



SETTING THE RECORD STRAIGHT ON VIRGINIA'S ONE-HANDGUN-A-MONTH LAW

The Virginia General Assembly is currently considering HB 49, a bill sponsored by Del. Scott Lingamfelter (R-31st District) that would repeal Virginia's longstanding One-Handgun-a-Month law.

A report of the Virginia State Crime Commission found, "Virginia's one-gun-a-month-statute has had its intended effect of reducing Virginia's status as a source state for gun trafficking."¹ Nonetheless, Del. Lingamfelter and Governor Bob McDonnell have argued that the law is no longer needed. This document will explore the validity of their public claims in detail.

CLAIM FROM DEL. LINGAMFELTER: "Making it harder for the law-abiding citizen to acquire [more than one handgun a month] legally will not stop felons from acquiring [more than one handgun a month] illegally."²

TRUTH: In reality, the One-Handgun-a-Month law serves as a significant deterrent to felons (and other individuals prohibited under federal law from purchasing firearms) because it prevents them from obtaining handguns in bulk through illegal "straw purchases." The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has explained how this process works:

Straw purchases are one of the most frequent methods used to divert firearms out of lawful commerce, where they are a heavily regulated commodity, and onto the street, where they are available to anyone. Convicted felons [or other individuals prohibited under federal law from purchasing firearms] will simply use a friend, a family member or a girlfriend to buy a gun for them. The felon provides the money for the gun, selects the gun, and directs the purchase. The straw purchaser just fills out all of the required paperwork, posing as the buyer. Firearms traffickers...need straw purchasers to insulate themselves from discovery. The gun trafficker knows that these guns are going to the street and that police will recover some of them. If those firearms are traced, the trafficker does not want their name reflected as the purchaser of the gun. Frequently firearms traffickers will travel from a market area to a source area and recruit a network of straw purchasers who are residents of that state and who need a few extra dollars. Straw purchasers are not traffickers. They are pawns of the traffickers. They are frequently people desperate for money or drugs. Gun traffickers typically pay straw purchasers \$50 to \$100 per gun or provide them with a \$20 to \$50 rock of crack cocaine in exchange for their services.³

Should HB 49 be enacted into law, felons and gun traffickers would benefit greatly, as individual straw purchasers would again be able to buy an unlimited number of handguns during each visit to a federally licensed gun dealer in Virginia. The ATF has made it clear that the acquisition of handguns in multiple sales is an important indicator of illegal firearms trafficking.⁴

Additionally, the Virginia State Crime Commission concluded, “law-abiding gun purchasers in Virginia are not unduly burdened by Virginia’s one-gun-a-month law.”⁵ The law allows *law-abiding* Virginia residents to apply for a waiver if they wish to purchase more than one handgun per month. In 1996, a Virginia Department of State Police report confirmed that only 8% of applications for multiple handgun purchases had been denied since the enactment of the law.⁶ Since that time—between January 1, 1996 and December 31, 2009—the Virginia State Police have received 3,788 applications for multiple handgun purchase waivers and denied only 365 (10%) of those applications.⁷

Finally, during the past seven years, the Virginia General Assembly has enacted a number of exemptions to the One-Handgun-a-Month law for certain categories of law-abiding citizens. For example, law enforcement officers and concealed handgun permit holders are exempt from the law.

CLAIM FROM DEL. LINGAMFELTER: “Criminals who are inclined to break the law don't obey the [One-Handgun-a-Month Law].”⁸

TRUTH: Under Virginia’s One-Handgun-a-Month law, no criminal is permitted to purchase multiple handguns per month from federally licensed gun dealers in the Commonwealth. Additionally, although Virginia residents are able to apply for waivers from the Virginia State Police if they wish to purchase more than one handgun per month, this process involves a background check. No convicted felon (or any other criminal prohibited under federal law from purchasing firearms) would pass such a check.

Criminals *can* bypass the requirements of the law by purchasing multiple handguns per month through unregulated private sales. Under Virginia law, private individuals are permitted to sell firearms without conducting background checks on purchasers or maintaining records of sale. Both Del. Lingamfelter and Governor McDonnell, however, have been ardent defenders of this loophole in the law and fought all attempts to close it.

CLAIM FROM DEL. LINGAMFELTER: “The rationale for [the One-Handgun-a-Month law] has been neutered by all the exemptions [to the law] that now exist.”⁹

TRUTH: This claim is disingenuous at best because Del. Lingamfelter has been a supporter—and sponsor—of legislation that created these exemptions. Specifically, Del. Lingamfelter voted for HB 119, which exempts residents who trade in a handgun on the same day they purchase one, in 2002; HB 404, which exempts concealed handgun permit holders, in 2004; and HB 2060, which exempts law enforcement officers, in 2005. Del. Lingamfelter also introduced a bill during the January 2009 legislation that would have exempted active duty military personnel from the requirements of the law. That bill never made it to the governor’s desk.

Furthermore, during the debates over these bills in the General Assembly, Del. Lingamfelter and other supporters ensured Virginia residents that they would create exemptions only for law-abiding citizens in the Commonwealth and therefore do nothing to threaten public safety. If these exemptions did

“neuter” and weaken the One-Handgun-a-Month law, Del. Lingamfelter should explain why he voted for them in every case.

CLAIM FROM DEL. LINGAMFELTER: “[The One-Handgun-a-Month law] has not reduced crime. It has reduced commerce.”¹⁰

TRUTH: Del. Lingamfelter has produced no evidence to support either assertion. Both the Virginia State Crime Commission and the Virginia State Police have stated that the law has been effective in curbing illegal firearms trafficking.

CLAIM FROM DEL. LINGAMFELTER: “We should not ration constitutional rights.”¹¹

TRUTH: No federal court in the United States has ever asserted that Americans have a constitutional right to purchase multiple handguns per month, or more than 12 handguns per year.

CLAIM FROM GOV. BOB MCDONNELL: “Since the passage of the [One-Handgun-a-Month law]...the instant background check process has been greatly improved. The scope of the search is broader, and includes more criminal offenses from other states as well as other disqualifications such as mental health prohibition ... Second, laws prohibiting straw purchases have been improved as well. Thus, the primary concerns that existed over 15 years ago have been diminished today due to positive legislative changes, many of which Bob McDonnell has played an important role in crafting and moving forward.”¹²

TRUTH: There have been no significant improvements, either at the federal level or state level in Virginia, to the instant background check process or laws concerning straw purchases since the passage of the Brady Law in 1994. The Brady Law established the FBI’s National Instant Criminal Background Check System (NICS), which is searched during gun purchases made through federally licensed firearm dealers (FFLs).

During the past 16 years, there have been only two pieces of federal legislation signed into law to improve the background check process: the Lautenberg Amendment in 1996 and the “NICS Improvement Act in 2007.”

The Lautenberg Amendment created a new category of prohibited buyers by preventing those convicted of misdemeanor domestic violence offenses from owning or purchasing firearms. However, not all states have statutes for Misdemeanor Crimes of Domestic Violence and no other type of misdemeanor conviction acts as a bar to gun purchasers.

The NICS Improvement Act attempted to enhance federal background checks by supplying states with grant money to submit new disqualifying criminal and mental health records to the FBI’s NICS database. While this bill was appropriated, it remains unknown how many states are taking advantage of these resources and how many disqualifying records have been submitted to NICS as a result.

According to testimony that Rachel Brand of the Department of Justice gave before the House of Representatives' Subcommittee on Domestic Policy in 2007, "significant shortcomings remain in the completeness of the records in the [federal background check] system and the availability of relevant records for NICS checks."¹³ For example, Brand states, there is "limited submission by the States of disqualifying mental health records to the NICS index"¹⁴ and "less than full State participation in and complete submission of records to the [National Crime Information Center] Protection Order File."¹⁵ In addition, there is a "lack of flagging of misdemeanor convictions of domestic violence, preventing the NICS from readily identifying these disqualifying records."¹⁶

Other sources corroborate that the NICS database is missing huge amounts of data. According to a 2007 report by the group Third Way entitled "Missing Records," over 90% of disqualifying mental health records are missing from the system, in addition to 25% of felony conviction records.¹⁷ "The background check system is...still deeply flawed, particularly in certain areas like mental health disqualifications," the report found.¹⁸

At the state level, Virginia clarified processes regarding its Vcheck background check database following the 2007 shooting tragedy at Virginia Tech. After it was revealed that killer Seung-Hui Cho had legally obtained handguns after being detained in a psychiatric facility, then-Governor Tim Kaine signed an executive order to require Virginia's courts to forward Orders of Involuntary Commitment to the State Police so they can be considered during background checks. These orders *should* have been submitted prior to the shootings, however, under existing federal law—so no new disqualifications were created.

None of the remaining recommendations of the Virginia Tech Review Panel to prohibit dangerous individuals from purchasing firearms were implemented by the Virginia General Assembly and many loopholes still remain in the state's gun laws (i.e., private sellers are permitted to sell guns without conducting background checks on purchasers).

No other legislation has been passed in Virginia to strengthen the instant background check system or prevent straw purchases. In fact, the Virginia General Assembly has consistently weakened the state's gun laws over the past decade, and both Del. Lingamfelter and Gov. McDonnell have supported and facilitated that process.

¹ Report of the Virginia State Crime Commission, "Study of Virginia's Law on Handgun Purchase Limits," House Document No. 28, Richmond, Virginia, 1996, p. 7.

² Michael Sluss, *Roanoke Times*, "House to Lift Time Limit on Handgun Purchases," February 16, 2010.

³ Special Agent Mark Kraft, Bureau of Alcohol, Tobacco, Firearms and Explosives, "Firearms Trafficking 101 or Where Do Crime Guns Come From?" *Firearms Interdiction: A Technical Assistance Newsletter from the International Association of Chiefs of Police*, Vol. 2, Issue 3, Fall 2006, p. 3.

⁴ Bureau of Alcohol, Tobacco and Firearms, The Youth Crime Gun Interdiction Initiative, "Crime Gun Trace Reports: 1999," November 2000.

⁵ Report of the Virginia State Crime Commission, p. 7.

⁶ Superintendent M. Wayne Higgins, Virginia State Police, "Consent Forms Received by the Department of State Police for the Firearms Transaction Program: Update for the State Crime Commission," July 1995.

⁷ Freedom of Information Act request from Virginia Center for Public Safety to Department of State Police, February 19, 2010.

⁸ *Virginian-Pilot* Editorial, "One Gun a Month Should Be Enough," February 17, 2010.

⁹ *Ibid.*

¹⁰ Jonathan Hunley, *Manassas News & Messenger*, "Delegate Wants to Repeal Virginia's One-Handgun-a-Month Rule," January 7, 2010.

¹¹ *Ibid.*

¹² Freddy Kunkle, *Washington Post*, "More on Guns and Gubs," July 28, 2009.

¹³ Statement of Rachel L. Brand, Assistant Attorney General for Legal Policy, Department of Justice, Before the Committee on Oversight and Government Reform, Subcommittee on Domestic Policy, U.S. House of Representatives, Concerning "Lethal Loopholes: Deficiencies in State and Federal Gun Purchase Laws," May 10, 2007, p. 7.

¹⁴ *Ibid.*, p. 8

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Jim Kessler, Vice President for Policy, The Third Way Culture Project, "Missing Records: Holes in Background Check System Allow Illegal Buyers to Get Guns," May 2007.

¹⁸ *Ibid.*, p. 2