



Testimony

New York State Rifle & Pistol Association, Inc.

Testimony

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

We have a variety of bills and resolutions before us this morning. And as usual, they are based on a variety of false hopes and false premises. Laws are for the law abiding. We have said this here before, and it bears repeating. Laws are for the law abiding. Imposing further burdens and restrictions on New York City’s heavily taxed and intensely regulated licensed gun owners, and its few remaining, heavily taxed and intensely regulated licensed dealers of firearms and ammunition, will *not* reduce crime. As we heard the Mayor’s Criminal Justice Coordinator say in a September 2003 hearing before this Committee, New York City’s licensed gun owners are *not* the problem.¹ For this essential, transcending reason the Association opposes all of the intros and resolutions before us today. In addition, the Association opposes specific intros and resolutions on specific common sense and legal grounds as we will detail this morning (or as we have detailed in prior testimony, to which we will refer as necessary).

¹See also Talcott J. Franklin, TEN YEARS LATER: AN ANALYSIS OF THE EFFECTS OF NEW YORK CITY’S MANDATORY SENTENCING LAW (1990)(Available at http://www.saf.org/journal/4_Franklin.htm) (“Studies also show the proportion of ‘previously law-abiding’ murderers in New York City is extremely small. In their analysis of homicide in Harlem, Swersey and Enloe found: ‘that the great majority of both perpetrators and victims of assaultive homicides had previous arrests, probably eighty percent or more.’” (citation omitted)).

Before we address specific bills and resolutions, it will be constructive to set forth a brief, practical primer on the present state of firearms regulation in New York City. This should better inform the Committee as to the not merely unproductive, but *counter-productive*, nature of the burdens that today's legislative agenda seeks to impose on the law-abiding.

An Abbreviated, Practical Primer on Firearms Regulation in New York City, 2004

- Very few persons who apply for a license to carry a pistol will receive a carry license. This may seem like a good idea to some of you, until it is your life or the life of someone you love that is threatened. At that point, you would wish, as frequently cited gun control advocate Dr. Arthur Kellerman admitted, that your loved one would have a gun with which to defend herself.²
- Generally persons who do receive an NYPD-issued carry license have to fit into a recognized pigeon hole: celebrity (*e.g.*, Buddy Hackett,³ Don Imus, Robert DeNiro, Howard Stern, Steven Tyler⁴), wealthy and politically savvy (*e.g.*, Donald Trump, John Catsimitidis, Bill Fugazy), judge (*e.g.*, Donna Mills, Charles E. Ramos, Reinaldo Rivera, Peter Tom), retired police officer, security guard, diamond merchant, pharmacist or business person with a record of regular and substantial cash deposits.⁵ Most of you would justly chafe at being characterized as “elitist.” But gun control in New York City, which this Council has traditionally supported, is now exceedingly elitist.
- If your life or the life of a loved one is threatened, and you do not fit into one of the above-categories, and/or do not have at least five months to wait around while the NYPD takes that long to do what the New Hampshire State Police will do in less than five days (complete its investigation and issue a license), then prepare to run away, die or become an undocumented gun owner (and

² “If you’ve got to resist, you’re chances of being hurt are less the more lethal your weapon. If that were my wife, would I want her to have a .38 Special in her hand? Yeah.” Dr. Arthur Kellerman: Health Magazine (March/April 1994).

³ Deceased, June 30, 2003. Mr. Hackett enjoyed a NYPD-issued carry license although he lived and died in California.

⁴ License issued under the name of Steve Tallarico, the Aerosmith frontman’s real name. He lives in Massachusetts. As the New York Post reported (“NYPD BIG UNDER FIRE IN AEROSMITH ‘GOT A GUN’ SCANDAL, By Philip Messing and Murray Weiss, New York Post, Nov. 24, 2002), License Division personnel went to an Aerosmith concert at New Jersey’s Continental Airlines Arena to render first class road service, eliminating the need for Mr. Tallarico (and his also NYPD carry licensed bandmate and fellow Bay Stater, Joseph Perry) to make four visits to One Police Plaza like everyone else.

⁵ The internal NYPD guidance on what constitutes enough of a cash business to qualify has (1) never been made public and (2) been reported to change internally, without notice and comment to the interested public. It is understood to be a fixed number of dollars, which at any level has to be regressive and discriminatory. A successful midtown dentist will rake in more cash in a day than an uptown bodega owner, and hence be deemed more deserving of lawful means with which to defend his or her life. This should strike the members of this Committee, as it strikes us, as discriminatory and unjust, particularly since it is bodega owners and not midtown dentists who are truly at the greatest risk of armed criminals.

criminal). When the wolf is at the door, dialing 9-1-1 may better the odds of the wolf being caught, but not before he kills you.

- According to Deputy Insp. Roy M. Richter, the Executive Officer of the NYPD License Division, the average application file for such a license will be about three inches thick.⁶ Armed criminals about whom we have read, on the other hand, universally are unburdened by three-inch dossiers, waiting periods and the like.
- With a perfectly clean personal background, a New Yorker will qualify for a pistol to have in her home or business only. Again, the NYPD will take at least five months and usually more to give her back even this heavily infringed right. Women have been killed in jurisdictions with shorter waiting periods while waiting for government approval of their self-defense right.
- An applicant will pay a \$340 fee for a three-year license, plus a \$99 fee to the State, ostensibly to pay for fingerprint processing. Neither of these fees bears any relationship to the reasonable cost of administering a license program.
- She will need to pay for photos and notary fees.
- She will need copies of utility bills in her own name, because the NYPD will not believe her when she says she lives where she does.
- She will have to find a typewriter to use on the original yellow application, because even a neatly handwritten application will be rejected, and she cannot submit a photocopy from her computer printer.
- She will make no fewer than four personal visits to One Police Plaza during the licensing process (including one just to pick up the application, which the NYPD inexplicably will not post on the internet or mail to you).
- The application has over thirty questions, some with sub-parts, some astonishingly irrelevant, (such as wanting to know if any business partners have a pistol license) and at least one that serves no other person but trap the applicant (hint – when you’re asked if you have any other licenses, don’t forget your driver’s license, or else you can start the process again from the beginning).
- She will take a day off from work for the last visit, when she brings in her new firearm for a completely unnecessary “inspection” that the department will only conduct during two hours in the middle of the day. The gun will not seriously be inspected, and nothing else will happen at this occasion that could not be done by mail.
- She will pay that \$340 sum, or a higher one, every three years on renewal.

The expenses and burdens imposed by New York City are unique in the State and in the Nation. Upstate and Western Counties typically issue unrestricted licenses that are good for life and cost from zero to thirty dollars. Next-door Vermont does not bother its citizens to be licensed or registered at all, nor does it particularly tax them in connection with their firearms ownership. Those people are freer *and* safer.

⁶ M. Lefkowitz, “Cleared to Carry in City,” September 30, 2002. Available at: <http://www.newsday.com/mynews/ny-nygun302946032sep30.story> .

Most of the attributes of gun control in New York City were in place during the worst of the violent crime years, from Mayor Lindsey through Mayor Dinkins. Currently, about 35,000 New Yorkers have put themselves through this process (for either a carry or premises license) successfully and presently hold an NYPD-issued license. The NYPD has not disclosed the number who have applied and been turned down over any period of time. In a city of roughly 8 million inhabitants, 35,000 is a *very small number*. Manifestly, the Giuliani Administration's success in violent crime control was not due to aging and ineffective gun control policies – it was due to clear-thinking about, and determined execution of, policing strategies actually aimed at criminals.

What then, has New York City gun control achieved? Chiefly, disrespect for the law and an *enormous* undocumented market for firearms. Some achievement. The federal government estimates there are 2 million undocumented firearms in New York City,⁷ and every year over 99.975 % of them are not used to kill anyone. They are owned by those too poor and too busy to pay \$439 and make four trips downtown and spend hours completing forms and months waiting for approval, all to vindicate a God-given right. And there you have the result of New York City gun control: 35,000 persons able to comply with an expensive maze of regulation, and approximately 2,000,000 otherwise law-abiding folks who turn to the affordable freedom of the undocumented free market for their self-defense needs. Vermont does not have this problem.

Think about it. You could eliminate the egregious taxes and burdens on decent citizens, encourage them to acquire firearms through legal market channels (as virtually all law-abiding gun owners do in sane states like New Hampshire and Vermont), and use the increased ordinary tax revenues for a genuine fight against malicious criminals. And make us all safer.

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 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.

Intro 112: Firearms Tracing and Data Sharing

The Association opposes Intro 112.

This bill creates a significant workload for the Police Department without addressing funding or resources. Moreover, the requirement that data on the manufacturers and sellers of "crime guns" be made available to the public on a monthly basis may tend to stigmatize gun manufacturers and dealers who conduct business

⁷ *Id.*

according to all applicable laws. It is certain that these data will be used in conjunction with Introduction No. 365, if passed, to try to drive New York City gun dealers out of business *despite* their compliance with all applicable laws.

The Association generally opposes legislative branch attempts to micromanage law enforcement with unfunded mandates and politically fashionable legislation. Law enforcement is an executive function of government, with executive accountability. This is why the Police Department is chartered as a mayoral agency and not an agency of the Council.

A final point of information: in paragraph J the term “disaggregated” is misused. Disaggregated data would be case-level data, including the names or identities of crime victims that are meant not to be divulged. The proper term in this context is “aggregated.”

Intro No. 144: Prohibit the Sale of Rifles and Shotguns to Those Under Age 21 / Collect Additional Information About Ammunition Sales

The Association opposes Intro 144.

This bill substantially replicates Intro 454 from the last legislative session, as to which we registered our objections in our testimony of July 12, 2003.⁸ We respectfully refer the Committee to that testimony for a full statement of our objections to the present Intro 144.

Intro No. 325: Personalization

The Association opposes Intro 325.

This bill is an attempt to restrict commerce, and to saddle New Yorkers with unproven and potentially unreliable and dangerous technology under the guise of protecting children. The casual reader of this proposal would think that New York City suffers from an epidemic of handgun accidents involving young children. In fact, these tragic accidents are extremely rare, and I believe that you know this. According to the Centers For Disease Control, in 1998 through 2001, the last year in which complete state-level data are available at the CDC’s website,⁹ only five children under the age of ten died in firearms-related accidents in all of New York State.¹⁰ Several, if not all of, those deaths were the result of a law enforcement officer failing safely to secure or handle a

⁸ <http://www.nysrpa.org/PB-Testimony-NYC091203.pdf>

⁹ <http://www.cdc.gov/ncipc/wisqars/>

¹⁰ We do not mean to minimize any tragedy. Each such loss is infinite. But singular tragedies fail to acknowledge or account for the lives saved by firearms in good hands, and so cannot form a sound basis for making policy. Examination of the benefits as well as the costs of freedom reveals that on balance, unfettered freedom of the law-abiding to possess arms saves lives.

firearm.¹¹ Of course, law enforcement insists on being exempted from this and virtually every other gun control bill considered by this body. The CDC does not report handgun accidents separately from other firearms accidents, nor does it report how many of those incidents occurred in New York City, but these statistics make it clear that there is *no* epidemic, and that this bill is a solution in search of a problem.

While most recent accidental tragedies involving New York youngsters and guns involved guns belonging to members of law enforcement services, we cannot forget that only 35,000 New Yorkers lawfully own handguns, while 2,000,000 other firearms and their owners have opted out of an increasingly abusive and nutty regulatory scheme. This law will not reach them either. In fact, it will be one more demand-side driver in the local market for undocumented firearms. New York City policy created this market and gave it critical mass. The rest of America (a handful of other big cities excepted) is not enamored of Hollywood fantasy inspired gun control, and will not suffer itself to be governed by the dysfunctional policies of big city politicians. Industry will continue to produce simple, reliable firearms that law enforcement and law-abiding citizens across America actually want, and enterprising risk-takers will continue to defy foolish local laws in order to meet those same demands from security-conscious customers in New York City.

As noted above, the bill would exempt handguns sold to law enforcement officers. The sponsors of this bill apparently appreciate that law enforcement officers (who not only have a worse record than civilians in safely storing their firearms but also are at greatest risk of losing their firearms to criminals in close quarters) refuse to trust their lives to unproven and trouble-prone technology. Why, then, should private citizens be held hostage to this technological pipe dream? Are our lives worth less?

This bill will have additional unanticipated consequences. A person who owns one or more grandfathered firearms who lives in New York City today would be treated differently than such a person living outside of the City. A person living in the City would be permitted to keep his firearms and move about from one residence to another within the City. A person moving into New York City from outside, owning the same grandfathered firearm(s), could never get them licensed in New York City. That is because one of the more asinine features of New York City gun control law is that for a firearm owner to move to New York City and keep all of his guns, she must leave her guns with a federally licensed dealer (“FFL”) in her original jurisdiction, apply for a NYPD-issued license (wait about six months), and finally, license in hand, make applications *one gun at a time* to purchase back her own guns in an interstate dealer-to-dealer transaction. This is the process that was described to us by License Division Director Thomas Prasso as the only authorized process for legally bringing one’s own firearms into New York City. Accordingly, decent people would be turned away from

¹¹ See, e.g., “Officer's Fatal Shooting Of Son Deemed Accidental,” Albany Times Union, Aug. 2, 2002 (Queens corrections officer Hernando Olaya, while unloading service pistol, accidentally shot and killed his three year old son Jonathan); R.L. Jones, “In an Instant, a Child Is Lost to a Handgun,” New York Times, August 5, 2001, § 1, p. 28, col. 5 (concerning the tragedy of four year old DaShawn White, who accidentally killed himself with his court officer-mother’s service pistol).

New York City, or made into criminals, on account of this illogical solution in search of a problem.

Moreover, thanks to a mindless rule change instigated by fired former License Division Director Karen Pakstis (reportedly fired by Bernard Kerik for being as insubordinate to him as she was rude and irrational to the general public), since June of 2001 the standard NYPD-issued license cannot be transferred to another address outside of the City. No other county in New York State operates this way. The result is that, under the proposed intro, it is questionable whether a New York City licensee of a grandfathered firearm could move to another county in New York State outside of the City with it (since doing so would involve not a transfer of a license, but the surrender of the NYPD license and application for a new license of a different type in the new jurisdiction).

In addition, competitive pistol shooters – and there are more of us than you might think in New York City, including one of the top finishers at the 2004 National Championships – use expensive, low-volume, hand-made pistols. The manufacturers of these pistols do not have the resources to create “personalization” systems, and will have to end their sales to New York City competitors. Since we will not be allowed to dispose of our “grandfathered” pistols by selling them to new competitors, high-level competitive pistol shooting will gradually die out in New York City as current competitors retire from the sport. One of the teams we compete against in the Greater New York Pistol League is made up of firefighters. Who on this Committee will volunteer to tell the firefighters that their team is going to expire along with the others? Ironically, the death of competitive pistol shooting in New York City might begin around the time of the 2012 Olympics if the City wins them. Thus, we would be put in the position of hosting Olympic shooting sports in a city where residents are effectively barred from competing in them.

Finally, what happens when “personalization” technology is introduced, is found not to work, and is withdrawn? Will we be left with this law on the books, and *no* guns to buy? What a neat end-run around the Second Amendment!

As is so often the case, technology is not the answer. Education is the answer. The NRA's Eddie Eagle program teaches children to leave the area and call an adult if they come upon a gun. Can we afford not to teach this lesson to our children? Or will we rely on a false technological promise?

Intro No. 365: Cause of Action

The Association opposes Intro 365.

This bill substantially replicates Intros 197, 210 and 487 of the last legislative session, as to which we registered our objections in our testimony of July 12, 2003.¹² We respectfully refer the Committee to that testimony for a full statement of our objections to the present Intro 365.

¹² <http://www.nysrpa.org/PB-Testimony-NYC091203.pdf>

Intro No. 469: Assault Weapons

The Association opposes Intro 469.

Intro 469 is largely of the “make the rubble bounce” species of legislation. It does not break new ground, but merely breaks old broken ground (without building anything).

The portion of Intro 469 that raises the rifle and shotgun permit age from 18 to 21 is subject to the same objections we’ve previously made to legislation encompassing this provision. We will reiterate that the Council, for the sake of its own prerogatives, should not be enacting legislation that endorses an unconstitutional abuse of the Charter revision process by the Mayor’s office.¹³

The portion of Intro 469 dealing with so-called “assault weapons” proposes increased penalties and mandates tri-annual review of the Police Commissioner’s scheduled of rifles to be banned by make and model. The Association opposes laws that attempt to regulate behavior by restricting the availability of tools to the law-abiding. It will not answer to ask “who needs a Kalashnikov to go hunting.”¹⁴ We live in a supposedly free society where government officials should never feel entitled to ask the citizens why they want a toaster oven, a five-gallon bucket, a good set of kitchen knives, a baseball bat, a particular car or any given firearm. Each can be neglected or abused with fatal results. The focus should always be on deterring criminal behavior, not on scapegoating equipment. If we were to prefer to take our target practice with a semi-automatic Kalashnikov,¹⁵ as a number of people around the country such as might surprise you do, you would take no more notice of that than you do of our present, completely lawful competitions. Banning particular rifles according to the definitions in the City “assault weapon” ban, the State “assault weapon” ban or the recently expired federal ban, is the policy-making equivalent of addressing dangerous automobile racing on public streets by banning cars with spoilers, racing stripes, cosmetic air intakes and fancy hood ornaments as well as Ferraris, Corvettes, Camaros, Trans-Ams and Datsun/Nissan Z cars by name. We don’t make that confused mistake with bad drivers and high performance cars. We shouldn’t make it with criminals and any class of firearms.

¹³ As happened in 2001 with the Mayor’s Charter revision referendum that circumvented the Council and placed a similar ordinary penal code-type law in the City Charter.

¹⁴ Although the standard Kalashnikov 7.62x39 round, in softpoint hunting variety, has ballistics comparable to the venerable deer hunting Winchester Model 94 lever action rifle’s 30-30 caliber round.

¹⁵ Remember, a semi-automatic, even the much-maligned Kalashnikov, only discharges one bullet with each pull of the trigger. It does not “spray” while the trigger is held down.

Intro No. 490: Limit Acquisition To One Rifle or Shotgun Every 90 Days

The Association opposes Intro 490.

This bill substantially replicates Intro. 536 from the last legislative session, as to which we registered our objections in our testimony of July 12, 2003.¹⁶ We respectfully refer the Committee to that testimony for a full statement of our objections to the present Intro 490.

Res 49: Expanding CoBIS

The Association opposes Res 49.

This resolution calls upon the Governor and the New York State Legislature to amend that section of the New York State General Business Law known as the Pistol and Revolver Ballistic Identification Databank Law (known as CoBIS), to require that assault weapons, rifles and other long-barreled weapons be included in New York State's ballistics fingerprint database. CoBIS is a spectacular boondoggle – a piece of fashion show legislation costing millions of dollars and operating as a tax on lawful gun purchases that has yet to solve a single crime or deter one. As of approximately the end of last year, the CoBIS system collected roughly 40,000 casings at a cost of \$12 million. That's \$300 per casing to collect. According to the office of State Senator George D. Maziarz, \$4 million was allocated by the State police for CoBIS in each of Fiscal Years '01-'02 and FY '02-'03, and thirty (30) new positions were added to the NYS Police.¹⁷ Generally, the costs of maintaining the system, the staff, storage, etc. have been hidden from the public, as CoBIS has no budget line. It is just part of the New York State Police general budget. Only one other state, Maryland, has a similar law, and the result in Maryland has been an identical failure – millions wasted and not once crime solved or deterred. Maryland, pursuant to a report on the lack of program success by the Maryland State Police,¹⁸ has declined to expand its program

CoBIS is legislation for the gullible. It satisfies the audience that thinks spending money is the same as solving problems. It isn't. When the State of California considered a similar law, it's legislature thoughtfully asked its Department of Justice to evaluate the technological merits of the idea (something New York did not do before wasting millions of dollars). The independent report of the California Department of Justice explained in practical and scientific detail why a program such as CoBis would be doomed not merely to failure, but to serving as an expensive distraction from effective crime-fighting tools.¹⁹

¹⁶ <http://www.nysrpa.org/PB-Testimony-NYC091203.pdf>

¹⁷ Text of letter available at <http://www.ocshooters.com/Reports/cobis/cobis.htm> .

¹⁸ Maryland IBIS (Integrated Ballistics Identification System), Maryland State Police Forensic Sciences Division, September 2003, available at <http://www.calgunlaws.com/Docs/BALLISTIC%20IMAGING/Agency%20Opinion/mspscan2MED.pdf> .

¹⁹ Feasibility of a California Ballistics Identification System Assembly Bill 1717 (Hertzberg) (Stats. 2000, ch. 271), Report to the Legislature, Attorney General Bill Lockyer, California Department of Justice January 2003, available at http://www.ag.ca.gov/newsalerts/2003/03-013_report.pdf .

California tabled its legislation to create such a system as a result. New Jersey, Connecticut and Massachusetts waited on the California report before acting on legislation in their own statehouses, and since the publication of the California DOJ study have tabled their own legislation.

The last thing a budget-strapped New York needs is to waste more millions of dollars by expanding this futile program.

Res 78: “Gun Trafficking”

The Association opposes Res 78.

This resolution calls upon the New York State Legislature to amend various sections of the Penal Law to better combat illegal gun trafficking. As set forth at the Introduction to this testimony, “gun trafficking” is almost uniquely a New York City problem within the Empire State. “Gun trafficking” is not a major problem in adjoining states with sane firearms laws like Vermont and Pennsylvania. “Gun trafficking” is a major problem for New York City because New York City, alone in the state, has made law-abiding gun ownership prohibitively expensive and viciously abusive for good citizens. The State should not enable New York City’s neurotic gun control policies. What it should do to relieve New York City of the burden of its own mistakes is to adopt Vermont or Pennsylvania style gun laws, and pre-empt all local law to the contrary. Gun trafficking into New York City would fall through the cellar. Then the NYPD would be free to better focus their efforts on the proper object of policing – criminals.

Res 85: BLAST Act

The Association opposes Res 85.

This resolution calls upon the United States Senate to approve S.3096, also known as the “Ballistics, Law Assistance, and Safety Technology Act” (“BLAST Act”) to establish a national ballistics fingerprint database.

For the reasons stated above in opposition to Res. 49, and further for the reasons set forth in the written testimony of the National Shooting Sports Foundation by its General Counsel, Larry Keane, submitted before this Committee on September 12, 2003 in opposition to a substantially similar resolution, the Association opposes Res 85.

Res 597: Amending Penal Law § 400

The Association opposes Res 597.

This resolution calling on the State Legislature to amend the Penal Law to include the denial of a weapons permit for any applicant convicted of violating New York City’s assault weapons ban. For reasons previously stated we hold that New York City’s assault weapons ban is an ill-conceived measure, incapable of achieving a crime-fighting

objective and antithetical to the rights of citizens in a free republic. As the nation justly turns its back on such legislation, no other jurisdiction should give any consideration to New York City's unjust law.

Conclusion

The New York State Rifle & Pistol Association, Inc. respectfully opposes the Intros and Resolutions on the agenda. 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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