill are non-controversial. Others, clearly are not uncontroversial, as we will hear from our witnesses today.

I'm concerned with certain provisions, in particular the provisions eliminating the requirement for reporting multiple sales to State and local governments. Virginia, as I understand other jurisdictions, has a one-gun-a-month restriction. And this information is clearly necessary to enforce this law.

So I will clearly want to know what the proposed legislative restriction—what effect it may have on the one-gun-a-month law we have in Virginia. I'm concerned with the access to gun tracing and other information restricted by this legislation. I see no reason why we should shield individuals or companies from the responsibility for the results of their negligent acts, including those convicted of crimes directly relating to the injuries or deaths that are subject to negligence claims.

Mr. Chairman, I look forward to the testimony of our witnesses on the impact of this legislation. I look forward to working with you to ensure that we do not have undue restrictions on the abilities of our States and localities to effectively enforce their laws and on the ability of injured parties to recover from negligent acts or individuals or companies in their use of firearms.

I yield back.

Mr. COBLE. I thank the gentleman. And as Mr. Scott appropriately indicated, the primary author of the bill is with us. Mr. Smith, did you want to make a brief opening statement?

Mr. SMITH. Thank you, Mr. Chairman, I will, and it will be brief.

Mainly, I want to thank you for having this hearing on this particular piece of legislation. As you have mentioned and has the Ranking Member, Mr. Scott, there are certain tweaks that may need to be made to this legislation. But we have run it by the Department of Justice, and we believe that overall it is a good piece of legislation and will address a lot of concerns that need to be addressed.

So I am looking forward to this hearing. And I want to thank you for including me, and I want to thank Mr. Scott for his sentiments expressed a while ago as well.

I yield back the balance of my time.

Mr. COBLE. I thank the gentleman.

The distinguished gentleman from New York, Mr. Weiner, has requested permission to introduce another distinguished gentleman from New York—His Honor. Mr. Weiner?

Mr. WEINER. Thank you very much, Mr. Coble and Mr. Scott. I appreciate your obliging me. It is my great honor to introduce to the Committee, and to those who are viewing, the mayor of the city of New York, Michael R. Bloomberg.

Many of you know him as perhaps the single most successful businessman today, but if not, one of the top several in American history. But for those of us who have gotten to know him in New York, we also are familiar with his philanthropy and his charitable work.

When Tom Ridge, the former Director of Homeland Security, said that homeland security begins in our hometown, no one took it more seriously than Michael Bloomberg, who had just been sworn in shortly after September 11. With Policy Commissioner Kelly and about 36,000 police officers, including an anti-terrorism unit that extends, quite literally, beyond the ocean into other countries we have done a remarkable job in the city of New York of sometimes having to do without.

But there are some additional measures that the city of New York, and other localities, that so many of my colleagues here in Congress say that we should let the localities do what they do best. And in the case of the city of New York, thankfully, it's preventing and cracking down on crime.

But we can't do it entirely alone and we can't do it with major obstacles being put in the way with legislation that doesn't add to the enforcement actions but, frankly, makes them more and more and increasingly difficult.

You know, we in the city of New York have come to see Mayor Bloomberg as someone who proceeds with issues based on merit, not based on politics. Although I can say I have developed some appreciation for his political skills the hard way, I can say that this is an issue that, frankly, should and ought to transcend politics.

I learned from you, Mr. Coble, and others in this House that guns carry a certain cultural meaning in places around the country that perhaps I can't understand, having grown up in Brooklyn. But I think all of us recognize, particularly now after September 11th,

that there are going to be tools we're going to need to be able to give to local law enforcement to be able to do their job. And Mayor Bloomberg doesn't come here asking for things frivolously, but I think that his testimony today speaks for itself. And I think that we should give it the weight that it deserves. And we should be mindful of the fact that he is testifying not only on behalf of himself, but based on some of the letters we've gotten, based on mayors and executives all around this country in administrations both Democrat and Republican.

And I also want to express my gratitude to you, Mr. Chairman, for your flexibility in understanding the schedule of the mayor of the city of New York.

And with that, I'd like to ask unanimous consent that upon Mr. Bloomberg's testimony and our asking him questions that he be allowed to return to the city of New York. I have enough trouble operating in his shadow in New York. I'm more than eager for him to get back on the job in the city of New York. So I would ask for unanimous consent.

Mr. COBLE. Without objection. None heard.

Your Honor, it's good to have you with us. Mayor, we operate under the 5-minute rule, but you won't be keelhauled if you violate that rule. But if you can stay on or about 5 minutes, and your warning light will be that red light that will illuminate into your eye. The amber light tells you that you have a minute to go.

Now, Mr. Mayor, I am an alumnus of the rural South, and you and I probably won't agree on gun legislation. But we can disagree agreeably, as Mr. Scott and I oftentimes do. But when I come to your town, Your Honor, that country boy come to town. New York City overwhelms me, but it's good to have the mayor of America's largest city with us. And you may be heard, Mr. Mayor.

And, Mr. Weiner, I thank you for the introduction.

TESTIMONY OF THE HONORABLE MICHAEL R. BLOOMBERG, MAYOR, CITY OF NEW YORK

Mr. BLOOMBERG. Mr. Chairman, thank you. And we'd love to have you in New York City. Come and spend a lot of money. We need the sales tax revenues.

Thank you and, Ranking Member Scott, Mr. Weiner, thank you for the kind introduction, Mr. Feeney and Mr. Smith, thank you for the opportunity to appear before you and give testimony on H.R. 5005, what I would call the misnamed Firearms Corrections and Improvements Act. My name is Michael Bloomberg, for the record, and I am mayor of the city of New York.

Let me start by being very clear that I am not here today to engage in an ideological debate. H.R. 5005 has nothing to do with the second amendment and the right to bear arms, but it has everything to do with illegal guns and the dangers they pose to our police officers and citizens. And that's why I'm here, because the bill this Subcommittee is considering would explicitly impinge on our ability to fight illegal gun trafficking, and it would result in the shooting deaths of innocent people. And I urge you, in the strongest possible terms, to reject it. And I am submitting letters from mayors around the Nation, as well as from the former Chief of the

ATF's Crime Gun Analysis Bench who join me in opposing this legislation.

Why do New Yorkers care about illegal gun sales in other States? It's true that New York is the safest big city in America. And I am very proud that we have been able to reduce major crime by nearly 25 percent in the last 5 years. But the harsh reality is that far too many people continue to be killed with illegal guns. And nearly all of those guns are purchased outside of New York State. Last year, illegal guns were used to take the lives of more than 300 people in our city.

To protect all New Yorkers, we must not only root out and punish those who possess, use, and sell illegal weapons—and we are doing that more effectively than ever—but we must also do everything in our power to keep guns out of the hands of those criminals in the first place. This requires us to look beyond our borders because 82 percent of the guns used in crimes in New York City were purchased outside of New York State.

H.R. 5005 would make it immeasurably harder to stop the flow of illegal guns across our borders and into the hands of criminals by offering extraordinary protection to gun dealers who knowingly sell guns to criminals and depriving local governments and their law enforcement agencies of the tools they need to hold these dealers accountable.

Specifically, these obstacles would take the form of severe restrictions on our use of ATF trace data, which is perhaps the most effective tool we have in combatting illegal gun trafficking. Without question, the vast majority of gun dealers are law-abiding businesses, and we have no quarrel with them. Most dealers follow the law and take every precaution to ensure that their products do not fall into the hands of criminals.

But there's a very small group of bad apples—about 1 percent of all gun dealers who account for almost 60 percent of all crime guns nationwide. That's an astounding statistic. Imagine if 60 percent of all crime in a city were committed in one block. Would you pass a law that effectively prevented the police department from using every tool at its disposal to crack down on that block? Of course not. Yet H.R. 5005 would effectively prevent cities, like ours, from holding the 1 percent of bad gun dealers fully accountable for their actions. And that makes no sense whatsoever.

When rogue gun dealers break the law and their guns cause injury or death to innocent people, they should be compelled to answer for their conduct in a court of law, just as any other law breaker would. And when they hold licenses issued by State and local authorities, they should be called to account in administrative proceedings to revoke their licenses.

This is what happens to businesses in other industries when they act irresponsibly. Think about a tavern that sells alcohol to teenagers and as a result loses its license. Why should an irresponsible firearms dealer, who possesses a far greater threat to the overall safety of our citizens, be given special protection from State and local authorities?

In non-criminal proceedings, to revoke a rogue gun dealers' license trace data is the single most powerful way to demonstrate unmistakable patterns of illegal conduct. It's pretty simple. Gun

dealers with inordinately large numbers of traces to crime guns are gun dealers who make it a practice to sell to straw purchasers. Yet H.R. 5005 would ensure that this devastating evidence never sees the light of day.

Studies show that when dealers are subject to enforcement efforts, or even if they suspect enforcement efforts, the number of crime guns later traced to these dealers falls off sharply. Yet by forbidding the use of trace data in civil and administrative proceedings, H.R. 5005 would make it far more difficult to bring civil suits against rogue gun dealers and far more difficult to bring administrative actions to revoke their licenses.

And my question to you is why. Why is this in the best interest of the American people? Why is this in the best interest of your constituents? Why would Congress protect irresponsible gun dealers who help criminals get guns? Why is it good public policy to make cities fight the war against gun violence with one hand tied behind their back? Is it to benefit special interest groups or the one in a million person who was prosecuted for a purchase that is negligent, but not criminal? Is it for those few ideologues and extraordinary, unusual cases that you are willing to facilitate the shooting deaths of thousands of innocent Americans across this country every year?

I can't believe so. Nor can I take those answers back to the parents of the slain members of the New York City Police Department, including the families of Detectives James Nemorin and Rodney Andrews, who were murdered 3 years ago this month by one of the hundreds—in one of the hundreds of buy-and-busts that the NYPD carries out every year to take illegal guns off our streets.

Finally, of the other retrograde provisions in H.R. 5005, the worst of all is the provision that would actually treat police officers like criminals. Under the terms of H.R. 5005, a detective who shares ATF trace information with another State government for use in a license revocation hearing against a rogue dealer would be committing a Federal felony, a crime punishable by up to 5 years in prison. In other words, if an NYPD detective talks to a New Jersey State Trooper about a gun dealer problem, that detective could go to jail.

I would not expect that I would need to remind Congress of the horrific consequences that this country, particularly New York City, suffered as a result of the Federal Government's failure to share information among law enforcement agencies and to work together to connect the dots in order to establish patterns of criminality and threats of danger.

Yet, incredibly, instead of demanding that our law enforcement agencies share information, Congress is considering making it a crime, as absurd as that sounds. This bill would not only erect new barriers to information, it could send police officers to prison in order to prevent them from holding the worst gun dealers accountable for their potentially dangerous actions.

How in the world can you explain that to the public?

Members of the Subcommittee, I have been to too many police officers' funerals to believe that this bill actually has a prayer's chance in hell. But if it does pass, the next time an officer is attacked by an illegal gun—and I say next time because until Con-

gress gets serious about illegal guns, more police officers and many more citizens will be murdered. There can be no denying that those who vote for this bill will bear some of the responsibility. That may sound harsh to you, but I'm not going to sugarcoat my words when discussing a bill that coddles criminals and endangers police officers and citizens, not only in New York City but across this Nation.

On behalf of the members of the NYPD and their families and all New Yorkers, I am urging you in the strongest possible terms to reject this God-awful piece of legislation.

Thank you very much. And I'd be happy to answer your questions.

[The prepared statement of Mr. Bloomberg follows:]

PREPARED STATEMENT OF THE HONORABLE MICHAEL R. BLOOMBERG

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

Testimony of

Mayor Michael R. Bloomberg

Before

The Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
U.S. House of Representatives

March 28, 2006

Mr. Chairman, Ranking Member Scott, Members of the Subcommittee, thank you for the opportunity to appear before you and give testimony on HR 5005 – the misnamed Firearms Corrections and Improvements Act. My name is Michael Bloomberg, and I am the Mayor of the City of New York.

I want to be very clear that I am not here today to engage in an ideological debate. HR 5005 has nothing to do with the 2nd Amendment and the right to bear arms, but it is has everything to do with illegal guns and the dangers they pose to our police officers and citizens. That's why I am here – because the bill this Subcommittee is considering would explicitly impinge on our ability to fight illegal gun trafficking, and it would result in the shooting deaths of innocent people. I urge you in the strongest possible terms to reject it – and I am submitting letters from mayors around the nation, as well as from the former Chief of the ATF's Crime Gun Analysis Branch, who join me in opposing this legislation.

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to look beyond our borders, because 82% of the guns used in crimes in New York City were purchased outside of New York State.

HR 5005 would make it immeasurably harder to stop the flow of illegal guns across our borders and into the hands of criminals by offering extraordinary protections to gun dealers who knowingly sell guns to criminals, and depriving local governments and their law enforcement agencies of the tools they need to hold dealers accountable. Specifically, these obstacles would take the form of severe restrictions on our use of ATF trace data, which is perhaps the most effective tool we have in combating illegal gun trafficking.

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In non-criminal proceedings to revoke a rogue gun dealer's license, trace data is the single most powerful way to demonstrate unmistakable patterns of illegal conduct. It's pretty simple: Gun dealers with inordinately large numbers of traces to crime guns are gun dealers that make it their practice to sell to straw purchasers. Yet HR 5005 would ensure that this devastating evidence never sees the light of day.

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That may sound harsh to you, but I'm not going to sugarcoat my words when discussing a bill that coddles criminals and endangers police officers and citizens – not only in New York City, but across this country. On behalf of the members of the NYPD, their families, and all New Yorkers, I am urging you in the strongest possible terms to reject this God-awful piece of legislation.

Thank you, and I would be pleased to answer any questions you may have.

###

Mr. COBLE. Thank you, Your Honor, and the Chair wants to express thanks, as well, to Ms. Stucko and Mr. Gardiner, for having agreed to permit you to go first, Mr. Mayor. And then we will examine you. And then you're on a short leash. You need to go back to the Big Apple. And then we'll talk to Ms. Stucko and Mr. Gardiner.

Mr. BLOOMBERG. Congressman Weiner wants me out of Washington as soon as possible, and I'd be happy to accommodate. [Laughter.]

Mr. COBLE. We need to accommodate Anthony.

Mr. Mayor, what would you say if someone said to you, as I'm going to say to you, that for decades New York had tough, tough gun control laws and crime continued to run rampant. And then when the New York police were allowed to do their jobs and the courts more effectively did theirs, the crime rate reduced. How would you respond to that?

Mr. BLOOMBERG. We've brought the number of murders per year down from 2,200 a year down to 530 last year. But it's still 530 too many, and roughly 300 of those were committed—the murders were committed with guns. We have to continue to do our job.

And you're 100 percent right. We've done a good job and will continue to do it. But this is just one more tool in helping us get guns off the streets. Guns don't belong on the streets of big cities. And we recognize that in the suburbs and in other parts of the country, different laws may very well be appropriate. But in the major cities, I don't think there is a mayor that wouldn't stand next to me and say this is a significant problem. And it is a national problem because of the ease of carrying guns across the border from one State to another.

Mr. COBLE. But, Your Honor, much of the reduction in crime occurred after some of the gun laws were rolled back.

Mr. BLOOMBERG. Gun laws have something to do with it, in some cases don't. But that doesn't mean that we shouldn't be able to conduct an investigation. It's 1 percent of the dealers that sell 60 percent of the guns used in crime.

I mean, if it was any other industry, any other kind of crime, the public would be screaming. And I trust all of you would be leading the charge to help the cities continue the reduction in crime that they have been able to accomplish.

Mr. COBLE. Thank you, Your Honor.

Now, I want to recognize Ms. Stucko and Mr. Gardiner if you all have any comment to make prior to the mayor's departure. Mr. Gardiner?

Mr. GARDINER. No.

Mr. COBLE. Ms. Stucko?

[No response.]

Mr. COBLE. Well, I have beat the red light. The distinguished gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you. And, Mr. Mayor, you've noticed your colleague from the New York area, Ms. McCarthy, who has, as you know, a significant interest in gun legislation.

Mr. BLOOMBERG. She has mentioned it to me on more than one occasion.

Mr. SCOTT. Well, good for her. Good for her.

What effect would this—do you have one-gun-a-month legislation in New York?

Mr. BLOOMBERG. We have reasonably strict gun regulations in New York in terms of background checks and how much you can buy.

The big problem that we have are not people that are trying to buy guns legally. It is people that go out of State, buy a dozen guns, come back into the State and sell them to people that they know are criminals. And it's something that we can't control without having information, and we're going to use every tool in our quiver. We use the criminal law. We use the civil law. We use licensing requirements. We do that all the time to try to stop all of the kinds of behavior that really is so damaging to the young people of our city. We are losing our citizens to guns every day.

Mr. SCOTT. Now, a major portion of this is a restriction on what you can do with the documentation.

How would it help law enforcement to be able to have access to this information?

Mr. BLOOMBERG. What you try to do is you try to find out when a crime has been committed where the gun that the criminal had in his possession came from. You go to the manufacturer because you know the type of gun. You can look at the gun and know who manufactured it. That manufacturer can look and see what dealer he sold it to.

If one dealer has tens or hundreds of crime-used guns that he handled, that's the dealer you want to go after. This is not something that we're going after the manufacturers.

This legislation is bad for the manufacturers. In the end, the manufacturers have every interest in keeping guns out of the hands of criminals. In the end, everybody that wants to have the right to bear arms should have exactly the same interest. And this is a very important tool—having information. I know of no other place where we would deliberately prevent law enforcement officers from using the information. There's the old joke of follow the money. It's follow the information in all criminal investigations.

Mr. SCOTT. I can see how we would perhaps want to limit access, public access to this information.

Mr. BLOOMBERG. Nobody's arguing about that. We're not taking information and making it available to everybody. This is the fact an NYPD detective can't talk to a New Jersey State Trooper.

Mr. SCOTT. Now, you've indicated that some gun dealers, 1 percent of the gun dealers have an overwhelming portion. Are these 60 percent of gun crimes, are these illegal purchases or legal purchases?

Mr. BLOOMBERG. We're talking here only about illegal purchases. That's where we want to find out who is knowingly selling guns to criminals. Unfortunately, crimes are committed by people who have a gun and have a license for that gun and bought it in an appropriate manner. But you know who that is.

That's not what we're talking about here. This is purely a case where you have a handful of unscrupulous dealers, not manufacturers, who knowingly sell to people who they know will either use these guns in crime or will resell them to people who are buying

them for only one purpose, and that's to go out and to commit crime.

Mr. SCOTT. Thank you.

Mr. COBLE. I thank the gentleman.

The gentleman, distinguished gentleman from Florida, Mr. Feeney.

Mr. FEENEY. Thank you, Mayor. It's an honor to have you here today. We appreciate the job you do in America's most famous city. And thanks for being here.

Also, you know, I want to congratulate you. I mean, the truth of the matter is that for many decades, as long as I have been watching New York politics and national politics, mayors of New York have been insisting that in order to get control of the crime problem in New York, they need to have national anti-gun legislation. And, in fact, it turns out that Mayor Giuliani and your administration have enforced the laws of New York. And you have had a remarkable success. As a matter of fact, I feel safer visiting New York than at any time since I was a young man, the last 6 or 8 years. That hasn't happened as a consequence of national gun legislation. The truth of the matter is that in the last few years we have had some 70 million new handguns that have been sold and purchased, and yet violent crime continues to decrease.

And so I guess I'm a little bit mystified by some of the logic of your argument that in order to save 300 people in New York, we have to have some effect from New York City on people that sell or engage in lawful behavior outside—and let me finish, Mayor, if I can, and I am sure we will give you as much time as you need to respond, because I just have some respectful differences of opinion.

One of the things you have said is that you have implied that what Congress wants to do is to protect, if we pass the 5005 legislation—I haven't made up my mind. I don't know that I'm a cosponsor, but I certainly haven't made up my mind on specific language. I don't think anybody in Congress wants to protect the 1 percent bad gun dealers, but that is what you suggested, and we can have a difference of opinion about what the effect of the bill will be.

But I don't know whether you were here to hear some of the testimony of the last panel. What we heard, among other things, is that the number of gun dealers nationally since 1992 has gone from roughly 250,000 to less than 50,000. What we also heard is that ATF has a zero tolerance policy. No mistakes. Even though the language says "willful noncompliance by licensed gun dealers" is a crime, the tolerance policy is zero at ATF.

So I guess my question is: If you're going to say that you don't believe that ATF is policing the 1 percent of bad apples and that what you want to do is to have civil liability, you want to hold civilly responsible gun dealers that ATF is not holding responsible under its very rigid zero tolerance policy, then isn't the purpose really—and here is where I get concerned, and remember, the entire congressional intent when we created the Trace system was not to allow civil litigation or cities to crack down and license legal dealers elsewhere. It was to solve crimes. And there's nothing in this bill—and if we need to clarify the language, I can guarantee

you, I will support an amendment to say that a police officer anywhere in the country, to help solve a crime or help prevent a crime in New York can at any time pick up the phone, talk to any one of your detectives. You have my assurance on that. I will support such an amendment. But here is the problem I have, Mayor, and then I would like to invite you to respond, because we obviously have a big philosophical difference of opinion.

For decades in this country, as long as I've been alive, we have had a debate about whether or not the second amendment actually protects Americans' individual right to bear arms. I'm a big believer the second amendment is as important to America as the first amendment, freedom of the press. I happen to like the 10th amendment, also, by the way, and all the rest of the amendments.

But as a consequence of the political failure of the gun grabbers, the anti-gun lobby, to be able to convince Americans that we should take away Americans' weapons or their right to access to weapons, what they have done is to go after the people that manufacture guns. And now our concern is that individual jurisdictions will try to affect national policy by suing licensed gun dealers that have not committed a crime that the ATF finds them responsible for, but some judge in some local jurisdiction does.

And I will leave you with this last thought. You can address this hypothesis. The Legislature of South Dakota just decided that, whatever the U.S. Supreme Court has said, there should be no right to an abortion in South Dakota. If the legislature's intent in South Dakota is to protect women and unborn children in South Dakota from abortions, should they have the right after they pass this legislation to regulate the practice of medical doctors in the other 49 States that may continue to perform abortions if that occurs? We've got two constitutional rights there. One I don't find in the Constitution. One I see in the second amendment. And that's the problem I have with local jurisdictions impacting the 10th amendment rights of the rest of us.

Mr. BLOOMBERG. Mr. Feeney, I am not here to argue that the right to bear guns should be taken away. I'm not one of those gun grabbers. We are here talking simply about going after people who knowingly violate the law and sell guns to criminals, and the purpose of this bill is to take away the information we need to go after them. All law enforcement is done with both criminal law and civil law and licensing law. They're all tools that anybody that tries to enforce the law would use.

You say that the ATF has done a good job. They did, back in 2002, they inspected 4.5 percent of all Federal firearms licensees, and they found that a whopping 42 percent of those inspected had, on average, over 70 violations per store. They only attempted to revoke licenses in 30 cases, 1.6 percent of those violations. So if we are depending on the Federal Government to drive this car, they're asleep at the wheel.

I don't know that I agree with the analogy with the abortion laws in one State. That has nothing to do with what goes on in another State. These are guns used in New York that are sold in another State and transported into New York City. And so it should be up to the Federal Government to do something about it, and if they

don't, then the law permits local jurisdictions to go to court and to try to find liability.

I don't see why anybody should have more protections in the case of selling one kind of product than another kind of product. Things that are sold commonly, manufacturers and dealers have liability if their product is used incorrectly. They have labeling requirements or try to mitigate the liability through labeling requirements. Nobody suggests that a car dealer would sell—should sell a car to a 10-year-old who walks in with cash. I would argue that a car dealer that sold a car to a 10-year-old with cash probably should be put in jail, particularly if that kid goes out with a car, we find the money's been stolen, and he drives the car into a school bus and kills lots of other people.

Mr. FEENEY. Well, in fairness—and I appreciate your testimony, but, by the way, this bill doesn't allow any of those sorts of abuses. As a matter of fact, lawsuits against gun manufacturers, if their product doesn't function properly, all those things are still open——

Mr. BLOOMBERG. Those are open things. What we're talking about here is the information to find out who is deliberately and explicitly violating the law and selling guns to criminals.

Mr. COBLE. The gentleman's time has expired. If you could wrap up, Mr. Mayor.

Mr. BLOOMBERG. Let me just finish by saying, number one, thank you for listening to me. We do have some——

Mr. COBLE. Oh, no, I meant his time has expired.

Mr. BLOOMBERG. He's fine. I'd love to stay. Let me finish up by simply saying that we're not talking here about ideology. We're not talking about the Second rights—the second amendment rights. We are talking about withholding information in a world where the biggest problem we seem to have is that we are not sharing information, whether it's going after terrorists, coming from overseas, or going after criminals on our streets, whether the information is bottled up. There's a restriction, for example, in this legislation that says this data should be kept on microfilm. This is the year 2006. To put it on microfilm is only designed so that nobody can get at it. How can anybody look at their constituents in the eye and explain in a day when every kid has a cell phone that is more powerful than the biggest IBM computer made 20 years ago and restrict—come on.

Mr. COBLE. Thank you, Mr. Mayor.

The Chair recognizes the gentlelady, the distinguished gentlelady from New York, Ms. McCarthy. Good to—although not a Member of the Judiciary Committee, good to have you with us, Ms. McCarthy.

The Chair is now pleased to recognize the distinguished gentleman from New York, Mr. Weiner.

Mr. WEINER. Mr. Chairman, I think we should pick up something that Mr. Feeney said that I think put it very well, that with the laws of the city of New York, with good enforcement, with a police department second to none, with an anti-gun unit that is as vigorous as any in the country, we have been able to drive down crime. Why do you need new laws?

Well, Mr. Feeney, that's exactly the point we're making. The point is that now we've got the tools that we need to do—and I

should say, for someone who has opposed the renewing of the COPS program, which allowed more police on your streets and mine, that's one of the tools we've had that has been taken away in recent years. But all we're saying here is we don't want additional laws. We just want Congress not to butt in as we try to get the last 500 victims to not be victims, to try to drive that number down. You're exactly right, and I got to give credit—you know, from time to time my friends on your side of the aisle are exactly right. We seem to run around sometimes looking for new laws to pass, looking for new things to do. And sometimes it's just letting the good people in the localities and the cities and the States do their job.

Well, you have someone here who has arguably done it more effectively than anyone in recent memory. We've done it, sometimes without the help we needed from Washington, but we're dealing with that. Now you're coming here and saying we do need another law because, whoa, you're getting too good at this. And I want to start—I want to ask—make that the jumping off point for a question.

Mr. Bloomberg, tell us, if your police commissioner comes to you and said, You know what? We've made arrests and convictions, arrests and convictions. But based on our intelligence, we know that a particular dealer in a particular State on a particular avenue is where a lot of this is coming from, we've reported to the ATF, but they only do about 25 percent—their prosecutions are down 25 percent, you quoted 2002. I'll give you another number from 2002. There are over 2 million reported stolen firearms. There were 152 investigations, never mind prosecutions that year.

So I would ask you, Mr. Mayor, tell me a little bit about what you would do if Commissioner Kelly comes in and says that, with all your good work, with all your police officers, with all your prosecutors, with all your good intentions, at that point are you effectively stymied at that point, or do you have to launch an invasion of that State?

Mr. BLOOMBERG. The first thing we would do, Mr. Weiner, is call our corporation counsel and try to get clarification on a law that we read 10 times, and you could read it either way. It is very convoluted and complex as to whether or not you have the right to share information. But the fact that there is a law like this would certainly crimp most law enforcement efforts to share information, and they would err on the side of not sharing it. And the damage here is that somebody can die, that if we could have done something yesterday and stopped an unscrupulous gun dealer.

Let me repeat again: I have no problems with people buying guns legally, depending on the State that—the State law. But when those guns are then resold into our State and used by criminals, we, if we can't get Congress to act, will try to act ourselves and avail ourselves of the existing law that lets us use civil suits. But we need the information. And it seems to me that H.R. 5005 has one purpose and one purpose only, and that's to keep us from getting information that law enforcement agencies in any other area would have and we would encourage them to have, and, in fact, Congress pays for them to obtain. This is just trying to protect somebody who is a criminal. It doesn't have anything to do with

the right to bear arms. It doesn't have anything to do with the people who go hunting. It doesn't have anything to do with people who buy arms legally to protect themselves. It is purely and simply designed to protect the bad guys. It's to keep us from having the information.

And, Mr. Feeney, if you have concerns about how we should share the information, I don't have any problems with legislation that strikes the right balance between protecting the public and allowing the law enforcement officers from the great State of Florida or from New York to do their job. If we learnt anything from 9/11, it was we are in a common fight against those who would take away our rights, including, incidentally, the second amendment. We are in a battle to protect ourselves from terrorists from overseas and terrorists on our streets. And what we can do is to help our law enforcement officers, not hurt them and take away information.

Mr. WEINER. Thank you, Mr. Mayor.

Thank you, Mr. Chairman.

Mr. FEENEY. Would the gentleman yield before he yield back?

Mr. WEINER. Certainly.

Mr. FEENEY. Mr. Chairman, we are going to get you some of the language from the bill because—and I appreciate that we have some differences in approach. But there's nothing in the bill that prohibits information sharing between different law enforcement officers, and if there is, you have my commitment to support an amendment that will do that. What it does do is to say that the Trace information that we gather so we can track down the real criminals and solve crimes——

Mr. WEINER. Would the——

Mr. FEENEY. If it's not designed for civil litigation——

Mr. WEINER. If I can reclaim my time, I would just refer the gentleman to page 8, line 18 through 25, and you tell me—you know, I pride myself as being one of the few non-lawyers on the Committee. If you would—if there is some confusion, I think there might be, if you would take a look at it. But I will say, line 22, "and only to the extent that the information pertains to the geographic jurisdiction of the law enforcement agency or prosecutor requesting the disclosure." I read that to mean if you're interested in someone who's not in your geographic subdivision and you're not in your geographic jurisdiction—by the way, I don't even known what "geographic jurisdiction" means. I guess, I mean, the city of New York has prosecutions and investigations literally worldwide, but it's clear that there's some confusion. And I would welcome the gentleman's support in perhaps in Committee striking that whole section.

Mr. FEENEY. If you will yield to respond——

Mr. WEINER. Sure, sure.

Mr. FEENEY. I appreciate that, and, by the way, I'd be happy to help clarify the language. But what that refers to is the Trace information. To the extent to what the mayor wants is a database of all 50,000 gun dealers in the United States that some——

Mr. WEINER. I should think the mayor can expound on what he would like. It's the Trace——

Mr. FEENEY. Well——

Mr. WEINER. If I can reclaim my time for a moment, I'd be much more comfortable——

Mr. COBLE. The gentleman——

Mr. WEINER [continuing]. Letting the mayor say what he——

Mr. COBLE. The gentleman——

Mr. FEENEY. Well, respectfully, the mayor's under the opinion that a law enforcement officer in Florida, aware of a potential crime that's either occurred or about to occur in New York can't talk to him, that's simply not true.

Mr. WEINER. Okay. Let me—if I can reclaim my time, because now——

Mr. COBLE. The gentleman's time has expired, but I will——

Mr. WEINER. Could I have one more minute?

Mr. COBLE. Will you yield just a moment, Anthony? Will you yield?

Mr. WEINER. Sure, thank you. What's important here——

Mr. COBLE. I want to say a word, if I may.

Mr. WEINER. Oh, sure.

Mr. COBLE. I don't want to accelerate the mayor's departure. I know he has to get to New York. I hope we can wrap up pretty soon because we still have Ms. Jackson Lee and Ms. Waters just came in, so we have two——

Mr. WEINER. Sure, but I thank your indulgence for one additional minute because this is an important point.

If using Trace the city of New York is doing an investigation, arrests some guy, arrests another guy, arrests another guy, and it turns out that there's information they've gotten from ATF that says there is a likely candidate for an enforcement action in another subdivision, and ATF doesn't prosecute, for whatever reason, or it doesn't reach someone's desk, or they want to pursue it before the next guy gets shot, that, according to this language, sharing that Trace information with another agency of Government that's outside of New York would be a violation of this statute. And I would say—I would also say this: If there's confusion and the law enforcement folks think it's going to hinder them, take their word for it, Mr. Feeney. They know what they're talking about. They do it for a living. If they say so, maybe the best thing to do here is to strike the language—I would say to put aside the bill in toto. But the last thing you want to do is just because you have 100 percent certainty, if law enforcement feels they would be hindered, they're the folks we should defer to, and you know who says that most around here? Frankly, many folks on that side of the aisle say let law enforcement enforce the law. I think Mr. Coble and you just said it in your opening questions to Mr. Bloomberg, and I yield back.

Mr. COBLE. The gentleman's time has expired.

The gentlelady from—the distinguished gentlelady from Texas, Ms. Jackson Lee, is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the distinguished Chairman. I'm delighted and honored to be able to join one of the stronger visionaries on gun safety in Carolyn McCarthy from New York, and as well, Mr. Mayor, to thank you as well as the other witnesses. I'm from Texas, but I wear slightly a different perspective than might be expected.

I frankly believe that H.R. 5005 is, if you will, redundant. And I also believe that there is a degree of dumbing down the ATF in its collaborative work with local law enforcement. We have worked on this Judiciary Committee for a number of years that I have served to increase the collaboration and cooperation between local and State law enforcement and our Federal authorities.

Let me also reinforce a point that you made. I serve on the Homeland Security Committee. You're absolutely right. The singular issue after 9/11 that we began to address, even before looking at border security and other issues, was the sharing of intelligence. I mean, we've spent the longest period of time in light of a lot of issues that came to light—the FBI memo, which I'm sure you're aware of, the training of individuals to take off and not land. So this strikes me—it gives me a certain amount of "befuddleness," if you will, and I'll claim that word.

I would like to just go back to some comments that you've made, and I'm disappointed that some of the lawsuits that cities had undertaken dealing with gun usage was not only stopped by the courts in some instances but by legislation. And I want to go back to this question dealing with H.R. 5005. I view section 7 as the one that eliminates specifically the sharing of data between local law enforcement and the Federal.

Just take, for example, the last, I think, 48 to 72 hours, in the tragic shooting in Seattle. The perpetrator, alleged perpetrator, was first described, we don't know why, it's a perfectly genteel individual, yet to discover that, well, the individual was well armed but also had a number of other gun equipment.

The question is—we don't know what the investigation will find, but the question is: In that kind of tragic episode that may happen in any American city, wouldn't it have been—or would it be certainly more valuable—and this is in what we think is a standard crime, tragic crime situation—where information could be shared as to whether those guns had been used in other criminal circumstances, whether or not they were sold inappropriately, whether or not there was evidence of a person who sold them who violated the law? Would you share with me, even on the basis of simple crime solutions that happens in every major city, how a bill like this that dumbs down the ATF data system where it cannot be shared really undermines your commissioner's work, undermines your local—I shouldn't say your local, but your police officers on the street who we're trying to protect, and simply puts a large divide between what should be a unified scene of law enforcement and the sharing of intelligence?

Mr. BLOOMBERG. Ms. Jackson Lee, I cannot understand why this bill is before this Subcommittee. You would think that those who want to have the right to bear arms would do everything they could to keep the bad guys, if you will, from having guns. I don't know where any investigation goes. We never know what's going to happen in this tragic case that you referred to, or anyplace else. In this country, we have a number of rights. One is the right to bear arms. Another is a restriction on how Government can use information, and I think most of those restrictions are well founded. They have been tested in the courts. There's a lot of history behind them.

What this law would do is for one kind of product, go and remove the ability for law enforcement officers to do their jobs even under the protection of the civil rights that we all hold so dear. And the only beneficiary of this bill are the bad guys. It does not help gun manufacturers. Most of them are very responsible. It does not help gun dealers. Most of them are very responsible. It doesn't help people who buy guns legally and use them responsibly. It just helps one group—the bad guys. We have a law says they shouldn't have guns, and yet here's ways that you're taking away from the police department's ability to find out who is violating the law.

Ms. JACKSON LEE. Plain and simple—and might I just add these two points, and I'd appreciate your brief comment on it, because, again, it gives me great consternation and heightens the level of confusion. To limit ATF from gun tracing data and to limit it from using—or at least allowing this gun tracing data or the data that they might come about and potential civil action, which from my perspective the judiciary system or any legal system is for petitioners and defendants—or plaintiffs and defendants, rather, or prosecutors and defendants, to go before the court, and someone prevails. And so eliminating information to be given to either side, to be adjudged by either a hopefully independent jury or a jury of one's peers and/or a judge seems to me to put a major dent in any judicial system that we would claim to have. Why eliminate information?

Mr. COBLE. The gentlelady's time has expired, but you may respond, Mr. Mayor.

Mr. BLOOMBERG. Ms. Jackson Lee, before you came in, I talked about the difference between criminal law and civil law and licensing law. The truth of the matter is law enforcement officers and the governments use all three all the time. We use building codes to close down bars that may sell alcohol to children or houses of prostitution or places where they sell stolen goods. We use civil suits to make this city, our city, the city of Washington, safer all the time. The distinction is this is not a bunch of ambulance-chasing lawyers going out and looking for a case to make a few bucks. This is the Government that's sworn to protect all of us using information to catch a handful of people who go out and kill other human beings.

And, Mr. Feeney, one of the things you had said is we have done a good job at bringing down crime in New York City, but it's not just going after demand. It's going after the supply as well. Why not do both? And you do both simultaneously. And I think that there's plenty of protections for the public. In the past, I don't know of any kind of tracking data like this that was used inappropriately. All of a sudden, however, there's a law that was in the past put through as part of an appropriations bill, so it never really—Congress never really had to stand up and say yea or nay. This is the first time, I think, that Congress has to do that.

But it seems to me, plain and simple, you've got to answer to your constituents. Who are you trying to protect and why in this day and age, given everything that we've learnt from 9/11, everything that's going on in this world, we want to tie the hands of law enforcement officers? You may feel that there should be some

added protections for the public in terms of how the information is used, and if there are abuses, fine.

Ms. JACKSON LEE. Absolutely.

Mr. BLOOMBERG. I have the same interest in my personal rights as anybody else. But I don't think that you can make a rational case that deliberately keeping information of who is selling tens, hundreds of guns that they know are going to go out on the streets and be sold to criminals, that keeping that information from law enforcement makes——

Ms. JACKSON LEE. Mr. Chairman, I have just one sentence. What the mayor has enunciated I believe represents fatal flaws in legislation that I don't think can be cured or rehabilitated. And I'd just cite to my colleagues, though it is not a gun issue, but some decades ago when we took on Volkswagen to be helpful, we drive Volkswagens today that are safe. And that was a civil suit based upon information that had been garnered. Slightly different set of facts, but a good turned out. Why not allow facts to go to local governments so that good can come out of it for those they serve and for this Nation. This legislation is fatally flawed, and, again, I hope we'll find a way to detour it away from consideration.

I yield back.

Mr. COBLE. The gentlelady's time has expired.

The Chair has been very lenient on time because this is a very significant issue, and, Ms. Stucko and Mr. Gardiner, if you all want to weigh in before we adjourn, I will let you do that. But meanwhile I want to recognize the distinguished gentlelady from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman and Members. Allow me to take a moment to thank Mr. Bloomberg, the mayor, for being here today. I want to commend you not only because of your position on this issue, on the issue of gun laws, but for your courage in coming here. This bill is being advanced by a Member of your party, and oftentimes it is difficult, even when you know something is wrong, to look them in the eye and tell them, and you are here doing that today, and I commend you for that. As a matter of fact, I like people with courage.

Let me just say that I'm from Los Angeles, and I have a very diverse district. But one section of that district where we have a concentration of public housing developments and a concentration of poor people and gangs is a very troubling part of my district. In about a month's period of time, I think starting about December 23rd, there were 12 people killed in what has been described as gang warfare. And what's very interesting about what has taken place is the guns that they're using are more sophisticated, they have more fire power, and they're not killing just one person, they're killing several persons in a single round of shooting.

Now, we're all asking: Where are these guns coming from? How are these young people getting access to these guns? Can't we trace them? Can't we find out what is going on?

The NRA and maybe the gun dealers who support this bill can say whatever they want about constitutional rights. The Constitution never envisioned that sophisticated weaponry would be on the streets of America with people getting killed day in and day out all over this country.

Aside from the gangs and the criminals who have access to these guns, I would think that every Member of Congress would be concerned about terrorism. The President has made this his number one priority. We talk a good game up here about terrorism. We have an alert system with yellow and orange and red and all of that. But that does not really do very much to protect us from the potential for terrorists right here in our own country having access to the kind of weapons that could wipe out a whole bunch of people at a theater, in a supermarket, you name it.

And I want to tell you, each morning that I wake up, I wake up wondering whether or not some of what I'm hearing about what is going on in Iraq is not going to occur here in the United States, and how we could do something like the section 7, the elimination of duplicative, multiple sales report requirements, is unconscionable. To say that someone can walk in and purchase maybe ten guns or more and there would be a report maybe that goes to ATF but not to the State and locals and the ATF does not have a responsibility to report it to the State and locals is just beyond me, my comprehension. I don't understand why we would be doing something like this, and I think you raised the question why. Why do we have this bill in this Subcommittee before the Congress of the United States? Who are we trying to protect and why? And for anybody to say we're not trying to protect the criminals, I don't know how they would explain it.

I'm sick and tired of the sloganeering and the stupid slogans—"Guns don't kill people, people kill people." Well, I want to tell you who's killing folks. This kind of public policy is what can help get a lot more people killed and our inability to find out where these guns are coming from and how they're being sold.

So you give me an opportunity with this platform today to say how deeply concerned I am about what is going on not only in my own district and with young people and with gang members, but what's going on across this Nation.

I thank you for being here, and I hope that no matter what kind of criticism you may get from inside your party, that you continue to do this kind of work and show up at times when it's not popular to show up. And I don't need a response.

Thank you very much.

Mr. COBLE. Ms. Waters, you beat the red light. I commend you for that.

Your Honor, I think we're about to excuse you, but I want to give Ms. Stucko and Mr. Gardiner a chance to make a statement——

Mr. BLOOMBERG. Can I just say something about Ms. Waters' comments?

Mr. COBLE. Sure.

Mr. BLOOMBERG. I don't view this as a partisan issue.

Ms. WATERS. It shouldn't be.

Mr. BLOOMBERG. I'm not a particularly partisan person, as many people know, but I—and I don't view this as the NRA versus the rest of the world. This is not about the right to bear guns. This is not a philosophical issue. This is plain and simple: You've got criminals out there and we're not going after them, and I fail to understand how anybody can argue that we shouldn't have this information. It does not restrict anybody from legally buying a gun

anyplace or doing anything that is legal. And it seems to me that it is in the NRA's interest long term to do everything they can to make sure that guns are used responsibly, because whether the politics worked today or the politics work tomorrow, eventually the public is going to say enough is enough. And I had the mayor of Los Angeles, Mayor Villaraigosa, in the city recently, about 2 weeks ago, and we had dinner together and talked about crime, and we both have similar problems, and education. This is not something that's East Coast/West Coast, Republican/Democrat, rich/poor. Everybody is a victim of criminals, and all we're saying is don't take away the information that we need to catch the criminals. And I think that those that really care about the second amendment should not want this bill to become law.

Mr. COBLE. Mr. Mayor, since Mr. Gardiner and Ms. Stucko have been very generous with their time, do either of you have anything to say prior to the mayor's departure?

Mr. GARDINER. Are we going to have a chance to make——

Mr. COBLE. Your mike is not hot, Mr. Gardiner.

Mr. GARDINER. Are we going to have a chance to make statements afterward or is this the only—is this going to be the only——

Mr. COBLE. This will be it. Well, now, the record will be kept open for 7 days. If you want to communicate with us in writing, that will be in order.

Mr. GARDINER. I would like to make a couple of comments, and please——

Mr. COBLE. Oh, I stand corrected. Sure, you may indeed make them right now.

Mr. WEINER. Mr. Chairman, can—the mayor has to run back, but I just want to thank him on behalf of the Committee.

Mr. COBLE. Ms. Stucko, did you or Mr. Gardiner want your words to be received by the mayor necessarily?

Mr. GARDINER. I would like to make a couple of comments if the mayor could hold on for a couple minutes.

Mr. COBLE. Mr. Mayor, could you accommodate us to that end?

Mr. BLOOMBERG. I think this is important enough. I'd be happy to——

Mr. COBLE. Folks, we're departing all around from the rules of order here, but I think we'll be forgiven. Go ahead, Mr. Gardiner.

Mr. BLOOMBERG. I'd just like to say thank you—thank you, Mr. Gardiner and Ms. Stucko, for your patience, and I apologize.

Mr. GARDINER. I have prepared testimony, which has been in the record, but I want to comment on several things the mayor has said. First of all, he suggests that this bill would somehow impair the ability to bring lawsuits against dealers who knowingly sell firearms to criminals. That's absolutely untrue. There's nothing in this bill which would in any way prevent suits against dealers who knowingly sell firearms to criminals. If there are dealers who are doing that, those kind of lawsuits can be brought now. There's nothing that prevents that.

What the mayor is talking about here is the data from the National Trace System, the database that ATF maintains, and it's important to understand why what the mayor is saying about this bill simply is not true, because you have to understand what that data-

base is. It is a list of guns which have been traced. That's all it is. And as the Congressional Research Service said in a study at least a decade ago, all traced firearms are not crime guns, and all crime guns aren't traced. Indeed, the vast majority of guns which are traced are not crime guns, and probably the vast majority of crime guns aren't traced. You have a database that essentially all it's doing is indicating how many times law enforcement agents have called ATF and said, "Who—where did this gun go after it was manufactured?" That's all the Trace database is. It is not in the slightest way indicative of whether a particular dealer is selling guns to criminals. And so eliminating the ability of ATF to release the Trace database is not in any way going to impact on the ability to bring suits against dealers.

Now, I wanted to also respond, if I could, to Mr. Scott's question about Virginia and the one-gun-a-month provision. That—this database has absolutely nothing whatever to do with the enforcement of the one-handgun-in-30-day-period. That is a database that is maintained by the Virginia State Police because we have a statewide instance check. I have personally——

Mr. SCOTT. Doesn't the bill prohibit the dual reporting and that's why the Virginia——

Mr. GARDINER. It does. It has absolutely no effect, and the reason is that in Virginia we have this statewide instant check. In fact, Virginia was the first State to create that. And the way the State Police determined whether a second handgun has been sold within the 30 days is based on the State instance check system. It has nothing whatever to do with these multiple-purchase forms. The State has its own computer system, and when a dealer makes a transfer of a handgun, he has to call in and get permission, get a clearance for the individual buyer. And when that check is done, when the criminal history check is done, they also do a check to determine if the person has bought a second handgun within 30 days, and I know that's how it's done because I've represented a number of individuals who've been prosecuted, and I've cross-examined the State Police who've been involved in the cases. So this bill would have no effect whatever on that issue.

With regard to the—specifically with regard to section 7 and providing information, multiple-purchase information to the State police and local police, the problem is that part of what Congress said was that the data were to be destroyed after—I believe it was 20 days, and the police were then to provide certifications to the Department of Justice that they had destroyed those documents pursuant to Federal law.

I have done a Federal—a Freedom of Information Act request to get copies of those certifications. I believe in the course of the last 10 or 12 years since this was done, even though there have been thousands and thousands and thousands of multiple-purchase forms filed, there were probably four or five certifications from the entire United States in that file. The local and State law enforcement have simply—I guess a better—no better way to put it is that they violated Federal law because they have not provided these certifications. And that's part of the reason why the information is not—should not be provided, because they apparently have not complied with their requirements.

Mr. WEINER. Maybe they should file it on microfiche.

Mr. GARDINER. Then maybe they'd destroy it? Is that the——

Mr. WEINER. Then none of us would ever know.

Mr. GARDINER. Paper is easy to destroy. These are forms that are about——

Mr. WEINER. I know. I'm joking, Mr. Gardiner.

Mr. COBLE. Are you finished, Mr. Gardiner?

Mr. GARDINER. Those are the specific comments that I wanted to make.

Mr. COBLE. I thank you for that.

Ms. Stucko?

Ms. STUCKO. We have not had a chance to thoroughly analyze the bill, but we would like to enter comments for the record.

Mr. COBLE. Well, the record will remain open for 7 days, and I want to thank you the Members of the Subcommittee for their attendance.

Mr. Mayor, good to have you down here in the Nation's capital. Have a safe trip back.

Mr. BLOOMBERG. Thank you.

Mr. COBLE. This concludes the hearing. In order to ensure a full record and adequate consideration of this important issue, the record will be left open for additional submissions for 7 days. Also, any written questions a Member wants to submit should be submitted within the 7-day period.

This concludes the legislative hearing on H.R. 5005, the "Firearms Corrections and Improvements Act." Thank you for your cooperation. The Subcommittee stands adjourned. Thank you.

[Whereupon, at 4:03 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PREPARED STATEMENT OF RICHARD E. GARDINER, ATTORNEY AT LAW, FAIRFAX, VIRGINIA

TESTIMONY OF RICHARD E. GARDINER
ATTORNEY AT LAW
FAIRFAX, VIRGINIA

H.R. 5005, THE "FIREARMS CORRECTIONS AND IMPROVEMENTS ACT"
MARCH 28, 2006

Mr. Chairman and members of the subcommittee, thank you also for the opportunity to comment on H.R. 5005. This bill would roll back unnecessary restrictions, correct errors, and codify several longstanding congressional policies concerning firearms.

The most important provision of H.R. 5005 is section 9, which codifies limits on disclosure of trace records. Congress has passed a series of appropriations riders on this subject over the last several years, out of concern for gun owners' privacy and the confidentiality of law enforcement records. Like the language in section 9, these riders protect this information from disclosure in civil lawsuits.

The reason for this is quite simple. Congress requires firearms licensees to maintain records and to comply with trace requests for the purpose of gathering evidence to solve crimes, not to produce statistical evidence for lawsuits — such as New York City's — which blame the industry for the actions of criminals. Both the appropriations riders and the language in H.R. 5005 allow access to this data for legitimate law enforcement investigations. Law enforcement agencies and organizations have supported these restrictions to protect confidential information about agents, informants, and investigative targets who may be identified in these records.

A related provision, section 7, would eliminate duplicative paperwork for dealers. Currently, dealers have to report multiple handgun sales (that is, sales of more than one handgun to a person within 5 days) both to ATF and to state or local agencies. These sales, of course, are to people who have already passed the instant background check to buy the firearms. ATF is supposed to have primary responsibility for enforcing federal firearms laws, and therefore is the only agency that needs to receive these reports.

There is also a serious privacy concern about how agencies handle these records. Under federal law, the multiple sales report sent to local law enforcement agencies is not supposed to be disclosed to any other entity, and is supposed to be destroyed within 20 days. Local agencies are supposed to certify to the Attorney General every 6 months that they have complied with these rules. However, when one of my colleagues filed a Freedom of Information Act request for records on the implementation of this requirement, he only received a handful of documents, which did not include any of the required certifications. In fact, last year the Appropriations Committee adopted report language that urged ATF to make sure local agencies are aware of the requirement. If agencies are unable to comply with the legal requirements for receiving these documents, they should not receive them in the first place.

On another privacy concern, section 8 would permanently ban creation of a centralized electronic index of out-of-business dealers' records — a threat to gun owners' privacy that Congress has also barred through appropriations riders for a decade.

Section 5 would permanently ban taxes or "user fees" on background checks by the federal instant check system. Congress never gave FBI the authority to charge any fee for these checks, but in 1998, the FBI proposed to do so anyway. Congress has clearly expressed its opposition to such fees in annual appropriations riders ever since, and it is time to make that policy permanent.

Section 6 would eliminate a provision of the Youth Handgun Safety Act that currently requires juveniles to have written permission to use a handgun for purposes such as competitive shooting or safety training — even when the parent or guardian is personally present while the juvenile is using the handgun. This is obviously absurd. As there is fortunately no evidence that it has ever been enforced, section 6 is a very reasonable provision to correct it.

Section 3 would make important changes to the federal machinegun laws. In 1986, during the House floor debate on the Firearms Owners' Protection Act, Representative Hughes offered a last-minute amendment to prohibit all civilian transfers of new machineguns. This was obviously done for political reasons, and it has had unintended consequences. In particular, it prevents firearm and ammunition manufacturers from acquiring machineguns for use in developing or testing firearms and ammunition for government contracts. It also prevents the use of machineguns by private security contractors for security services or training within the United States. Section 3 would correct both of those anomalies.

Finally, section 10 would allow importation of barrels, frames and receivers for some types of semiautomatic rifles for use only as repair or replacement parts. Even under the Clinton Administration, which often imposed new bans on importing various types of firearms, these parts could be imported for repair or replacement use; this section corrects a recent and stricter interpretation by the Department of Justice that forbids such importation.

Mr. Chairman, I thank you for your time and I will be happy to answer any questions.

PREPARED STATEMENT OF AUDREY STUCKO

Department of Justice

STATEMENT

OF

AUDREY STUCKO
DEPUTY ASSISTANT DIRECTOR
ENFORCEMENT PROGRAMS AND SERVICES
BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

BEFORE THE

HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

"OVERSIGHT OF THE BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES:
REFORMING LICENSING AND ENFORCEMENT AUTHORITIES"

PRESENTED ON

MARCH 28, 2006

Good morning Chairman Coble, Congressman Scott and members of the Subcommittee. Thank you for the opportunity to appear before you to discuss the significant contributions of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) relating to our administration of the licensing provisions of the Gun Control Act of 1968.

I appreciate this opportunity to outline for the Subcommittee ATF's regulation of Federal firearms licensees, which I will refer to as "FFLs." I will begin with the application and license issuance process and then address voluntary FFL compliance, which is ATF's primary goal.

All applicants for a license submit an application to ATF's licensing center in Atlanta. The applicant and any corporate officers, directors, or managers are subject to National Instant Check System (NICS) background checks, and assuming none are felons or otherwise fall within a category of prohibited persons, the application is then sent to the ATF field division where the applicant is located. At that point an Industry Operations Investigator (IOI) conducts an interview to verify the identity of the applicant, verify that the applicant has a permanent location that will be available for ATF's statutorily authorized inspections, and to review with the applicant the laws and regulations governing the operation of the applicant's firearms business. This process benefits applicants by providing them with information to assist them in operating their business in compliance with the

law. Once the field is satisfied that the applicant meets all the statutory criteria for licensing, the licensing center is then directed to issue the license. ATF's attempts to complete the licensing process within 60 days, but that time period can be extended when complications arise in connection with criminal background checks or the necessary zoning variances. ATF continues to educate licensees concerning their obligations under the law through the issuance of Open Letters that are mailed to FFLs and posted on the ATF website, through quarterly FFL Newsletters, and by attending industry conferences and trade shows to answer questions from licensees. We also provide FFLs with our Federal Firearms Regulations Reference Guide, which includes the laws, regulations, and other information about conducting a firearms business under Federal law.

With certain exceptions, the Gun Control Act limits ATF to one annual compliance inspection of an FFL's firearms records and inventory each year. There are currently over 105,000 Federal firearms licensees, and ATF conducts approximately 4,000 inspections of firearms licensees each year. The purpose of the inspection program is to determine whether an FFL is complying with the law and regulations and, if not, to obtain voluntary compliance. Voluntary compliance is encouraged by educating FFLs about the requirements of the law and regulations and by issuing Notices of Violation that outline the specific violations of the law and regulations that were discovered during the inspection. IOIs go over the

violations outlined in the notice with the FFLs to make sure they understand how their business operations fell short and how to avoid violations in the future.

In the event the violations are "willful," the licensee may receive a warning letter from the Field Division or may be asked to attend a warning conference to discuss the violations and how they may be avoided in the future. If the violations are willful and it is determined that voluntary compliance is unlikely or that continued operation of the FFL poses a threat to public safety, the Field Division may recommend that the license be revoked. Under the Gun Control Act, license revocation may be undertaken for any willful violation of the law or regulations. The term "willful" is not defined in the law, but Federal courts have consistently defined it to mean that the FFL knew of the legal requirements at issue and disregarded or was plainly indifferent to these requirements. This interpretation of willfulness is consistent with that applied in administrative proceedings held by a number of other Federal agencies.

ATF has issued guidance to all field divisions outlining the types of violations that are suitable for warning letters, warning conferences, and revocation of licenses. These guidelines were issued to ensure consistency in administering the statute throughout the United States.

A review of agency data indicates that ATF typically revokes fewer than 100 licenses per year on the basis of willful violations of the law and regulations. This

represents 2.5% of all licensees inspected annually and 0.1% of the total FFL population. In the vast majority of these revocations, ATF has already provided the licensee with an opportunity to comply and previously issued Reports of Violation or warning letters, or held warning conferences. Moreover, in almost all cases the Federal district courts have upheld the Government's actions. For example, in the past 5 years, 33 of the 36 Federal district courts reviewing ATF's license denial or revocation decisions have upheld those determinations. Further, only one of the three adverse decisions has resulted in an award of fees and costs against the Government.

Again, our goals are voluntary compliance and educating FFLs about their obligations under the law and encouraging business practices that bring about this result. ATF typically resorts to license revocation only when it is clear that voluntary compliance is unlikely and that continued operation of the firearms business is not in the public interest.

Currently, license revocation hearings are held before ATF hearing officers, and the proceedings are informal, where the Rules of Evidence and other judicial rules do not strictly apply. Because the hearings are informal, FFLs often choose to represent themselves. After the hearing, the Director of Industry Operations, who oversees a Division's regulatory operations, issues a final decision. During the administrative proceedings, the FFL may continue to operate the firearms

business. Thereafter, the FFL can proceed to Federal District Court for review of the revocation or denial decision. Because a firearms license revocation is subject to trial *de novo*, a legal term which means the court can allow new testimony and evidence that was not considered at the administrative hearing, ATF revocation proceedings need not meet the formal adjudication requirements of the Administrative Procedure Act. Thus, ATF's revocation hearings are not required to be held before an Administrative Law Judge and need not follow formal rules of procedure. This makes the proceedings more amenable to unrepresented FFLs, who often choose to proceed without counsel. ATF hearing officers are trained to accommodate unrepresented licensees and make sure that the proceedings give them a meaningful opportunity to participate in the hearing. ATF's legal staff agree that the informal hearing procedures comply with due process and best serve the interests of licensees and the general public.

ATF has discretion under the regulations on whether to allow a licensee to continue to operate while the appeal process is ongoing in Federal court, which may take several years. The standard for allowing continued operation is whether "justice so requires," and ATF implements this provision to allow an FFL to continue operating unless their business practices pose a threat to public safety. For example, when the violations at issue involve significant numbers of

unaccounted for firearms or FFL participation in straw sales, ATF may decide that the FFL should not operate during the appeal process.

Further, new entities lawfully acquiring a firearms business – including a business from a person whose license was revoked for committing willful violations of the law – start their businesses with a clean compliance history. ATF will verify that the persons acquiring the firearms business are not merely fronting for the predecessor, and, providing that successors otherwise meet the statutory requirements, ATF will issue a license to the successor. In the event the new licensee includes responsible persons or hires employees from the previous business owner who were aware of or participated in prior violations, those violations may be the basis for a determination of willfulness if the successor later commits the same violations. ATF is frequently asked for guidance on such transactions and on how to go about liquidating firearms inventories after revocation.

Our enforcement efforts in inspecting FFLs are a valuable tool in protecting our communities. The commodities in which these businesses are dealing in are not ordinary products—they are firearms that can be used in crime as well as for lawful sporting purposes. If ever there was a business where extraordinary diligence is required, it is a firearms business. This principle has been recognized repeatedly by Federal courts in upholding ATF's revocation of licenses. Again,

our goal is voluntary compliance, and we believe we are using our resources and the available sanctions appropriately to bring about that result.

We hope this information will assist the Subcommittee in its oversight efforts. I look forward to answering any questions the Subcommittee may have.

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PREPARED STATEMENT BY THE HONORABLE ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you, Mr. Chairman. I am pleased to join in convening this legislative hearing on H.R. 5005, the "Firearms Corrections and Improvement Act." While some of the provisions of this bill are non-controversial, others are clearly controversial, as we will hear from our witnesses today. I am concerned with certain of the provisions, in particular, such as the provision eliminating the requirement for ATF to report multiple sales to state and local governments. Virginia, as other jurisdictions, has a one- gun-a-month restriction, and this information is clearly necessary to its

enforcement purposes. So, I will certainly want to know how the proposed legislative restriction relates to this purpose. I am also concerned with access to gun tracing and other information restricted by this legislation. I see no reason why we should shield individuals or companies from responsibility for the results of their negligent acts, including those convicted of crimes directly related to the injuries or deaths that are the subject of negligence claims.

So, Mr. Chairman, I look forward to the testimony of our witnesses on the impact the legislation and to working with you to avoid undue restrictions on the abilities of our states and localities to effectively enforce their laws, and on the ability of injured parties to recover from negligent acts individuals or companies in the use of firearms. Thank you.

PREPARED STATEMENT BY THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

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Congress of the United States
House of Representatives
Washington, DC 20515

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MEMBER:
DEMOCRATIC CAUCUS POLICY AND STEERING COMMITTEE
CHAIR:
CONGRESSIONAL CHILDREN'S CAUCUS

CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

COMMITTEE ON JUDICIARY

STATEMENT

MARCH 28, 2006

Mr. Chairman and Members of the Committee, I am pleased that we are following through on a series of hearings over the last two months on the policies and procedures of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

One could say that the first issue at hand today does not directly address the more contentious questions of gun

ownership and an individual's constitutional rights. We've seen in past hearings that a breakdown of communication, and of policy, occurred in regards to incidents at a gun show last August. I consider this hearing to be a question of management and oversight. I hope that today we can identify measures that will help ensure that the Bureau is efficient and effective in carrying out its mission.

However, I feel compelled to express my views on gun policy, both because of the abominable provisions in HR 5005, and because I feel very strongly that our country has gone a wayward and dangerous route. I am dismayed that we have continued to sit on our hands as it becomes clearer each week that we must go back to the table to address the issue of gun violence. Ever since Columbine High School, we have lost more than one hundred children, and yet, we have done nothing.

The current trend of fatal shootings in schools and workplaces across the United States must be stopped. For this reason, I would support fair and honest gun control legislation that would stop the current trend of senseless violence. It is a shame that HR 5005 gets nowhere near this. While I support the right of hunters and other sportsmen to carry firearms in a safe manner, I support common sense gun control legislation.

I am very concerned about the high rates of crime in many communities around the country. We must develop a comprehensive approach to this issue. I believe that reasonable gun control laws can help to reduce crime and violence, without placing an undue burden on law-abiding citizens.

I agree, however, that we must also enforce due process, and maintain the integrity of the laws of our country. Hopefully, moving forward, we will be able to consider legislation that

will substantively and realistically protect our nation and our communities from the dangers of firearms.

I thank all of the witnesses for being present today, and I look forward to hearing what you have to say. Thank you, Mr. Chairman, and I yield the balance of my time.

LETTER FROM ANTONIO VILLARAIGOSA, MAYOR OF THE CITY OF LOS ANGELES, TO THE HONORABLE HOWARD COBLE AND THE HONORABLE ROBERT C. SCOTT

ANTONIO R. VILLARAIGOSA
MAYOR

March 28, 2006

The Honorable Howard Coble
Chairman
House Judiciary Subcommittee on
Crime, Terrorism and Homeland
Security
207 Cannon House Office Building
Washington, DC 20515

The Honorable Robert C. Scott
Ranking Member
House Judiciary Subcommittee on
Crime, Terrorism and Homeland
Security
B-336 Rayburn House Office
Building
Washington, DC 20515

Dear Chairman Coble and Ranking Member Scott:

I am writing in strong opposition to H.R. 5005, the Firearms Corrections and Improvements Act. Although this legislation purports to make technical corrections, it in fact proposes significant changes that would undermine federal firearms law and endanger public safety. This legislation takes us in the wrong direction at a time when communities across the nation are struggling to find solutions to gun violence.

This legislation would unduly restrict the disclosure of information in the firearms trace database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). ATF's crime gun tracing program not only helps local police solve gun crimes, it also provides critical information about gun trafficking patterns that can prevent future crimes. The ATF's crime gun trace database helps law enforcement identify the retail dealers contributing the most guns to the illegal market, the manufacturers and distributors who supply those dealers, and the traffickers who are fueling violence in their communities. To restrict access to this data puts officers and the public at risk.

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The Honorable Howard Coble
The Honorable Robert C. Scott
March 28, 2006
Page 2

H.R. 5005 seeks to prevent state and local police from receiving reports on multiple sales of handguns. This will only help gun traffickers hide from law enforcement the large-volume sales they make. In recent years, law enforcement organizations have made strides toward working together through information sharing. This bill would erect walls where communication pathways have only recently been created.

HR 5005 severely weakens federal gun laws and moves our nation in the wrong direction. I urge Congress to reject this legislation and to work with us to strengthen federal gun laws.

Very truly yours,

ANTONIO R. VILLARAIGOSA
Mayor

ARV:js

cc: The Honorable Howard Berman
The Honorable Maxine Waters
The Honorable Adam Schiff
The Honorable Linda Sanchez

LETTER FROM RICHARD DALEY, MAYOR OF THE CITY OF CHICAGO, TO THE HONORABLE HOWARD COBLE

OFFICE OF THE MAYOR
CITY OF CHICAGO

RICHARD M. DALEY
MAYOR

March 27, 2006

The Honorable Howard Coble
Chairman
House Judiciary Subcommittee on
Crime, Terrorism and Homeland Security
207 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Coble:

As Mayor and on behalf of the City of Chicago, I write to express my strong opposition to H.R. 5005, which will be heard in the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security on Tuesday, March 28. The legislation would endanger the safety of the public by severely undermining federal gun laws.

Among the more objectionable provisions of the legislation is a measure that unreasonably restricts the ability of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") to disclose to law enforcement agencies information on firearms traced in criminal investigations. The bill would prohibit such disclosure except in connection with a specific criminal investigation.

Trace information is extremely important in identifying illegal gun traffickers, straw purchasers and corrupt gun dealers. In fact, data compiled from this information has revealed that a tiny percentage of gun dealers is responsible for the sale of a majority of guns later traced in criminal investigations. Unreasonable restrictions on the disclosure of such information already have been inserted into the ATF fiscal year 2006 appropriation bill. H.R. 5005 would make the restrictions permanent. That would be good news for gunrunners and other criminals, and bad news for law enforcement.

The ATF must be permitted to share crime gun trace information with local law enforcement personnel so that police activity can be concentrated more effectively on those dealers who abuse and break the law by putting countless firearms into the hands of criminals.

Lastly, I note that H.R. 5005 contains additional irresponsible provisions that would diminish the effectiveness of law enforcement, such as a measure that would benefit gun traffickers by prohibiting state and local police from receiving reports on multiple sales of handguns.

I sincerely hope that you consider the negative effect that H.R. 5005 would have on public safety and oppose the bill.

Sincerely,

Richard M. Daley

Mayor

LETTER FROM RICHARD DALEY, MAYOR OF THE CITY OF CHICAGO, TO THE HONORABLE ROBERT C. SCOTT

OFFICE OF THE MAYOR

CITY OF CHICAGO

RICHARD M. DALEY
MAYOR

March 24, 2006

The Honorable Robert C. Scott
Ranking Member
House Judiciary Subcommittee on
Crime, Terrorism and Homeland Security
B-336 Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Scott:

As Mayor and on behalf of the City of Chicago, I write to express my strong opposition to H.R. 5005, which will be heard in the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security on Tuesday, March 28. The legislation would endanger the safety of the public by severely undermining federal gun laws.

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Sincerely,

Richard M. Daley

Mayor

LETTER FROM THOMAS MENINO, MAYOR OF THE CITY OF BOSTON, TO THE HONORABLE HOWARD COBLE AND THE HONORABLE ROBERT C. SCOTT

CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
THOMAS M. MENINO

March 27, 2006

Honorable Howard Coble
Chairman
House Judiciary Subcommittee on
Crime, Terrorism and Homeland Security
207 Cannon House Office Building
Washington, DC 20515

Honorable Robert C. Scott
Ranking Member
House Judiciary Subcommittee on
Crime, Terrorism and Homeland Security
B-336 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Coble and Ranking Member Scott:

I am writing in strong opposition to H.R. 5005, the "Firearms Corrections and Improvements Act." This legislation proposes significant changes that would undermine Federal firearms law and endanger public safety. In Boston and many other communities nationwide, we are struggling on a day-to-day basis to find solutions to end gun violence. This legislation would not only impede our efforts but it would exacerbate the problem further. We need tools and resources to help us combat the surge in gun violence. This legislation should not be allowed to move forward.

Just three weeks ago, I convened a Community Summit on Youth and Handgun Violence titled "Know More – Do More" in response to the escalating gun violence in Boston. The summit brought together city and law enforcement officials, academics, and community and religious leaders to discuss the upsurge of handgun violence and to identify community-based policies and partnerships to help address this problem. In stark contrast to what we discussed at the summit – this legislation would ensure that we know less and hence are able to do less.

One of the issues discussed at the summit was trace data. Firearm trace information provided by ATF is critical to the Boston Police Department's ability to initiate and investigate firearm trafficking cases, which ultimately leads to taking guns off

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the street. Currently, we are experiencing an increase in gun violence in several of our neighborhoods, including the "community gun" phenomenon - a group of individuals having access to, and utilizing the same gun multiple times. Trace information is particularly useful in these cases, where one gun is implicated in several shootings, by multiple offenders.

One of the most disturbing provisions in the legislation you are considering is that it would unduly restrict the disclosure of information in the firearms trace database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Instead of codifying this harmful provision in statute, it should be stripped from any future appropriations language.

Preventing state and local police from receiving reports on multiple sales of handguns, as proposed in the legislation, will only help gun traffickers hide the large volume sales they make. It is important that state and local law enforcement know whether gun traffickers are purchasing large numbers of guns from local gun shops. It makes no sense for Congress to prevent state and local law enforcement from being notified of, and acting on, inherently suspicious multiple sales.

HR 5005 severely weakens federal gun laws and moves us in the wrong direction. As a Mayor on the front lines in the battle against gun violence, I urge Congress to reject this legislation. Furthermore, I ask that Congress work with Mayors such as myself, Mayor Bloomberg and others who have made eliminating handgun violence a top priority to develop tools and resources that truly enhance public safety.

Sincerely,

Thomas M. Menino
Mayor of Boston

LETTER FROM TOM BARRETT, MAYOR OF THE CITY OF MILWAUKEE, TO THE HONORABLE F. JAMES SENSENBRENNER, JR., CHAIRMAN, COMMITTEE ON THE JUDICIARY, AND THE HONORABLE JOHN CONYERS, JR., RANKING MEMBER, COMMITTEE ON THE JUDICIARY

Tom Barrett
Mayor, City of Milwaukee

March 28, 2006

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Sensenbrenner and Ranking Member Conyers:

This letter is written to express my grave concern with H.R. 5005, the Firearms Corrections and Improvement Act, and the effect it will have on the ability of law enforcement to solve gun crimes and prevent future firearm injuries and deaths in Milwaukee and the nation.

H.R. 5005 limits the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) from releasing comprehensive crime gun trace data to local and state law enforcement agencies, and virtually prohibits ATF from providing firearm trace data to legitimate research partners and to the general public.

In addition, H.R. 5005 relieves gun dealers of their current responsibility of notifying state and local police when someone purchases multiple firearms within a week. At a time when cities are inundated with illegal firearms, the bill hinders law enforcement from doing its job by shielding access to information like multiple purchases or sales of crime guns, straw purchases, and other methods of illegal gun trafficking.

Office of the Mayor • City Hall • 200 East Wells Street • Milwaukee, Wisconsin 53202
(414) 286-2200 • fax (414) 286-3191 • mayor@milwaukee.gov

Rep. Sensenbrenner and Conyers
Committee on Judiciary
House of Representatives
March 28, 2006
Page 2

If enacted, this legislation will disrupt the work of law enforcement and community task forces charged with developing and implementing strategies to crackdown on street thugs and sophisticated gang members, and the few bad apple dealers who have been responsible for so many deaths in our country at the hands of illegal guns.

I urge you to carefully review H.R. 5005 and to reject those sections that interfere with our efforts to combat crime. Your consideration of this request is much appreciated.

If you have any questions, feel free to give me a call at 414-286-2200.

Sincerely,

Tom Barrett
Mayor of Milwaukee

LETTER FROM GREGORY NICKELS, MAYOR OF THE CITY OF SEATTLE, TO THE HONORABLE F. JAMES SENSENBRENNER, JR.

Gregory J. Nickels
Mayor of Seattle

March 24, 2006

The Honorable James Sensenbrenner, Jr.
Chairman, House Judiciary Committee
U.S. House of Representatives
2449 Rayburn House Office Building
Washington DC 20515

Dear Chairman Sensenbrenner:

The ability of the Seattle Police Department to receive information on crime gun traces is essential for successful criminal investigations and for identifying illegal gun transactions. As Mayor of Seattle, I want to ensure that our police department has the critical information it needs to protect our citizens from gun crime. H.R. 5005, if enacted, would severely restrict the ability of the Seattle Police Department to investigate the sources of crime guns and stop those who are illegally providing guns to criminals. This bill is being heard in your Judiciary Committee on March 28th.

It is not reasonable or good public policy to prohibit the federal National Trace Center of the Alcohol, Tobacco, Firearms and Explosives Bureau from disclosing crime gun tracing information to law enforcement and prosecutors at any level of government. In this country we are engaged in emotionally charged debates about gun rights and gun control. However, everyone can agree that guns should not be used to commit crimes and guns should not be provided to criminals. H.R. 5005 would shield those who supply guns to criminals by withholding important crime gun trace information from law enforcement. No one is safer when police and prosecutors are denied the vital information they require to perform their jobs protecting our citizens.

H.R. 5005 will provide shelter for criminals by making it harder for law enforcement to identify them. H.R. 5005 runs counter to our basic public safety goals. As Chair of the House Judiciary Committee, I urge you to reject H.R. 5005 by not moving this bill any further through the process.

- over -

Seattle City Hall, 7th Floor, 600 Fourth Avenue, P.O. Box 94749, Seattle, WA 98124-4749
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appreciate your thoughtful consideration of this request.

Sincerely,

GREG NICKELS
Mayor of Seattle

cc: The Honorable Jay Inslee, Congressman
The Honorable Jim McDermott, Congressman
The Honorable David Reichert, Congressman
The Honorable Adam Smith, Congressman

LETTER FROM GREGORY NICKELS, MAYOR OF THE CITY OF SEATTLE, TO THE HONORABLE JOHN CONYERS, JR.

Gregory J. Nickels
Mayor of Seattle

March 24, 2006

The Honorable John Conyers, Jr.
Ranking Member, House Judiciary Committee
U.S. House of Representatives
2426 Rayburn House Office Building
Washington DC 20515

Dear Congressman Conyers:

The ability of the Seattle Police Department to receive information on crime gun traces is essential for successful criminal investigations and for identifying illegal gun transactions. As Mayor of Seattle, I want to ensure that our police department has the critical information it needs to protect our citizens from gun crime. H.R. 5005, if enacted, would severely restrict the ability of the Seattle Police Department to investigate the sources of crime guns and stop those who are illegally providing guns to criminals. This bill is being heard in your Judiciary Committee on March 28th.

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H.R. 5005 will provide shelter for criminals by making it harder for law enforcement to identify them. H.R. 5005 runs counter to our basic public safety goals. As Ranking Member of the House Judiciary Committee, I urge you to reject H.R. 5005 by not moving this bill any further through the process.

- over -

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appreciate your thoughtful consideration of this request.

Sincerely,

GREG NICKELS
Mayor of Seattle

cc: The Honorable Jay Inslee, Congressman
The Honorable Jim McDermott, Congressman
The Honorable David Reichert, Congressman
The Honorable Adam Smith, Congressman

LETTER FROM THE FAIR TRADE GROUP TO THE HONORABLE HOWARD COBLE

FAIR TRADE GROUP

FIREARMS IMPORTERS ROUNDTABLE
OFFICE OF THE EXECUTIVE DIRECTOR

March 30, 2006

Chairman Howard Coble
Subcommittee on Crime, Terrorism, and Homeland Security
Judiciary Committee
207 CHOB
Washington DC 20510

Dear Chairman Coble:

I am writing on behalf of the membership of the FAIR Trade Group, an organization that represents importers of goods regulated by the Bureau of Alcohol, Tobacco and Firearms including firearms, firearms parts and accessories and ammunition.

We were very pleased to watch the legislative hearing on HR 5005, the Firearms Corrections and Improvements Act of 2006, and wish to express our strong support for this legislation.

The FAIR Trade Group has worked with the BATF for over 10 years in an effort to resolve issues associated with firearms imports, firearms sales and firearms ownership and the legislation provides a number of significant improvements over existing law.

I respectfully request that you proceed to mark this legislation up in Committee and move forward to the full committee at your earliest opportunity.

Sincerely,

Robert Talley
Executive Director

2121 K STREET, N.W., SUITE 650, WASHINGTON, D.C., 20037 • TEL 202.296.2537 • FAX 202.296.2675 • EXECDIR@FAIRTRADEGROUP.ORG

LETTER FROM THE NATIONAL FIREARMS ACT TRADE & COLLECTORS ASSOCIATION TO THE HONORABLE HOWARD COBLE

March 31, 2006

Chairman Howard Coble
House Judiciary Committee
Subcommittee on Crime, Terrorism, and Homeland Security
207 Cannon House Office Building
1st Street and Independence Avenue, SE
Washington, DC 20515

RE: H.R. 5005, The Firearms Corrections and Improvements Act

Dear Chairman Coble:

I am writing on behalf of the National Firearms Act Trade and Collectors Association (NFATCA) to express strong support for H.R. 5005, The Firearms Corrections and Improvements Act. The NFATCA is a trade association comprised of those engaged in the NFA weapons business and NFA weapons collectors. Our goal is to assist the NFA community in understanding and working with governmental rules and regulations, communicating with government agencies, and lobbying for necessary legislative changes.

H.R. 5005 contains necessary and urgently needed legislative changes. Section 3, Possession and transfer of Machineguns for Industry Testing and Security Contracting, and Section 10, Barrel and Receiver Importation, are extremely important to the NFATCA and the NFA community as a whole. Section 3 is vital to the national security of the United States and its federal contractors. Section 10 would fix a serious problem affecting both the United States government and private individuals. Currently, neither governmental entities nor private individuals, such as hunters, can obtain replacement barrels or receivers. H.R. 5005 will provide much needed relief to both the government and private individuals.

Additionally, we must disagree with the comments made by Mayor Michael Bloomberg at the March 28th hearing covering H.R. 5005. The firearms industry maintains that there are good reasons that Congress does not allow the Bureau of Alcohol, Tobacco, Firearms and Explosives to make sensitive information available to the public about sales records of guns used in crimes. Part of H.R. 5005 would make permanent a prohibition against sharing traced gun data except for legitimate law enforcement purposes. The NFATCA agrees with Mayor Bloomberg in wishing to reduce the criminal misuse of firearms, but this is best accomplished by not releasing this data to others outside of law enforcement.

On behalf of the NFATCA, I respectfully request that you move H.R. 5005 forward to a markup and on to the full committee at the earliest opportunity.

Cordially,

John Brown
President
National Firearms Act Trade
and Collectors Association

LETTER FROM THE BRADY CENTER TO PREVENT GUN VIOLENCE TO THE HONORABLE HOWARD COBLE AND THE HONORABLE ROBERT C. SCOTT

March 28, 2006

Chairman Howard Coble

Ranking Member Bobby Scott

Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
207 Cannon House Office Building
Washington, DC 20515

Dear Chairman Coble and Ranking Member Scott:

Today the Subcommittee on Crime, Terrorism and Homeland Security will conduct a hearing on H.R. 5005. The Brady Center to Prevent Gun Violence, and its affiliate, the Brady Campaign to Prevent Gun Violence, the nation's largest, non-partisan, grassroots organizations dedicated to creating an America free from gun violence, strongly oppose H.R. 5005, the so-called "Firearms Corrections and Improvements Act." Far from making "Corrections and Improvements" in our Nation's gun laws, H.R. 5005 severely undermines those laws and makes Americans less safe.

H.R. 5005 WILL BLOCK PUBLIC AND LAW ENFORCEMENT ACCESS TO VALUABLE CRIME GUN INFORMATION

Particularly in the last decade, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has released to law enforcement agencies, scholars, the press, local and state governments and the public, valuable information about crime guns derived from the firearms trace database, as well as portions of the trace database itself. This has led to an explosion of new knowledge establishing that ***thousands of guns move quickly from a relatively small number of licensed gun dealers into the illegal market***. The more the public understands about crime guns, the more it also understands the integral role of reckless licensed dealers in supplying the illegal market. The gun lobby, and particularly the gun industry, feels threatened by this new learning because it supports the need for tighter federal regulation of gun dealers and gun sales to curb the flow of guns into criminal hands. Section 9 of H.R. 5005 is a transparent attempt by the gun lobby, and its wholly owned friends in Congress, to shield the public, as well as government and law enforcement agencies, from the truth about guns and crime.

ATF Crime Gun Trace Data Has Taught the Public and Policymakers that the Illegal Gun Market is Continuously Supplied by the Diversion of Guns from a Small Number of Reckless Gun Dealers

Although ATF long has traced the sales history of crime guns as a service to law enforcement agencies investigating specific crimes, in the mid-1990s ATF began to significantly expand its tracing program. In July of 1996, President Clinton launched the *Youth Crime Gun Interdiction Initiative*, under which cities across the country engaged in comprehensive crime gun tracing; that is, to trace every gun used in crime and seized by law enforcement, not simply those where tracing was needed to solve a specific crime. This led to a massive increase in the number of ATF traces, from around 54,000 in 1993 to over 280,000 in 2003. This database – which now contains reports on over 2 million crime guns – has been a rich source of information that ought to guide public policy for years to come. Instead, the gun lobby now seeks to hide the trace data from public view to ensure that the role of irresponsible and corrupt gun dealers in supplying the illegal market is never fully understood

To appreciate how much public understanding will be lost if H.R. 5005 is enacted into law, it is critical to review what ATF's crime gun trace data has enabled us to know about the issue of guns and crime. Some examples include:

- Almost 60% of crime guns originate with only 1% of the Nation's licensed gun dealers.[1]
- 30% of traced crime guns move so quickly from licensed gun dealers into crime that they likely have been trafficked from dealers.[2]
- Handguns sold in multiple sales account for 20% of traced crime guns.[3]
- In cities and states with strong gun laws, crime guns tend to originate with licensed gun dealers in other states, thus showing that strong gun laws make it more difficult to criminals to access local sources of guns.[4]
- State laws curbing multiple handgun sales diminish interstate movement of crime guns from those states.[5]

Crime gun trace data also has enabled communities to know which gun dealers are contributing the most guns to the illegal market.[6] In short, ***ATF crime gun trace data has enabled the public to know that the illegal market is continuously supplied by guns diverted quickly to gun***

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[1] ATF, *Commerce in Firearms in the United States* 2 (2000).
[2] ATF, Youth Crime Gun Interdiction Initiative, *Crime Gun Trace Reports (2000) National Report*, at ix.
[3] Id.
[4] Daniel Webster, et al., Relationship between licensing, registration and other gun sales laws and the source state of crime guns, 7 *Injury Prevention* 184-89 (2001).
[5] Douglas Weil and Rebecca Knox, Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms, 275 *Journal of the American Medical Association* 1759 (June 12, 1996).
[6] Americans for Gun Safety Foundation, *Selling Crime: High Crime Gun Stores Fuel Criminals* (January 2004).

traffickers from a relatively small number of licensed gun dealers, through multiple gun sales, straw purchases and other means.

H.R. 5005 Would Shield the Public from Valuable Data on the Role of Reckless Gun Dealers in Supplying the Illegal Market

H.R. 5005 bars disclosure of "information in the firearms trace system database," as well as information about multiple sales of handguns required to be reported by licensed dealers pursuant to 18 U.S.C.§923(g)(3), to any entity, with the sole exception of disclosure to law enforcement agencies "for use in a bona fide criminal investigation or prosecution." Such disclosure to a law enforcement agency is further restricted to information that "pertains to the geographic jurisdiction" of the agency or prosecutor requesting the disclosure.

This provision has several obvious effects on the public's understanding of the role of reckless gun dealers in fueling the illegal market:

- It will prevent ATF itself from issuing reports, based on its crime gun trace database and multiple sale data, that educate law enforcement, and the public, on the origins of the illegal gun market. For example, if H.R. 5005 had been law, ATF could not have issued the reports under the *Youth Crime Gun Interdiction Initiative* that provided individual cities, their law enforcement authorities, and the general public, valuable information about the guns traced to crime in their communities. As ATF itself has written, these reports "inform the public, Congress, and State and local authorities, building cooperation by communicating what ATF agents, inspectors, and State and local law enforcement investigating violent criminals see in their everyday enforcement operations."[7]

- It will prevent ATF from providing information about guns traced to crime and multiple handgun sales data to scholars studying the problem of guns and crime. For example, scholars have used this data to show the effect of a state law barring multiple sales on the interstate movement of crime guns.[8]

- It will prevent ATF from disclosing valuable crime gun data to the press, to advocacy organizations, or even to Members of Congress. In the past, publicly disclosed trace data has been used by the press to study assault weapon use in crime.[9] It has been used by advocacy organizations to identify gun dealers responsible for large numbers of crime gun traces.[10] It has been used by Members of Congress to establish that most guns traced to crime originate with a small percentage of licensed gun dealers.[11]

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[7] ATF, Youth Crime Gun Interdiction Initiative, *Crime Gun Trace Reports, National Report (2000)* at 1.
[8] Weil and Knox, *supra*.
[9] Cox Newspapers, *Firepower: Assault Weapons in America* (1989).
[10] Americans for Gun Safety Foundation, *Selling Crime, supra*.
[11] Report of Sen. Charles Schumer, A Few Bad Apples: Small Number of Gun Dealers the Source of Thousands of Crimes (June 1999).

- It will prevent ATF from disclosing crime gun trace data to gun manufacturers and distributors to enable them to better ensure that their retailers use responsible business practices. For example, in February 2000, ATF publicly announced that it would provide trace data to gun manufacturers to enable them "to police the distribution of the firearms they sell."[12] In reports issued thereafter, ATF expressly told the gun industry that a primary purpose of trace data is to "inform federal licensed firearms dealers of crime gun patterns, allowing them to build sounder and safer businesses."[13]

H.R. 5005 Would Prevent Law Enforcement Agencies from Using Crime Gun Trace Data to Develop Effective Enforcement Strategies

Although H.R. 5005 provides for limited disclosure of crime gun trace data to law enforcement agencies, the data can only be "for use in a bona fide criminal investigation or prosecution" and, even then, the disclosure must be limited to information that "pertains to the geographic jurisdiction of the law enforcement agency or prosecutor requesting the disclosure."

In the past, ATF has released information from its crime gun trace database to local and state governments, and law enforcement agencies, without the requirement that the data relate to a specific criminal investigation or that the data disclosed be limited to crime guns pertaining to the requesting jurisdiction. For example, if a local law enforcement agency wanted information to allow it to know which gun dealers in its community exhibit "trafficking indicators" as specified by ATF (such as multiple crime gun traces, short "time-to-crime" for traced crime guns, or frequent multiple sales), H.R. 5005 presumably would block ATF from sharing that information. Law enforcement agencies may want the information to craft effective enforcement strategies against those dealers, long before a specific criminal investigation has begun. Law enforcement agencies may also need such data to propose legislative or policy initiatives to protect the community from the risk of diversion of crime guns from such dealers. As ATF itself has recognized, its public dissemination of crime gun trace data provides "crime gun information to the Federal, State, and local law enforcement agencies that submit trace requests, boosting their information resources for arresting gun criminals, responding to gun violence, and establishing a benchmark for crime gun measurements."[14]

H.R. 5005 Is Not Needed to Protect Against Disclosure of Data that Could Harm Law Enforcement Investigations

The proponents of H.R. 5005 claim that disclosure of crime gun trace data threatens to disclose undercover and other law enforcement operations against gun traffickers and corrupt dealers. On the contrary, as shown above, by barring ATF from disclosing crime gun trace and multiple sale data to law enforcement agencies, the bill adversely affects law enforcement's ability to help ATF to combat gun trafficking and the reckless dealers who aid and abet it.

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[12] Treasury/ATF Press Release, *Firearms Report, Gun Trafficking Actions*, February 4, 2000.
[13] ATF, Youth Crime Gun Interdiction Initiative, *Crime Gun Trace Reports, National Report (2000)* at 1.
[14] Id.

The argument that H.R. 5005 is needed to protect law enforcement operations is entirely bogus. As noted above, for many years ATF has disclosed crime gun trace information to the public, while redacting any data it felt could compromise law enforcement investigations. H.R. 5005, on the other hand, is a far broader prohibition of disclosure than necessary to protect law enforcement investigations. For instance, as shown above, ***it would bar ATF itself from referring to aggregate trace data in its own reports*** providing the public, along with government and law enforcement officials, valuable information about guns and crime. There is no reason to believe that the reports issued by ATF containing crime gun trace data have compromised a single law enforcement investigation. Likewise, there is no evidence that the studies and reports based on ATF crime gun trace data previously published by scholars, advocacy groups, the press and other government agencies have revealed confidential ATF sources or adversely affected law enforcement activities.

The Law Enforcement Steering Committee (LESC), composed of major national law enforcement groups, including the Federal Law Enforcement Officers Association, the Major Cities Chiefs and the International Brotherhood of Police Officers, has expressed concerns about legislative restrictions on ATF's disclosure of trace data. In a January 16, 2004, letter to the Senate concerning provisions in the FY2004 Omnibus Appropriations Bill, the LESC stated that its members "are concerned by a provision included in the omnibus bill which will prohibit the Bureau of Alcohol, Tobacco, Firearms and Explosives from publicly disclosing or sharing gun trace data with local law enforcement." The FY2004 Appropriations provisions restricted only disclosure of trace data pursuant to requests to ATF from outside parties and thus were far more narrow in scope than those in H.R. 5005.

H.R. 5005 REPRESENTS AN UNWARRANTED ATTEMPT BY CONGRESS TO INTERFERE WITH FEDERAL AND STATE JUDICIAL PROCEEDINGS INVOLVING THE GUN INDUSTRY

Section 9 of H.R. 5005 is so broad that it even purports to make information from the trace database and multiple sale data "immune from legal process" and "not subject to subpoena or other discovery" in any State or Federal civil action or administrative proceeding. It further provides that such data "shall not be admissible as evidence" in such court or administrative proceedings and "testimony or other evidence relying on the information" shall also not be admissible. The only exception is for use of the data in administrative enforcement proceedings brought by ATF or in judicial review of such enforcement proceedings.

This language would prohibit a party to civil litigation from subpoenaing trace data and multiple sale data, even if the data were considered by a court to meet the generally applicable standards for permissible discovery. It also would bar a court from admitting trace data and multiple sale data as evidence in a civil proceeding, even if a court has determined that they meet the generally applicable rules of evidence admissibility in that court. Finally, the language purports to bar expert witnesses from relying on the data to formulate and support their expert opinions in civil proceedings, even if a court has determined that the expert's reliance on the data conforms to the generally applicable evidentiary requirements for expert testimony. ***In short, this legislation purports to prevent the use of crime gun trace and multiple sale data in civil***

actions, even if a court has determined that the use of the data is probative of the issues in the action and its use is necessary to ensure a fair hearing.

Section 9 of the bill is an extraordinary attempt by Congress to intervene in judicial proceedings for the purpose of "stacking the deck" in favor of gun industry defendants, and it may well be unconstitutional for that and other reasons. In *NAACP v. Accusport*, 271 F.Supp.2d 435 (E.D.N.Y. 2003) a federal court relied extensively on evidence from the crime gun trace database, and related expert testimony, in finding that the gun industry's distribution practices contribute to the public nuisance of illegal guns in New York City. The court found that "[c]areless practices and lack of appropriate precautions on the part of some retailers lead to the diversion of a large number of handguns from the legal primary market into a substantial illegal secondary market." It further found that "[t]he flow of guns into criminal hands in New York would substantially decrease if manufacturers and distributors insisted that retail dealers who sell their guns be responsible…." Obviously, these legal and factual conclusions are quite threatening to the gun industry. Section 9 of H.R. 5005 is the gun lobby's attempt to ensure that no other court has the benefit of evidence that is so damning to the gun industry.

H.R. 5005 WILL DEPRIVE LOCAL LAW ENFORCEMENT AUTHORITIES OF WARNINGS OF POSSIBLE CRIMINAL ACTIVITY IN THEIR COMMUNITIES

Section 7 of H.R. 5005 proposes to eliminate the requirement that licensed gun dealers notify state and local law enforcement when they sell multiple handguns – more than two handguns within five days – to one purchaser.

When a federally licensed gun dealer sells more than one handgun to the same individual within five consecutive business days, the dealer must send a multiple-sale report to ATF, and send a copy to local law enforcement. Multiple-sale reports are required to be forwarded to federal and local law enforcement because ATF considers multiple sales to be such an important indicator of gun trafficking.[15] Handguns sold in multiple sales are often traced to crime and sales of multiple guns at one time are one way that gun traffickers obtain large quantities of guns to be illegally re-sold to prohibited purchasers.[16]

It is important that local law enforcement agencies know whether gun traffickers are purchasing large numbers of guns from local gun shops. Indeed, according to ATF, in "[m]ost ATF trafficking investigations, 68 percent …, involved the cooperation of State and local law enforcement agencies."[17] This amendment would prevent state and local law enforcement from being notified of, and acting on, inherently suspicious multiple sales.

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[15] *See, e.g.*, ATF, *Commerce in Firearms in the United States* 22 (2000).
[16] *See, e.g.*, ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (2000).
[17] *Id.* at 44.

H.R. 5005 WILL HINDER LAW ENFORCEMENT INVESTIGATIONS OF SUSPECTED CRIMINALS

Section 8 of H.R. 5005 makes permanent a restriction on ATF, currently imposed through a rider to ATF's appropriations since 1997, preventing federal law enforcement from "electronically retrieving" records kept by name under Section 923(g)(4) of the Gun Control Act. This restriction prevents ATF from assisting local law enforcement with investigations of suspected criminals.

Under 18 U.S.C. § 923(g)(4), when a federally licensed firearms dealer goes out of business, the dealer is required to turn over all of its gun sale records to ATF within 30 days. The dealer is required to forward its records so that ATF has access to the records whenever law enforcement requests trace information on a gun sold by that dealer. More than 50% of trace requests ATF receives involve going through out of business dealer files. ATF organizes and indexes the files so they can be more easily searched.

This provision prevents ATF from being able to search the files for a specific suspect identified by law enforcement. Since ATF cannot respond to such requests, law enforcement is, for example, prevented from learning about weapons purchased by a suspected gun trafficker, or from knowing whether the suspect may have a cache of firearms. Section 8 simply makes more difficult the critical task of ATF and local law enforcement to apprehend gun criminals.

H.R. 5005 WILL CREATE A LOOPHOLE IN THE FEDERAL BAN ON IMPORTATION OF NON-SPORTING FIREARMS

Section 10 proposes to amend 18 U.S.C. § 925(e) to exempt parts of semiautomatic assault weapons from the ban on importation of semiautomatic assault weapons.

Federal law prohibits the importation of non-sporting firearms, including semiautomatic assault weapons. These weapons are semiautomatic, civilian versions of weapons designed for military use. The weapons are capable of holding large-capacity magazines that allow a shooter to fire even more than 100 shots without having to reload. ATF has found that the guns "are not generally recognized as particularly suitable for or readily adaptable to sporting purposes" and instead "are attractive to certain criminals."[18]

The importation of certain types of assault weapons from overseas was banned during the Reagan, George H.W. Bush, and Clinton Administrations. Such bans were ordered by ATF under the 1968 Gun Control Act, which grants ATF the power to prevent the importation of guns that are not "particularly suitable for or readily adaptable to sporting purposes."[19] Federal law also currently prohibits the importation of frames, receivers, or barrels of non-sporting firearms, because they can be assembled into a prohibited firearm. ATF recently explained that it would not allow for any exceptions to this statutory language.[20]

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[18] Dep't of Treasury, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*, at 38 (1998).
[19] ATF, *Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles* (July 6, 1989).
[20] ATF Open Letter, July 13, 2005, at http://www.atf.gov/firearms/071305openletter.htm.

H.R. 5005 would overturn ATF's ruling by repealing the ban on importation of semiautomatic assault weapon frames, barrels and receivers for repair or replacement in assault weapons, opening a loophole in the ban on the importation of non-sporting weapons. The amendment will allow parts to be imported and assembled into firearms that would have been prohibited under ATF regulations. Such a loophole effectively allows the importation of non-sporting firearms, including semiautomatic assault weapons.

H.R. 5005 WILL PREVENT THE DEPARTMENT OF JUSTICE FROM RECOUPING THE COSTS OF FEDERAL BACKGROUND CHECKS ON FIREARMS

Section 5 proposes to forbid the Justice Department from charging fees for conducting background checks. Since the Brady Law went into effect in 1994, federally licensed firearms dealers must conduct a criminal history background check to make sure prospective buyers are not prohibited purchasers – most often performed through the Federal Bureau of Investigation's National Instant Check System (NICS). NICS provides access to millions of criminal history records from all 50 states and the District of Columbia. Since 1994, NICS checks have stopped more than 1.3 million criminals and other prohibited people from purchasing firearms from federally licensed dealers.

Currently, American taxpayers pay tens of millions of dollars a year to fund background checks on gun buyers. There is no good public policy reason for preventing the federal government from shifting the costs of background checks from the general public onto those whose desire to purchase firearms makes the background checks necessary.

H.R. 5005 WILL REDUCE PARENTAL SUPERVISION OF MINORS USING HANDGUNS

Section 6 proposes amending 18 U.S.C. § 922(x)(3) to allow parents or guardians to give one-time written permission to minors to use handguns "in the course of employment," or for target practice or hunting. Once the juvenile obtains this permission, he or she would be free to use handguns with no parental supervision whatsoever. Given the frequent tragic consequences of juvenile gun misuse,[21] this would be an appalling relaxation of federal law.

Sincerely,

Dennis Henigan

Legal Director
Brady Center to Prevent Gun Violence

[21] *See, e.g., Two Wounded on First Day of Squirrel Season*, Charleston Gazette, Oct. 8, 1996 at 3C; *8-year-old Boy Shoots Himself While Hunting*, Richmond Times Dispatch, Nov. 19, 1997, at B4.

LETTER FROM CRIME GUN SOLUTIONS LLC TO THE HONORABLE LAMAR SMITH, CHAIRMAN OF THE SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

2214 West Greenleaf Drive
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301-631-2950
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March 27, 2006

Hon. Lamar Smith
U.S. House of Representatives
2184 Rayburn House Office Building
Washington, DC 20515

Dear Representative Smith:

I am writing to express my opposition to H.R. 5005, the "Firearm Corrections and Improvements Act." While I commend your interest in protecting sensitive information about criminal investigations from public disclosure, I am concerned that the bill's restrictions on access to data on traced firearms will interfere with the ability of state and local law enforcement to protect themselves and the public from crime and terrorism.

As the former chief of the Crime Gun Analysis Branch at the Bureau of Alcohol, Tobacco, and Firearms who now serves as a firearms-related violent crime expert for the International Association of Chiefs of Police. I am intimately familiar with the issues arising from disclosure of information about crime-gun traces outside of ATF. I previously have testified and provided affidavits opposing unfettered access to the ATF firearm trace database in civil litigation against the firearm industry. I continue to believe that relinquishing the entire database to litigants could compromise important law enforcement interests. Specifically, releasing segments of the database that include notes or other investigative material entered by ATF special agents or other law enforcement authorities could interfere with their ability to build cases and prosecute lawbreakers, and access to these notes should be restricted. I believe, however, that access to the trace data in a wide variety of situations is critical to law enforcement.

ATF should be encouraged to make more information from its trace database available to local and state police as a means of enhancing officer safety, preventing violent crime and deterring foreign and domestic terrorists from acquiring firearms. Whether for the investigation of terrorists such as Timothy McViegh following the bombing of the federal building in Oklahoma City; the recent arrests of Islamic terrorists who were training with assault weapons in Virginia and foreign countries; or the brutal killing of local police officers (our nation's first responders), tracing has provided valuable leads toward solving crimes and identifying perpetrators. Since the firearm is the tool of the trade for violent criminals, law enforcement requires data that only firearm tracing can provide. Comprehensive and expeditious firearm tracing coupled with associated analysis is the key to protecting officers and expeditiously solving violent crimes.

Most importantly, every law enforcement officer in the United States should be alerted when encountering an individual that has been associated with a crime-gun in order to guard themselves against the risk that the individual will be in possession of a firearm. Geography-based limits on the use of trace information are a bad idea, because it does not matter that an individual being stopped in Virginia was associated with a crime-gun in

Oregon – officer safety demands dissemination and sharing of this information across jurisdictional boundaries. After 9/11, lawmakers and pundits complained that law enforcement could not adequately "connect the dots" to foresee acts of terrorism. Appropriations riders similar to the restrictions in H.R. 5005 have already prevented law enforcement from obtaining the data that they need. By making these restrictions permanent, H.R. 5005 would further hinder law enforcement's ability to stop crimes before they happen by tying together information that appears at first to be unrelated.

Restrictions adopted by Congress as part of the appropriations process in order to prevent plaintiff's lawyers from obtaining access to trace data that might be used against the firearm industry in court have had other unintended consequences. First, these appropriations amendments have denied state and local police and prosecutors information that would help identify and investigate corrupt or careless firearm dealers, straw purchasers, and traffickers who systematically divert guns to criminals. Second, the amendments have prohibited local or state law enforcement agency access to trace data which could make connections to investigations within the agency's own geographic jurisdiction that could identify potential associates, conspirators, and the places where they conduct criminal activity. Third, recent appropriations riders have prevented local police and prosecutors from obtaining and integrating regional trace data that could enhance analysis and provide leads in new and ongoing investigations.

Who might be the beneficiary of codifying restrictions on the use of trace data by enacting H.R. 5005? Studies conducted by my firm, Crime Gun Solutions, and others have found that fewer than one percent of federally licensed dealers supply the lion's share of crime-guns to criminals. Furthermore, 86 percent of all federally licensed dealers have never had a crime-gun traced back to their businesses. During the nearly three decades I spent in law enforcement and in my subsequent experience as a law enforcement trainer, I have never encountered or even heard of a case where the release of trace information to law enforcement – or to the public, for that matter – has compromised or impeded a criminal investigation or prosecution. In light of the significant problems that have been created by recent restrictions on use of the data, the risks of relaxing restrictions on law enforcement access are clearly outweighed by the benefits. After all, the trace database cannot help solve crimes if the agencies investigating the crimes cannot get access to its entire contents and are limited to the information that they input to the tracing database (they already have that information).

Thank you for taking the time to consider my views on H.R. 5005. If you have questions or would like additional information, feel free to contact me at (301) 631-2950.

Sincerely,

Joseph J. Levince, Jr.
President
Crime Gun Solutions LLC

DECLARATION OF SERVICE VIA JUSTICELINK

In re Firearm Case
No. JCCP 4095

(*People, et al. v. Arcadia Machine & Tool, Inc., et al.*)
San Francisco Superior Court No. 303753
Los Angeles Superior Court No. BC210894
Los Angeles Superior Court No. BC214794

I, Kathy Scoville, declare:

1. That I am and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested in the within action; that my business address is 401 B Street, Suite 1700, San Diego, California 92101.

2. That on February 3, 2003, I served the DECLARATION OF ROBERT A. RICKER IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT MANUFACTURERS' MOTION FOR SUMMARY JUDGMENT by JusticeLink Electronic filing on all persons appearing on the Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of February, 2003, at San Diego, California.

/s/ *Kathy Scoville*

Kathy Scoville

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Attorneys for The People of the State of California, et al.
11
12

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN DIEGO

15 Coordination Proceeding Special Title (Rule 1550(b))	) JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4095
16	)
17 FIREARM CASE	) San Francisco Superior Court No. 303753
	) Los Angeles Superior Court No. BC210894
18 Including actions:	) Los Angeles Superior Court No. BC214794
	)
19 *People, et al. v. Arcadia Machine & Tool, Inc., et al.*	) DECLARATION OF ROBERT A. RICKER IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT MANUFACTURERS' MOTION FOR SUMMARY JUDGMENT
20 *People, et al. v. Arcadia Machine & Tool, Inc., et al.*	)
21	)
22 *People, et al. v. Arcadia Machine & Tool, Inc., et al.*	) Date: March 7, 2003) Time: 8:30 a.m.) Dept: 65
23	
24	Hon. Vincent P. DiFiglia

25
26
27

I, ROBERT A. RICKER, declare as follows:

1. I am the former Director of Government Affairs, and later Executive Director, of the American Shooting Sports Council (ASSC), a trade association defendant in the above-captioned litigation. During the period of my service at ASSC, it was the leading organization representing the interests of the gun industry in legislative and policy-making forums. Through my work for ASSC and in various other positions that preceded it, for over eighteen years I devoted a substantial portion of my professional life to representing the interests of firearms owners, manufacturers, distributors and dealers.

2. After earning a law degree from The George Mason University School of Law and working in private law practice for approximately four years, I began my work on firearms issues in 1981, as an Assistant General Counsel for the National Rifle Association (NRA) in Washington, D.C. The NRA has long been the most powerful organization in the nation working to oppose legislative and regulatory restrictions on the manufacture, sales and ownership of firearms. The focus of my legal work at the NRA involved three areas. First, I handled all political law matters involving the NRA's political action committee, the NRA/Political Victory Fund (NRA/PVF). The NRA/PVF uses the substantial financial resources of the NRA to support the election of candidates opposing strong gun laws and the defeat of candidates who support such laws. Second, I handled various legal matters for the NRA's Institute for Legislative Action (ILA), which involved, among other things, the drafting and analysis of legislative proposals advanced by NRA at the federal and state level. Third, I supervised outside counsel representing ILA in pending litigation in both federal and state court.

3. In 1983, I left the NRA's legal staff and moved to California, where I took a position with the California Wildlife Federation, which at that time, directed all lobbying activities in California for the California Rifle and Pistol Association (CRPA), the official state affiliate organization for the NRA. During that period, on behalf of Sturm, Ruger & Co., CRPA and the NRA, I helped write, and directed the lobbying efforts to pass, the nation's first state statute

1 protecting the firearm industry from certain firearm product liability lawsuits. This effort was
2 successful and the legislation was signed into law in 1983 and codified as section 1714.4 of the
3 California Civil Code. Last year, following the California Supreme Court's decision in *Merrill, et. al*
4 *v. Navegar, Inc.*, section 1714.4 was repealed by the California legislature.
5 4. After returning to private law practice in late 1984, I served briefly as an outside
6 counsel to the NRA in certain matters pending before the Federal Election Commission. In 1985,
7 I was hired by the founder of Gun Owners of California, former state Senator H.L. Richardson, to
8 direct his Law and Order Campaign Committee, a California political action committee that
9 campaigned to prevent the reconfirmation of California Supreme Court Justice Rose Bird and two
10 other California Supreme Court Justices. Gun Owners of California opposed Chief Justice Bird
11 because of her perceived support for strong gun controls, as well as her opposition to the death
12 penalty. Following the successful effort against Chief Justice Bird, I worked for several years for
13 the California State Legislature. First, I served as a Special Assistant to the Republican Leader of
14 the California State Assembly, Pat Nolan (R-Glendale), where I handled, among other issues,
15 firearms legislation for the Assembly Republican Caucus. Later, I worked as Chief of Staff to
16 Assemblyman Chris Chandler (R-Yuba City), where I handled a wide variety of legislative issues,
17 including firearms.
18 5. From 1991 through 1997, I maintained my own lobbying practice in Sacramento,
19 California representing the interests of firearm industry clients before the California legislature and
20 several other state legislatures. Among my clients were various individual firearm manufacturers,
21 including California-based manufacturers. I also represented the Citizens Committee for the Right
22 to Keep and Bear Arms and the National Alliance of Stocking Gun Dealers. However, my primary
23 client was the American Shooting Sports Council, Inc. (ASSC). The ASSC was the largest and most
24 influential industry trade association lobbying on behalf of the firearm industry in California and
25 elsewhere. The membership of the ASSC included virtually all the major gun manufacturers and
26 distributors, including most of the defendants in this action. In 1997, I returned to the Washington,
27 D.C. area to take a position as ASSC's Director of Government Affairs, with responsibility of

1 managing the organization's national legislative advocacy and regulatory program. From 1991-1999,
2 during my period of work for the ASSC, I was a spokesperson for the association in the media as
3 well as in Congress and state legislatures. In March of 1999, I became Executive Director of the
4 ASSC. In June of 1999, the ASSC was merged into and became a part of the National Shooting
5 Sports Foundation (NSSF). Although I strongly believe that law-abiding citizens have the
6 constitutional right to keep and bear arms, it is my view that the firearm industry should take greater
7 responsibility for instituting reforms of its business practices to guard against the acquisition of
8 firearms by children, felons and other prohibited persons. I believe such reforms would greatly
9 benefit the industry and the public at large. During the merger negotiations with NSSF it became
10 clear that my views were not compatible with views of certain individuals, companies and consumer
11 organizations that controlled NSSF. On July 1, 1999, I resigned as Executive Director of ASSC.
12 6. In connection with my long-time work as a legislative advocate for the firearm
13 industry, I have had regular personal contact with virtually all of the major gun manufacturers and
14 distributors, including most of the defendants in this action. During the period 1991-99, I attended
15 all ASSC Board of Directors meetings, in which such companies as Taurus, Smith & Wesson, Glock,
16 Colt and RSR Wholesale Guns, Inc. were represented. I also assisted ASSC staff in organizing
17 annual lobbying "fly-ins" to Washington D.C., in which virtually all leading industry executive
18 participated in visits to key Congressional offices. I also arranged, and attended meetings between
19 industry representatives and the Bureau of Alcohol, Tobacco and Firearms and met regularly with
20 senior staff of the Firearm Division of the California Department of Justice. With ASSC Executive
21 Director Richard Feldman, I made several trips per year to visit various firearm manufacturers and
22 distributors. For example, during this period I visited the manufacturing facilities of Sturm, Ruger,
23 Heckler & Koch, Taurus, Lorcin and Glock (both in Austria and the U.S.) and the facilities of
24 distributors RSR Wholesale Guns, ACCUsport, Davidson's and Interarms. I also had daily
25 telephone conversations with gun industry executives.
26 7. During the entire period of my work for ASSC, I was regularly asked by industry
27 members to assess the likely impact of proposed legislative, regulatory and policy proposals on the

1 manufacture and sale of firearms and to assist in the development and advocacy of industry positions
2 concerning those proposals. Many of those proposals concerned the movement of guns from the
3 industry's lawful distribution channels into the illegal market. As a result of this work, I have
4 acquired extensive knowledge of the system by which the firearm industry distributes firearms,
5 including the relationships between manufacturers, distributors and dealers. I also acquired extensive
6 knowledge of California and federal firearms laws and regulations. I have participated in countless
7 meetings and discussions with industry members in which movement of guns from the industry's
8 legal distribution system to the illegal market was discussed. I have also represented industry
9 interests on several advisory panels formed by two different California Attorneys General to assist
10 in the implementation of regulatory schemes involving such issues as implementation of California's
11 assault weapons statute, the Basic Firearm Safety Certificate Program and California's handgun and
12 safety lock testing program.
13 8. The firearm industry, including the defendants in this action, has long known that the
14 diversion of firearms from legal channels of commerce to the illegal black market in California and
15 elsewhere, occurs principally at the distributor/dealer level. Many of those firearms pass quickly
16 from licensed dealers to juveniles and criminals through such avenues as straw sales, large-volume
17 sales to gun traffickers and various other channels by corrupt dealers or distributors who go to great
18 lengths to avoid detection by law enforcement authorities. Leaders in the industry have long known
19 that greater industry action to prevent illegal transactions is possible and would curb the supply of
20 firearms to the illegal market. However, until faced with a serious threat of civil liability for past
21 conduct, leaders in the industry have consistently resisted taking constructive voluntary action to
22 prevent firearms from ending up in the illegal gun market and have sought to silence others within
23 the industry who have advocated reform.
24 9. During the entire time I represented the firearm industry through my work for the
25 ASSC, it was widely known within the industry that straw purchases, often of large volumes of
26 guns, were a primary avenue by which a relatively small number of federally licensed firearm dealers
27 supplied the criminal market. A straw purchase involves a buyer with a "clean" record purchasing

1 a gun for someone who is prohibited by law from acquiring firearms. It has long been known in the
2 industry that many straw purchases or other questionable sales could be stopped by dealers who
3 are adequately trained and schooled in preventing illegal activity. However, without the proper
4 training and commitment to responsible business practices, some dealers are responsible for straw
5 sales going forward, undetected by law enforcement and regulatory authorities. Instead of requiring
6 dealers to be proactive and properly trained in an effort to stop questionable sales, it has been a
7 common practice of gun manufacturers and distributors to adopt a "see-no-evil, hear-no-evil, speak-
8 no-evil" approach. This type of policy encourages a culture of evasion of firearms laws and
9 regulations.

10 10. The firearm industry has long known that gun traffickers often acquire firearms
11 through multiple or large-volume purchases from licensed dealers. Because of the inherently
12 suspicious nature of such sales, a special federal reporting requirement for multiple sales exists at the
13 dealer level. Although the industry knows of the special reporting requirements, and that
14 unscrupulous dealers generally fail to report multiple sales, it has long been industry policy not to
15 question or monitor such sales. Due to the passage of a state law in 1993 in Virginia barring the
16 purchase of more than one-handgun-per-month to curb gun trafficking from Virginia gun shops,
17 Richard Feldman and I suggested that the ASSC Board consider a more practical approach for the
18 firearm industry to monitor multiple purchases in order to further prevent illegal sales. Although the
19 ASSC Board discussed this issue at length, it did not take action on the matter until 1998, and only
20 after then-Mayor Ed Rendell of Philadelphia threatened legal action against the industry because of
21 a refusal to consider supporting a national one-gun-a-month law. To my knowledge, however, the
22 industry has taken no voluntary action to address this issue and more fully monitor dealer activity
23 involving large volume sales to individual buyers.

24 11. Firearm manufacturers and distributors have long known that the current firearm
25 distribution system encourages and rewards illegal activity by a few corrupt dealers and distributors.
26 Lawful and conscientious dealers are at a distinct economic disadvantage under the current system.
27 Manufacturers and distributors, including the defendants in this action, have been advised by myself

1 and others, many times, that the industry will be destroyed unless it adopts proactive measures to
2 stop the supply of firearms to corrupt "store-front" and "kitchen table" dealers, who use a multitude
3 of secretive means to funnel guns to illegal buyers without detection by law enforcement. Some in
4 the industry, including myself, believed that industry practices and policies needed a "self-
5 examination" and evaluation in light of new government reports indicating a dramatic increase in the
6 use of guns in crime. Extensive industry analysis and discussion of these issues occurred at several
7 high level "Planning Meetings" which were sponsored by the ASSC Board of Directors and held
8 during the time I represented the organization. One such planning meeting, which I attended, took
9 place in Atlanta in 1994. The meeting was planned, moderated and conducted by executives of the
10 Eddie Mahe Company, a well-known political consulting and public affairs company headquartered
11 in Washington, D.C. that was under contract with the ASSC. The meeting was attended by members
12 of the ASSC Board of Directors including Ed Schultz, CEO of Smith & Wesson, Bruce Savane, CEO
13 of Taurus, Allen Mossberg and Georgia Nichols of O.F. Mossberg & Sons, Ron Whitacker, CEO of
14 Colt's, Gene Lumsden, Director of Marketing for Interarms, Michael Saporito of RSR Wholesale
15 Guns, Steve Ottway of Heckler & Koch, Bill Bridgewater, a licensed firearm dealer and Executive
16 Director of the National Alliance of Stocking Gun Dealers (NASGD) and other industry executives.
17 At that time, NASGD represented 8,000 of the nation's largest and most successful firearm retailers,
18 distributors and manufacturers. Many of the NASGD members were also members of ASSC, NSSF
19 and SAAMI. During the weeks preceding the Eddie Mahe planning meeting, I had several in-depth
20 discussions with Mr. Bridgewater about the upcoming meeting and his intention to raise important
21 issues that were the subject of an editorial he had recently written that appeared in the February
22 1994 edition of *The Alliance Voice,* the widely circulated official publication of the NASGD. In that
23 editorial, Bridgewater wrote:

24 > Let us quit pretending that we don't realize that a majority of the gun shows
> in this country are black market outlets to the criminal trade. Let us quit pretending
25 > that we don't know that a big chunk of the "FFL-Holders" have the licenses in their
> pocket as nothing more than access to firearms at quantities and prices that will allow
> them to be successful in the firearms black market.
26
27 > I suggest to you that we are and have been a part of the problem. I suggest
> to you that we had better start becoming part of the solution in the very near future

> or those who share the Brady's simple-minded views will have us all shut down.
>
> If we don't start educating our own police, city council, state and federal representatives, you can bet your wallet that we will be surely be thrown out as the problem. If we don't separate ourselves from those who do divert firearms into the black market, we will be shut down in their name.
>
> These "licensees" who engage in the black market are perceived as no different than you and me by the general public, and certainly by law enforcement and the media. That is our fault for sitting quietly and saying nothing, knowing full well that there are felons hidden among us.
>
> You may continue to help shield these folks who operate this firearms black market among us and you will surely go down the drain with them whenever the public gets tired of every snot-nosed 13-year old poking a gun in its face and demands draconian action.
>
> * * *
>
> It is really your choice – do something about the felons among you who disguise themselves as legitimate businesses or die with them because their excesses are intolerable to our society."

See Notice of Lodgment ("NOL"), Ex. 89 at PLTF102472 (emphasis in original). At the planning meeting, Mr. Bridgewater, in very strong terms, urged the manufacturers and distributors to voluntarily adopt programs to "deal" with the issue of gun show dealers and corrupt dealers and distributors. He expressed the view that it is not good enough for the manufacturers and distributors to simply sell guns through anyone who possessed a federal firearms license (FFL) and ignore opportunities to voluntarily work with established "stocking" dealers and industry regulators to stop the illegal trade in firearms.

12. Despite the warnings of Mr. Bridgewater and others, many manufacturers and distributors consistently refuse to address the problem of the "felons among us." They instead hide behind the fiction that as long as a retail dealer has a valid federal firearms license to sell guns, no attention to the dealer's business practices is required by its suppliers. Many manufacturers and distributors ignore the consequences of continuing to supply firearms to any dealer with a federal license, regardless of whether that dealer may be selling guns into the illegal market. In January of 1995, the ASSC annual members meeting was held in Las Vegas, Nevada, in conjunction with the NSSF's Shooting and Hunting Outdoor Trade (SHOT) show. The board seat on the ASSC Board

1 of Directors held by Bill Bridgewater was up for reelection at that meeting. Due to pressure from
2 influential SAAMI companies that were being solicited for membership in ASSC, Richard Feldman
3 had been warned not to re-nominate Bridgewater for a seat on the ASSC Board. Certain SAAMI
4 members thought Bridgewater's views were "too controversial." I was asked by Feldman to meet
5 with Bridgewater and explain that his assertions regarding the "firearms black market" and crime gun
6 sources had angered key industry and NRA leaders. I was instructed to explain that if he were to
7 continue on the ASSC Board, the future of ASSC would be in doubt. The meeting with Bridgewater
8 was personally very difficult for me. Bridgewater was a prime mover in the establishment of ASSC
9 as a leading industry trade association and believed, very strongly in the principles it stood for. The
10 news of Feldman's decision was not welcomed by Bridgewater, however, "for the good of the
11 organization" he voluntarily gave up his seat on the ASSC Board "without a fight." Although he
12 continued as Executive Director of the NASGD until his untimely death in 1997, his clout within the
13 industry had been severely diminished. At that time, Michael Saporito, Chairman of the Board of
14 ASSC warned Feldman that if he gave into the whims of certain SAAMI members, it would not be
15 long before those same individuals would "get" Feldman.
16 13. The firearm industry, including the defendants in this action, has long known that
17 ATF is hampered in its enforcement efforts by inadequate resources and constraints in federal law
18 on its ability to crack down on corrupt dealers. For example, ATF is limited by statute to one
19 unannounced inspection of a dealer per year and must show "willful" violations of law in order to
20 revoke a dealer's license. The industry asserts that curbing sales of guns to the illegal market is
21 ATF's responsibility, at the same time the industry knows that ATF cannot do this job effectively.
22 Without independent action by all segments of the industry to address the flow of guns from
23 corrupt dealers, distributors and gun shows into the illegal market, ATF will continue to fight a losing
24 battle against illegal gun traffickers. For example, in April of 1994, many leaders in the industry and
25 the NRA were stunned when *The Alliance Voice* reported a historic meeting between then-Secretary
26 of the Treasury, Lloyd Bentsen, and Bill Bridgewater. Also present at the meeting were
27 representatives of The Collectors and Arms Dealers Association, The Fraternal Order of Police, The

1 National Association of Police Organization, The Federal Law Enforcement Officers Association and
2 the International Association of the Chiefs of Police. At that meeting, those present acknowledged,
3 in writing, that within the firearm industry there are elements who divert the flow of firearms from
4 the legitimate trade into the more lucrative firearms black market, there are gun licensees, who
5 through willful, negligent or irresponsible actions contribute to the illicit gun market and undermine
6 those businesses which carefully adhere to the letter of the law and that ATF's regulatory authority
7 is hampered by insufficient resources and inadequate statutory authority. NOL, Ex. 89. The joint
8 statement went on to call for reforms in the FFL system, including increasing licensing fees to pay
9 for enforcement efforts, requiring FFLs to be in compliance with all state and local laws and
10 ordinances, requiring licensees to timely report lost and stolen firearms, removing the statutory
11 prohibition on ATF conducting more than one compliance visit per FFL per year, increasing
12 penalties for willful falsification of records and supporting any initiative in the pending "crime bill"
13 that would improve ATF's ability to enforce firearm laws and address the "illicit firearms market".
14 Bridgewater was severely criticized by segments of the industry and the NRA for participating in
15 the event. To this day, most of those reforms called for in the document are yet to be implemented.
16 14. Firearm manufacturers have long been aware that the number of ATF crime gun traces
17 associated with a particular dealer can be an important indicator that illegal gun trafficking is
18 occurring. In 1996, for example, I became a participant in the ATF's Firearms Industry Discussion
19 Group. ATF and representatives from ASSC, SAAMI, NRA and other industry groups were to
20 meet periodically to develop a joint industry/law enforcement firearm safety program. At the first
21 meeting of the discussion group, ATF's tracing system was discussed. The meeting was attended
22 by James J. Baker, chief lobbyist for the Sporting Arms and Ammunition Manufacturers Institute
23 (SAAMI), Tanya Metaksa, chief lobbyist of the National Rifle Association, Ted Rowe, CEO of
24 Sigarms (who was, at the time, also Chairman of the Board of SAAMI), Georgia Nichols, General
25 Counsel of O.F. Mossberg & Sons, President of ASSC and a member of the Board of Directors of
26 NSSF, Mike Saporito, General Counsel of RSR Wholesale Guns and Chairman of the Board of
27 ASSC, along with other executives. The chairman of the meeting was Pete Gagliardi, a senior level

1 administrator of the firearm division at ATF. Mr. Gagliardi explained that ATF tracing data was
2 being used by the agency to target suspected illegal arms traffickers. He stated that "statistically"
3 if a particular dealer shows up in a firearm trace "three or four" times per year, it may indicate a
4 significant trafficking problem with that dealer exists. I have attended several other industry
5 meetings with ATF in which ATF representatives made similar statements indicating that only a few
6 traces to a single dealer may be significant. Despite claims to the contrary, most gun manufacturers
7 also have been aware that ATF will provide manufacturers with tracing information about each
8 manufacturer's guns and how often they have been traced. For example, the meeting described above
9 led to a later visit by various executives to ATF's Tracing Center in West Virginia. That meeting was
10 attended by Rafael Aguirre-Sacassa of Beretta USA, Georgia Nichols of O.F. Mossberg & Sons,
11 Mike Saporito of RSR Wholesale Guns and others. During a tour of the facility, Gerald Nunziato,
12 the head of the Tracing Center, was asked by Georgia Nichols if ATF could identify the number of
13 traces the Bureau had conducted on Mossberg firearms during that year. Mr. Nunziato was able to
14 provide a computer printout with that information to Ms. Nichols before the end of the visit.
15 15. Even though most gun manufacturers sell their products through distributors, some
16 typically use a network of "manufacturer's representatives" to ensure close and frequent
17 communication with retail dealers. These representatives are usually outside firms that are assigned
18 by the manufacturer to take responsibility for the dealers in a certain geographic area. They provide
19 promotional material, ensure effective placement of the manufacturer's products and perform other
20 services designed to maximize product sales. Manufacturers' representatives provide an avenue for
21 manufacturers to gather information from dealers and monitor dealers' sales performance.
22 Manufacturers' representatives have long been used to enlist retail dealers in advancing the political
23 interests of the firearm industry. For example, I personally directed an ASSC-sponsored effort in
24 California in 1994 in which over fifty manufacturer representatives were enlisted (with the approval
25 of the major gun manufacturers) to use retail dealers and gun shows to register gun buyers as
26 California voters. The representatives provided dealers with over 50,000 voter registration cards and
27 other promotional materials. The effort was funded by several gun manufacturers and the publisher

1 of *Guns & Ammo* magazine. It was estimated that the campaign registered over 25,000 gun-owning
2 voters that year. Despite this well-established system of interaction and communication between
3 retail dealers through manufacturers' representatives, even to the extent of using dealers to advance
4 the political interests of the industry, manufacturers generally maintain that they are blind to the
5 business practices of certain dealers and can do nothing about the business practices of corrupt
6 dealers. Additionally, firearm distributors maintain almost daily contact with the nation's 100,000-
7 plus licensed FFLs. For example, as far back as 1992, RSR Wholesale Guns was instrumental in
8 assisting ASSC and the Firearms Coalition of Colorado, a politically active firearms rights
9 organization, in defeating a proposed Colorado ban on certain semi-automatic firearms and high
10 capacity magazines. RSR used its established lines of communication with Colorado FFLs to flood
11 key Colorado House and Senate committees with phone calls and faxes opposing the measure. As
12 a result of this success, Michael Saporito of RSR formed a dealers' action network called "Mike's
13 Militia". Mike's Militia was activated on a nationwide basis using RSR's established lines of
14 communication to coordinate the opposition to various federal, state and local legislative initiatives.
15 16. Some of the most important discussions of industry policy issues occurred at the
16 annual industry trade meetings known as the SHOT Show. Typically, at some point during each
17 SHOT Show that I attended, lawyers for the firearms industry, both inside and outside counsel,
18 would informally meet to discuss various legal, legislative and policy issues facing the industry.
19 These meetings became known as the "lawyers' meetings". The first series of "lawyers meetings"
20 I attended were organized by Pat Squire, then General Counsel of Colt and later General Counsel of
21 Interarms. Others who attended these meetings included industry in-house counsel such as Michael
22 Saporito of RSR Wholesale Guns, Georgia Nichols of O.F. Mossberg & Sons, Robert Chairello of
23 Joseph Chairello and Company and outside industry lawyers such as James Dorr of Wildman,
24 Harrold, Allen & Dixon, counsel to Sturm, Ruger & Co., Inc. in this case, and Timothy Bumann. of
25 Budd, Larner, Gross, Rosenbaum, Greenberg & Sade, counsel to Taurus International Manufacturing,
26 Inc. in this case, as well as lawyers representing the NRA and Citizens Committee for the Right To
27 Keep and Bear Arms such as Stephen Halbrook, Richard Gardiner and Don Kates. I attended such

1 meetings from 1992 through 1997. The "lawyers' meetings" often addressed questions such as
2 whether the industry should take voluntary action to better control the distribution of guns.
3 Although it was known that Richard Feldman and I advocated a more proactive approach as a means
4 of heading off legislative action and reducing the risk of future liability, Mr. Squire, Ms. Nichols, Mr.
5 Dorr, Mr. Bumann and others consistently opposed that idea. The prevailing view was that if the
6 industry took action voluntarily it would be an admission of responsibility for the problem.
7 Beginning in 1994, Mr. Dorr and Ms. Nichols became concerned that the industry lawyers were
8 having such meetings and were concerned that industry counsel were openly talking about such
9 topics. After one such meeting, Jim Dorr told me he thought the meetings were "dangerous". After
10 the 1996 meeting, Georgia Nichols told others and me that Jim Dorr had "put out the word" that
11 industry lawyers should not attend future meetings. That effectively ended the informal meetings.
12 17. In an effort to voluntarily implement proactive programs to combat illegal gun
13 trafficking, promote firearm safety and prevent the criminal misuse of firearms, ASSC developed
14 plans for several comprehensive voluntary programs directly involving manufacturers and
15 distributors. In 1997, with the help of the Eddie Mahe Company, Richard Feldman, Georgia Nichols
16 and I developed, through ASSC's tax-exempt affiliate, the American Firearms Council (AFC), a plan
17 for a "dealer certification" program. The program envisioned the use of videotapes, computer
18 programs and other materials to train dealers to better understand and apply federal and state
19 firearms laws, including recognizing the warning signs of straw purchases and other suspicious sales.
20 Those who completed the program would be certified and manufacturers and distributors would be
21 encouraged to sell guns only through such certified dealers. We believed this program would help
22 to professionalize retail dealers and help prevent the diversion of firearms into the illegal market. We
23 also planned to distribute program materials to the media to convey the message that the industry
24 was doing its part to curb gun violence. Because the ASSC and AFC lacked the necessary funding
25 for the program, a decision was made to seek funding from the National Shooting Sports Foundation
26 (NSSF). The NSSF, at that time, was organized strictly to promote the shooting sports. ASSC
27 sought approximately $700,000 to fund the certified dealer program, and support a separate program

1 to teach safety practices to gun owners. The NSSF had many of the same industry members as
2 ASSC, but had access to far greater resources because of its sponsorship of the very lucrative annual
3 SHOT Show, which is the largest industry trade show and generates millions of dollars to NSSF
4 every year. In November 1997, I attended a meeting at the National Association of Sporting Goods
5 Wholesalers trade show in Phoenix, Arizona, where the certified dealers program concept was
6 presented to NSSF officials. The NSSF rejected ASSC's funding request. In 2000, after a series of
7 municipal lawsuits had been filed, and the merger of ASSC into the NSSF, the industry adopted a
8 much more limited dealer information program called "Don't Lie for the Other Guy." NOL, Ex. 108.
9 18. In instances where firearm manufacturers have taken constructive voluntary steps to
10 reduce gun violence, they have been very successful. For example, during my tenure at ASSC, Mr.
11 Feldman and I were successful in organizing a joint effort by major gun manufacturers to provide
12 child safety locks with each new handgun sold. In the mid-1990s, Smith & Wesson had become the
13 first handgun manufacturer to begin a program of voluntarily providing "trigger locks" with its
14 handguns. The impetus for an industry-wide effort came from the Clinton White House, which
15 convened a meeting in September of 1997 between Rahm Emanuel, President Clinton's Domestic
16 Policy Advisor, and Richard Feldman and I, representing ASSC and Robert Delfay and James Jay
17 Baker, representing SAAMI and the NRA. President Clinton wanted all the major manufacturers
18 to follow Smith & Wesson's lead on the child safety lock issue. Mr. Feldman and I became advocates
19 for such an approach after discussions with Smith & Wesson's CEO Ed Shultz. We felt that the
20 industry's public image was suffering as a result of the persistent problem of child access to firearms
21 in the home. We were also aware of the highly successful gun-lock program started in 1988 by O.F.
22 Mossberg & Sons, one of the nation's leading shotgun manufacturers. We realized that a flexible,
23 voluntary approach, designed to reduce the risk of possible industry liability, was preferred over
24 rigid legislatively-mandated requirements many manufacturers could not meet. We felt voluntary
25 action, with the blessing of the Clinton White House, would stave off an effort to pass legislation
26 requiring a "one-size-fits-all" trigger lock approach. However, SAAMI executive Robert Delfay and
27 the NRA were bitterly opposed to the announcement of an industry-wide voluntary effort endorsing

1 the concept of gun owners using gun locks. Indeed, on the morning of the announcement, on October
2 9, 1997, James Jay Baker, told me that "[Richard] Feldman [ASSC Executive Director] has
3 deliberately done this to me and I am going to do everything in my power in the next three to four
4 hours to undo what you have done." Nevertheless, on October 9, in a Rose Garden ceremony,
5 President Clinton stood with Mr. Feldman, myself and other gun industry executives and announced
6 the industry's commitment to begin to provide, free of charge, a child safety lock with each new
7 handgun sold. The manufacturer parties to this commitment, many of whom are SAAMI members,
8 included: Smith & Wesson, Beretta USA, Sigarms, Heckler & Koch, Taurus Firearms, Sturm, Ruger
9 & Co., North American Arms, Glock, H&R 1871, Savage Arms, Davis Industries, Kahr Arms,
10 Heritage Manufacturing, Gibbs Rifle Company and O.F. Mossberg & Sons. This example
11 demonstrates that it is possible for gun manufacturers to take action beyond that required by law to
12 help prevent the misuse of firearms.
13 19. Following the 1997 White House safety lock announcement, there was an increasingly
14 strident debate within the industry between advocates of voluntary reform, including Mr. Feldman
15 and myself from the ASSC, and certain members of the Board of Directors of SAAMI who were
16 closely allied with the NRA. Robert Delfay, President of SAAMI and CEO of NSSF, was a major
17 opponent of reform and worked closely with the SAAMI Board, James Jay Baker and the NRA to
18 prevent anything like the safety lock agreement from ever happening again. For example, in an
19 obvious attempt to intimidate Mr. Feldman and myself, in November 1997, the Legal and Legislative
20 Committee of SAAMI convened a special meeting to which they asked Mr. Feldman and me to
21 attend and explain the reason for our actions in connection with the October, 1997 White House
22 trigger lock announcement. The meeting occurred as part of the Phoenix wholesalers trade show at
23 which we had presented the ASSC plan for a "certified dealers" program to industry representatives.
24 *See* ¶18 above. The SAAMI meeting was attended by Gerald Bersett, CEO of Sturm, Ruger. Art
25 Wheaton of Remington Arms (and then-Chair of SAAMI), Rafael Aguirre-Sacassa of Beretta USA,
26 Georgia Nichols and Allen Mossberg of Mossberg Firearms, Robert Scott of Smith & Wesson and
27 Paul Januzzo of Glock. At that meeting, Mr. Feldman and I were angrily denounced by Delfay,

1 Baker and Bersett.

2 20. Mr. Delfay and the NRA also were sharply critical of the efforts of Mr. Feldman and
3 myself to meet during 1998 with Mayor Ed Rendell of Philadelphia and other mayors to address the
4 issues raised by Mayor Rendell's threat to sue the gun industry. They also were critical of various
5 public statements by Mr. Feldman and myself suggesting the possibility of compromise with cities
6 seeking changes in industry business practices. Since many of the same manufacturers represented
7 in the ASSC also were members of NSSF, Mr. Delfay, James Jay Baker and the NRA began putting
8 pressure on influential members of the ASSC Board of Directors to terminate Mr. Feldman as ASSC
9 Executive Director. In February, 1999 at a meeting in Phoenix, Arizona, called for the purpose of
10 forming the new Hunting and Shooting Sports Heritage Foundation (HSSHF), industry leaders
11 pressured several ASSC Board members to call for the resignation of Richard Feldman. Feldman's
12 employment with ASSC was terminated the following month. The HSSHF was formed to bring the
13 industry "together" and to build a "war chest" to fight the municipal lawsuits. The Board of the
14 Heritage Foundation was composed of industry executives serving on the Boards of ASSC, NSSF,
15 SAAMI, and the Wildlife Management Institute (WMI), which is an affiliate of NSSF. In March
16 of 1999, I was appointed Executive Director of ASSC, replacing Richard Feldman.

17 21. My service as Executive Director of ASSC was short-lived, as I continued to clash
18 with the NRA-influenced SAAMI executives and NSSF CEO Robert Delfay. On May 10, 1999,
19 I attended a White House summit called by President Clinton to address the need to prevent future
20 tragedies like the shooting at Columbine High School in Colorado that had occurred the previous
21 month. Mr. Delfay of NSSF also planned to attend the White House meeting but at the last minute
22 backed out of the meeting because of pressure from the NRA to boycott the event. NRA President
23 Charlton Heston and NRA Executive Vice-President Wayne LaPierre were not invited to the event.
24 I had made special arrangements through Bruce Reed, the President's Domestic Policy Advisor, to
25 invite former Congressman Bill Brewster, an NRA Board member and Clinton friend to represent
26 the organization. This did not satisfy the NRA leadership. Following the White House summit,
27 there was a concerted effort by Mr. Delfay and the NRA to silence me and terminate ASSC as the

lobbying arm of the firearm industry. In a May 11, 1999 meeting of the Heritage Foundation Board of Directors, a surprise decision was made not to fund ASSC legislative and government affairs activities. On May 12, 1999, Mr. Delfay sent an "urgent" memo to each member of the U.S. Senate entitled "The Firearms Industry is United Behind the National Rifle Association" which refers to "confusion about who speaks for the gun industry". NOL, Ex. 96. On May 25, 1999, Mr. Delfay sent a memo to the NSSF Board of Governors and the new Heritage Foundation entitled: "We have a problem. A serious and urgent problem." The memo addresses the "new and unfortunate rift between our industry's major trade associations." NOL, Ex. 97. On June 4, 1999, Mr. Delfay sent yet another memo to four industry executives entitled "Reigning [sic] in Ricker." Citing my support for legislation to raise the age for handgun possession from 18 to 21, despite the fact that support for that had been approved by the HSSHF board on May 11,1999, Mr. Delfay advises in the June 4 memo: "Someone in a position of authority at ASSC needs to direct Mr. Ricker to become silent." NOL, Ex. 98. At that time, several major manufacturers and distributors closely aligned with the NRA resigned from ASSC. Finally, on June 15, the ASSC Board voted to adopt a proposal from the NSSF Board and the Heritage Fund Board to merge ASSC into NSSF under Mr. Delfay's leadership. After that vote, I resigned my position with ASSC effective July 1, 1999. Both Mr. Feldman and I were silenced as voices for reform within the firearm industry and the NRA was firmly in charge of the industry's legislative and policymaking arm.

I declare under penalty of perjury under the laws of the State of Californiathat the foregoing is true and correct. Executed this ____ day of _____, 2003, at _____, _____.

_____
Robert Ricker

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