

The Present and Potential Future of Federal and State Gun Regulations in the United States

The mass shootings in Uvalde, Texas and Buffalo, New York sparked renewed interest in gun control reform in the United States. On June 12, 2022, a bipartisan group of United States Senators announced an agreement on principle for gun control legislation.¹ The deal includes provisions designed to prevent people experiencing crises from obtaining guns, additional protections for victims of domestic violence, and enhanced mental health services for children.²

For full context on the new proposed deal, this note provides a primer on existing laws, addressing restrictions on (1) who can own a gun, (2) what classes of weapons people can own, and (3) what licenses are required when carrying a gun. The note further discusses pending reform and litigation efforts, highlighting where there may be more potential for success in overcoming constitutional and/or legislative restrictions.

Laws that restrict access to guns in the U.S. are subject to the Second Amendment, which provides: “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”³ The U.S. is one of only three countries to constitutionally protect gun ownership,⁴ although there is disagreement over the interpretation of this constitutional protection.

In *District of Columbia v. Heller*,⁵ the Supreme Court held that the Second Amendment guaranteed individual citizens the right to possess firearms for lawful purposes, striking down a D.C. statute that criminalized possession of loaded firearms in the home. This left open many questions as to how the federal and state governments can regulate firearms. As Quinn Emanuel partner John Bash, the clerk who helped Justice Scalia write the *Heller* majority opinion, noted in a recent New York Times article, “*Heller* merely established the constitutional baseline that the government may not disarm citizens in their homes.”⁶ “Most of the obstacles to gun regulations are political and policy based, not legal; it’s laws that never get enacted, rather than ones that are struck down, because of an unduly expansive reading of *Heller*.”⁷

The Supreme Court is expected to address the scope of the Second Amendment once again in *New York Rifle & Pistol Association v. Bruen*.⁸ The petitioners challenged the constitutionality of a New York statute requiring an applicant to show “good cause” to acquire an unrestricted license to carry a firearm outside the home (that is, a license not limited to hunting or other specific uses). Whatever the result, *Bruen* will further define the scope and limits of the Second Amendment.

As is outlined in detail below, the key areas of regulation include (1) who can own a gun, (2) what kind of gun they can own, and (3) what licenses are required (when and how can they use a gun). The Supreme Court’s upcoming *Bruen* decision is focused on the third category, while the legislature is primarily focused on the first category—the bipartisan proposal is almost entirely aimed at expanding limitations on who can purchase a gun. Even with the bipartisan movement, many key issues remain, including the exception to background checks for private sales (including online transactions) as well as the exception to background checks that are delayed more than three days. Notably missing from current bipartisan discussions is the second regulatory category—regarding any expanded regulation based on the type of gun or accessory itself.

I. Who can purchase firearms?

Federal law sets a national baseline on who can acquire or possess a firearm. The federal Gun Control Act of 1968⁹ prohibits firearm sales and possession based on the following.

- Domestic Violence, Harassment, and Stalking: Federal law prohibits buying or possessing a firearm by anyone who:
 - Has been convicted in court for a misdemeanor crime of domestic violence;
 - Is subject to a court order restraining them from harassing, stalking, or threatening an “intimate partner”—that is, a current or former spouse, cohabitant, or co-parent (but not other romantic partners)—or that partner’s child; or
 - Is subject to a court order prohibiting the use, attempted use, or threatened use of force against an intimate partner.
- Criminal History: A person indicted or convicted for the following crimes may not purchase or possess a gun:
 - Federal crimes that are punishable by imprisonment for more than one year;¹⁰
 - State crimes not classified as misdemeanors that are punishable by imprisonment for more than one year; or
 - State misdemeanors punishable by imprisonment for more than two years.
- Fleeing law enforcement: A person who has fled a state to avoid prosecution or giving testimony in a criminal proceeding may not purchase or possess a gun.
- Age: Federal law prohibits federally-licensed firearms dealers from selling or delivering handguns to people under the age of 21, and prohibits unlicensed persons from selling or transferring a handgun to people under 18. Federal law also prohibits possession of a handgun by any person under 18. Federal law does not set a minimum age for possession of a long gun (i.e., a rifle).
- Mental Health: Federal law bars gun possession and purchases by people involuntarily committed to a mental institution¹¹ or found mentally incompetent by a court, commission, board, or other lawful authority.¹² Federal law does not require states to provide the relevant mental health records to the FBI’s National Instant Criminal Background Check System (“NICS”), and many states do not voluntarily report these records.¹³
- Substance Use: Federal law prohibits anyone who is an “unlawful user of or addicted to any controlled substance” from possessing firearms. While this restriction is broad,¹⁴ it is difficult to enforce or incorporate in background checks because, absent a criminal charge, there are no public records of who has engaged in substance abuse.¹⁵
- Immigration Status: People who are unlawfully present in the U.S., are present on nonimmigrant visas, or have renounced their U.S. citizenship cannot acquire firearms.
- Dishonorable Discharge: Individuals subject to a dishonorable discharge from the armed forces cannot acquire firearms.

Many states impose additional restrictions based on age, criminal record, and mental health. Several states impose minimum-age requirements on long gun ownership and have raised the minimum age for handgun possession to 21.¹⁶ Some states also prohibit the purchase and ownership of guns by people convicted of (1) misdemeanor gun-related offenses and other violent crimes; (2) stalking offenses not covered by federal law, including misdemeanor stalking offenses or stalking of people other than domestic/intimate partners; and (3) certain drug-related or alcohol-abuse related crimes.¹⁷ Records relating to state restrictions have been incorporated into NICS since 2012.¹⁸

As discussed above, federal law prohibits selling firearms to individuals subject to court orders restraining them from harassment, stalking, threats, and force against current and former spouses and co-parents, or their children. But federal law does not bar firearms sales to people subject to such court orders protecting other romantic partners. This is known as the “boyfriend loophole.” The bipartisan proposal would

close this loophole by prohibiting people from owning guns if they are subject to a restraining order from dating partners.¹⁹

Federal law requires federally licensed firearms dealers to conduct background checks through NICS before selling firearms, but this requirement contains gaps.²⁰ For example, federal law does not require unlicensed sellers—many of whom sell guns directly to buyers at gun shows or online through websites—to conduct background checks.²¹ According to one study, private sellers post 1 million ads every year on one website, Armslist.com, for gun sales that would not require a background check.²² Another study estimates that 22% of U.S. gun owners who had acquired a firearm in the prior two years had done so without a background check.²³ The bipartisan proposal will include language clarifying which commercial arms sellers are required to obtain federal firearms licenses and conduct background checks, and also impose new penalties on criminals who illegally traffic guns or buy them through third-party straw purchasers.²⁴ But it is unclear whether these proposed changes will materially limit the private seller exception to background checks.

Federally licensed firearms dealers can also sell guns if the buyer's background check is delayed more than three business days.²⁵ This exception is known as the "Charleston Loophole" because the 2015 shooter of nine worshippers at Charleston's Emanuel A.M.E. Church purchased a firearm, despite being legally prohibited from doing so, after his background check took more than three days.²⁶ Twenty-one states have closed or limited the Charleston Loophole by, among other things, imposing longer wait periods on firearms sales if background checks are delayed.²⁷ The bipartisan proposal extends the time to conduct background checks on buyers under 21, but details on this change are sparse.²⁸ The bipartisan proposal does not close the so-called "Charleston Loophole" entirely.

Recently, a number of states have also passed what are known as "red flag laws" or "extreme risk protection orders" that allow law enforcement, school officials, family members, coworkers, or household members—depending on the state—to petition courts to seize or prevent purchases of firearms by a person experiencing a mental health crisis that puts himself or those around him at risk.²⁹ If a proper petition is made under the specific state's red flag law, the court can issue an order seizing that person's gun, and restrict that person's access to a gun for a limited time.³⁰ The bipartisan proposal offers funding for states to enact and enforce "red flag laws."³¹

These state restrictions—closing the Charleston Loophole and enacting red flag laws—are likely not prohibited under *Heller*, although no court has yet said so. In dicta, the Supreme Court stated in that case, "[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." But it is not clear whether the present Supreme Court would uphold the above restrictions or potential expansions of them.

II. What firearms can be purchased?

Not every gun is alike. Legislation often restricts or regulates access to certain classes of firearms. There are two primary ways to classify guns: their overall design and the way in which they fire ammunition. Weapons tend to become more dangerous the further along each axis they fall.

First, firearms can be designed as handguns, rifles, or shotguns.³² Rifles and shotguns are both designed to be fired from the shoulder. Rifles fire a single bullet through a grooved barrel to improve accuracy, whereas shotguns fire a cartridge containing multiple projectiles through a smooth barrel to achieve a wider impact area. Handguns are defined by their capacity to be concealed on a person's body. Rifles and shotguns are generally considered more dangerous than handguns because they fire ammunition with greater destructive potential and can hold significantly more rounds of ammunition than handguns, depending on the magazine capacity and the limits of a given state.

Second, any type of firearm can be further classified by the way it fires rounds. In general, the faster it is to fire additional rounds, the more lethal the firearm is.³³ Manufacturers design different firearms to fire ammunition according to their intended application. Handguns, rifles, and shotguns can all be constructed to fire in one of three ways:

- Manual Operation: The weapon will fire one shot before a user must reload (also called single-shot action or bolt-action).
- Semi-automatic: the firing of one round re-cocks the mechanism for the next round and loads a new round into firing position, but requires another trigger pull to fire. A user can fire as many rounds of ammunition as the magazine³⁴ contains before reloading. Most weapons in circulation today are semi-automatic.
- Automatic (i.e., machine guns): a single sustained trigger press will fire multiple rounds of ammunition until the magazine is empty or an ammunition belt terminates. Automatic weapons' primary use purpose is in military or tactical contexts.

Of course, the more rounds a weapon can fire, the more people it can strike in a shorter time. Past and present regulation has centered primarily on restricting access to semi-automatic and automatic weapons because a shooter can fire a large number of rounds before having to pause to reload. Accessories, such as high-capacity magazines and bump stocks, can enhance the danger posed by any gun, and are frequent targets of regulation.

Assault Weapons

“Assault weapons” is a term gun control advocates usually apply to semi-automatic rifles and shotguns. There is controversy over what constitutes an “assault weapon.” Many semi-automatic rifles are designed to look like automatic rifles and other military-grade firearms. The most popular type of semi-automatic rifle is an AR-15. “AR” are the initials of the original manufacturer of that firearm; “AR” does not stand for “assault rifle.” To avoid legal challenges based solely on the label “assault weapons,” Legislatures have designated specific makes or models of guns as falling into that category often based on features, such as magazine capacity, pistol grips, or bayonet studs, as indicative of combat-oriented arms.³⁵

In 1994, following a string of mass shootings, Congress enacted a federal ban on certain semi-automatic rifles that include these features as a subsection to the larger Violent Crime Control and Law Enforcement Act of 1994.³⁶ This law became known as the federal “assault weapons ban” and included a ten-year sunset provision. It expired in 2004.³⁷ In the ten years of its enforcement, recovery of assault weapons used in crimes fell in most major cities, generally to between 32% and 40%.³⁸ Seven states have passed similar prohibitions.³⁹

Because the Supreme Court did not recognize an individualized right to own a gun until 2008's *Heller*, the Court has never decided whether the 1994 federal ban would have been within the bounds of the Second Amendment. After declining to hear challenges to similar state bans,⁴⁰ the Court is currently considering whether to grant certiorari to a Second Amendment challenge to Maryland's assault weapons ban.⁴¹ If the petitioners prevail, the decision would have spillover effects for similar statutes in other states.

There have been multiple legislative attempts to renew the federal ban on these weapons, particularly in the aftermath of mass shootings. So far none has been successful.⁴²

Machine Guns

Federal law does not entirely prohibit automatic weapons. The 1986 Hughes Amendment to the Firearms Owners Protection Act closed the registration of new machine guns for private citizens but allowed

the transfer of existing lawful weapons as of May 19, 1986.⁴³ As a result, approximately 741,146 known machine guns remain in circulation.⁴⁴ Only 16 states entirely prohibit people from possessing machine guns,⁴⁵ and five have no state-level restrictions.⁴⁶ Many gun control advocates question what, if any, civilian uses exist for machine guns.

Accessories

Accessories are parts that a gun owner can add to a firearm to change or extend its functionality. States often regulate three types of accessories: high-capacity magazines, silencers, and bump stocks.

The capacity of a revolver-style pistol is typically five or six rounds. The standard capacity of most semi-automatic pistols is 12 to 15 rounds, depending on the size of the ammunition and length of the grip. In some states, such as California, the state legislature has determined that a magazine with a capacity of more than ten rounds is to be classified as a “high-capacity magazine.” AR-15 rifles can readily accommodate a magazine carrying 30 rounds. Some mass shootings (defined by the federal government as a shooting in which more than four persons are shot) have involved the use of high-capacity magazines.⁴⁷ Although the now-defunct federal assault weapons ban restricted these magazines, they are now legal unless outlawed by state or local laws.⁴⁸

Silencers, also called suppressors, limit the sound and flash made by a gunshot, making it easier for a shooter to go undetected. Federal law regulates the ownership and purchase of silencers through a centralized database maintained by the ATF.⁴⁹ Eight states and the District of Columbia prohibit owning silencers.⁵⁰ The Supreme Court has so far declined to hear Second Amendment challenges to regulations on silencers.⁵¹

“Bump stocks” are an accessory component that replaces the rifle stock of a semi-automatic weapon. They function by using the recoil of each shot fired to bounce the firearm between a shooter’s shoulder and trigger finger while they hold both in place.⁵² This enables a semi-automatic rifle to fire almost as rapidly as an automatic weapon. In 2018, the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) finalized a rule that classifies bump stocks as machine guns within the meaning of the National Firearms Act, effectively banning bump stocks.⁵³ Litigants have challenged this prohibition in the courts, particularly after the mass shooting at a Las Vegas concert, with mixed success.⁵⁴ The Supreme Court has yet to decide the issue.⁵⁵

Ghost Guns

Federal and state regulations, including regarding the sale and distribution of firearms or background check requirements, do not apply to many unfinished parts or components of a gun. Those seeking to avoid these restrictions have exploited this loophole by purchasing or 3-D printing firearm components. Purchasers can then assemble the kit or, if necessary, finish certain parts with a power drill. The resulting weapon is functionally identical to a regular firearm but has no serial number or other reliable means to trace it.

Several states have enacted laws to limit the problem of ghost guns. In April 2022, President Biden announced a rule that would require manufacturers of assembly kits to include serial numbers on their components, run background checks on purchasers, and maintain records.⁵⁶ Additionally, a number of 3-D printing companies have endeavored to self-regulate by programming their software and hardware not to print certain parts that are known to be used as gun components.

Quinn Emanuel is working with the Office of Los Angeles City Attorney Mike Feuer and Everytown Law, the litigation arm of Everytown for Gun Safety Support Fund, in an expansive lawsuit against Polymer80—claiming to be one of the nation’s largest sellers of “ghost gun” kits and component parts that enable buyers to build fully functional guns at home without complying with background checks or gun serialization requirements. The lawsuit alleges Polymer80 has violated California’s Unfair Competition Law and created a public nuisance by selling these ghost gun kits in violation of federal and California gun laws. Other cities, including the District of Columbia⁵⁷ and Baltimore,⁵⁸ have also sued Polymer80.

III. What license is required?

On top of federal (and corresponding state) law limiting who can purchase and possess a firearm, each state has its own system for determining where a person can carry that firearm and how. There are no federal licensing requirements. With respect to state licensing laws, many states distinguish between *open carry*, carrying a firearm visibly in public, and *concealed carry*, with some states either banning open carry or subjecting it to additional regulation on the theory that the visible presence of guns incites aggression and elevates danger.⁵⁹ Opponents of such measures argue that they deter shootings and other crimes. Likewise, many states have designated “sensitive places,” like school zones and places where alcohol is served, where firearms are either banned or restricted. Second Amendment advocates argue that creating these known “gun-free zones” attracts persons looking to commit mass murder.

As part of these regulatory schemes, most states have created some form of permit system for carrying a firearm in public. Permits often require the holder to have special training, submit to a background check, or make mental health disclosures. State regimes generally fall into one of three categories: *permitless carry* states, *shall issue* states, or *may issue* states.

“Permitless carry,” sometimes called “constitutional carry,” states generally allow adults⁶⁰ to carry concealed firearms in public *without* a permit. But states allowing permitless carry regulate it. For example, individuals may not be able to: (1) “permitless carry” all types of firearms,⁶¹ (2) “open carry,”⁶² or (3) carry weapons in certain locations.⁶³ Some states exempt gunowners with permits from these restrictions.⁶⁴

States that require a firearms permit follow either a “shall issue” or “may issue” regime. As the name suggests, “shall issue” states require their issuing authority to grant a firearm permit to anyone who qualifies and applies. By contrast, “may issue” states reserve discretion for the issuing authority, often a local law enforcement agency, to issue or not issue a permit based on factors such as suitable moral character or whether the individual seeking a permit can show good cause for needing a firearm. Second Amendment advocates have criticized these “may issue” states as being de facto “no issue” states given the level of scrutiny with which they review applications.⁶⁵

The Supreme Court’s decision in *Bruen* will likely affect the permitting framework of many states. If the Court agrees with the petitioners, who argue New York’s good cause requirement for an unrestricted license to carry violates their right to bear arms outside of the home without discretionary government interference, it would likely strike down many of the “may issue” state permit systems. At oral argument, the *Bruen* petitioners suggested that, in future cases, the Supreme Court might need to strike down laws regulating gun possession at “sensitive places” open to the public.⁶⁶

In the meantime, New York Governor Hochul signed a bill into law on June 7, 2022 raising the minimum age to purchase semi-automatic rifles from 18 to 21, closing loopholes allowing for older high-capacity magazines, and improving reporting procedures on those who might pose a threat to others’ safety.⁶⁷ The New York Rifle & Pistol Association has criticized the new legislation, and may challenge it in court.⁶⁸

IV. Conclusion

The House of Representatives recently passed a bill that would, among other things, codify the regulatory ban on bump stocks, raise the age limit for purchasing certain semi-automatic weapons, require secure storage of firearms, and ban the sale of magazines with a capacity of more than 15 rounds.⁶⁹ But this bill is unlikely to pass the Senate—indeed it goes beyond the recently announced bipartisan proposal. Because any such bill would have to attract 60 votes to overcome the Senate filibuster, more drastic legislative reforms at the federal level are unlikely.

As long as mass shootings continue, victims of gun violence are likely to seek private recourse in the courts against gun manufacturers and sellers. The federal Protection of Lawful Commerce in Arms Act (“PLCAA”) generally immunizes firearms manufacturers and sellers from civil lawsuits alleging that individuals used firearms in an unlawful way.⁷⁰ Under the PLCAA, federal courts have dismissed gun crimes victims’ lawsuits against manufacturers, as well as municipalities’ lawsuits alleging that firearms manufacturers and sellers marketed guns to legitimate buyers while knowing that the guns will be later sold in illegal markets.⁷¹ (President Joe Biden has called on Congress to repeal the PLCAA, but Congress is unlikely to do so.⁷²)

There are exceptions to the PLCAA’s broad grant of immunity. Most notably, plaintiffs can sue firearms sellers for knowingly violating state or federal laws regulating the sale and manufacture of guns if this violation proximately caused the plaintiffs harm.⁷³ In 2019, the Connecticut Supreme Court held that the estates of nine victims of the 2012 Sandy Hook Elementary School shooting could sue Bushmaster Firearms International, the manufacturer of the weapon used in the shooting, for “wrongful marketing” under Connecticut’s Unfair Trade Practices Act, based on allegations that Bushmaster had “extoll[ed] the militaristic and assaultive qualities of their AR-15 rifles.”⁷⁴ The plaintiffs established proximate cause by alleging that Bushmaster’s marketing encouraged the shooter to select Bushmaster’s rifle, citing the fact that the shooter wanted to join the U.S. Army as a child and played video games featuring variants of Bushmaster’s rifle.⁷⁵ Shortly after, Bushmaster settled the case for \$73 million.⁷⁶ *Soto* appears to open the door to similar lawsuits under state unfair trade practices laws. A victim of the 2022 Brooklyn Subway Shooting recently sued Glock, Inc. under a similar theory.⁷⁷ The government of Mexico has also sued several firearms manufacturers in Massachusetts for enabling gun deaths in its territory, contending that the PLCAA does not apply to wrongful deaths occurring in Mexico.⁷⁸

The scope of gun control remains a controversial issue in the United States. However, as more and more mass shootings are seen across the country, citizens, government agents, and authorities are participating in robust dialogue about potential reform efforts at the federal and state levels.

¹ Emily Cochrane & Annie Karni, *Senators Reach Bipartisan Deal on Gun Safety*, N.Y. TIMES (June 12, 2022), <https://www.nytimes.com/2022/06/12/us/politics/senator-gun-safety-deal.html>.

² Press Release, Senator Chris Murphy, Bipartisan Group of Senators Announce Agreement (Jun. 12, 2022), <https://www.murphy.senate.gov/newsroom/press-releases/bipartisan-group-of-senators-announce-agreement>.

³ U.S. CONST. amend. II.

⁴ Ty McCormick, *How many countries have gun rights enshrined in their constitutions?*, FOREIGN POLICY (Apr. 5, 2013, 11:50 PM), <https://foreignpolicy.com/2013/04/05/how-many-countries-have-gun-rights-enshrined-in-their-constitutions/>.

⁵ 554 U.S. 570 (2008).

⁶ Kate Shaw & John Bash, *We Clerked for Justices Scalia and Stevens. America Is Getting Heller Wrong*, N.Y. TIMES (May 31, 2022), <https://www.nytimes.com/2022/05/31/opinion/supreme-court-heller-guns.html>.

⁷ *Id.*

⁸ 141 S. Ct. 2566 (2021) (granting certiorari).

⁹ 18 U.S.C. § 922.

¹⁰ This excludes crimes related to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices. 18 U.S.C. § 921(a)(20).

¹¹ This may happen when law enforcement brings an individual to a mental institution, or when a doctor petitions a court to keep a person in a mental institution against the wishes of that person.

¹² This includes a finding by a court or other government adjudicatory body that a person, based on a mental condition, is (1) a danger to himself or others, or (2) lacks the mental capacity to manage his own affairs. It also includes a finding by a criminal court that a person is legally insane or incompetent to stand trial due to mental incompetence. Amended

Definition of “Adjudicated as a Mental Defective” and “Committed to a Mental Institution,” 79 Fed. Reg. 774, 775 (proposed Jan. 7, 2014) (codified at 27 C.F.R. pt. 478 (2014)).

¹³ David Shortell, *How do laws prevent mentally ill people from buying guns?*, CNN (Feb. 15, 2018 9:24 PM) <https://www.cnn.com/2018/02/15/politics/mental-health-gun-possession-explainer/index.html>.

¹⁴ The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) interprets the term to include “any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician.” 27 C.F.R. § 478.11.

¹⁵ ATF regulations include some touchstones that would support that an individual is subject to this restriction. These include a conviction for use or possession of a controlled substance within the past year, multiple arrests for such offenses in the past 5 years, and a positive test for unlawful use of a controlled substance within the past year. *Id.*

¹⁶ See *Minimum Age to Purchase & Possess*, GIFFORDS L. CTR., <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/> (last visited June 6, 2022).

¹⁷ See *Firearm Prohibitions*, GIFFORDS L. CTR., <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/firearm-prohibitions/> (last visited June 6, 2022).

¹⁸ Shortell, *supra* note 13.

¹⁹ Cochrane & Karni, *supra* note 1.

²⁰ *Firearm Prohibitions*, GIFFORDS L. CTR., *supra* note 17.

²¹ *Id.*

²² *Unchecked: An Investigation of the Online Firearm Marketplace*, EVERYTOWN FOR GUN SAFETY (Feb. 1, 2021), <https://everytownresearch.org/report/unchecked-an-investigation-of-the-online-firearm-marketplace/>.

²³ Matthew Miller, et al., *Firearm Acquisition Without Background Checks: Results of a National Survey*, 166 ANNALS OF INTERNAL MED. 233 (2017).

²⁴ Richard Cowan, *Gun-reform deal reached in Senate with key Republican backing*, REUTERS (June 13, 2022), reuters.com/world/us/bipartisan-us-senate-group-unveils-framework-gun-safety-reform-2022-06-12/; Mike DeBonis & Leigh Ann Caldwell, *Senators strike bipartisan gun deal, heralding potential breakthrough*, WASH. POST (June 12, 2022), <https://www.washingtonpost.com/politics/2022/06/12/senate-gun-deal-framework/>.

²⁵ *Close the Charleston Loophole*, EVERYTOWN FOR GUN SAFETY, <https://www.everytown.org/solutions/close-the-charleston-loophole/> (last visited June 10, 2022).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Chris Murphy (@ChrisMurphyCT), TWITTER (Jun. 12, 2022, 11:52 AM EDT), <https://twitter.com/ChrisMurphyCT/status/1536013610014674949>.

²⁹ Matt Vasilogambros, *Red Flag Laws Are Saving Lives. They Could Save More*, STATELINE (Oct. 5, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/10/05/red-flag-laws-are-saving-lives-they-could-save-more>.

³⁰ Nicole Narea, *Red states aren't following Florida's lead on gun control*, VOX (June 8, 2022, 9:30 AM EDT), <https://www.vox.com/policy-and-politics/23158755/florida-red-flag-law>.

³¹ Lauren Fox & Devan Cole, *What's in the bipartisan gun deal and what's not*, CNN (June 13, 2022), <https://www.cnn.com/2022/06/12/politics/whats-in-senate-gun-reform-agreement/index.html>.

³² See 26 U.S.C. § 5845 (“National Firearms Act” or “NFA”).

³³ Though there are exceptions: a .50 caliber rifle fires one shot at a time, but can be extremely dangerous if used effectively.

³⁴ Magazines contain multiple rounds of ammunition that are fed into the firing chamber. In handguns, magazines usually contain between six and eight rounds, whereas rifle magazines can range from five rounds to thirty rounds or more.

³⁵ See Pub.L. No. 103–322, tit. XI, subtit. A, 108 Stat. 1796, 1996–2010 (1994) (“Federal Assault Weapons Ban”).

³⁶ 42 U.S.C. ch. 136 (1994).

³⁷ Ron Elving, *The U.S. Once Had A Ban On Assault Weapons — Why Did It Expire?*, NPR (Aug. 13, 2019, 1:06 PM EDT), <https://www.npr.org/2019/08/13/750656174/the-u-s-once-had-a-ban-on-assault-weapons-why-did-it-expire>.

³⁸ CHRISTOPHER S. KOPER, DANIEL J. WOODS & JEFFREY A. ROTH, *AN UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN: IMPACTS ON GUN MARKETS AND GUN VIOLENCE, 1994-2003*, at 48–49 (2004).

³⁹ California, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, New York, and the District of Columbia.

⁴⁰ *Kolbe v. Hogan*, 138 S. Ct. 469 (2017).

⁴¹ *Bianchi v. Frosh*, 858 F. App'x 645 (4th Cir. 2021).

⁴² See Erin Doherty, *Failed gun legislation is the norm after mass shootings*, AXIOS (May 25, 2022), <https://www.axios.com/2022/05/18/mass-shootings-gun-control-legislation-buffalo>.

⁴³ 18 U.S.C. § 922.

- ⁴⁴ BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, FIREARMS COMMERCE IN THE UNITED STATES ANNUAL STATISTICAL UPDATE 2021, at 16 (2021).
- ⁴⁵ California, Colorado, District of Columbia, Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New York, Rhode Island, Virginia, and Wisconsin. *See Machine Guns & 50 Caliber*, GIFFORDS L. CTR., <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/machine-guns-50-caliber/> (last visited June 10, 2022).
- ⁴⁶ Alabama, Kentucky, Mississippi, New Hampshire, and New Mexico. *See id.*
- ⁴⁷ *See Large Capacity Magazines*, GIFFORDS L. CTR., <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/large-capacity-magazines/> (last visited June 2, 2022).
- ⁴⁸ Nine states prohibit high-capacity magazines: California, Colorado, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, New York, Vermont, and D.C. *See id.*
- ⁴⁹ 26 U.S.C. §§ 5841(a), 5845(a).
- ⁵⁰ California, Delaware, Hawaii, Illinois, Massachusetts, New Jersey, New York, and Rhode Island. *See Silencers*, GIFFORDS L. CTR., <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/silencers/> (last visited June 10, 2022).
- ⁵¹ *United States v. Cox*, 906 F.3d 1170 (10th Cir. 2018), *cert. denied* 139 S. Ct. 2691 (2019).
- ⁵² Larry Buchanan et al., *What is a bump stock and how does it work?*, N.Y. TIMES (Oct. 4, 2017), <https://www.nytimes.com/interactive/2017/10/04/us/bump-stock-las-vegas-gun.html>.
- ⁵³ 27 C.F.R. §§ 447.11, 478.11, 479.11 (2022).
- ⁵⁴ *Compare Cargill v. Garland*, 20 F.4th 1004 (5th Cir. 2021), *with United States v. Alkazahg*, 81 M.J. 764 (N-M. Ct. Crim. App. 2021).
- ⁵⁵ *See Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 140 S. Ct. 789 (2020) (denying certiorari to an appeal of a D.C. Circuit decision upholding a bump stock ban; Justice Gorsuch made an accompanying statement that he would have granted it).
- ⁵⁶ Press Release, The White House, Fact Sheet: The Biden Administration Cracks Down on Ghost Guns, Ensures That ATF Has the Leadership it Needs to Enforce Our Gun Laws (Apr. 11, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-cracks-down-on-ghost-guns-ensures-that-atf-has-the-leadership-it-needs-to-enforce-our-gun-laws>.
- ⁵⁷ *District Of Columbia v. Polymer80, Inc.*, 2020-CA-002878-B (D.C. Super. Jun. 24, 2020).
- ⁵⁸ Press Release, Mayor of Baltimore Brandon M. Scott, City of Baltimore Files Lawsuit Against Ghost Gun Manufacturer Polymer80 (Jun. 1, 2022), <https://mayor.baltimorecity.gov/news/press-releases/2022-06-01-city-baltimore-files-lawsuit-against-ghost-gun-manufacturer-polymer80>.
- ⁵⁹ *See Prohibit Open Carry*, EVERYTOWN FOR GUN SAFETY, <https://www.everytown.org/solutions/prohibit-open-carry/> (July 26, 2021).
- ⁶⁰ Minimum ages range from 18 to 21, depending on the state. Federal law prohibits possession of a handgun or handgun ammunition for anyone under the age of 18. 18 U.S.C. § 922(x).
- ⁶¹ *E.g.*, Oklahoma. OKLA. STAT. tit. 21 § 1290.6 (2020) (disallowing ammunition larger than .45 caliber in weapons carried pursuant to the Oklahoma Self-Defense Act).
- ⁶² *E.g.*, North Dakota. N.D. Cent. Code § 62.1-03-01(1), (2)(a) (2021).
- ⁶³ *E.g.*, Maine. 12 ME. REV. STAT. ANN. tit. 220 § 1803(7) (2013) (requiring a permit to carry a firearm inside a state park). Federal law further limits possession of a firearm, for example, in places like federal facilities, 18 U.S.C. § 930(a), (g)(1), and school zones, 18 U.S.C. § 921(a)(25)-(26).
- ⁶⁴ In many states, a “Carrying a Concealed Weapon” (CCW) permit allows one to skip the federally mandated background check. *E.g.*, Texas. *Permanent Brady Permit Chart*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (June 21, 2020), <https://www.atf.gov/rules-and-regulations/permanent-brady-permit-chart>.
- ⁶⁵ *See, e.g., Gun Laws by State*, GUNS TO CARRY, <https://www.gunstocarry.com/gun-laws-state> (last visited June 1, 2022); Brief for Arizona et al. as Amici Curiae Supporting Petitioners, *New York Rifle & Pistol Ass’n v. Bruen*, No. 20-843 (S. Ct. Dec. 17, 2020) at 19–20.
- ⁶⁶ Amy Howe, *Majority of court appears dubious of New York gun-control law, but justices mull narrow ruling*, SCOTUSBLOG (Nov. 3, 2021), <https://www.scotusblog.com/2021/11/majority-of-court-appears-dubious-of-new-york-gun-control-law-but-justices-mull-narrow-ruling/>.
- ⁶⁷ Press Release, Governor of New York, Governor Hochul Signs Landmark Legislative Package to Strengthen Gun Laws and Protect New Yorkers (Jun. 6, 2022), <https://www.governor.ny.gov/news/governor-hochul-signs-landmark-legislative-package-strengthen-gun-laws-and-protect-new-yorkers>.
- ⁶⁸ Aundrea Cline-Thomas & John Dias, *New York enacts sweeping gun control laws in wake of Buffalo shooting and other gun violence*, CBS N.Y. (Jun. 6, 2022, 6:06pm), <https://www.cbsnews.com/newyork/live-updates/new-york-gov-kathy-hochul-set-to-sign-gun-control-bills-into-law>.

⁶⁹ H.R. 7910 – Protecting Our Kids Act, 117th Cong. (2021-2022).

⁷⁰ See 15 U.S.C. §§ 7902-03

⁷¹ *Ireto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009); *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2d Cir. 2008).

⁷² *Fact Sheet: Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety*, THE WHITE HOUSE (June 23, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/23/fact-sheet-biden-harris-administration-announces-comprehensive-strategy-to-prevent-and-respond-to-gun-crime-and-ensure-public-safety/> (last visited June 11, 2022).

⁷³ 15 U.S.C. § 7903(5)(A)(iii).

⁷⁴ *Soto v. Bushmaster Firearms Int'l, LLC*, 331 Conn. 53 (2019).

⁷⁵ *Id.* at 74-75.

⁷⁶ Andrew Larson, *Profound Implications: \$73M Settlement in Sandy Hook Lawsuit Could Expand Scope of CUTPA*, CONN. L. TRIB. (Feb. 25, 2022), <https://www.law.com/ctlawtribune/2022/02/25/profound-implications-73m-settlement-in-sandy-hook-lawsuit-could-expand-scope-of-cutpa/>.

⁷⁷ *Steur v. Glock, Inc.*, No. 1:22-cv-3192, (E.D.N.Y. May 31, 2022).

⁷⁸ *Estados Unidos de Mexico v. Smith & Wesson Brands, Inc.*, No. 1:21-cv-11269-FDS (D. Mass. Aug. 4, 2021).

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