

TESTIMONY IN SUPPORT OF HOUSE BILL 638

TO: THE JUDICIARY COMMITTEE

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PREVENT GUN VIOLENCE

DATE: FEBRUARY 25, 2021

Chair Clippinger, Vice Chair Atterbeary, and Members of the Judiciary Committee: thank you for the opportunity to provide this testimony on behalf of Giffords, the gun violence prevention organization led by former Congresswoman Gabby Giffords. I am writing in support of House Bill 638, which would prohibit dangerous untraceable firearms, which are often referred to as “ghost guns.”

GHOST GUNS ARE DESIGNED TO AVOID BACKGROUND CHECKS AND TO BE UNTRACEABLE

Since the Gun Control Act was enacted in 1968, all firearms manufacturers and importers have placed serial numbers on all firearms sold in the United States. When a firearm is sold by a retailer to a consumer, the retailer retains records of the transaction. This enables a law enforcement process known as “tracing”: when a crime gun is recovered, the serial number allows investigators to trace the firearm back to its retail sale, a critically important piece of information for a firearms investigation.

In addition, before the retail sale of any firearm, a retailer must initiate a background check on the buyer. This background check determines whether the buyer is legally eligible to possess a firearm, and thus prevents people who are prohibited from possessing a firearm from obtaining one.

When it works correctly, the background check, serialization, and record-keeping requirements also discourage firearm trafficking and give law enforcement tools to investigate and crack down on trafficking rings.

Ghost guns disrupt this process. Ghost gun purveyors avoid the range of federal laws pertaining to firearms by exploiting a loophole in the way that the federal government currently defines a “firearm.” By statute, a “firearm” includes “any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive” or “the frame or receiver of any such weapon.”¹ This means that, of all the components that make up a firearm, only one—a “frame” on a handgun, or a “receiver” on a long gun, a key component that houses the firing mechanism—is subject to federal regulation. It is this component, and this

¹ 18 U.S.C. § 921(a)(3).

component alone, that requires a serial number, a background check before sale, and recording of the sale. Once one has acquired a frame or receiver, one can obtain the rest of the parts needed to assemble a firearm without having to pass a background check.

To avoid federal firearm laws, ghost gun purveyors claim they are not selling frames or receivers; instead, they say they are selling “unfinished” frames or receivers, components that have been machined so that they are almost fully functional frames or receivers, but are not considered “frames” or “receivers”—and therefore are not considered “firearms”—for the purposes of federal law. As a result, ghost gun purveyors can sell unfinished frames and receivers, often packaged with all of the other components needed to assemble a firearm, without serializing the product and without conducting a background check. Their customers can then take the package, drill out the few holes needed to convert the “unfinished” piece into a fully functional frame or receiver, and use it to assemble an unserialized, untraceable firearm.

GHOST GUNS ARE A GRAVE AND GROWING THREAT

Ghost guns present a grave and growing danger to the public. Law enforcement are increasingly encountering trafficking rings that are mass-manufacturing and selling untraceable firearms.² And ghost guns are increasingly being used in shootings and by those seeking to commit acts of political violence.

To list just a few examples:

- A man who failed a background check and could not legally purchase a gun built an assault rifle from a ghost gun kit, then used it on a rampage at a college campus, firing 100 rounds and killing five people.³

² E.g., U.S. Attorney’s Office, Eastern District of California, *Eight Men Indicted for Manufacturing and Dealing AR-15 Type Rifles and Silencers Without a License*, DEP’T OF JUSTICE (Oct. 15, 2015), <https://www.justice.gov/usao-edca/pr/eight-men-indicted-manufacturing-and-dealing-ar-15-type-rifles-and-silencers-without>; Zusha Elinson, *The Rise of Untraceable ‘Ghost Guns,’* WALL ST. J. (Jan. 4, 2018), <https://www.wsj.com/articles/the-rise-of-untraceable-ghost-guns-1515061800>; Maxwell Reil, *Man Indicted After Selling ‘Ghost Gun’ in Hammonton*, PRESS OF ATLANTIC CITY (Apr. 13, 2018), https://www.pressofatlanticcity.com/news/man-indicted-after-selling-ghost-gun-in-hammonton/article_16aa48bc-519c-50d5-b66b-748689e9c5b4.html; Cassie Dickman, *Grass Valley Man Sentenced to 5 Years for Trafficking ‘Ghost’ Guns*, SACRAMENTO BEE (Sept. 22, 2018), <https://www.sacbee.com/news/local/crime/article218864215.html>; Tommy Rowan,; Emily Masters, *State Police: Downstate Cop Sold ‘Ghost’ Guns to Motorcycle Gang*, TIMES UNION (Mar. 1, 2019), <https://www.timesunion.com/news/article/State-Police-Downstate-cop-sold-ghost-guns-to-13656862.php>; *Cedar Rapids Man Pleads Guilty to Federal Drug and Gun Charges*, CBS2/Fox 28 (Jan. 17, 2020), <https://cbs2iowa.com/news/local/cedar-rapids-man-pleads-guilty-to-federal-drug-and-gun-charges>; Bureau of Alcohol, Tobacco, Firearms & Explosives, *Man Sentenced to 15 Years for Trafficking ‘Ghost Guns’ and Drugs* (Feb. 14, 2020), <https://www.atf.gov/news/pr/man-sentenced-15-years-trafficking-ghost-guns-and-drugs>.

³ Robert Cavnar, *Santa Monica Shooter Built His Gun from Parts He Bought Online*, HUFFINGTON POST (June 15, 2013), https://www.huffingtonpost.com/robert-l-cavnar/santa-monica-shooter-buil_b_3447220.html.

- A man who was prohibited from owning a gun and under prosecution for multiple crimes assembled two assault-style ghost guns from parts he ordered online and went on a rampage with them, killing six people and injure 10 more.⁴
- A sixteen-year-old boy used a self-assembled untraceable firearm in a school shooting in Santa Clarita, CA, killing two students and injuring three others.⁵
- In November of last year, a man was arrested after threatening to “‘blow up’ an FBI building” and threatening Congressional leadership. The man had ordered ghost gun parts, he said, to “start manufacturing implements of war.”⁶
- Ghost guns have repeatedly been used to threaten law enforcement in Maryland. In the summer of 2016 detectives responded to shots fired in West Baltimore, only to be fired on themselves by a man who was firing an assault-style ghost gun.⁷

The threat to public safety growing more severe: the Washington Post has reported that police in “Baltimore and suburban Maryland” have “said they are seeing more of the weapons.”⁸ In late summer of 2019 police recovered a loaded ghost gun equipped with a high-capacity magazine from a man also charged with drug trafficking,⁹ and in December of 2019 a ghost gun trafficker was sentenced in Montgomery County after supplying ghost guns to organized crime members and other persons prohibited from possessing a firearm.¹⁰ In a 2020 investigation, Fox45 News

⁴ Ray Sanchez, Jason Hanna & Phil Gast, *Gunman in Northern California Rampage Was Not Supposed to Have Guns*, CNN (Nov. 15, 2017), <http://www.cnn.com/2017/11/15/us/california-tehama-county-shootings/index.html>; Damon Arthur, *Sheriff: Tehama Shooter Built His Own Illegal Guns*, RECORD SEARCHLIGHT, (Nov. 15, 2017), <http://www.redding.com/story/news/2017/11/15/tehama-shooter-built-his-own-illegal-guns/868737001/>.

⁵ Dakin Andone, *The Gunman in the Saugus High School Shooting Used A ‘Ghost Gun,’ Sheriff Says*, CNN (Nov. 21, 2019), <https://www.cnn.com/2019/11/21/us/saugus-shooting-ghost-gun/index.html>.

⁶ Alan Feuer, *Man Arrested Over Threat to Schumer and Vow to ‘Blow Up’ F.B.I.*, N.Y. Times (Nov. 10, 2020), <https://www.nytimes.com/2020/11/10/nyregion/brian-maiorana-threat-fbi-schumer.html>.

⁷ *Homemade, Untraceable Guns Pose Threat to Police*, WMAR Baltimore (Sept. 22, 2016), <https://www.wmar2news.com/news/crime-checker/baltimore-city-crime/homemade-untraceable-guns-pose-threat-to-police>; see also David Collins, *Police: Man Fired Several Shots at Officers in West Baltimore*, WBALTV (July 18, 2016), <https://www.wbaltv.com/article/police-man-fired-several-shots-at-officers-in-west-baltimore/7101771>.

⁸ Peter Hermann & Tom Jackman, *District Seeks to Ban ‘Ghost Gun’ Kits as Seizures of Homemade Weapons Soar*, Washington Post (Feb. 27, 2020), https://www.washingtonpost.com/local/public-safety/district-seeks-to-ban-ghost-gun-kits-as-seizures-of-homemade-weapons-soar/2020/02/27/d12be0da-5416-11ea-9e47-59804be1dcb_story.html.

⁹ Erika Butler, *Edgewood Man Sleeping on Bel Air Sidewalk had ‘Ghost Gun,’ Drugs, Police Say*, Baltimore Sun (Aug. 16, 2019), <https://www.baltimoresun.com/maryland/harford/aegis/cng-ag-belair-gun-arrest-0816-20190816-kqoovj7jhzgbxful3qriywzrme-story.html>.

¹⁰ Kyle Cooper, *Long Prison Term for Maryland Man Who Sold Untraceable Guns to Criminals*, WTOP News (Dec. 4, 2019), <https://wtop.com/montgomery-county/2019/12/long-prison-term-for-maryland-man-who-sold-untraceable-guns-to-criminals/>.

Operation: Crime & Justice found that sales of ghost gun kits to Maryland quadrupled over a four year period, with over 12,000 kits representing more than a million dollars sold from 2016 through 2019.¹¹ That same investigation also found that the number of ghost guns recovered from crimes was sharply increasing, with particular spikes in Prince George’s County and Baltimore.

ADDRESSING THE PROBLEM WHILE ACCOMMODATING HOBBYISTS

House Bill 638 would cut the supply of ghost guns off at the source by closing the loopholes that allow them to be sold without a background check or serial number. It would create a system that would ensure that buyers have passed a background check and that the resulting firearm is traceable.

It would thus address the rising danger of ghost guns, but the legislation is carefully crafted to accommodate hobbyists who build weapons in their spare time. There is an explicit exception for the kinds of historically accurate muskets and flintlock firearms and other “antique firearms” that are crafted by historical enthusiasts and hobbyists.¹² It will also not prevent a person from obtaining an unfinished frame or receiver and building a firearm at home. It will merely require a serial number and a license that establishes that the person is legally permitted to possess firearms.

CLARIFYING RECORD-KEEPING OBLIGATIONS

I would like to take this opportunity so suggest that a small change to the legislation is necessary to make it fully effective. As currently drafted, this legislation requires that sellers retain “a record log of any sale or transfer of a firearm or an unfinished frame or receiver as required by federal law and regulation.” A record-keeping requirement of the kind contemplated here is necessary to link a serial number to a purchaser. The intent seems to be to incorporate by reference the record-keeping standards that currently exist under federal law, and to apply them to unfinished frames and receivers. But as drafted, this language could be misinterpreted and read only to *re-state* federal record-keeping requirements, which the federal government does not currently understand as applying to unfinished frames and receivers. If this language were misinterpreted in that way, the sellers of unfinished frames and receivers could escape these record-keeping requirements.

¹¹ Joy Lepola, *ATF Finding More Untraceable Guns “Ghost Guns” in Baltimore*, Fox 45 News (Nov. 26, 2020), <https://foxbaltimore.com/features/operation-crime-justice/atf-finding-more-untraceable-guns-ghost-guns-in-baltimore>.

¹² Section 4-201 of the Criminal Law Article, from which this bill takes its definition of “antique firearm,” defines the term to include:

- (1) a firearm, including a firearm with a matchlock, flintlock, percussion cap, or similar ignition system, manufactured before 1899; or
- (2) a replica of a firearm described in item (1) of this subsection that:
 - (i) is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition; or
 - (ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

I would thus advise that Section 5-704(c)(4) be amended as follows:

Delete Current language

~~A FEDERALLY LICENSED FIREARMS DEALER, FEDERALLY LICENSED FIREARMS MANUFACTURER, AND FEDERALLY LICENSED FIREARMS IMPORTER SHALL MAINTAIN A RECORD LOG OF ANY SALE OR TRANSFER OF A FIREARM OR AN UNFINISHED FRAME OR RECEIVER AS REQUIRED BY FEDERAL LAW AND REGULATION;~~

Add:

A PERSON WHO SELLS OR TRANSFERS A FIREARM OR AN UNFINISHED FRAME OR RECEIVER THAT HAS BEEN MARKED IN ACCORDANCE WITH SUBSECTIONS (A) AND (B) OF THIS SECTION SHALL KEEP RECORDS OF SUCH TRANSFER OR SALE, INCLUDING THE SERIAL NUMBER OF THE PRODUCT, THE NAME AND ADDRESS OF THE PERSON RECEIVING THE PRODUCT, THE DATE OF THE TRANSFER OR SALE, AND THE HANDGUN QUALIFICATION LICENSE NUMBER OF THE PERSON RECEIVING THE PRODUCT, AND SHALL MAKE SUCH RECORDS AVAILABLE TO LAW ENFORCEMENT UPON REQUEST.

This change will help ensure the integrity of the tracing system that this bill will enable, and further promote gun safety in Maryland and across the country.

Thank you again to the Committee for the opportunity to provide this testimony. I urge you to support this critically important legislation.

Respectfully Submitted,

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ABOUT GIFFORDS

Giffords is a nonprofit organization dedicated to saving lives from gun violence. Led by former Congresswoman Gabrielle Giffords, Giffords shifts culture, changes policies, and challenges injustice, inspiring Americans across the country to fight gun violence.