

## GUN RATIONING LAWS, PUSHED BY ANTI-GUNNERS AS COMMON SENSE GUN SAFETY, LAY THE FOUNDATION FOR A TOTAL FIREARMS BAN.

**BANNING HANDGUNS, THE GUN** prohibition lobbies accurately recognize, is not politically feasible to accomplish all at once. Accordingly, the lobbies often focus on measures that set the stage for moving towards near-prohibition in incremental steps.

In pushing for pre-prohibition measures, the lobbies work hard to select measures that superficially seem to affect only a small minority of gun owners just to keep the tens of millions of gun owning American families on the political sidelines. Yet the pre-prohibition bills often have enormous implications for all gun owners.

Among the cleverest anti-gun proposals, expertly created to exploit this divide-and-conquer strategy, is the campaign for so-called "one-handgun-a-month laws."

These gun rationing laws help lay the foundation for broader restrictions in two important ways. First, the laws set the precedent that the government can quantitatively limit the exercise of firearms rights, based on the government's determination that an individual does not "need" to exercise the right so much.

Once the gun rationing principle is established, the time period can be changed to limit gun purchases to two per year, or two per lifetime, or none per lifetime, based on the government's determination that people do not need any more guns.

Great Britain is a good example. Police there enforce the rifle licensing laws so that a hunter who has a rifle in a particular caliber may never acquire a second rifle in that same caliber, since he does not, according to the government, "need" the second gun.

In the U.S. Congress, the first formal efforts to impose gun rationing came in the late 1970s and early 1980s. Sen. Edward Kennedy, D-Mass., and Rep. Peter Rodino, D-N.J., proposed a handgun licensing law that would, among other things, allow the purchase of no more than two handguns per year.

As evidence of the anti-gun lobbies' increasing sophistication in taking incremental steps, the lobbies apparently recognized that the Kennedy "two per year" proposal was too restrictive to be politically realistic as a first step. Accordingly, in 1993, then-Rep. Robert G. Torricelli, D-N.J., introduced "The Multiple Handgun Transfer Prohibition Act of 1993." The bill would have made it a federal crime to buy more than one handgun in a 30-day period.

The second way in which gun rationing sets the stage for more controls stems from the fact that gun rationing is difficult to implement without gun registration. Only if the government maintains a computerized list of gun buyers for at least 30 days after each purchase can the government tell if a person purchased more than one gun at retail. Only if private gun sales are prohibited can the state be sure that the individual is not exceeding the rationing limit. Thus, for advocates of gun registration, gun rationing is a good first step because it not only helps to create a "need" for registration but also a need for prohibiting private firearm sales.

Gun registration, in turn, makes gun confiscation much easier to accomplish—as residents of California, New York City, Great

Britain, Canada and Australia have already discovered. Registration lists in those jurisdictions have been used for confiscation of a variety of handguns and long guns.

In the United States, the first regulations on multiple handgun purchases appeared after enactment of the Gun Control Act of 1968. Although the Act itself said nothing about multiple purchases, the new Bureau of Alcohol, Tobacco and Firearms (BATF) created regulations for "Multiple Purchase Reporting Forms." Whenever a federally licensed firearms dealer sold more than one handgun to an individual in a 30-day period, the dealer had to send the Multiple Purchase Reporting form to BATF.

BATF did nothing with most of the forms that it received. Thus, when would-be assassin John Hinckley legally bought two handguns from a Texas firearms dealer one day in early 1980, the dealer sent a Multiple Purchase Form to BATF.

Neither a BATF investigation based on the Multiple Purchase Form, nor the future "Brady Act," would have prevented Hinckley's purchases. His only criminal conviction was for a misdemeanor; his mental health records were private; and although the address on his Texas driver's license was no longer correct, he was a Texas resident, and legally allowed to buy guns anywhere in Texas.

The BATF regulation for the Multiple Purchase Form was codified in the Firearms Owners' Protection Act

# EATING AWAY AT THE FABRIC OF FREEDOM

by Dave Kopel



of 1986. The 1994 Clinton crime bill later mandated that the Multiple Purchase Form also be sent to the local chief of police or sheriff.

In recent years, Chicago Mayor Richard Daley has been attempting to use the federal Freedom of Information Act in order to obtain every Multiple



**Sen. Charles Schumer, D-NY, leading advocate of One-Per-Month legislation.**

Purchase Form in BATF's custody. Obviously, this would be a gross violation of the privacy rights of law-abiding gun owners.

Commendably, the BATF fought Daley all the way to the Supreme Court, and just before the court was scheduled to hear the case in March 2003, Congress enacted an appropriations rider specifically forbidding the Bureau of Alcohol, Tobacco, Firearms and Explosives (its new name as a result of the Homeland Security government reorganization) from spending any money to divulge the private information in the Multiple Purchase Reporting forms.

The first state to impose explicit gun rationing was South Carolina. (New York State's 1911 Sullivan Law requires police permission for handgun purchases, and in some jurisdictions, such as New York City, handgun purchase authorizations are frequently forbidden under the theory

that the applicant does not "need" another handgun.)

South Carolina's legislature acted after a 1975 television network news report claimed that South Carolina was the main source of handguns for New York City street crime. In response, the South Carolina legislature passed a law allowing only one handgun purchase in a 30-day period.

Next came Virginia. The gun rationing idea was introduced for the first time in the 1992 session of the General Assembly and was defeated soundly in committee and on the House floor. Democratic Governor Douglas Wilder made gun rationing his top priority for 1993, claiming: "The surest way to stop the number of guns available for illegal sale is to place limits on the numbers that can be purchased legally."

In support of the proposal, Gov. Wilder sent every legislator a copy of a recent issue of *Batman* comics, which apparently had been written in order to assist the anti-gun cause in Virginia. In the *Batman* episode, Virginia was portrayed as the main gun-running state in the east. One character complained that tough gun laws had not been enacted "because some fat white bastard wants to play with his guns on a weekend."

The writers made *Batman* himself endorse total gun prohibition, claiming that violence "will end when we decide that we don't want guns in our houses, in our neighborhoods, in our schools, in our hands. It will end when we decide to get rid of the guns we have and not get more."

According to *Batman*, non-Virginians traveled to Virginia, purchased multiple handguns, and then took them back to Gotham City to sell on the black market. Ever since the Gun Control Act of 1968 (which banned handgun purchases outside one's state of residence), such purchases were federal felonies, with especially strict penalties for trafficking of multiple handguns.

Besides the comic book, the other major evidence used to portray Virginia as the main source of New York City crime guns was Project Lead, a BATF firearms tracing operation. According to anti-gun advocates, Project Lead showed that 41 percent of New York City crime guns came from Virginia.

Project Lead had traced 6 percent of the firearms recovered by New York City police in 1991 and 1992 (1,231 of the 13,382 recovered firearms). Of firearms found at the scenes of violent crimes in New York City, 32 (17 percent of traced violent crime guns) had been originally sold at retail in Virginia. Of these 32 guns, three guns originally sold in Virginia were found at homicide scenes.

Project Lead was unable to determine whether traced firearms had been stolen from the original buyer, or how they had entered New York City. Most of the Virginia guns appeared to have been associated with non-violent crimes, including violations of New York City's near-prohibitory handgun licensing ordinances.

After an intense legislative struggle, the normally pro-gun Virginia legislature enacted a law making it a misdemeanor for persons (other than licensed firearms dealers) to purchase more than one handgun in a 30-day period. The law contained provisions for persons to obtain waivers if the multiple purchase was part of a collection (e.g., the purchase of a pair of matched pistols), for bulk purchases from estate sales, if a person's guns had been lost or stolen or for similar reasons.

In that same legislative session, the Virginia legislature required proof of residence for driver's license applicants, thus making it harder for out-of-staters to unlawfully buy guns in Virginia.

After the victory in Virginia, Handgun Control, Inc. (originally known as the National Council to Control Handguns, and later renamed the Brady Campaign to hide its true agenda), pushed very hard for gun rationing in other states. Intense

lobbying in Delaware has come close, but has not yet succeeded. Maryland enacted gun rationing in 1996 after extensive legislative arm-twisting by Gov. Parris Glendinning and Lt. Gov. Kathleen Kennedy Townsend.

California followed suit in 1999, as a direct result of the Columbine High School murders. A key legislator who had opposed gun rationing announced that he was switching his vote because of Columbine. Of course, the logical connection between the California one-handgun-a-month law and Columbine was tenuous, since the Columbine killers had used only a single handgun, plus three long guns, in a murder spree that had been planned for more than a year.

But in the post-Columbine atmosphere, the logic of particular anti-gun laws was less relevant than the atmosphere of hatred and panic incited by prohibitionists such as Rosie O'Donnell and President Bill Clinton. Congress appeared ready to pass a national gun rationing bill, but NRA lobbying managed to turn the tide sufficiently so that the bill was never brought to a formal vote.

What has been accomplished by the gun rationing laws put into effect? In 1995, Captain R. Lewis Vass of Virginia's Department of State Police testified to a Virginia crime commission that the gun rationing law had "not significantly affected ... the number of multiple handgun purchases within the Commonwealth." According to Captain Vass, 95 percent of applications for multiple handgun purchases are approved.

The laws' main benefit is supposed to be reducing interstate gun trafficking, rather than controlling local crime. Certainly South Carolina achieved no crime reduction for itself with the 1975 law, as the state's already high violent crime rate more than doubled over the next two decades.

A 1996 gun trace study conducted by Handgun Control, Inc., researcher

Douglas Weil found that after the Virginia law was enacted, the number of guns traced to a group of four southeastern states including Virginia declined.

But a study that same year by the office of Rep. Charles Schumer (simply reporting the results of BATF gun traces) found that Virginia and South Carolina were two of the three states that supplied the most guns to New York.

If the Schumer "study" is correct, then the South Carolina and Virginia laws were miserable failures, since gun rationing failed to change the status of either state as a prime source of illegal guns for New York.

A pair of journal articles that I have authored (and that are cited at the end of this article) argue that neither the Weil study nor the Schumer study are reliable, since they both depend on BATF trace statistics, and the BATF firearms traces involve only a small and unrepresentative sample of crime guns.

The conventional wisdom in Virginia was summed up by a pair of newspaper headlines. In 1992, the *Richmond Times-Dispatch* announced: "Virginia gun-running is an 'embarrassment'." In 1998, an article by the same author was headlined, "Virginia Gun Limit has Enthusiastic Following: But State Still Ranks High as Weapon Source."

It should not be surprising that there is so little evidence for the effectiveness of gun rationing laws, since there are several better programs in place that help prevent the purchase of guns for illegal interstate trafficking. The BATF's Multiple Purchase Reporting Forms already alert BATF about every multiple handgun sale, and BATF can use these forms to focus on genuinely suspicious transactions (such as repeated large quantity purchases of firearms by an individual). The National Shooting Sports Foundation runs a firearms dealer education program that helps dealers detect "straw

purchasers" who may be acting as a surrogate for someone who is legally barred from gun ownership. And, of course, every single retail purchase of any kind of firearm requires prior authorization from the FBI or its state equivalent under the National Instant Check System.

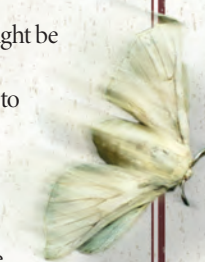
Now the original gun rationing law, the South Carolina statute, may also be headed for the ash heap of failed restrictions on civil liberty. As this article was written, the South Carolina House of Representatives had voted to repeal the state's gun rationing law, and Gov. Mark Sanford has voiced his support for repeal.

This would not be the first time that South Carolina's legislature has acted to undo civil liberties restrictions from the past. Following the assassination of President William McKinley by an anarchist, South Carolina in 1902 banned pistol sales to anyone except sheriffs and "special deputies" (e.g., Klansmen, company goons and similar insiders). In 1966, the South Carolina legislature forthrightly acknowledged that the law restricting civil rights was wrong, and the pistol ban was repealed.

While the debate about gun rationing often focuses on empirical issues, civil rights attorney Stephen Halbrook believes that empirical data are irrelevant when constitutional rights are at stake. In a 1993 article for *West Virginia Law Review* ([www.saf.org/LawReviews/Halbrook2.htm](http://www.saf.org/LawReviews/Halbrook2.htm)), Halbrook asked:

"May a constitutional right be limited by a legislature's determination of whether, to what extent, or how many times within a given time period a person has a 'need' to exercise that right? ... it could hardly be argued that the Sixth Amendment right to the assistance of counsel in criminal cases would not be violated if crime decreased as a result of

(Continued on page 70)





### One-Gun-A-Month Proposals

*from page 49*

not allowing an accused person to consult with counsel more than once each month. A bill of rights guarantee cannot be disregarded under the guise that its existence contributes to increases in crime or that its absence would make it harder to extract confessions . . . The essence of a bill of rights is that the issue of whether a person ‘needs’ to do a protected act is removed from legislative proscription.”

This is why the gun rationing issue is so important to every gun owner—including the woman who owns just one rifle and has no plans to ever buy a second gun. Gun rationing is one of the tools being used to eliminate firearms ownership as a human right that belongs to all law-abiding American citizens, and to replace that right with a government-granted privilege that can be exercised no more frequently than the government decides there is a need. ☞

#### Editor’s Note:

*This article is based in part on Kopel’s entry on One-Gun-per-Month Laws for Guns in American Society: An Encyclopedia of History, Politics and Law (ABC-CLIO, 2002), for which Kopel served on the editorial board. For more on gun tracing and its relation to gun rationing, see David B. Kopel & Paul H. Blackman (NRA-ILA Research Coordinator), “Firearms Tracing Data from the Bureau of Alcohol, Tobacco and Firearms: An Occasionally Useful Law Enforcement Tool, but a Poor Research Tool,” 11 Criminal Justice Policy Review 44 (Mar. 2000); David B. Kopel, “Clueless: The Misuse of BATF Firearms Tracing Data,” 1999 Law Review of Michigan State University Detroit College of Law Review 171, [www.davekopel.com/2A/LawRev/CluelessBATFtracing.htm](http://www.davekopel.com/2A/LawRev/CluelessBATFtracing.htm)*

