

The “GOSAFE” Gun and Magazine Ban

Ban on Commonly-owned Semi-automatic Rifles and Parts

The “GOSAFE” gun ban prohibits “any person to import, sell, manufacture, transfer, receive, or possess” any semi-automatic rifle, other than .22 caliber rimfire, capable of accepting a detachable magazine or equipped with a fixed magazine capable of accepting more than 10 rounds of ammunition.

Unlike the 1994 Clinton “assault weapons” ban, this ban does not contemplate a firearm’s features (pistol grip, bayonet mounts, barrel shrouds, etc.). Rather, the “GOSAFE” ban would prohibit ALL semi-automatic centerfire rifles capable of accepting a detachable magazine. This includes America’s most popular rifle, the AR-15, but also all semi-automatic centerfire hunting rifles capable of accepting a detachable magazine. “GOSAFE” would even prohibit common hunting and target shooting semi-automatic rimfire rifles in the popular 17 HMR caliber.

“GOSAFE” also prohibits common gun parts in a vague manner. This includes a ban on a manual device attached to a semi-automatic firearm that “materially increases the rate of fire of a firearm.” This imprecise language could be used to prohibit the use of competition triggers or other devices that permit a user to fire a gun more easily.

Current Gun Owners, Transfer Ban, Destruction of Value

Those who currently possess firearms banned under “GOSAFE” may continue to possess their firearms. However, they may not transfer the prohibited firearms outside their own “immediate family.” “Immediate family” only includes “a spouse, parent, brother or sister, or child of that person” or another “person living in the household of that person and related to that person by blood or marriage.”

Those seeking to transfer a banned firearm to an immediate family member, even a spouse or son or daughter, would be required to do so through a Federal Firearms Licensee (gun dealer) and do so only after obtaining permission from the federal government.

As current owners would be unable to transfer their banned firearms in an open market, “GOSAFE” destroys the value of their property. “GOSAFE” functions as a taking.

Ban on Standard Capacity Magazines

“GOSAFE” prohibits importation, sale, manufacture, transfer, receipt, or possession of “large capacity ammunition feeding devices,” - chiefly magazines capable of accepting more than 10 rounds of greater than .22 caliber rimfire ammunition - that are manufactured after the legislation’s date of enactment.

“GOSAFE” defines “large capacity ammunition feeding devices” broadly, to include magazines or “any such device joined or coupled with another in any manner” with “an overall capacity” greater than 10 rounds. This language appears aimed at prohibiting common magazine couplers used to attach multiple magazines together to facilitate faster reloads. However, the language is vague enough to rope in common items such as chest rigs or even the type of belt magazine carriers capable of holding multiple magazines that are common with those who exercise their Right-to-Carry.

Current Standard Magazine Owners, Total Transfer Ban, Destruction of Value

Those who currently possess magazines banned under “GOSAFE” may continue to possess their magazines. However, they may not transfer a “large capacity ammunition feeding device” to any private citizen, regardless of when the item was manufactured. Owners are even prohibited from transferring the banned magazines to their own family members.

As current owners would be unable to transfer their banned magazines in an open market, “GOSAFE” destroys the value of their property. “GOSAFE” functions as a taking.

Application to Handguns

The exemption in the bill for semiautomatic handguns is so poorly written that it wouldn’t apply to many popular self-defense handguns, and, depending on its interpretation, may not apply to any handguns. Meaning the bill could ban all semiautomatic handguns.

The handgun exception applies to “a handgun that . . . is a single or double action semi-automatic handgun that uses recoil to cycle the action of the handgun.” This exception clearly excludes all blowback handguns, including extremely popular .380 self-defense handguns like the Ruger LCP, and gas delayed handguns like the HK P7. But, a narrow interpretation of what it means to “use[] recoil to cycle the action” could exclude the popular Browning short recoil operating system that is used by essentially all modern handguns of 9MM or larger caliber.

Penalties

An individual found in violation of the new “GOSAFE” prohibitions would be subject to up to a year imprisonment and a \$5,000 fine.

Scenarios restricted under “GOSAFE”:

- A father gifting his daughter his AR-15 without first obtaining government permission.
- A mother passing down a semi-automatic handgun, along with its factory-issue 15-round magazines, to her son.
- A grandfather who lives across town passing down Mini-14 to his grandson, regardless of whether he sought government permission.
- A gun owner in need of money to pay the rent selling off a portion of his semi-automatic rifle collection to make ends meet.
- Gifting a lifelong friend and hunting partner a BAR MK 3 hunting rifle he admires.
- A person who seeks to leave his firearm collection to his only heirs, but those heirs do not fit inside “GOSAFE’s” narrow definition of “immediate family.”

Empowers Biden’s DOJ and ATF to Curtail Innovation and Harass Gun Industry

President Joe Biden’s administration has used the Department of Justice and Bureau of Alcohol, Tobacco, Firearms and Explosives to attack law-abiding gun owners, Federal Firearms Licensees, and other components of the gun industry. “GOSAFE” would empower DOJ and ATF to further harass the firearms industry by having these agencies determine what firearms are prohibited under this legislation and create a system of prior restraint whereby these agencies determine what firearms are allowed to come to market.

The legislation tasks ATF with creating a list of semi-automatic firearms prohibited under the “GOSAFE” criteria. Given the Biden administration’s use of ATF to misinterpret statute in order to attack the gun community, gun owners should expect ATF’s determinations to go beyond even what the overbroad “GOSAFE” legislation provides.

“GOSAFE” requires all new semi-automatic firearm designs to be approved by the attorney general prior to manufacture for sale to civilians. Operating as a prior restraint on Second Amendment activity, manufacturers are required to submit to an onerous application process. Operating as a prior restraint on speech, the application process even requires manufacturers to submit “marketing materials and plans” for the item.

Facts about Semi-automatic Firearm and Magazine Bans

“Assault Weapons” Bans Do Not Work

Rifles of any description are rarely used in violent crime. FBI Uniform Crime Reporting breaks down homicides by weapon. In 2022, the FBI reported that there more than three times as many individuals listed as killed with “knives or cutting instruments,” than with rifles of any kind. The data also shows that rifles were listed as being used in less homicides than “personal weapons (hands, fists, feet, etc.)”¹

In 1994, a 10-year federal ban on commonly-owned semi-automatic firearms and their magazines was enacted as part of the Clinton Crime Bill. Faced with the reality that so-called “assault weapons,” are rarely used to commit violent crime, a 1997 Department of Justice-funded study of the Clinton ban determined that “At best, the assault weapons ban can have only a limited effect on total gun murders, because the banned weapons and magazines were never involved in more than a modest fraction of all gun murders.”²

A 2004 follow-up Department of Justice-funded study came to a similar conclusion. The study determined that “AWs [assault weapons] and LCMs [large capacity magazines] were used in only a minority of gun crimes prior to the 1994 federal ban,” “relatively few attacks involve more than 10 shots fired,” and “the ban’s effects on gun violence are likely to be small at best and perhaps too small for

¹ Crime Data Explorer, Federal Bureau of Investigation.

² Jeffrey A. Roth, Christopher S. Koper, Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994, Urban Institute, March 13, 1997.

reliable measurement.”³ Presented with the overwhelming evidence of the ban’s inefficacy, Congress did not renew it.

A 2023-updated RAND Corporation study that surveyed the available research on the effects of “assault weapons” and “large” capacity magazine bans. The study found no conclusive evidence that such bans impact violent crime.⁴

In August 2021, the State University of New York’s Rockefeller Institute for Government published a document titled “Policy Solutions to Address Mass Shootings.” Authored by a team of academics that included Northeastern University Professor of Criminology James Alan Fox, the report was negative about the impact a so-called “assault weapons” ban could have on high-profile shootings.

The report stated,

We found no evidence that assault weapon bans deter these events or reduce fatalities when such events occur. These findings are consistent with previous work...

Adding,

While it might seem logical that banning the sale of assault weapons would reduce the incidence of mass public shootings, this conceptual hypothesis relies on the assumption that if not for the existence of assault weapons, an individual would not carry out a planned mass shooting. We are aware of no evidence to suggest that a potential mass shooter would decide not to follow through with a planned shooting if assault weapons were not available on the retail or secondary markets.⁵

Magazine Bans Don’t Prevent Mass Shootings

A 2016 article published in Justice Research and Policy examined 23 mass shootings with six or more victims that occurred between 1994 and 2013 and in which the perpetrator used one or more magazines with a capacity of more than 10 rounds. The study determined,

In sum, in nearly all [large capacity magazine]-involved mass shootings, the time it takes to reload a detachable magazine is no greater than the average time between shots that the shooter takes anyway when not reloading. Consequently, there is no affirmative evidence that reloading detachable magazines slows mass shooters’ rates of fire, and thus no affirmative evidence that the number of victims who could escape the killers due to additional pauses in the shooting is increased by the shooter’s need to change magazines.⁶

³ Christopher S. Koper, An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003, Report to the National Institute of Justice, June 2004.

⁴ The Effects of Bans on the Sale of Assault Weapons and High-Capacity Magazines, Rand Corporation, April 22, 2020.

⁵ Policy Solutions to Address Mass Shootings, Rockefeller Institute for Government, August 2021.

⁶ Gary Kleck, Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkages, Justice Research and Policy, 2016, p. 44.

The report of the 2007 Virginia Tech shooting Review Panel determined that a ban on standard capacity magazines “would have not made much difference in the incident.”⁷

Ownership of Commonly-owned Semi-automatic Firearms is Protected by the U.S. Constitution

In the *District of Columbia v. Heller* (2008), the U.S. Supreme Court made clear that Second Amendment protects an individual right to keep and bear arms. Moreover, the court determined that the Constitution protects ownership of arms in “in common use” for lawful purposes.⁸

In 2015, *Heller* decision author Justice Antonin Scalia reiterated that the Second Amendment and *Heller* preclude so-called “assault weapons” bans when he signed onto a dissent from the denial of certiorari in *Friedman v. Highland Park*. In the dissent, Justice Clarence Thomas explained,

*Roughly five million Americans own AR-style semiautomatic rifles. The overwhelming majority of citizens who own and use such rifles do so for lawful purposes, including self-defense and target shooting. Under our precedents, that is all that is needed for citizens to have a right under the Second Amendment to keep such weapons.*⁹

In 2022, the Court decided *New York State Rifle & Pistol Association v. Bruen*. In its opinion, the Court held,

*[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”*¹⁰

This test would preclude bans on commonly-owned semi-automatic firearms and their magazines, as the U.S. has no historical tradition of such firearm regulation.

AR-15s and other Commonly-owned Semi-automatic Firearms are Effective for Self-Defense

The AR-15 is the most popular rifle in the U.S. The immense popularity of the AR-15 has come about at a time when Americans cite self-defense as their primary reason for owning a gun.¹¹

The effectiveness of the commonly-owned semi-automatic rifle in defense of self and others was illustrated in 2017 during an attack on a church in Sutherland Springs, Texas. Upon learning of the attack, resident Stephen Willeford retrieved his AR-15 rifle, and shot and wounded the gunman. Since 2017,

⁷ Mass Shootings at Virginia Tech: Report of the Review Panel, Virginia Tech Review Panel, April 16, 2007, p. 74.

⁸ *District of Columbia v. Heller*, 554 U.S. 570 (2008).

⁹ Dissent from Denial of Petition for Writ of Certiorari, *Friedman v. Highland Park* (2015).

¹⁰ *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, 2126 (2022).

¹¹ Key takeaways on Americans’ views of guns and gun ownership, Pew Research, June 22, 2017.

other Armed Citizens have used commonly-owned semi-automatic firearms to thwart an armed robbery in Texas, stop a trio of home invaders in Oklahoma, and halt a stabbing attack in In Illinois.¹²

Standard Capacity Magazines are Effective and Preferred for Self-Defense

Many of the most popular firearms in America are designed to use magazines with a capacity greater than 10 rounds. Law enforcement officers routinely carry 15 or 17-round magazines in their duty sidearms. Law enforcement and law-abiding civilians choose these magazines for the same reasons; to best protect themselves and others from criminal violence.

¹² Suspects flee after trading gunfire with W. Houston gun store workers, Houston Chronicle, January 17, 2017; Three burglars entered an Oklahoma home. The owner's son opened fire with an AR-15, deputies say, Washington Post, March 28, 2017; Gun instructor uses AR-15 to stop attacker in Oswego, Aurora Beacon-News, March 1, 2018.