



Department of Justice

STATEMENT OF

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DISTRICT OF COLORADO**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

FOR A

“HEARING ON THE ASSAULT WEAPON BAN OF 2013”

PRESENTED ON

FEBRUARY 27, 2013

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United States Senate Committee on the Judiciary
February 27, 2013

Senator Feinstein, and Members of the Judiciary Committee, it is a privilege to appear before you today on behalf of the Department of Justice. As the United States Attorney for the District of Colorado, I am pleased to speak with you about the Department of Justice's views on limiting gun violence and protecting the American public by restricting access to dangerous military-style assault weapons and high-capacity magazines. These are common sense, constitutional measures that a majority of Americans have supported for years, and now, more than ever, want to see reinstated. Although the Department of Justice does not yet have a position on any particular legislative proposal, we are confident that renewed restrictions can be implemented in a manner that enhances public safety without interfering with the constitutional rights of every law-abiding American citizen. On behalf of the Department of Justice, I want to thank you, Senator Feinstein for your tireless efforts to formulate and introduce legislation to address gun violence in our country.

Colorado, like the rest of the Rocky Mountain West, has a long and storied history of gun ownership, one steeped in frontier tradition, and based on the needs of the public for self-defense, hunting, and sporting purposes. Given this powerful tradition, we in Colorado place great stock in the Second Amendment to the Constitution. But at the same time, Colorado has in recent years seen gun violence tragedies on a scale most Coloradans would never have dreamed possible. In the Columbine High School tragedy of April 1999, and just seven months ago in the Aurora Theater shooting in July 2012, Coloradans have been profoundly shaken by senseless mass murders. The question before us, then, is how to balance our respect for the Second Amendment with the need to protect Americans by reducing and preventing gun violence, and mass shootings in particular.

The horrific events in Aurora, at Sandy Hook Elementary School in Newtown, Connecticut, and too many other locations in recent years have chillingly reminded us that those intent on inflicting mass casualties have ready access to the tools they need to inflict maximum harm in a matter of moments: military-style assault firearms and high-capacity magazines. As we are all now too painfully aware, these firearms and magazines are both lawful at the federal level and widely available. Yet common sense tells us that the combination of military-grade firearms with magazines capable of holding 20, 30, or even 100 rounds of ammunition simply is not consistent with public safety. Similarly, common sense tells us that these types of firearms and magazines are not needed for sporting or self-defense purposes. Especially in light of the incredible proliferation of these weapons and magazines in recent years, we must act now to stem the tide of violence.

From the point of view of most law enforcement professionals, a perspective I share as a long-time federal prosecutor and sitting United States Attorney, shutting off the flow of military-style assault weapons and high-capacity magazines is a top public safety priority. Law enforcement professionals fully understand that due to the large existing stock of these weapons and magazines, a prospective ban on new production, importation, and sales will not yield instant results, but we also understand that inaction is not the answer. My experience as a federal prosecutor has taught me that no single law will prevent every crime from occurring or protect every member of the American public. Implementation of a new ban on assault weapons and high-capacity magazines must be coupled with other measures as well: first, continued aggressive enforcement of existing firearms laws; second, enactment and implementation of new laws to prohibit firearms trafficking and to provide for universal background checks on private firearm transfers; and third, enhancement of the National Instant Background Check System (NICS) to include more complete and comprehensive information identifying persons prohibited from possessing firearms, such as records of convictions for felonies and crimes of domestic violence, and records of persons prohibited from having guns for mental health reasons. Helping to stop one incident from occurring or protecting one victim during a shooting rampage is reason enough to implement these common sense safety measures. As President Obama stated back in January, in calling on Congress to reinstitute and strengthen the ban on assault weapons and high-capacity magazines, “we won’t be able to stop every violent act, but if there is even one thing that we can do to prevent any of these events, we have a deep obligation, all of us, to try.”

I. Assault Weapons Ban

The types of weapons that the Department believes should be banned include firearms that were originally designed to be military implements, crafted to be as effective as possible at killing human beings. The key features of these weapons are the ability to fire at high velocities and to accept high-capacity magazines, thus allowing soldiers to concentrate fire on an enemy by rapidly expelling a large volume of bullets. The power, high rate of fire, and efficiency of these firearms is the reason they have become weapons of choice for mass shooters, criminal gangs, and drug-trafficking cartels. Restricting the availability of these weapons will not only help to prevent these destructive tools from being used by violent criminals and criminal organizations, it will also help limit the carnage that occurs when they are used against innocent civilians and law enforcement. As a society, we have a responsibility not only to protect the public, but also to protect police officers, emergency responders, and all those who place themselves in harm’s way every day to protect all of us.

One of the primary arguments against an assault weapons ban is the claim that the federal Assault Weapon Ban enacted in 1994 was ineffective. The Department recognizes that the 1994 ban resulted in certain manufacturers producing and selling firearms of equivalent functionality and lethality to the banned weapons. Nevertheless, we believe that current proposals under consideration substantially address the gaps in the 1994 statute and, if enacted, will be

considerably more effective. Moreover, the Department believes that the effectiveness of the 1994 ban has been significantly underestimated – in large part because it has been insufficiently studied. In fact, the leading empirical study of the 1994 ban, a 1997 report sponsored by the National Institute of Justice (“NIJ”), found that the 1994 statute was responsible for a 6.7 percent decrease in total gun murders. See, Jeffrey A. Roth & Christopher S. Koper, “*Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994*,” The Urban Institute (March 1997). The 1997 report also reached a conclusion that echoes tragically through the headlines of the past year: “[A]ssault weapons are disproportionately involved in murders with multiple victims, multiple wounds per victim, and police officers as victims.” *Id.* Moreover, in a 2004 follow-up report to the NIJ, the same researchers concluded that the use in crimes of assault weapons subject to the 1994 ban declined by more than two-thirds in the first nine years the ban was in effect. See, Christopher S. Koper, “*An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*” (June 2004).

These empirical findings on the 1994 ban belie claims that its provisions were ineffective. Moreover, anecdotal evidence indicates that when the 1994 ban expired in 2004, crimes involving assault weapons and high capacity magazines subject to its provisions *increased*, further underscoring the effectiveness of the ban. For example, a report by the Police Executive Research Forum in 2010 found that 37 percent of police departments reported an increase in criminals’ use of assault weapons, and a 38 percent increase in the use of these weapons with high capacity magazines holding more than 10 rounds, following the expiration of the ban. See, Police Executive Research Forum, “*Guns and Crime: Breaking New Ground by Focusing on the Local Impact*” (May 2010).

In hindsight, the Department believes that one of the primary limits on the effectiveness of the 1994 ban was its 10-year sunset provision. Given the pre-existing stock of assault weapons that were not subject to the 1994 ban, and unintended loopholes that allowed for the continued production of weapons with similar lethality to those that were the subject of the ban, the 10-year term of the ban was simply insufficient to realize long-term sustained reductions in violent crime involving banned weapons and magazines. The lesson for us today is that any ban or restriction on military-style assault weapons and high-capacity magazines must be permanent to ensure maximum effectiveness – particularly since the existing stock of these firearms and magazines has dramatically expanded since the ban expired in 2004. The Department of Justice does not advocate making it unlawful to possess those items already legally owned by our citizens and acknowledges that most of the impact of the new restrictions on assault weapons and high-capacity magazines will not be immediate. But we must start now and stay the course to address this most pressing problem.

II. High-Capacity Magazine Ban

One of the most disturbing aspects of the recent mass shootings our Nation has endured is the ability of a shooter to inflict massive numbers of fatalities in a matter of minutes due to the use of high-capacity magazines. High-capacity magazines were defined in the 1994 ban as magazines capable of holding more than 10 rounds, and this is a definition the Department endorses. The devastating impact of such magazines is not limited to their use in military-style assault rifles; they have also been used with horrific results in recent mass shootings involving handguns. The 2007 mass shooting at Virginia Tech involved a shooter using handguns with high-capacity magazines. Similarly, recent mass shootings in Tucson, Arizona; Oak Creek, Wisconsin; and Fort Hood, Texas all involved handguns with magazines holding more than 10 rounds. As evidenced by these events, a high capacity magazine can turn any weapon into a tool of mass violence. Forcing an individual bent on inflicting large numbers of casualties to stop and reload creates the opportunity to reduce the possible death toll in two ways: first, by affording a chance for law enforcement or bystanders to intervene during a pause to reload; and second, by giving bystanders and potential victims an opportunity to seek cover or escape when there is an interruption in the firing. This is not just theoretical: In the mass shooting in Tucson, for example, 9-year old Christina-Taylor Green was killed by the 13th shot from a 30-round high-capacity magazine. The shooter was later subdued as he was trying to reload his handgun after those 30 shots. The outcome might have been different if the perpetrator had been forced to reload after firing only 10 times.

Furthermore, high-capacity magazines are not required for defending one's home or deterring further action by a criminal. The majority of shootings in self-defense occur at close range, within a distance of three yards. In such a scenario, and at such close ranges, a 10-round magazine is sufficient to subdue a criminal or potential assailant. Nor are high-capacity magazines required for hunting or sport shooting. Like military-style assault weapons, high-capacity magazines should be reserved for war, and for law enforcement officers protecting the public. The continued commercial sale of high-capacity magazines serves only to provide those determined to produce a high body count with the opportunity and the means to inflict maximum damage. Indeed, there is evidence suggesting that when the previous ban was in effect, it reduced the number of high-capacity magazines seized by the police, as well as the lethality of incidents. See, David S. Fallis and James V. Grimaldi, "In Virginia, high-yield clip seizures rise," Washington Post, at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012204046.html>.

III. Conclusion

I would again like to thank the committee for the opportunity to come and testify on this important issue. As United States Attorney for Colorado, I go to bed every night wondering whether I will be awakened by the same sort of pre-dawn call I received on July 20, 2012,

notifying me of the horrific mass shooting in Aurora. And already twice since that terrible night just seven months ago, I have received phone calls from other United States Attorneys seeking counsel after receiving the call that their community was facing the same sort of horror we faced in Aurora. One such call came to me on a Sunday in August 2012, when the Sikh Temple shooting took place in Wisconsin, and another in December 2012, on the morning of the Sandy Hook tragedy.

I am proud to serve as United States Attorney for Colorado, the state I grew up in, and a state that honors American traditions, including the ownership and use of firearms as guaranteed by the Second Amendment. I share those values. Reasonable proposals to restrict the manufacture, importation and sale of military-style assault weapons and high capacity magazines, as supported by the Department of Justice, are essential to protect the American public and do not run afoul of the Second Amendment. That is why these measures are supported by the majority of Americans. Enacting reasonable and constitutional restrictions on the availability of assault weapons and high capacity weapons is a necessary step in the right direction. I look forward to taking your questions.