March 6, 2013

Honorable Patrick Leahy
Chair, Committee on Judiciary
United States Senate
433 Russell Office Building
Washington, DC 20510

Honorable Chuck Grassley
Ranking Member, Committee on Judiciary
United States Senate
135 Hart Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We understand that the Senate Judiciary Committee will soon consider legislation to address gun violence prevention. I write on behalf of the American Bar Association to urge the Committee to approve legislation 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.

Since the unthinkable slaughter of children and staff members in Newtown, Connecticut in mid-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 ABA believes that the Committee, the full Senate and Congress should approve these common sense legislative steps to strengthen protection of the public 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 the landmark decision 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.

The key bills before the Committee are each constitutionally valid, as they are all presumptively lawful regulations as described by the Supreme Court. Assault weapons and large-capacity ammunition magazines, for example, are “dangerous and unusual weapons” that are used most commonly in military combat. Universal background checks are regulations on the commercial sale of firearms and are 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 requirements for background checks nor authorization of prosecution of straw purchasers have any cognizable impact on lawful gun owners. These proposals are both constitutional and necessary as sound policy steps to reduce the threat of gun violence in our communities.

**Background check requirements and the National Instant Check System should be strengthened.** The current operational status of the National Instant Check System for background checks of prospective purchasers of firearms is deeply flawed and should be strengthened by Congress. Since 1968 federal law has limited gun sales through licensed firearms dealers to legally qualified purchasers, and since 1993 the law has required a background check, prior to completion of the sale of a firearm, of federal and state records through the National Instant Check System (NICS). However, federal law continues to exempt an estimated 25-40 percent of all gun sales in the United States from this requirement. Unlicensed sellers are permitted by law to sell firearms with no background check whatsoever. Convicted felons, domestic violence abusers, persons who are dangerously mentally ill, and potential terrorists can walk into any gun show or flea market, or click on their internet browser, and buy any weapon and unlimited supplies of ammunition with no background check and no questions asked.

Recent public polling suggests that for the first time there is broad recognition by the American public, including gun owners, that the background check system for gun sales is in reality two systems that allow easy, unchecked access to guns by criminals and the mentally ill. The public has reached a high level of consensus seen on few public issues, as evidenced in 14 separate public opinion polls in the past several weeks showing that more than 90 percent of responders support a “universal background check.” Pollsters often note that most of the public assumes that the law already requires a background check for all sales of firearms, including sales at gun shows and for private sales. Regarding this question, there is remarkably little difference in support for this reform between gun owners, NRA members, non-gun owners, men and women, Republicans and Democrats: all agree in overwhelming majorities seldom seen on national policy issues that requiring a background check prior to all sales of firearms is a necessary step that Congress should take with great dispatch to better protect our children and all citizens from gun violence.
S. 374 (Protecting Responsible Gun Sellers Act of 2013), legislation to strengthen background check requirements and the national instant check system, will require background checks for gun shows and all private sales, with narrow exceptions for family transactions, for hunting exchanges and life-threatening exigencies.

While gun shows can continue to flourish with a background check requirement, their role should end as a too-easy source of guns for dangerous persons who should not have them. A number of states have required background checks at gun shows without serious harm to sales or the trade. Licensed gun dealers can facilitate background checks and keep records of private sales, as they have done for over 40 years, for their sales as dealers without those sales becoming a national registry of gun owners, as is the most extreme concern of a few despite this history and the existence of longstanding federal law prohibiting such a registry. We believe that Senators who have expressed concerns regarding the means of instituting background checks at gun shows and in protecting narrow exceptions for background checks for private sales will find that those concerns are addressed in S. 374.

**Stronger laws and enforcement are needed to prevent gun trafficking.** The ABA supports provision of adequate federal investigative and prosecutorial resources targeted not only to prosecuting crimes committed with guns, but also to prosecuting illegal gun trafficking, illegal sales by firearms dealers, stolen firearms offenses, and false statements by prospective buyers. We support bipartisan provisions introduced in several bills to address “straw purchases” of firearms. Straw purchases of firearms are one of the most common ways criminals obtain guns. Straw purchases occur whenever persons who may not legally acquire a firearm, or who wish to do so anonymously, have a companion or colleague buy it on their behalf. The Bureau of Alcohol, Tobacco and Firearms (ATF) has identified straw purchases as the single most significant factor in illegal gun trafficking, accounting for nearly a third of all firearms involved in federal trafficking investigations.

In many places, criminals are more likely to obtain their weapons through straw purchases than at gun shows. Such straw purchases are regularly used by criminals, criminal gangs and persons disqualified by age, such as the individuals involved in the mass killings at Columbine High School. Numerous investigations of illegal gun trafficking, including undercover investigations conducted by federal, state, and local officials, have found that the current prohibition on false statements regarding the purpose of a gun for the purpose of transfer to an ineligible buyer is widely disregarded by dealers and the persons involved in straw purchases.

These criminal violations are also not regularly prosecuted, since the current law is ambiguous, often difficult to prove in court, and accompanied by modest criminal penalties that result in these violations being deferred to prosecution of other crimes. We believe that the provisions introduced in several bills to make straw purchases a distinct and separate federal crime can close this gap in current law and help prevent the current widespread evasion of background checks through straw purchasing.
Assault weapons and high-capacity clips should available only to the U.S. military, the National Guard and law enforcement. The firearms used in recent massacres including the killings in Newtown and in Aurora, Colorado, are weapons of war. They are designed to kill the maximum number of people in the shortest period of time. While we appreciate that there is recreational use of some of these firearms, and that most are owned and handled safely and responsibly, we support legislation that would not take away or make the guns presently owned illegal, but would limit the future sale and transfer of assault weapons and ammunition devices that hold more than 10 bullets. We believe this step, like laws governing automatic weapons and other military ordinance, is necessary to protect the public from their capacity to carry out mass shootings. It is also necessary to protect our nation’s police and law enforcement personnel from unreasonable danger and harm.

We urge the Committee to approve S. 150, the Assault Weapons Ban of 2013. The proposed act makes revisions to the 1994 Act that strengthens it in a number of important respects. The proposed act protects the rights of existing gun owners by carefully defining the characteristics of assault weapons to distinguish them from the more than 2,200 specifically named weapons used for hunting or sporting purposes. It grandfathers into legal status assault weapons currently owned rather than rendering them illegal, but requires more careful regulation of their transfer and sale by bringing them and large-capacity ammunition devices under the provisions of the National Firearms Act, subject to the existing registration requirements long in effect for fully automatic firearms. We also strongly support the proposed act’s ban on future transfer of grandfathered ammunition clips, as well as the proposed voluntary buyback of these clips, as we believe the public safety of everyone in our country will be best served by eventually eliminating these devices from civilian circulation. The purpose of the proposed act and its 1994 predecessor is to narrow the availability of these weapons and dry up the supply over time.

The expired 1994 federal assault weapons ban clearly reduced the incidence of assault weapons used in crime. In the five-year period (1990-1994) before enactment of the ban, assault weapons constituted 4.82 percent of the crime gun traces that ATF conducted nationwide. When the ban was in effect, these assault weapons made up only 1.61 percent of the guns ATF traced to crime – a drop of 66 percent from the pre-ban rate. ATF data showed a year-by-year decline in the percentage of assault weapons, evidence that the longer the statute was in effect, the less available these weapons became for criminal misuse. A report by the Department of Justice documented these findings along with a decline in the absolute number of assault weapons traced to crime during this period.

The Police Executive Research Forum found that 37 percent of police departments reported seeing a noticeable increase in criminals' use of assault weapons since the ban expired. A study by the Violence Policy Center found that, between 1998 and 2001, one in five law enforcement officers slain in the line of duty was killed with an assault weapon. Virtually every major law national enforcement organization in the United States supports limiting the availability of assault weapons and high-capacity ammunition clips.
The ABA opposes amendments that would add mandatory minimum sentences to the gun safety bills under consideration by the Committee. Several amendments already filed would create a new, one-year mandatory minimum sentence for those who violate 18 U.S.C. § 924(a)(1)(A), for knowingly making false statements in regard to firearms purchases. We oppose these proposed mandatory minimum sentences because they are unnecessary and could result in unintended and unforeseeable injustices – as is the case with all mandatory minimum sentences – and higher costs to taxpayers. There is no evidence that current law including related federal sentencing guidelines provisions is inadequate for this offense, as data from the U.S. Sentencing Commission shows that the average sentence is currently 52 months.

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 speak to us all. Mass killings happen too often in our nation, as do the more common day-to-day gun killings numbering in the hundreds just since December. We must act now to improve the weak and flawed laws at issue: The laws governing gun sales, background checks and assault weapons with high-capacity ammunition clips need to be strengthened to protect our children and us all. We urge you to support these measures so that they may soon be considered by the full Senate and become law.

Sincerely,

Laurel G. Bellows
President

cc: Members of the Senate Judiciary Committee