



Testimony

New York State Rifle & Pistol Association, Inc.

Testimony

Amy L. Heath – Director, Women in the Shooting Sports, NYSRPA
Patrick W. Brophy, Esq., General Counsel, NYSRPA

City Council Hearing
Public Safety Committee

September 12, 2003
10:00 a.m.
City Hall, New York City

I am pleased to testify today on behalf of the New York State Rifle & Pistol Association, Inc. (“Association”). The Association is the New York State affiliate of the National Rifle Association of America (“NRA”).

Before I begin, allow me on behalf of our Association to extend our condolences to the family, friends and colleagues of Councilman James Davis. His murder was a deplorable act of evil. It does remind us that we – all of us – bear a civic responsibility to take stock of our laws in order best to guard the rights and the safety of innocents.

We respectfully submit that the proposals before the Committee today invade the rights of innocents, and – even if rights could or ought to be bargained away for security, a proposition we believe our Founding Fathers would have deemed shameful – the proposals provide no measure of security in return.

Before turning to specific proposals, we note that an objective frequently noted by council members in statements to the press and in prior hearings on gun control legislation is that of decreasing the undocumented entry of firearms into New York City. We urge the Council to consider the extent to which the present state of gun control laws and practices in New York City actually incubates the conditions, and stimulates the economics, of unregulated commerce in firearms in the City.

Briefly, a handgun license here is only good for three years and costs \$255. In contrast, in Buffalo and Rochester that license costs: \$0.00 – nothing (except the statewide fingerprint fee, which is \$99 here, there and everywhere) – and is good for life.

It also comes with more authorized uses. Vermont does not even bother to issue licenses, and our law-abiding Green Mountain State neighbors, including city-dwellers in Burlington and Montpelier, are free to possess and carry firearms provided they do so without genuine criminal intent. Back here in New York City, licensees are treated as criminals, obliged to appear at police headquarters during very limited hours whenever legally buying or selling a pistol. And they had better do it within 72 hours of the event, or else! Everywhere else in the state, pistol license applicants complete a State Police approved application in the form annexed hereto as Exhibit A; licensing officials will mail the application to you. In the City, applicants must pick up the license application in person, and they then are obliged to fill out a remarkable set of questions, some of which are pure traps and others of which have no rational relevance, in the form annexed hereto as Exhibit B. The License Division then eschews most modern technology¹ and investigates by mail, paper, phone calls and log books all of the useless information in the application. Decisions regularly are not rendered within the six-month mandate of the Penal Law. And nowhere else in the state or nation² other than New York City does the government require long gun permits or registration.

This is not being tough on criminals. It is being relentlessly abusive to good citizens, many of whom have lived in neighborhoods that, over the years, have not been well or consistently served by law enforcement. Frankly, we are astounded that otherwise independent-thinking representatives of so many City communities join in the disempowering call for more laws to make it harder for their good constituents to meet their own responsibilities for the safety of their homes and families. That responsibility is one that free and independent citizens should share with government – not cede to it.

Demand for undocumented firearms does not come merely from troubled youngsters in the gangs and the drug trade. It also comes from good people who refuse to be defenseless but who cannot afford or abide the relentlessly bureaucratic and viciously expensive process of becoming and remaining duly licensed New York City gun owners. When the Council recognizes this, and proposes reforms accordingly, it will have taken its most significant steps ever to reckon with undocumented trade in firearms.

¹ The principal author of this written testimony, Patrick W. Brophy, recently obtained a Firearms Owners Identification Card from the New Jersey State Police. The N.J.S.P. Detective-Sergeant conducted the investigation via computer, in minutes, while I waited in his office. The N.Y.P.D. presently does not complete it's review within the Penal Law mandated deadline of six months!

² Excepting, as in California, so-called "assault weapons."

INTRO 363 & RES 669
Requiring Rifle And Shotgun Owners To Obtain Yearly Liability Insurance

The Association opposes Intro. 363 and Res. 669. These bills propose to fix a problem that does not exist, with solutions that the insurance industry cannot and will not underwrite. Intro. 363 thus would effectively ban the lawful possession in New York City of rifles and shotguns by law-abiding residents.

When Captain Richter of the NYPD License Division testified before this Committee in June of 2002, he reported that his office keeps statistics on thefts of all types of licensed or permitted firearms (long guns and handguns) jointly with statistics on accidental discharges. In other words, the Department could not readily tell this Committee or anyone else how many legitimately possessed firearms were stolen in a year, nor how many accidental discharges occurred, because those numbers are aggregated as they are compiled. The approximate number of both types of occurrences aggregated together on a yearly basis is, according to Captain Richter's June 2002 testimony, 100. It may well be that the number of accidental discharges among those numbers was at or near zero. It may also be that any and all accidental discharges involved handguns, since rifle and shotgun owners in an urban environment have less cause to load or unload such firearms at home than do pistol owners. In addition, we are not aware of any publicly available information reliably and fully documenting occurrences of unjustified use of force with a firearm by licensees (handguns) and/or permittees (long guns) in New York City. If asked, Captain Richter and Director Thomas Prasso of the License Division will surely report that licensed and permitted owners of firearms are not the cause of gun-related tragedies in New York City. Criminals are. That should go without saying, but remarkably, here we are having to say it again.

Accordingly, there is no information available to us to indicate that accidental risks of the sort for which insurance companies are generally willing and able to write policies are a problem for licensees or permittees so as to justify the basic idea of the proposed legislation.

Furthermore, the proposals would fail to achieve their proffered basic goals for some very simple reasons.

As the cost of compliance with regulations in New York City increases (or as authorized possession is increasingly restricted), otherwise law-abiding people will have an incentive to "opt-out" by various means. Some, notably better-off collectors, will simply move their firearms beyond the jurisdiction. Underwriters may not have the ability affordably to price insurance according to the risk perceived from, for example, a collection of WWII battle rifles versus a collection of modern sporting rifles and shotguns. Of course, collectors especially are not much of a risk of accidental discharges in the home or around town, so hounding them out of the jurisdiction treats them as pariahs and returns no assurance to the public. Indeed, given that most privately-owned

long arms in an urban environment are collector pieces or sporting arms and loaded only in the field or on the range, none of their owners are much of a risk of accidental discharges in the home or around town. Other permittees (and we do not encourage unlawful conduct but we can confidently predict it) will simply state that their firearms were put beyond the jurisdiction, surrender their NYC long gun permits, and carry on as before. Again, there will be no diminution in the perceived risk.

Intro 363 attempts to command that “[s]uch a policy of insurance shall be available, provided the victim was not engaged in the commission of a crime, to satisfy any judgment for personal injuries or property damage arising out of the unintentional, accidental or unlawful use of an insured weapon.” No insurance carrier will underwrite this risk, not because permittees are a bad risk – they aren’t – but because the boundaries of the mandated coverage are so widely and vaguely drawn as to yield a risk incapable of economical evaluation.

In critical respects, the automobile insurance analogy made in the prelude to the bill is inapt. Automobile-related deaths and injuries are chiefly accidental. Automobile related injuries are vastly more common than automobile-related deaths. In most places in New York and America, automobile-related injuries and deaths each far outpace injuries and deaths related to firearms. Firearms related deaths and injuries are chiefly intentional, *not accidental*. Intentional firearms use can be either criminal, or justified. According to WISQARS™ (Web-based Injury Statistics Query and Reporting System at the U.S. Centers for Disease Control’s National Center for Injury Prevention and Control),³ in 2000⁴, the following are the fatalities, population and crude rate per 100,000, for automobile-related deaths and firearms-related deaths in New York State:

New York: Automobile-Related Fatalities

	<u>Number</u>	<u>Population</u>	<u>Rate</u>
Total	1,552	18, 277,971	8.49
Homicide	1	s.a.a.	0
Suicide	6	s.a.a.	0.03

New York: Firearms-Related Fatalities

	<u>Number</u>	<u>Population</u>	<u>Rate</u>
Total	1,093	18, 277,971	5.98
Homicide	602	s.a.a.	3.29
Suicide	450	s.a.a.	2.46

³ <http://www.cdc.gov/ncipc/wisqars/>

⁴ The year 2000 is the last for which completely compiled data are available for fatalities.

In the following table are the non-fatal injuries, population and crude rate per 100,000, for automobile-related injuries and firearms-related injuries in the United States of America (comparable data limited to New York State is not made available by the C.D.C.):

United States: Automobile-Related (All Transportation-Traffic Related) Injuries

	<u>Number</u>	<u>Population</u>	<u>Rate</u>
Total	3,828,741	281,421,906	1,360.50
Assault	11,859	s.a.a.	4.21
Self harm	2,437	s.a.a.	0.87

United States: Firearms-Related Injuries

	<u>Number</u>	<u>Population</u>	<u>Rate</u>
Total	75,685	281,421,906	26.89
Assault	48,570	s.a.a.	17.26
Self-harm	3,016	s.a.a.	1.07

It is readily obvious from the United States C.D.C. data that automobile mortality and firearms mortality are substantially different, qualitatively and quantitatively. Accidents and other causes, including legal intervention (which is not included within the homicide cases above) account for the relatively low number of 51 firearms fatalities in New York State in 2000. Some of those other cases were hunting accidents and other fatalities doubtlessly occurred outside of the City of New York as well. Automobile-related injuries occur nationwide at a rate more than 50 times that of firearms-related injuries, and are almost entirely accidental, while the vastly lower number of firearms injuries predominantly result from intention assault or self-inflicted harm. The data plainly reveals that Intro 363 is an idea that prescribes the wrong tools for a non-existent job. Reducing firearms-related injuries and fatalities must be addressed in measures aimed at controlling criminals and at identifying persons at risk of self-destructive behavior and reaching out to them.

Automobile insurance is mandatory chiefly because of the ubiquitous nature of those machines in our lives, both in absolute numbers and in our individual inability to avoid personally interacting with or near them countless times in the course of every day. Even then, the minimum mandatory coverage for bodily injury is only \$25,000, ten times less than what is prescribed by Intro 363 for rifle and shotgun owners. With approximately eight million resident New Yorkers in the City and only approximately 25,000 active rifle and shotgun permits as of early 2001 (the last data available to us; Captain Richter can confirm and update the number), one cannot say that long guns are a ubiquitous risk to life and health in New York City. Nearly every automobile is, to

borrow an emotionally exploitative phrase popular with gun control fans, “on the street” where it can be in an accident at any time, even while parked. Compared with the common itinerary of cars, lawfully kept long guns are taken out of their safes and closets relatively rarely, then only to be transported to ranges and hunting fields, and on such occasions are already subject to prophylactic New York City transport rules requiring the firearm to be transported in a case, locked, unloaded, with ammunition separate therefrom. The regulated automobile insurance scheme addresses common problems in a common way (albeit with far more attention to detail than has been invested in Intro 363). Intro 363 attempts to impose a one-size-fits-all solution on diverse owners of rifles and shotguns to address a problem that does not exist.

To make some constructive use of the otherwise inappropriate automobile analogy: Every automobile insurance company doing business in New York State will disclaim coverage for a crash arising out of unlawful and/or intended acts. The unlawful use of an insured vehicle, whether by a thief, or by an authorized operator driving while impaired or committing vehicular homicide, will not be covered.⁵ Indeed, the essence of insurance is that it offers a hedge against the risk of a possible, but not certain event.⁶ Accordingly, underwriters and insurance lawyers know as an elementary principal that the public policy of New York prohibits insurance providing coverage for intended acts. Intro 363 reveals an abject lack of understanding of the law and business of property and casualty insurance.

Intro. 363 has a “re-inventing the wheel” approach to property and casualty insurance. Insurance is a field in which inertia is almost worshiped, for good reason. Language and underwriting practice that may be obscure to the casual observer has been around for decades and is well understood by lawyers and also by judges whose job it is to make it simple for juries. Cutting insurance policies from whole cloth generally isn’t done because no one who matters will know what the new policy means. Artistry has no cache here. As it turns out, coverage for property damage or bodily injury resulting from an accidental discharge of a firearm of a licensee insured under a typical homeowner’s or renter’s liability policy exists today. There is no need to schedule an inventory of firearms any more than there is a need to schedule an inventory of toasters (which probably generate more casualty claims than do firearms). There is coverage for such occurrences under today’s homeowners’ and renters’ policies because it is a type of accident to which no exclusionary endorsement typically applies.

Finally, we note that Intro 363 would command an applicant “to present a complete list of every rifle or shotgun owned by the applicant” and to swear to it under the penalties of perjury. Frankly, it is none of the City’s business if anyone owns a rifle that is not stored in the City.⁷ Moreover, it is plainly beyond the City’s jurisdiction to

⁵ The principal author of this written testimony, Patrick W. Brophy, is an attorney with a civil trial and appellate practice concentrating in insurance defense and coverage.

⁶ Do not indulge the temptation to compare casualty insurance to life insurance. Yes, death is a certainty, but life insurance is a bet on the timing of an event. Casualty insurance is a bet on the event itself.

⁷ A practice recognized as legitimate and, thanks to the City’s 1991 “assault weapon” law, sometimes necessary, by then District Court Judge and now Circuit Court Judge Reena Raggi (“Local Law 78 does not

force persons to acquire insurance on property outside of the City of New York, or to condition rights or privileges within the City on curtailment of residents' lawful activities beyond the City.

For all of the foregoing reasons, the Association opposes Intro. 363 and Res. 669.

INTRO 454
Revisions to the Rifle and Shotgun Permit Code Sections

In 2001, the New York City Charter was "revised" so as to raise the minimum age of eligibility for a rifle and shotgun permit from 18 to 21.⁸ We accept that with respect to Intro. 454's proposal to amend the Administrative Code to raise the age of eligibility for a rifle and shotgun permit that the Council is proposing a conforming change in light of the 2001 Charter Revision changes. Moreover, assuming the effectiveness of the 2001 Charter Revision changes, we applaud the proposed change to Admin Code § 10-305(a) that eliminate the Charter Revision's incidental disenfranchisement of persons age 18 through 20 from opportunities for supervised training and participation in sport. However, we oppose the balance of Intro. 454.

Section 2 of Intro 454 proposes to add to the rifle and shotgun permit system the following feature: "Such permit shall specify the identifying information of each rifle or shotgun covered by the permit, including the caliber, make, model, manufacturer's name and serial number." The Police Department presently collects all of this information, but does it in a far more efficient manner than is now proposed.

Section 3 of Intro 454 would add: "Any person to whom a rifle or shotgun permit has been validly issued pursuant to this chapter shall apply at any time to the police commissioner for amendment of his or her permit to include one or more such weapons or to cancel weapons held under the permit. If granted, a record of the amendment describing the weapons involved shall be filed with the police commissioner." Again, the Police Department already receives and files information regarding all long guns as a permittee lawfully acquires and disposes of same, and does so in a vastly more efficient manner than is now proposed.

prohibit city residents from receiving CMP-issued rifles nor from purchasing M-1 Garand rifles. It requires only that they store and use these weapons outside city limits." Richmond Boro Gun Club v. City of New York, 896 F. Supp. 276, 288 (S.D.N.Y. 1995), *aff'd* 97 F.3d 681 (2nd Cir. 1996).

⁸ We do not believe that the enactment of penal or licensing provisions through a charter revision process is an authorized use of the charter revision powers enumerated in Municipal Home Rule Law §§ 36 and 37. One would think that out of institutional prerogatives that this Council would agree. No part of the former charter was actually "revised" by the 2001 Charter Revision penal provisions affecting teachers or the licensing provisions affecting rifle and shotgun permittees between 18 and 21, and no part of the government of the City of New York was reorganized by those provisions. However, this interesting issue has not been brought before a court in regards to the 2001 Charter Revision.

Presently, whenever a permuter lawfully acquires or disposes of a long gun, a Certificate of Registration setting forth, *inter alia*, the following information: make, model, caliber, type (rifle or shotgun), action (bolt, lever, etc.), serial number, name and address of seller, and name, address and social security number of buyer. If a permittee purchases a long gun from a City, the dealer immediately submits the completed quadruplicate carbon copy form Certificate of Registration/Disposition to the Rifle & Shotgun Section. The Rifle and Shotgun Section, for anyone who has not seen it, is a relatively small office in the basement of Borough Hall in Kew Gardens, with no facilities to accommodate the long lines of law-abiding but abused and impatient customers that this proposal, as drafted, would create. If a permittee brings a long gun back home to the City after purchasing it elsewhere, s/he has 72 hours to complete and submit the quadruplicate Certificate of Registration/Disposition, which can be done by mail. The Rifle and Shotgun Section staff then expeditiously review the certificates and on a same-day basis return a stamped copy by mail (S.A.S.E. required) to the permittee. At the Rifle and Shotgun Section, this takes a matter of minutes, and records all of the information sought in Intro 454.

Sections 2 and 3 of Intro 454 propose to take this long-standing and well-functioning method of keeping tabs on legitimately bought and sold long guns,⁹ and replace it with one in which Police Department personnel would instead spend vastly greater amounts of time walking around and typing up amended licenses and typing up new certificates. All the while, permittees would have to come to Kew Gardens or some other police facility and be treated as one of the lowest priorities of the day (which has long been the order of the day for pistol licensees, upon whose grief the present proposal is apparently modeled). For just about all but the trust fund set, this proposal would make untenable the pleasurable and harmless hobby of collecting historically interesting long arms. It is not right to take the most squeaky-clean of constituencies, treat them like criminals, abuse them by forcing them to take days off from work and wait on lines in government offices in order to enjoy their hobby or sport, and then tell the world that the Council has done something worthy in the memory of a fallen colleague or otherwise.

If this Council desires to give the Police Department a break from work that accomplishes little at great cost of time and manpower, it will enact legislation to make the pistol permit process resemble the present long gun permit process, and not the other way around. Indeed, if the Council really wanted to jettison resource-wasting mandates from the Police Department's freight of responsibilities, it would propose legislation to eliminate the rifle and shotgun permit bureaucracy altogether. No other town or city in the State of New York requires long gun permits, and the rest of the Empire State (including its other substantial cities such as Albany, Buffalo and Rochester) has never made a move to follow New York City down this time-and-money wasting road.

Finally, Section 5 of Intro 454 would add the following items to the data collection mandate imposed upon City dealers who sell ammunition: "the caliber, make,

⁹ No one has ever offered a cogent reason why the government should keep tabs on lawfully bought and sold long guns, which very well may explain why no other part of New York State, nor any other part of any other state to the best of our knowledge, bothers to do so.

model, manufacturer's name and serial number of the rifle or shotgun for which the purchaser is purchasing ammunition." This is simply pointless, and also unworkable. If a person is presenting a rifle or shotgun permit, she presumptively should be of such good character as to purchase sporting ammunition based on the presentment of that permit alone. We cannot fathom any serious law enforcement objective in requiring a dealer who sells ammunition to have to record all of a licensee's personal information or inventory information on every ammunition sale. Even if the Police Department wanted to indulge the exercise of spot-checking a permittee-purchaser whose name and address are in a dealer's log of ammunition sales, to see if that permittee has a registered long gun in the recorded caliber or gauge, that could be easily accomplished with reference to the Department's existing records and the name and address information alone from the dealer log. We doubt that the Department would bother because, for example, while someone may stop by a sporting goods store on New Utrecht Avenue to get some .223 Remington ammunition, it may very well be for use in a competition rifle, the most common of which is the AR-15 type, which City laws and rules dictate cannot be registered and thus must be stored outside the City. In addition, many sportsmen own more than one rifle or shotgun of the same caliber or gauge. Which one should be put down on the dealer's log, and what difference would it make? Moreover, many rifles are chambered in rounds that are also pistol rounds (*e.g.*, .22 long rifle and 9mm chamberings are commonly used in rifles as well as pistols), and plenty of sportsmen¹⁰ own a pistol and rifle of the same caliber.

We accept and appreciate those changes proposed by Intro 454 that directly conform the Administrative Code to the 2001 Charter Revision. The Association opposes the balance of Intro 454 as profoundly abusive and wasteful.

INTRO 536 & RES 1000
Limiting Same-Buyer Sales to 1 per any 90 Day Period

The Association opposes Intro. 536 and Res. 1000.

The Declaration of Legislative Findings and Intent for Intro.536 recites that "current City laws governing gun sellers are inadequate to prevent the diversion of guns to the illegal marketplace." We respectfully disagree. In addition, regardless of the efficacy of current City laws, rules and practice, the Council lacks authority to legislate the proposed sales condition regarding handguns ("firearms" as defined in the Penal Law).

With respect to long arms, there is plainly little of a market for such items as illegal guns, since they are patently not desirable for typically criminal purposes. Only one long arm makes it into the B.A.T.F.E. top ten traced crime scene gun list – the Mossberg 12 gauge shotgun. The reason is overwhelming supply-side economics, but not necessarily from a retail dealer source of supply – the Mossberg 12 gauge has for

¹⁰ Of course, gender neutrality should be inferred throughout...

decades been the shotgun of choice for law enforcement officers nationwide.¹¹ Where violent crime perpetrated by young people (ages 18—20)¹² with firearms is concerned, again, only the Mossberg 12 gauge makes the top ten. In the aggregate data collected concerning 27 American cities, at number ten on that list of most-traced crime scene firearms, it was recovered and traced in 1.7% of those cases (or a total of 82 shotguns from those 27 cities combined).¹³

New York City law, uniquely within the State of New York or for almost any other American jurisdiction, requires a resident desiring to purchase and keep a rifle or shotgun in the City to have a permit from the Police Department, and then to register every such long arm owned and kept in the City. If a City dealer sells the long gun, the City dealer will complete the Certificate of Registration/Disposition and mail it to the Rifle and Shotgun Section of the N.Y.P.D. License Division. When such a registered long arm is disposed of, another Certificate of Registration/Disposition must be sent to the Rifle and Shotgun Section. A permittee would have to be profoundly stupid, and/or have a wide masochistic streak, to buy rifles and shotguns from a New York City dealer with intent then to illegally traffic in them. The competitive disadvantage versus criminals who bootleg from elsewhere would probably be economically prohibitive. If the Police Department should have probable cause to suspect trafficking by a New York City long gun permittee, a search warrant would issue and the permittee's inability to account for firearms registered when bought but not when sold would make for a simple prosecution under existing anti-trafficking laws. Rather than leverage the already significant abilities the Police Department and District Attorneys have under existing law, the Council here proposes presumptively to treat every purchaser of rifles and shotguns as a suspect.

There are a number of easily contemplated scenarios in which a person would acquire more than one long gun at a time. A parent could be planning to buy nice skeet guns as presents for grown children.¹⁴ Collectors regularly purchase, sell and/or trade more than one firearms at a time (just as collectors of stamps, coins, comic books, or any other sort of collectibles do).¹⁵ Sometimes collectors purchased matched sets of

¹¹ America's Most Wanted Guns, Time Online Edition, Friday, July 12, 2002 (“[T]he venerable Mossberg shotgun made the list based on the sheer volume in circulation.”). (<http://www.time.com/time/nation/article/0,8599,320383,00.html>). The N.Y.P.D. generally employs the New York-made Ithaca 37. A classic. Nice choice.

¹² This age group accounts for 25% of all arrests for murder. Gun Crime in the Age Group 18-20 – A Report by: The Department of the Treasury and The Department of Justice (June 1999), p. 1. (<http://www.ustreas.gov/press/releases/reports/report.pdf>).

¹³ *Id.* at p. 14, Table 6. This U.S. Government report did not provide broken-out data for New York City.

¹⁴ Sarah Brady of the Brady Campaign has done this (“I did purchase a hunting rifle as a gift for my son. This was not considered a straw purchase. He himself is not a prohibited purchaser. He could purchase one at any gun store himself. Under both federal and Delaware law, it is perfectly legal to purchase a gun as a gift for a family member, and it's done day in and day out throughout this nation.”). (http://abcnews.go.com/sections/community/DailyNews/chat_sarahbrady020327.html).

¹⁵ Almost amusingly, when Virginia enacted its “one-gun-a-month” law, then-Governor Wilder circulated sympathetic copies of Batman™ comic books, in which Batman extols the virtues of such laws. Batman also endorsed total gun prohibition. Criminals, however, view the matter differently, and as long as they do, and as long as Batman won't really come to save the day, we are obliged to view the matter differently,

commemorative firearms. Sometimes a collector will part with more than one example of an item in her collection in order to acquire a nice example of something her collection lacks. A professional hunting guide could buy several new rifles for his expanding business. Virginia's gun rationing law at least included reasonable exceptions to accommodate, for example, collecting activities and replacement of stolen firearms.

Gun rationing bills are antithetical to traditional American notions of freedom, and of trusting in the goodwill of the people until in an individual case there is probable cause to do otherwise. Such bills serve no genuine end in themselves. They have failed to reduce trafficking as promised. But they do serve the more insidious purpose of dulling the peoples' awareness that their freedom is being chiseled away, bit-by-bit. Accordingly, the Association opposes Intro. 536 and Res. 1000.

INTROS 197, 210 and 487 **Creating Causes of Action Against Manufacturers and Others**

The Association opposes Intros. 197, 210 and 487.

Intro. 197 would create a cause of action against manufacturers (including possible punitive damages), in strict liability, for personal injury or death to a person in the City, if the manufacturer does not operate in accordance with a code of conduct as set forth therein. Intro. 210 would create a cause of action against manufacturers in favor of the City (including possible punitive damages), in strict liability, for personal injury or death to a City employee in the course of the employee's duties. These Intros. offer a morally repugnant vision of a future in which American workers and entrepreneurs are made to pay for the acts of genuine criminals and for our politicians' failure to respond effectively to the menace of violent criminals.

These Intros constitute an arrogant and unconstitutional presumption – that the New York City Council can dictate interstate and international firearms commerce policy and regulation better than Congress and the Justice Department. For a well-elucidated presentation of the constitutional issues that are implicated by Intros 197, 210 and 487, we respectfully refer the Council to Scott Gast, *Gun Control's "Third Way": State And Local Gun Purchase Preference Plans And The Dormant Commerce Clause*, (Note) *Virginia Law Rev.*, 167 (March 2002). These Intros also constitute a transparent attempt (although a more skillful one than Intro 487, discussed *infra*) to destroy the lawful firearms industry in America, and the Second Amendment with it. Intro 487 suffers all of the criticisms above, and more.

Intro 487 totally ignores the net positive social utility of liberal access to firearms by law-abiding citizens, as has been documented most thoroughly by John Lott, Ph.D., and also other scholars.

and more seriously, as well. D. Kopel, *Eating Away at the Fabric of Freedom*, Independence Institute (2003) (<http://www.davekopel.org/2A/Mags/Eating-Away.htm>).

Intro 487 targets not only manufacturers,¹⁶ but also importers and retail dealers. If our courts should fail to reckon honestly with the fatal constitutional infirmities of the bill, then many businesses with good union manufacturing and other good jobs will flee New York State¹⁷ from law-abiding manufacturers of quality arms for sportsmen and law enforcement including Henry Repeating Arms (Brooklyn), Kimber (Yonkers), Kahr Arms (Blauvelt), Remington (Ilion), Ithaca (Ithaca) and Dan Wesson Firearms (Norwich). In Intro 487's brave new world, where one tragedy means bankruptcy and ruin, every law-abiding dealer in the City including Manhattan's Westside Rifle & Pistol Range in Chelsea, NYC Ironworks and John Jovino near Police Headquarters, Olinville in the Bronx, Chapel Sports in Jamaica, Woodhaven Rifle & Pistol Range in Woodhaven, and all the others, would close, move out or be killed. Intro 487 is not merely a ham-fisted revelation of a naked gun control agenda – it is a savagely vicious job-killing bill. Any council member who supports it should never dare to look a union machinist, like the organized United Mine Workers of America members at Remington, in the eye and claim to care about working families. Sheldon Silver should think long and hard whether his upstate Democratic caucus needs to be “show[n] the way” by legislation such as this.¹⁸

After this bills' gun control dream is realized, then the nightmare begins for the rest of us. After the jobs and businesses are closed or moved out of state, the “Iron Pipeline” will be doing a more brisk business than ever before, with armed thugs more emboldened than ever. That has been the English experience after near-total gun control, and it would no doubt be ours. Unemployment, disarmed victims and emboldened thugs.¹⁹ Quite a future.

RES 584 **Urging Creation of Federal Ballistics Imaging Database**

The Association opposes Res. 584. We have had an opportunity to review written comments of Lawrence G. Keane, Vice President and General Counsel of the National Shooting Sports Foundation, Inc. We fully concur therein and we adopt those points as our own. Presently, the creation of a federal ballistics imaging database, as contemplated, would waste millions of dollars and return zero benefits.

We would add that it is easy to explain why FBI and ATF spokespersons have insisted (without specifying why or how) that such a database would be useful, although California's Department of Justice specialists painstakingly explained why the opposite is true. Such a database is useless without a matching registry (more appropriately, a pre-confiscation list) of gun owners. Federal agencies operate under a Congressional ban

¹⁶ In this regard, its title heading is deceptive, since it also targets importers and retail dealers.

¹⁷ Court jurisdiction is statewide, even if the prospective world of plaintiffs is confined to the City.

¹⁸ Winnie Hu, Council Seeks To Toughen Gun Controls, N.Y. Times, Aug. 23, 2003.

¹⁹ “Gun Control? It's the best thing you can do for crooks and gangsters. I want you to have nothing. If I'm a bad guy, I'm always gonna have a gun. Safety Locks? You will pull the trigger with a lock on, and I'll pull the trigger. We'll see who wins.” Sammy ‘the Bull’ Gravano, Vanity Fair, Sept. 1999.

against their building and keeping a pre-confiscation list of gun owners. California is not bound by that law, and in fact it has a registry of gun owners. Therefore, California has no ulterior motive in examining the efficacy of a ballistics imaging database on the New York and Maryland models. Those systems cannot and will not achieve their ostensible objective, and California law enforcement knows it and has candidly said so.

Conclusion

Except for the portions of Intro 454 that directly conform the Administrative Code to the 2001 Charter Revision, the New York State Rifle & Pistol Association, Inc. respectfully opposes the Intros and Resolutions on the agenda. Again, I appreciate the opportunity to present testimony on behalf of the Association, and will be happy to answer any questions you may have.

###