April 9, 2013

Dear Senator:

We understand that the Senate will soon consider legislation to address gun violence in our nation. I write on behalf of the American Bar Association to urge you to support S. 649 (the Safe Communities, Safe School Act of 2013) and S. 150 (the Assault Weapons Ban of 2013), and to oppose weakening amendments.

Since the unthinkable slaughter of children and staff members in Newtown, Connecticut in December, we have all been called upon to consider responsible actions to better protect our nation’s children and ourselves from senseless gun violence. The profound public concern over more frequent and horrific mass shootings has also brought new focus on the extraordinary human toll taken every day in the United States due to misuse of guns. The Centers for Disease Control estimates that over 100,000 Americans are shot and 31,000 die from those gunshots each year. The rate of per capita gun violence in the United States far exceeds that of any comparable country.

The ABA strongly supports the key provisions of S. 649 and S. 150 to require background checks for private sales of firearms, to make straw purchases a federal crime, and to limit future sales of new assault weapons and high-capacity ammunition clips so that they are available only to the U.S. military and law enforcement entities. The ABA believes that the Senate should promptly approve these common sense legislative steps to strengthen protection of the public from mass shootings and to prevent and reduce future gun violence throughout our nation.

We further believe that these steps are fully consistent with the Second Amendment right to bear arms as articulated by the U.S. Supreme Court in District of Columbia v. Heller, 554 U.S. 570 (2008), and that they that do not unreasonably impinge on gun owner traditions and ordinary uses of firearms. In Heller, the Supreme Court held for the first time that the Second Amendment protects the right of a law-abiding, responsible citizen to possess a handgun in the home for self-defense. However, the Court made clear that the right is not absolute and does not protect the right to “keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” 554 U.S. 570, 626-27 (2008). The Heller decision identified several examples of gun laws it considered “presumptively lawful,” and noted a list of types of regulation – including limits on gun ownership by felons and the mentally ill and, relevant to assault weapons and high-capacity ammunition clips, regulation of dangerous and unusual weapons used for military action – the constitutionality of which the Court did not question.

These key provisions in S. 649 are constitutionally valid, as they are presumptively lawful regulations as described by the Supreme Court. A universal background check, for
example, is a regulation on the commercial sale of firearms and is necessary to enforce existing laws prohibiting firearm possession by felons and the mentally ill. Laws punishing “straw purchasers” who buy guns on behalf of prohibited persons are also regulations on the commercial sale of firearms. Neither a requirement for background checks nor authorization of the prosecution of straw purchasers has any cognizable impact on lawful gun owners. Assault weapons and large-capacity ammunition magazines, are “dangerous and unusual weapons” that are used most commonly in military combat. These proposals are both constitutional and necessary as sound policy steps to reduce the threat of gun violence and to protect the public’s safety.

We have not taken a position regarding the provisions of S. 649 regarding school safety and school security, the School and Campus Security Enhancements Act of 2013, or regarding an alternative school security amendment known as the “School Shield Act” expected to be offered during floor consideration. We do, however, reject the notion that either of these proposals are to be regarded as mutually exclusive alternatives to the other provisions of S. 649 regarding closing background check loopholes, addressing straw purchases of firearms, strengthening reporting of mental health records to the NICS system, or limiting future availability of military assault weapons and high-capacity clips. We know clearly right now that having armed personnel at schools, courthouses, at businesses and other settings – while it may deter many crimes – has not prevented individual mass shootings.

In closing, we acknowledge that no single action by Congress will prevent all mass shootings or result in a background check system that is 100 percent enforceable. But recent events should prod each of us to take responsible actions. Mass killings happen too often in our nation, as do the more common day-to-day gun killings numbering in the thousands just since December. The Senate should act now to improve the weak and flawed laws at issue. We urge you to support S. 649 and S. 150 that they may soon become law.

Sincerely,

Laurel G. Bellows
President