March 6, 2018

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Support for Legislative Steps to Reduce Gun Violence

Dear Chairman Grassley and Ranking Member Feinstein:

On behalf of the American Bar Association, I write to commend the Senate Judiciary Committee for scheduling an oversight hearing this month to examine the February 14th shooting that killed 17 people in Florida and to urge the Committee to take swift, evidence-informed steps to curb the scourge of gun violence. Decisive action is imperative. More than 30,000 Americans a year die from gun violence – including homicides, suicides, and unintentional shootings – but this staggering death toll is not inevitable. Indeed, no other developed nation has more than a fraction of our mass shootings or overall gun deaths. Fortunately, there are proven solutions, consistent with the Second Amendment, that can be legislated and implemented quickly. I offer several proposals below based on ABA policy. The ABA would be glad to lend its legal expertise to develop additional legislative proposals.

The ABA, the world’s largest legal organization, with more than 400,000 members from across the nation, has developed policy directed at gun violence prevention for decades, dating back to the assassination of President John F. Kennedy. More recently in 2015, the ABA, along with eight national health organizations, issued a joint call for action to address gun violence as a public health crisis. The joint paper has since been endorsed by dozens of additional health groups. The paper’s recommendations coupled the health groups’ expertise on prevention and harm reduction with the ABA’s law and policy expertise. There is no one solution to this stubborn public health crisis, but we offer the Committee the following recommendations as a meaningful starting point.

*Background checks.* The ABA supports universal background checks. Where current federal law only requires background checks for guns acquired from a federally licensed dealer, a significant percentage of firearms are obtained through private, unlicensed sales. Research suggests that firearms obtained through private sales are disproportionately used in criminal activity. With today’s technology and a more robust National Instant Background Check System (see below), no practical reasons exist to allow these unlicensed sales and transfers to proceed without the
benefit of background checks that could keep firearms out of the hands of individuals too dangerous or untrustworthy to possess them.

*National Instant Criminal Background Check System (NICS).* Background checks are only effective if NICS contains timely and complete information. Toward this end, the ABA supports recent legislative efforts such as S. 2135, the Fix NICS Act of 2017 introduced by Senators John Cornyn and Chris Murphy, which would put greater pressure on federal agencies to upload relevant information into the system in a timely manner. The ABA also supports providing sufficient federal funding to help states, territories, and tribal governments upgrade their capacity for determining firearm purchaser eligibility and improving transmission of relevant records to federal and state record repositories.

**Assault weapons.** In 1993, the ABA called for restricting the sale and possession of assault weapons except for military and law enforcement purposes. This came shortly after what was known as the 101 California Street Massacre, where a gunman entered a law firm and randomly killed eight individuals and injured six others. Accompanying this policy was a detailed report documenting the problem of assault weapons’ easy accessibility, a problem that persists today:

There is no remedy short of federal gun control to reduce that threat, and ameliorate that fear. The victims at 101 California Street [substitute Stoneman Douglas High School] had no connection with their killer, and could have done nothing differently to avoid him. But without his … weapons … the same level of violence and death could not have been achieved.

Assault weapons are more dangerous not only because of their rapid-firing capability, but also their devastating power. As University of Arizona trauma surgeon Peter Rhee has observed, the AR-15, which is based on military rifles, is exponentially more devastating than a 9mm handgun: “One looks like a grenade went off in there, the other looks like a bad knife cut.”

The ABA is heartened by renewed interest in outlawing bump stocks, but this is at best a half-step. A comprehensive solution would require outlawing semi-automatic assault weapons or subjecting them to the same rigorous regulation as machine guns under the National Firearms Act. Devices that increase the lethality of weapons, such as large capacity magazines, bump stocks, and silencers, must also be prohibited or subject to heightened regulation.

**Research on gun violence.** As noted, the ABA fully supports a public health approach to addressing gun violence. This approach depends on research to identify factors that place people at risk of gun violence and to develop and test preventive strategies. We urge Congress to repeal the 22-year-old “Dickey Amendment,” which has had a chilling effect on gun-related research by the Centers for Disease Control and other federal agencies. Former Representative Jay Dickey (R-AR), the amendment’s author, himself has since asked Congress to reverse this law and begin funding gun violence research. To effectively address gun violence, policy makers must know more about its causes and solutions.
Liability and enforcement. The ABA believes civil remedies and administrative enforcement both play important roles in preventing gun violence. Accordingly, we support repealing the Protection of Lawful Commerce of Firearms Act of 2005 (P.L. 109-92), which grants broad immunity to gun dealers and manufacturers. Additionally, the ABA supports greater enforcement and oversight activity by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, which currently does not have adequate resources, tools, and leadership to achieve its mission. Congress can fix this by increasing appropriations and overturning congressionally imposed restrictions like the limit of one inspection per year for compliance inspections of gun dealers.

Gun Violence Restraining Orders. While a matter of state law, the ABA’s most recent policy on gun violence urges enactment of laws to allow courts to temporarily remove guns from persons found to be dangerous to themselves or others by using gun violence restraining orders. The ABA urges federal support for the widespread adoption and implementation of these initiatives.

These are some of the many ABA policies on gun violence, most of which do not require congressional action or further regulation of firearms. Among others, we call for increased prosecution of crimes committed with firearms, increased funding for public mental health services, and better education and prevention training in our schools.

The ABA is confident that implementing the proposals above would withstand constitutional scrutiny. The Supreme Court, in District of Columbia v. Heller (2008), concluded that Second Amendment rights are not unlimited. The Court made clear that the Second Amendment should not be understood as conferring a “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose”; identified a nonexclusive list of “presumptively lawful regulatory measures”; and noted that the Second Amendment is consistent with laws banning “dangerous and unusual weapons” not in common use, such as firearms typically used by the military. While federal courts since Heller have struck down some outlier laws that infringed on core Second Amendment rights, in most cases, they have upheld a broad range of gun law regulations that Heller made clear are constitutional. These critical laws save lives -- it has repeatedly been demonstrated that states with stronger gun control laws also have lower rates of gun violence.

As Congress considers legislative solutions in the wake of the Stoneman Douglas High School massacre, I emphasize that the ABA strongly opposes any effort to federally mandate national reciprocity for concealed carry permits issued in any other state. I first noted this opposition in my July 20, 2017, letter to this Committee opposing S. 446, the Constitutional Concealed Carry Reciprocity Act of 2017. Such bills violate deeply rooted principles of federalism by stripping state and local governments’ traditional dominion over public safety. They undermine longstanding discretion of state and local law enforcement who often have greater knowledge of individual applicants and the specific public safety dynamics of their communities than federal officials do. At the very least, concealed carry reciprocity proposals are a distraction from what Congress should now be focused on: preventing and mitigating gun violence.
On behalf of the American Bar Association, I strongly urge you to consider these proposals that would address our gun violence crisis. If we can provide you or your staff with additional assistance in this process, please contact Holly Cook in the ABA’s Governmental Affairs Office at 202-662-1860 or holly.cook@americanbar.org.

Sincerely,

Hilarie Bass

cc: Members of the Senate Judiciary Committee