



# Testimony

New York State Rifle & Pistol Association, Inc.

Testimony

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City Council Hearing  
Public Safety Committee

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10:00 a.m.  
City Hall, New York City

I am pleased to present our written testimony and comments for the record, on behalf of the New York State Rifle & Pistol Association, Inc. (“Association”), regarding Int. Nos. 362, 363, 364 and 365. The Association is the New York State affiliate of the National Rifle Association of America (“NRA”).

As a preface to our written comments regarding each proposed new law, we respectfully repeat the concluding paragraph of the (much longer and detailed) preface to our November 15, 2004 testimony before this Committee on the occasion of gun control legislation proposed at that time:

Today’s legislative agenda looks to further the folly of a demonstrably failed idea. Gun control will not work better if it is tried harder. It will fail harder. It will engender still greater disrespect for the law and an even greater demand for an undocumented marketplace. We respectfully challenge the members of this Committee to break with the failed urban gun control orthodoxy, to respect the rights and freedom of the people as the governments of thirty-eight<sup>1</sup> states do, and to act instead as partners with the Police Department, District Attorneys and Courts in promising strategies aimed at criminals, not at the law abiding and defenseless.

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<sup>1</sup> The number is now 39, with Kansas on March 22, 2006 having joined the ranks of states having either non-discretionary concealed-carry license laws or no requirement of a license to carry concealed. The sky still hasn’t fallen, and Dodge City (which was supposed to materialize everywhere such laws were passed, but didn’t) is actually still a very peaceable Kansas town ...

## **Int. No. 362: A Gun Offender Registry**

The Association opposes Int. No. 362.

The proposition that genuine criminals may warrant continued attention upon their release from incarceration may well have some merit. Int. No. 362 in its current form is, however, focused on status-offenders rather than persons with demonstrated histories of armed violence and/or otherwise convincing histories of incorrigible anti-social criminal behavior.

In prior testimony before this Committee we have set forth our fundamental, philosophical and practical objections to the overarching, and over-reaching, thrust of gun control in New York City. In a nutshell, New York City implements increasingly burdensome and non-intuitive laws, rules and unwritten administrative practices to the peril of persons who have no genuine criminal intent, all the while thereby creating and nourishing the conditions for the thriving marketplace for undocumented firearms by which the City's elected leaders, à la Capt. Renaud, are "shocked." Elected officials call for more gun control, and deceptively assure a sympathetic press and ill-informed public that they are focused only on *illegal* guns, while failing to note that what they have deemed illegal in New York City would be perfectly legal in most of the rest of America. It continues to amaze us that we have yet to find an elected leader in New York City who cares about the racially disparate impact, on both status incarceration and self-defense rights, resulting from our City's dysfunctional gun control fixation.

There is not something wrong with the thinking in most of the rest of America. There is a demonstrable and enduring collective irrationality concerning public safety and firearms in New York City. The direct result (aside from a massive violation of the right to keep and bear arms) is a substantial undocumented marketplace for firearms imported into New York City, that New York City struggles to regulate and cannot.

The beginning of the resolution of this mess is stunningly obvious: eliminate the gratuitous monetary,<sup>2</sup> bureaucratic,<sup>3</sup> privacy<sup>4</sup> and penal abuses<sup>5</sup> targeted at persons who wish to be law-abiding gun owners in the City, bring the commerce lawfully to New York City licensed retail gun stores, take advantage of the increased revenue from sales taxes on locally and legally purchased firearms that are now illegally purchased in the

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<sup>2</sup> The most expensive pistol licenses in America by far.

<sup>3</sup> For just one example, successful New York City residence premise pistol license applicants typically wait six months or more for license approval, when other jurisdictions use National Instant Check resources for fast and responsible approval of purchase and license documents.

<sup>4</sup> NYPD License Division investigators have contacted employers, among others, in the course of investigations of residence premises applicants, revealing a personal decision that frankly is none of an employer's business and may unfairly affect an employer's treatment of that employee.

<sup>5</sup> When many members of the public perceive, on account of a morass of non-intuitive laws and their inconsistent application, that there is an unacceptable likelihood of making an "illegal" error in trying to get licensed, you can be sure that plenty of them will opt for the simple, relatively affordable option of the undocumented marketplace, hope never to actually have to use their firearm, and know that if they do it is better to be judged by twelve than carried by six.

untaxed, undocumented marketplace, and fairly and reasonably regulate it from within. Today the City looks once more to miss the obvious opportunity, and instead to march further in the wrong direction.

The chief difficulty, from a fundamental fairness viewpoint, in heaping more punishments upon some persons who may have pled guilty to or been adjudicated guilty of a violation of any of subdivisions (4), (5), (6), (7) or (8) of Penal Law § 265.02 is that the proscriptions set forth therein (1) are not proscriptions that would be intuitively expected by most Americans and (2) are violative of every citizen's right to keep and bear arms. For example, an American who moves from elsewhere in the United States to New York City with three or more firearms,<sup>6</sup> and then tries to get licensed here, will be in violation of Penal Law 265.02(5). An American who moves from elsewhere in the United States to New York City with a competition sporting rifle such as a Colt AR-15 or Springfield M1A will be in violation of Penal Law 265.02(7). Every law enforcement resource devoted to tracking such people is wasted.

The obligation to disclose employment and higher education affiliations gives us a very strong concern that persons who have paid the statutorily prescribed penal price for a predicate violation of Int. No. 362 will be discriminated against in employment and education, a result plainly counterproductive to society's strong interest in the legitimate economic success of every free citizen, in addition to being grossly unfair.

### **Int. No. 363: Bi-Annual Dealer Inventory and Reporting Mandates**

The Association takes no position on Int. No. 363.

### **Int. No. 364: Multiple Purchases**

The Association opposes Int. No. 364.

As a practical matter, with respect to handguns, Int. No. 364 will merely enshrine longstanding NYPD administrative practice into the Administrative Code. Our understanding of NYPD administrative practice going back at least into the mid-1990s and probably well-before then, is that the License Division only issues pistol purchase authorizations one-at-a-time, no more frequently than every three or four months to the same licensee. As a further practical matter, while rifle and shotgun collectors and sellers will be more tightly regulated under Int. No. 364, we respectfully submit that even the most ardent proponents of tightening rifle and shotgun regulations in New York City will agree that the exercise is largely symbolic and exemplary, targeted more toward political audiences in Albany and Washington, D.C. than at anyone living and working in New York City.

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<sup>6</sup> Hardly uncommon among sport shooters and collectors.

The class of collectors who collect curios and relics (as defined under federal law) would be unnecessarily restricted in their collecting by Int. No. 364, with no crime control purpose served by that infringement. Amendment of Int. No. 364 to exempt transactions made in rifles and shotguns pursuant to a Curio and Relic License issued by BATFE would improve the bill.

As a legal matter, we believe the attempt to regulate handgun commerce as set forth within Int. No. 364 is pre-empted by the state legislative scheme concerning the licensing and distribution of handguns within the State of New York (a position we understand to have long been generally shared by the staff counsel of this Council, which is why symbolic rifle and shotgun commerce regulations have been more forthcoming from this body over the years than regulation of handgun commerce).

We could make esoteric objections beyond the practical ones and the legal one set forth, but in view of the realities of the current legal and administrative environment in New York City, we will forebear from the academic exercise.

### **Int. No. 365: Banning Colored Guns**

The Association opposes Int. No. 365.

Int. No. 365 aims to solve a problem that does not exist. It is redundant of our state Penal Law § 265.02(6), which makes it a Class D felony for a “person knowingly [to] possesses any disguised gun...” Of course, the genuinely criminal misuse of a firearm is already variously and seriously proscribed by other sections of our state Penal Law. Moreover, we would venture that any dimwit painting a real handgun in toy colors is already willfully violating one or more status provisions of Penal Law § 265 *et seq.*, and will not be better deterred by a City Local Law

While further criminalizing acts that are already criminal, along the way Int. No. 365 creates the possibility of unintended but serious prosecutorial grief for gun owners of no genuine criminal intent. The bill is unfortunately ambiguous. It does not (and probably cannot) define with comfortable certainty against the fear of selective enforcement what it means to have a firearm, rifle or shotgun “any substantial portion of whose exterior surface is colored any color other than black, dark grey, dark green, silver, steel or nickel...” A seemingly substantial portion of all of my rifles and my best shotgun are the color of wood, which this legislation does not sanction.<sup>7</sup> Camouflage patterns on shotguns popular with turkey hunters (and of no known attraction to criminals) might result in an unintended prosecution, as light brown is a predominant shade of such patterns, which frequently cover not only the shotgun’s furniture but also its metal. Many handguns that appear black from a distance are actually a very dark blue.

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<sup>7</sup> Good thing I moved to New Jersey!

Int. No. 365 gains nothing in the department of crime control, but does create new opportunities for confusion and selective enforcement.

### **Conclusion**

The New York State Rifle & Pistol Association, Inc. respectfully opposes Int. Nos. 362, 364 and 365, and takes no position on Int. No. 363. Again, we appreciate the opportunity to present testimony on behalf of the Association, and will be happy to answer any questions you may have.

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