

**PREVENTING INTIMATE PARTNER
HOMICIDE: A CALL FOR COOPERATIVE
FEDERALISM FOR COMMON SENSE GUN
SAFETY POLICIES**

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**I. WITH ALL DUE RESPECT PAT BENATAR, LOVE IS
NOT A BATTLEFIELD¹**

There was probably a moment during childhood in which you heard a trusted adult say, “he hit you because he likes you.” Women often learn at a young age that a boy hitting you on the playground or teasing you or calling you names means that he must like you and he just does not know how to express his feelings any other way. Women are groomed to not trust their own feelings: “Don’t be upset. You should be so flattered by this attention!” Early

1. Referring to Pat Benatar’s 1983 chart-topping, up-tempo hit, “Love Is A Battlefield,” for which she won a Grammy Award for Best Female Rock Vocal Performance. See Pat Benatar (@PatBenatarVEVO), YOUTUBE (Mar. 11, 2009), <https://youtu.be/IGVZOLV9SPo>.

experience with this form of gaslighting² is problematic for everyone. It is problematic for the girls that are learning that it might be okay for someone “who likes them” to hurt them physically or emotionally. And it is problematic for the boys, who should really be punished for this kind of behavior but are nevertheless excused from responsibility for their own actions.

Who might these girls and boys grow up to be? They grow up to be Lauren McCluskey and Melvin Rowland—a twenty-one-year-old, soon-to-be college graduate, model student and distinguished member of her university’s track and field team, and the ex-boyfriend that shot and killed her on her college campus.³ They grow up to be Dr. Tamara O’Neal and Juan Lopez—a dedicated emergency room doctor caring for her underserved community, and the ex-fiancée that shot and killed her in the parking lot of the hospital where she worked.⁴ And they grow up to be Samantha and Kirk Keithley—a young mother and her husband who shot and killed her inside her home.⁵ Staggeringly, several commonalities exist in each of these instances: these women were young; they feared for their lives because of their partner’s abusive behavior; and their abusers had access to firearms to commit murder.⁶

Intimate partner violence (IPV) is a widespread and serious health problem in the United States. Approximately twenty people

2. Gaslighting refers to the manipulation of someone by psychological means into questioning their own sanity. *Gaslight*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/gaslight> (last visited Jan. 30, 2019).

3. Eric Levenson & Chuck Johnston, *Utah student’s 911 calls asked police to stop her harasser. Days later she was murdered*, CNN (Dec. 26, 2018, 1:36 PM), <https://www.cnn.com/2018/12/25/us/utah-student-killed-911-lauren-mccluskey>.

4. Julia Jacobs, *Doctor Killed in Chicago Was Committed to ‘Serving the Underserved,’* N.Y. TIMES (Nov. 20, 2018), <https://www.nytimes.com/2018/11/20/us/tamara-oneal-mercy-hospital-shooting.html>.

5. Erik Waxler, *Wife sent text messages to friend before she was allegedly killed by her husband, a HCSO deputy*, ABC ACTION NEWS (Dec. 19, 2018, 10:55 AM), <https://www.abcactionnews.com/news/region-pasco/land-o-lakes/wife-sent-text-messages-to-friend-before-she-was-allegedly-killed-by-her-husband-a-hcso-deputy>.

6. See CBS/AP, *Chicago doctor called 911 moments before ex-fiancé killed her, 2 others*, CBS NEWS (Nov. 21, 2018, 9:39 AM), <https://www.cbsnews.com/news/chicago-hospital-shooting-dr-tamara-oneal-called-911-moments-before-ex-fiance-juan-lopez-killed-her-2-others/>; Julia Jacobo, *Police release timeline detailing slain University of Utah student’s relationship with killer*, ABC NEWS (Oct. 26, 2018, 2:13 AM), <https://abcnews.go.com/US/police-release-timeline-detailing-slain-university-utah-students/story?id=58756070>; Erik Waxler, *Wife sent text messages to friend before she was allegedly killed by her husband, a HCSO deputy*, ABC ACTION NEWS (Dec. 19, 2018, 10:55 AM), <https://www.abcactionnews.com/news/region-pasco/land-o-lakes/wife-sent-text-messages-to-friend-before-she-was-allegedly-killed-by-her-husband-a-hcso-deputy>.

are physically abused by an intimate partner every *minute*.⁷ An estimated 1,800 people are killed by their intimate partner every year, and approximately half of these are committed with firearms.⁸ Researchers believe this estimate could actually be higher, but several gaps exist in the available research data.⁹ Approximately one-third of homicide reports are missing the data on the victim-offender relationship (most likely attributed to unsolved cases where the offender is unknown).¹⁰ Additionally, homicides involving *former* dating partners are not included in this estimate because the victim-offender relationship (as defined in available research data) includes only spouses, common-law spouses, former spouses, and current dating partners.¹¹ Significantly though, women¹² make up about eighty-five percent of known intimate partner homicide (“IPH”) victims.¹³

While Congress has enacted legislation to address violence against women and IPV, statutory loopholes and the lack of enforcement of these laws are major causes for concern. This Comment takes a holistic approach in outlining several gun safety policies aimed to prevent intimate partner homicide including: (1) reauthorizing an amended Violence Against Women Act to provide incentives for states to pass meaningful gun safety policies; (2) closing statutory loopholes such as the “boyfriend loophole” in the Lautenberg Amendment; and (3) enacting Universal Background Checks. Part II provides the scope of domestic violence, including the correlation between firearms and intimate partner homicide.

7. *Statistics*, NCADV, <https://ncadv.org/statistics> (last visited Apr. 11, 2019).

8. Carolina Diez et al., *State Intimate Partner Violence-Related Firearm Laws and Homicide Rates*, ANNALS INTERNAL MED. (Oct. 17, 2017), <https://annals.org/aim/fullarticle/2654047/state-intimate-partner-violence-related-firearm-laws-intimate-partner-homicide>.

9. *Id.*

10. *Id.*

11. National data is based on the Supplementary Homicide Reports of the Federal Bureau of Investigation’s Uniform Crime Report, to which state and local law enforcements agencies submit monthly reports on homicides. *Id.*

12. It is important to note that while this Comment makes a mostly heteronormative analysis and spotlights women as victims, intimate partner violence can affect anyone regardless of race, gender identity, sexual orientation, socioeconomic status, or marital status. Furthermore, African-American women, Native American women, immigrant women, and members of the LGBTQIA community face higher risks of violence against them and profound impediments in seeking survivor resources and legal remedies. This Comment does not formally address these intersectional issues solely for time constraints, but they were absolutely considered in drafting the proposals to prevent intimate partner homicide in Part IV.

13. *Id.*

Part III examines current laws aimed to prevent domestic violence and provide support for survivors, and how these laws fall short of their goals. Part IV evaluates opposition against such policies and highlights extensive lobbying efforts that prevents the enactment of “common-sense” gun safety legislation. Finally, Part V provides the framework of a proposal for Congress to cooperatively work with States to pass “common sense” gun safety legislation, close the loopholes at the federal level, and enact Universal Background Checks.

II. PULLING THE CURTAINS BACK ON INTIMATE PARTNER VIOLENCE

Traditionally referred to as “domestic violence,”¹⁴ intimate partner violence (IPV) describes felony or misdemeanor crimes of violence that includes physical, sexual, or psychological harm by a current or former intimate partner or spouse.¹⁵ The pervasiveness of domestic violence is staggering. One in three women have experienced some form of physical violence by an intimate partner.¹⁶ Further, one in four women have experienced *severe* physical violence by an intimate partner in their lifetime.¹⁷ And one in seven women have been stalked by an intimate partner during their lifetime in which they felt fearful for their own safety or life.¹⁸

Equally astounding are the serious health and economic consequences associated with intimate partner violence and homicide. According to the Centers for Disease Control and Prevention (CDC), the physical violence associated with IPV can have a direct impact on a person’s health aside from deaths and injuries.¹⁹ Chronic stress from IPV can have adverse effects on the victim’s cardiovascular, gastrointestinal, endocrine, and immune

14. Some signs of an abusive relationship include: exerting strict control (financial, social and/or appearance); needing constant contact including excessive texts and calls; emotional abuse including insulting a partner in front of other people; extreme jealousy; showing fear around a partner; isolation from family and friends; frequent canceling of plans at the last minute, unexplained injuries or explanations that do not quite add up. For more resources, see *Know the Facts, NO MORE*, <https://nomore.org/learn/resources/> (last visited Apr. 11, 2018).

15. *Domestic Violence*, OFFICE ON VIOLENCE AGAINST WOMEN (Jan. 3, 2019), <http://www.justice.gov/ovw/domestic-violence>.

16. *Statistics*, NCADV, <https://ncadv.org/statistics> (last visited Apr. 11, 2019).

17. *Id.*

18. *Id.*

19. *Intimate Partner Violence: Consequences*, CDC, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html> (last updated Oct. 23, 2018).

systems.²⁰ Moreover, IPV can touch every aspect of a person's wellbeing, including her reproductive health, psychological health, and social health.²¹ The CDC estimates that the lifetime economic cost of IPV to the U.S. population alone is \$3.6 trillion.²²

Even more, domestic violence is a public health crisis across the world. Eighty-seven thousand women were murdered in 2017, and thirty thousand of those women were murdered by a current or former intimate partner.²³ The prevalence of domestic violence has been well documented over the past thirty years and, while it affects both men and women, women are much more likely to die from intimate partner homicide (IPH) than men.²⁴ One recent United Nations study found that women and girls make up a substantially smaller share of total homicides than men, but they are at a far greater risk to fall victim to intimate partner homicide.²⁵

However, on a national scale, the statistics for women killed by an intimate partner are worse. In fact, the United States is the only Western country to make the Thomson Reuters Foundation's list of the world's most dangerous countries for women in 2018.²⁶ Women in the United States are twenty-one times more likely to be shot and killed with a firearm than in other developed countries.²⁷ Femicide—the homicide of women—is the fifth

20. *Intimate Partner Violence: Consequences*, CDC, <https://www.cdc.gov/violence-prevention/intimatepartnerviolence/consequences.html> (last updated Oct. 23, 2018).

21. *Id.*

22. This estimate includes \$2.1 trillion in medical costs; \$1.3 trillion in lost productivity among victims and perpetrators; \$73 billion in criminal justice costs; and \$62 billion in other costs, such as victim property loss and damage. *Id.*

23. Alanna Vagianos, *Domestic Violence Is the Most Common Killer of Women Around the World*, HUFFPOST (Nov. 27, 2018), https://www.huffpost.com/entry/domestic-violence-most-common-killer-of-women-united-nations_n_5bfbf61ee4b0eb6d931142ac.

24. *Id.*

25. UNITED NATIONS OFF. ON DRUGS & CRIME, GLOBAL STUDY ON HOMICIDE: GENDER-RELATED KILLING OF WOMEN AND GIRLS (2018), https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf. Compare only twenty percent of victims of homicide globally are women against the eighty-two percent of victims of intimate partner homicide who are women. *Id.*

26. THOMSON REUTERS FOUNDATION ANNUAL POLL: THE WORLD'S MOST DANGEROUS COUNTRIES FOR WOMEN 2018, <http://www.poll2018.trust.org> (last visited Jan. 28, 2019) (Results of a survey of 500 global experts on women's issues considering the countries that have high rates of violence against women, a lack of economic resources, health care issues, and traditions that perpetuate strict gender roles).

27. *Domestic Violence & Firearms*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/do>

leading cause of premature death among women aged eighteen to forty-four in the United States, and each year, more than half of these deaths are intimate partner homicides.²⁸ Consequently, out of the twenty-five most populous, high-income countries in the world, the United States accounts for eighty-four percent of all firearm-related femicides, despite only making up thirty-two percent of that female population.²⁹

Research shows that the likelihood of intimate partner homicide within the United States increases when the abuser owns a firearm. When an abuser owns a firearm, the abuser is five times more likely to kill his partner than an abuser without a firearm.³⁰ Indeed, firearm-related intimate partner homicide accounts for the death of over fifty women each month in the United States.³¹ And of the 1,352 known intimate partner homicides in 2015, the abuser used a firearm in fifty-five percent of them.³²

Moreover, intimate partner homicide is on the rise. The number of intimate partner homicides have steadily increased every year since 2014, and gun related murders of intimate partners have increased by twenty-six percent since 2010.³³

mestic-violence-firearms/ (last visited Jan. 27, 2019).

28. Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93(7) AM. J. PUB. HEALTH 1089, 1089 (July 2003), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447915/>; Carolina Díez et al., *State Intimate Partner Violence-Related Firearm Laws and Homicide Rates*, ANNALS INTERNAL MED. (Oct. 17, 2017), <https://annals.org/aim/full/article/2654047/state-intimate-partner-violence-related-firearm-laws-intimate-partner-homicide>; Ariana Eunjung Cha, *Most female homicide victims are killed by husbands or other intimate partners, new report shows*, WASH. POST (July 20, 2017), https://www.washingtonpost.com/news/to-your-health/wp/2017/07/20/most-female-homicide-victims-are-killed-by-husbands-or-other-intimate-partners-new-report-shows/?utm_term=.c018f2b071f1.

29. *When Men Murder Women: An Analysis of 2016 Homicide Data*, VIOLENCE POL'Y CTR. (Sept. 2018), <http://vpc.org/studies/wmmw2018.pdf>.

30. *Domestic Violence & Firearms*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/> (last visited Jan. 27, 2019).

31. *Guns and Violence Against Women: America's Uniquely Lethal Intimate Partner Violence Problem*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/reports/guns-intimate-partner-violence/> (last visited Jan. 30, 2020).

32. *Facts About Gun Violence*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/wp-content/uploads/2018/01/18.01-FACT-Stats.pdf> (last visited Jan. 27, 2019).

33. Melissa Jeltsen, *Domestic Violence Murders are Suddenly on the Rise*, HUFFPOST, (Apr. 11, 2019, 11:21 AM), https://www.huffpost.com/entry/domestic-violence-murders-rising_n_5cae0d92e4b03ab9f24f2e6d. Compare this to murders with other weapons like knives, which have continued to decline. *Id.*

Criminologist James Alan Fox, who has analyzed over forty years of gender differences in homicide patterns, believes it is “critical” to disarm abusers and stalkers.³⁴ According to his most recent data, four women are murdered by their intimate partners every day.³⁵ However, Dr. Fox found that states with strong gun policies yielded fewer intimate partner femicides.³⁶

What is more is that gun violence is rampant in the United States, and intimate partner violence makes up only a small part of this epidemic. Besides increasing the likelihood of death in incidents of intimate partner violence, gun violence claims over 30,000 lives annually in the United States and disproportionately affects communities of color.³⁷ Gun violence is the second leading cause of death for American children and teens behind motor vehicle accidents, but the first leading cause of death for Black children and teens.³⁸ In total, Black Americans are ten times more likely to die by gun violence than white Americans.³⁹ Moreover, gun access increases the probability of death by suicide by three times and doubles the risk of death by homicide.⁴⁰ In 2010, total gun deaths comprised over fifty percent of all suicides and over sixty-eight percent of all homicides, while 606 people died from unintentional firearm injuries.⁴¹

Mass shootings⁴² are another part of the gun violence epidemic and directly correlate with the need to address intimate

34. Melissa Jeltsen, *Domestic Violence Murders are Suddenly on the Rise*, HUFFPOST, (Apr. 11, 2019, 11:21 AM), https://www.huffpost.com/entry/domestic-violence-murders-rising_n_5cae0d92e4b03ab9f24f2e6d.

35. *Id.*

36. *Id.* Compare this to murders with other weapons like knives, which have continued to decline. *Id.*

37. *Statistics*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/facts/statistics/> (last visited Apr. 11, 2019).

38. *Gun Violence in America*, EVERYTOWN FOR GUN SAFETY, https://everytownresearch.org/gun-violence-america/?source=mdmo_MomsHomepage&utm_source=md_m_&utm_medium=_o&utm_campaign=MomsHomepage&refcode=MomsHomepage. (last visited Apr. 11, 2019).

39. *Id.*

40. *Id.*

41. *Statistics*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/facts/statistics/> (last visited Apr. 11, 2019).

42. Everytown for Gun Safety defines a mass shooting as “an incident in which four or more people, not including the shooter, are killed with a firearm.” *Mass Shootings in the United States: 2009-2017*, EVERYTOWN FOR GUN SAFETY, https://everytownresearch.org/reports/mass-shootings-analysis/?source=mdmo_MomsHomepage&utm_source=md_m_&utm_medium=_o&utm_campaign=MomsHomepage&refcode=MomsHomepage (last visited Apr. 11, 2019).

partner violence with common sense gun safety policies. First, out of the 194 mass shootings from 2009 to 2018, there were warning signs in half of the mass shootings that the shooter posed a danger to himself or others before the shooting.⁴³ These “red flags” include recent, attempted, or threats of violence (either to himself or other people); convictions for firearm offenses; violations of protective orders; and evidence of ongoing substance abuse.⁴⁴ Moreover, *current* gun laws prohibited the shooter from possessing any guns at the time of the shooting in at least one-third of the mass shootings during this time period.⁴⁵ But as discussed below in Part III, loopholes in current laws have enabled prohibited offenders and other criminals to gain access to firearms. Finally, the majority of mass shootings from 2009 to 2017 were related to domestic or family violence.⁴⁶ In fact, the perpetrator also shot a current or former intimate partner or family member in at least fifty-four percent of the mass shootings in this time period.⁴⁷

While intimate partner violence can impact anyone, survivors have historically suffered in silence. The police and courts often overlooked their abuse because they considered abuse to be a private matter between husbands and wives.⁴⁸ However, with the rise of camera phones, social media, and viral hashtags like #MeToo and #NiUnaMenos, now more than ever, the curtains are pulled back on intimate partner violence and it is no longer confined to the private matters of the home. As strides are being made in both societal and legal institutions to understand and address the complexities of intimate partner violence, we must avoid stagnation and keep the conversations moving forward. Addressing how current laws are failing women and passing common sense gun safety policies are vital to progress as a society and minimize the devastation of intimate partner homicide.

43. *Mass Shootings in the United States: 2009-2017*, EVERYTOWN FOR GUN SAFETY, https://everytownresearch.org/reports/mass-shootings-analysis/?source=mdmo_MomsHomepage&utm_source=md_m_&utm_medium=_o&utm_campaign=MomsHomepage&refcode=MomsHomepage (last visited Apr. 11, 2019).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Amy Thomson, *History of the “Battered Women’s Movement,”* NAT’L VOICE DOMESTIC VIOLENCE (Mar. 7, 2018), <https://www.breakthesilencedv.org/history-of-the-battered-womens-movement/>.

III. PREVENTING INTIMATE PARTNER VIOLENCE— WHAT'S WORKING AND WHAT'S NOT.

Gun laws are as old as America. According to one historian, there were laws in the 1600s prohibiting the discharge of a gun near roads, buildings, in populated areas, during social occasions, or on Sundays.⁴⁹ Even after the ratification of the Second Amendment⁵⁰ to the United States Constitution in 1791, all levels of government continued to enact gun legislation. In the days of Wyatt Earp and Doc Holliday, the laws of Tombstone required visitors to disarm upon entering the town by relinquishing their weapons at a hotel or a “lawman’s” office.⁵¹ Thereafter, Congress passed several pieces of gun legislation between World War I and World War II including making it illegal to use the United States Postal Service to ship small, concealable firearms; imposing a hefty tax on machine guns and small-barrel shotguns and rifles; and requiring firearm licenses for gun dealers, manufacturers, and importers.⁵² In the wake of the assassinations of President John F. Kennedy, Attorney General Robert Kennedy and Dr. Martin Luther King, Jr. thirty years later, President Lyndon B. Johnson signed the Gun Control Act of 1968 (GCA).⁵³

In the 1990s, Congress added two major provisions to the GCA that has helped prevent domestic abusers from purchasing or possessing firearms: the Brady Handgun Violence Prevention Act, and the Lautenberg Amendment. These two provisions and the limitations on their efficacy are discussed below in Part A and Part B, respectively. Then, Part C examines the passage of the Violence Against Women Act in recognition of the shortcomings of the current gun safety policies and how it still falls short of what is

49. Olivia B. Waxman, *How the Gun Control Act of 1968 Changed America's Approach to Firearms—And What People Get Wrong About That History*, TIME (Oct. 30, 2018, 11:52 AM), <http://time.com/5429002/gun-control-act-history-1968/>.

50. U.S. CONST. amend. II (“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.”).

51. Tombstone, AZ, circa 1881. Matt Jancer, *Gun Control Is as Old as the Old West*, SMITHSONIAN (Feb. 5, 2018), <https://www.smithsonianmag.com/history/gun-control-old-west-180968013/>.

52. The Nonmailable Firearms Act of 1927, 18 U.S.C. § 1715; the National Firearms Act; and the Federal Firearms Act of 1938, respectively. The Associated Press, *Timeline of pivotal moments in US gun control history*, AP (Mar. 15, 2018), <https://www.apnews.com/95e0294725cc4bc1909279263129f4bb>.

53. Olivia B. Waxman, *How the Gun Control Act of 1968 Changed America's Approach to Firearms—And What People Get Wrong About That History*, TIME (Oct. 30, 2018, 11:52 AM), <http://time.com/5429002/gun-control-act-history-1968/>.

necessary to meaningfully address intimate partner violence and provide support to survivors.

A. THE BACKGROUND ON BRADY

When John Hinkley attempted to assassinate President Ronald Reagan in the spring of 1981, he shot President Reagan, two law enforcement officers, and the White House Press Secretary, Jim Brady.⁵⁴ Jim Brady survived, but was left partially paralyzed for the rest of his life and he never worked as press secretary again.⁵⁵ Following that assassination attempt, Jim Brady and his wife, Sarah, began lobbying in support of “common sense gun laws.”⁵⁶ After countless hours of lobbying for six years, President Bill Clinton signed the Brady Handgun Violence Protection Act (Brady Act) into law.⁵⁷ The Brady Act amends the Gun Control Act of 1968, and is an enforcement mechanism behind the GCA prohibiting certain persons⁵⁸ from gun possession.⁵⁹

The Brady Act requires that federally licensed firearms dealers (FFLs) conduct background checks on potential firearm purchasers before completing any sale.⁶⁰ If an FFL that has initiated a Brady background check is notified within three business days that the sale would violate federal or state laws, the prohibited person will be denied a firearm transfer or permit.⁶¹ The Federal Bureau of Investigation (FBI) created the National Instant Criminal Background System (NICS) to implement the Brady Act.⁶² The NICS is a set of databases that make up a

54. *About Jim and Sarah Brady*, BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, <http://www.bradycampaign.org/jim-and-sarah-brady> (last visited Jan. 30, 2019).

55. *Id.*

56. *Id.*

57. *Id.*; see 18 U.S.C. § 922(s) (2020).

58. Prohibited persons including but not limited to: felons, fugitives, unlawful users of controlled substances, some domestic violence abusers, undocumented immigrants, certain people in crisis, and those dishonorably discharged from the military. *Brady Background Checks: History & Future*, BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, <http://www.bradycampaign.org/sites/default/files/BradyBackgroundChecks-historyAndFuture.pdf>.

59. *Id.*

60. *Background Check Procedures*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/background-check-procedures/>.

61. *Brady Background Checks: History & Future*, BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, <http://www.bradycampaign.org/sites/default/files/BradyBackgroundChecks-historyAndFuture.pdf>.

62. *Background Check Procedures*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/ba>

centralized catalog of records, including criminal and mental health histories and any civil orders entered against individuals.⁶³

While the FBI was in the process of creating the NICS, the Brady Act provided an interim policy which included a five-day waiting period, during which local chief law enforcement officials (CLEO) were required to investigate the backgrounds of all potential firearm purchasers.⁶⁴ In *Printz v. United States*, two CLEOs challenged the constitutionality of this interim policy contending that they were being forced into federal service and that “congressional action compelling state officers to execute federal laws is unconstitutional.”⁶⁵ The Supreme Court of the United States reaffirmed *New York v. United States*⁶⁶, holding that Congress cannot compel the States to enact or enforce a federal regulatory program and that it “cannot circumvent that prohibition by conscripting the State’s officers [or those of their political subdivisions] directly.”⁶⁷ The Tenth Amendment⁶⁸ of the United States Constitution reinforces the notion of a limited government and guarantees state sovereignty.⁶⁹ The interim policy violated dual sovereignty and the Court invalidated its provision of the Brady Act.⁷⁰ *Printz* is a key federalism⁷¹ decision by the Rehnquist Court that increasingly scrutinized and invalidated federal legislation on constitutional federalism principles.⁷² The

ckground-check-procedures/.

63. *NICS & Reporting Procedures*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/nics-reporting-procedures/#federal>.

64. *Printz v. United States*, 521 U.S. 898, 898 (1997).

65. *Id.* at 905.

66. *New York v. United States*, 112 S. Ct. 2408 (1992) (holding that the take title provision of the Low-Level Radioactive Waste Policy Amendment of 1985, crossed the line distinguishing encouragement from coercion, and thus violated the Tenth Amendment).

67. *Printz*, 521 U.S. at 935.

68. U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

69. *Printz v. United States*, 521 U.S. 898, 919 (1997).

70. *Id.* at 935.

71. Federalism is a two-tiered system of government in which the national government is responsible for broad governance and the smaller political subdivisions like states and cities govern issues of local concern. Both have a certain level of autonomy from each other. “Dual sovereignty” in the context of the United States is a system in which the States surrendered many of their powers to the Federal Government, but still retained some sovereignty. *Federalism*, WEX LEGAL DICTIONARY, <https://www.law.cornell.edu/wex/federalism> (last visited Apr. 11, 2019).

72. *E.g.*, *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000); *United States v.*

Court's decision in *Printz* had little impact once the NICS was up and running, but the Court's interpretation of federalism further supports the need for *cooperative federalism* and for Congress to use its spending power to implement common sense gun safety policies.⁷³

These legal challenges, as well as built-in loopholes, have tested the Brady Act's efficacy. Federal law cannot require states to submit disqualifying information to the FBI databases—states submit their records to NICS on a voluntary basis—and data shows that NICS records are incomplete.⁷⁴ Information typically missing in the FBI databases include outstanding felony warrants, mental health records, domestic violence restraining orders, and records that show whether an arrest resulted in an acquittal or a conviction.⁷⁵ Nearly 197 million applications for firearm transfers or permits were subjected to background checks from the date the Brady Act went into effect in 1994 through 2015; over 3 million applications were denied.⁷⁶ Nevertheless, the FBI estimates that every year about 3,000 people pass a NICS background check even though current state or federal law prohibits them from purchasing a gun.⁷⁷ That is why these incomplete records have directly impacted the effectiveness of the NICS.

Furthermore, the Brady Act provides for a “default proceed.” Default proceed allows a licensed gun dealer to sell a firearm to a customer *without* a completed background check after three business days if the background check has not been completed.⁷⁸

Morrison, 529 U.S. 598 (2000); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996); *City of Boerne v. Flores*, 521 U.S. 507 (1995); *United States v. Lopez*, 514 U.S. 549 (1995); *New York v. United States*, 112 S. Ct. 2408 (1992).

73. U.S. CONST. art. I, § 8, cl. 1 (“The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.”).

74. *NICS & Reporting Procedures*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/nics-reporting-procedures/#federal> (last visited Jan. 27, 2019).

75. *Id.*

76. Jennifer C. Karberg et al., *Background Checks for Firearm Transfers, 2015 – Statistical Tables*, BUREAU OF JUST. STAT. (Nov. 30, 2017), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6126>.

77. *National Instant Criminal Background Check System (NICS) Operations 2013*, FBI, <https://archives.fbi.gov/archives/about-us/cjis/nics/reports/2013-operations-report> (last visited Jan. 27, 2019); *NICS & Reporting Procedures*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/nics-reporting-procedures/#federal> (last visited Jan. 27, 2019).

78. *Brady Background Checks: History & Future*, BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, <http://www.bradycampaign.org/sites/default/files/BradyBackground>

Now known as the “Charleston Loophole,” this provision enabled the shooter at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina to purchase his gun before the FBI could complete a background check, even though he was prohibited by law from possessing one.⁷⁹ This “prohibited person” killed nine innocent people⁸⁰ during a prayer meeting in the 2015 mass shooting.⁸¹ Moreover, the Brady Act provides only for federally licensed dealers to conduct background checks, so there are loopholes in the law for potential buyers to proceed to purchase firearms from private sellers at gun shows and through online sales without undergoing a background check.⁸²

Therefore, even if the state in which he lives submits his conviction to the federal database, a domestic violence abuser who is considered a “prohibited person” from possessing or purchasing a firearm can still easily obtain access to a gun. For example, John Doe was convicted of a domestic violence misdemeanor, but goes to his local gun dealer (who is federally licensed) because he wants to purchase a handgun. The FBI completes his background check within three business days and so the federally licensed dealer denies his application. However, John is determined and quite the savvy shopper and goes to the town’s civic center which is currently holding a gun show. John finds a booth selling the exact handgun he tried to buy from the local licensed dealer and tries to purchase it again. This time, however, the private seller is not required to perform a background check and sells the gun to John. Now imagine this same scenario, but John lives in one of the few states that require private sellers to perform a background check on gun purchasers. John tries to purchase the handgun at the gun show but is denied again. Unwaveringly, John goes home, does a quick Google search, and finds the coveted handgun online for sale. Unlicensed gun sales made online are not regulated,⁸³ and John is finally able to purchase his handgun. He receives his handgun a

Checks-historyAndFuture.pdf (last visited Jan. 27, 2019).

79. *Laws and Loopholes*, BRADY, <https://www.bradyunited.org/issue/laws-and-loopholes> (last visited Jan. 27, 2019).

80. Clementa C. Pinckey, Cynthia Marie Graham Hurd, Susie Jackson, Ethel Lee Lance, Depayne Middleton-Doctor, Tywanza Sanders, Daniel L. Simmons, Sharonda Coleman-Singleton, and Myra Thompson.

81. Jason Horowitz et al., *Nine Killed in Shooting at Black Church in Charleston*, N.Y. TIMES (June 17, 2015), <https://www.nytimes.com/2015/06/18/us/church-attacked-in-charleston-south-carolina.html>.

82. *Laws and Loopholes*, BRADY, <https://www.bradyunited.org/issue/laws-and-loopholes> (last visited Jan. 27, 2019).

83. *Id.*

few days later and is now five times more likely to shoot and kill his wife.⁸⁴

Undoubtedly, countless lives have been saved by Brady Background Checks, but its loopholes mean that all too often guns are still falling into the wrong hands. Ninety percent of Americans support background checks for *all* gun purchases.⁸⁵ Doing so could save countless more.⁸⁶

B. THE LAUTENBERG AMENDMENT AND THE “BOYFRIEND LOOPHOLE”

Federal law already prohibited convicted felons from buying or owning guns when Senator Frank Lautenberg (D-NJ) sponsored legislation to go one step further to protect current and future victims of intimate partner violence.⁸⁷ Adopted in 1996, the “Lautenberg Amendment” to the Gun Control Act of 1968 (GCA) prohibits people convicted of “a misdemeanor crime of domestic violence,” or people subject to certain domestic violence protective orders, from purchasing or possessing firearms and ammunition.⁸⁸ Over 140,000 people convicted of a misdemeanor crime of domestic violence have been denied from purchasing a firearm since Congress enacted the Lautenberg Amendment.⁸⁹ In fact, a conviction for a misdemeanor crime of domestic violence is the

84. *Domestic Violence & Firearms*, GIFFORDS LAW CTRR TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/> (last visited Jan. 27, 2019).

85. Tom Kertscher, *Do 90% of Americans Support Background Checks for All Gun Sales?*, POLITIFACT WIS. (Oct. 3, 2017, 1:05 P.M.), <https://www.politifact.com/wisconsin/statements/2017/oct/03/chris-abele/do-90-americans-support-background-checks-all-gun/>.

86. Researchers found that a 1995 Connecticut law that required buyers to undergo a background check before receiving a permit was associated with a forty percent decline in gun homicides and a fifteen percent drop in suicides. Danielle Kurtzleben, *Research Suggests Gun Background Checks Work, But They're Not Everything*, NPR (Jan. 9, 2016, 9:58 A.M.), <https://www.npr.org/2016/01/09/462252799/research-suggests-gun-background-checks-work-but-theyre-not-everything>. Compare this to a study on Missouri's 2007 repeal of its permit-to-purchase law found the repeal was associated with a twenty-three percent increase in homicides and a sixteen percent increase in suicides. *Id.*

87. See *Domestic Violence & Firearms*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/> (last visited Jan. 27, 2019).

88. 18 U.S.C. § 922(g)(8), (9) (2020).

89. *Federal Denials November 30, 1998 – March 31, 2019*, FBI, https://www.fbi.gov/file-repository/federal_denials.pdf/view (last visited Apr. 11, 2019).

fourth-most frequent reason a person's application to purchase a firearm from a federally licensed dealer is denied.⁹⁰

A "misdemeanor crime of domestic violence" is defined as an offense that:

(1) is a misdemeanor under Federal, State, or Tribal law; (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and (3) was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.⁹¹

So, violence between *dating* partners do not fall within the definition of domestic violence under the Lautenberg Amendment. This so-called "boyfriend loophole" means that abusers who are not married to their partners or share a child between them are not considered a prohibited person under the Lautenberg Amendment.⁹² This is especially startling when new data shows that every four out of five incidents of intimate partner violence reported to police involved people who were *not* married.⁹³ Moreover, former unmarried partners are more likely to stalk their former partners and violate restraining orders.⁹⁴

To that end, girls and young women are particularly vulnerable to the boyfriend loophole. Dating abuse may start young—well before an appropriate age to even consider someone being "similarly situated to a spouse." At its core, a growing portion of the United States population is not protected by the laws that

90. A felony conviction, an outstanding arrest warrant, and unlawful use of a controlled substance are the top three reasons for denial. Protection/restraining order for domestic violence is number six with over 60,000 federal denials. *Federal Denials November 30, 1998 – March 31, 2019*, FBI, <https://www.fbi.gov/file-repository/federal-denials.pdf/view> (last visited Apr. 11, 2019).

91. 18 U.S.C. § 921(a)(33)(A) (2020); *What is a "Misdemeanor Crime of Domestic Violence"?*, ATF, <https://www.atf.gov/firearms/qa/what-misdemeanor-crime-domestic-violence>, (last visited Apr. 11, 2019).

92. *Laws and Loopholes*, BRADY, <https://www.bradyunited.org/issue/laws-and-loopholes> (last visited Jan. 27, 2019).

93. Susan B. Sorenson & Devan Spear, *New Data on Intimate Partner Violence and Intimate Relationships: Implications for Gun Laws and Federal Data Collection*, 107 PREVENTATIVE MEDICINE 103, 103-108 (Feb. 2018), <https://doi.org/10.1016/j.ypmed.2018.01.005>.

94. *Id.*

were designed to keep guns out of the hands of abusers. In fact, girls and young women between the ages of sixteen and twenty-four experience the highest rate of intimate partner violence.⁹⁵ Approximately 1.5 million high school students experience some form of abuse from a dating partner in a single year.⁹⁶ And nearly forty-three percent of college women who date have reported experiencing violent and abusive behaviors.⁹⁷ The United States needs adequate laws to protect these young women and all survivors of domestic violence.

C. SUPPORT FOR SURVIVORS: THE VIOLENCE AGAINST WOMEN ACT

President Bill Clinton signed the Violence Against Women Act (VAWA) into law in 1994 to create a number of crucial funding streams and substantive laws that support survivors and work toward preventing domestic violence.⁹⁸ It was the first law dedicated to ending the brutality of women in America being raped, stalked, and experiencing domestic violence.⁹⁹ VAWA created the National Domestic Violence Hotline and changed how the criminal justice system treated sex offenses.¹⁰⁰ VAWA also created the Office on Violence Against Women (OVW) within the Department of Justice to implement the legislation and facilitate the creation of programs and policies to end domestic violence.¹⁰¹ The OVW works with the Department of Health and Human Services (HHS) to provide funding to grant programs that include: training law enforcement officers and judges, developing policies for improved handling of domestic violence cases, encouraging collaboration between community service providers and law enforcement, and staffing law enforcement agencies with victim liaisons.¹⁰²

95. *Dating Abuse Statistics*, LOVE IS RESPECT, <https://www.loveisrespect.org/resources/dating-violence-statistics/>, (last visited Apr. 11, 2019).

96. *Id.*

97. *Id.*

98. Ami Lynch, *Violence Against Women Act*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/Violence-Against-Women-Act> (last updated Dec. 28, 2018).

99. Emily S. Rueb & Niraj Chokshi, *The Violence Against Women Act is Turning 25. Here's How It Has Ignited Debate*, N.Y. TIMES (Apr. 4, 2019), <https://www.nytimes.com/2019/04/04/us/violence-against-women-act-reauthorization.html?login=smartlock&auth=login-smartlock>.

100. *Id.*

101. Ami Lynch, *Violence Against Women Act*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/Violence-Against-Women-Act> (last updated Dec. 28, 2018).

102. *Id.*

Moreover, VAWA required states and local government, as a condition of certain funding, to certify that their judicial administrative policies and practices included notification to domestic violence offenders of both federal firearm prohibitions and any applicable related federal, state, or local laws.¹⁰³

Congress reauthorized VAWA in 2000 for another five years and included additional financing for law enforcement, shelters for survivors of domestic violence, as well as new programs designed to protect elderly women and women with disabilities, and rape prevention and education.¹⁰⁴ When Congress reauthorized VAWA in 2005, it strengthened penalties for repeat stalking and added “cyberstalking” to the federal definition of stalking.¹⁰⁵ Political discord within Congress facilitated VAWA’s expiration in 2011 before finally getting reauthorized in 2013.¹⁰⁶ Likewise, VAWA expired once more in 2018.¹⁰⁷

VAWA was successful in improving the criminal justice response to violence against women and ensuring that victims and their families had access to the services they need.¹⁰⁸ However, it has been highly criticized for putting too much money into the criminal justice system and not doing enough in the way of preventing domestic violence, which is actually exacerbating some of the problems.¹⁰⁹ For example, VAWA encouraged mandatory arrest policies which required police officers responding to domestic violence calls to arrest the alleged abuser if there was

103. *Domestic Violence & Firearms*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/> (last visited Jan. 27, 2019).

104. Emily S. Rueb & Niraj Chokshi, *The Violence Against Women Act is Turning 25. Here’s How It Has Ignited Debate*, N.Y. TIMES (Apr. 4, 2019), <https://www.nytimes.com/2019/04/04/us/violence-against-women-act-reauthorization.html?login=smartlock&auth=login-smartlock>.

105. *Id.*

106. *Id.*

107. Elise Viebeck, *Violence Against Women Act Expires with Government Shutdown*, WASH. POST (Dec. 22, 2018, 4:48 PM), https://www.washingtonpost.com/powerpost/violence-against-women-act-to-expire-with-government-shutdown/2018/12/21/b66ff600a-0557-11e9-b5df-5d3874f1ac36_story.html?noredirect=on&utm_term=.6bd20ebdec18.

108. *Factsheet: The Violence Against Women Act*, WHITE HOUSE: PRESIDENT BARACK OBAMA, https://obamawhitehouse.archives.gov/sites/default/files/docs/vawa_factsheet.pdf (last visited Jan. 27, 2019).

109. Kate Pickert, *What’s Wrong with the Violence Against Women Act?*, TIME (Feb. 27, 2013), <http://nation.time.com/2013/02/27/whats-wrong-with-the-violence-against-women-act/>.

probable cause to believe an assault had taken place.¹¹⁰ These policies can actually put women in more danger. When domestic violence is already such a severely under-reported crime, mandatory arrest could discourage some women from reporting domestic violence for fear that their partners will be automatically arrested.¹¹¹ Here, as researchers have found, more criminalization is not the answer. Harvard conducted a study in 2007 that found the rate of intimate partner homicide is actually higher in states that have enacted mandatory arrest laws.¹¹²

Another shortcoming of VAWA is that it only responds to domestic violence concerns after the abuse has already happened. While federal law prohibits certain domestic violence abusers from *possessing* firearms, and background checks conducted by federally licensed dealers can prevent abusers from *purchasing* firearms, federal law does not require abusers to *surrender* guns that are already in their possession.¹¹³ Accordingly, without an effective relinquishment policy, intimate partner abusers can still have access to firearms already in their possession.

Thus, expanding the Violence Against Women Act to include more proactive policies in violence *prevention* is necessary to effect real change. Notably, Congress's efforts to reauthorize VAWA for a fourth time has garnered opposition centered on this need for more common-sense gun safety policies.¹¹⁴

IV. THE NATIONAL RIFLE ASSOCIATION: RESHAPING THE GUN DEBATE WITH DOLLARS BUT NO SENSE

The National Rifle Association (NRA) is one of the most powerful gun rights lobbying groups in the United States. Historians point to the enactment of the Gun Control Act of 1968 (GCA) as one factor that led dissident gun owners to politicize the

110. Kate Pickert, *What's Wrong with the Violence Against Women Act?*, TIME (Feb. 27, 2013), <http://nation.time.com/2013/02/27/whats-wrong-with-the-violence-against-women-act/>.

111. *Id.*

112. *Id.*

113. Carolina Diez et al., *State Intimate Partner Violence-Related Firearm Laws and Homicide Rates*, ANNALS INTERNAL MED. (Oct. 17, 2017), <https://annals.org/aim/fullarticle/2654047/state-intimate-partner-violence-related-firearm-laws-intimate-partner-homicide>.

114. Emily S. Rueb & Niraj Chokshi, *The Violence Against Women Act is Turning 25. Here's How It Has Ignited Debate*, N.Y. TIMES (Apr. 4, 2019), <https://www.nytimes.com/2019/04/04/us/violence-against-women-act-reauthorization.html?login=smartlock&auth=login-smartlock>.

NRA in the late 1970s.¹¹⁵ Subsequently, the NRA began endorsing politicians, with Ronald Reagan being the first presidential candidate to ever receive an NRA endorsement.¹¹⁶ The NRA lobbied Congress to repeal the GCA and failed, but Congress did enact (and President Reagan signed) the Firearm Owners Protections Act.¹¹⁷ Aptly named, this legislation provides more protections for gunowners.¹¹⁸ Simply put, the Act and its passage authorizes individuals to now sell guns without a license, permits gun dealers to sell firearms in temporary locations (i.e., gun shows), and prohibits the government from establishing a national registry of gun owners.¹¹⁹

For all that, the NRA represents only nineteen percent of gun owners in the United States, but it has spent decades successfully blocking federal action that it believed would threaten their rights under the Second Amendment and even reshaped the Supreme Court's interpretation of these rights.¹²⁰ The NRA contributes millions of dollars during elections to presidential and congressional campaigns of candidates that support expanding gun rights (and millions more *against* candidates that support gun control), as well as towards lobbying efforts focused on a number of bills each year.¹²¹ Remarkably, the NRA spends nearly ten times as much money in lobbying efforts as Everytown for Gun Safety—the largest gun control lobbying group in the United States.¹²²

But it is not just the amount of money the NRA spends lobbying that sets them apart, it is *how* the NRA lobbies and communicates their messages that really magnifies their

115. Olivia B. Waxman, *How the Gun Control Act of 1968 Changed America's Approach to Firearms—And What People Get Wrong About That History*, TIME (Oct. 30, 2018, 11:52 AM), <http://time.com/5429002/gun-control-act-history-1968/>.

116. *Id.*

117. David Welna, *The Decades-Old Gun Ban That's Still on The Books*, NPR (Jan. 16, 2013, 5:39 PM), <https://www.npr.org/sections/itsallpolitics/2013/01/18/169526687/the-decades-old-gun-ban-thats-still-on-the-books>.

118. Olivia B. Waxman, *How the Gun Control Act of 1968 Changed America's Approach to Firearms—And What People Get Wrong About That History*, TIME (Oct. 30, 2018, 11:52 AM), <http://time.com/5429002/gun-control-act-history-1968/>.

119. The Associated Press, *Timeline of pivotal moments in US gun control history*, AP (Mar. 15, 2018), <https://www.apnews.com/95e0294725cc4bc1909279263129f4bb>.

120. Ruth Igielnik & Anna Brown, *Key Takeaways on Americans' Views of Guns and Gun Ownership*, PEW RES. (June 22, 2017), <https://www.pewresearch.org/fact-tank/2017/06/22/key-takeaways-on-americans-views-of-guns-and-gun-ownership/>.

121. Brennan Weiss & Skye Gould, *5 Charts that Show How Powerful the NRA Is*, BUS. INSIDER (Feb. 20, 2018, 5:00 PM), <https://www.businessinsider.com/nra-power-lobbying-statistics-gun-control-2017-10>.

122. *Id.*

influence. First and foremost, the NRA has developed an incredible grass-roots operation and has closely aligned with the Republican Party.¹²³ The NRA has a separate organization to lobby on its behalf—the Institute for Legislative Action (NRA-ILA).¹²⁴ Moreover, the NRA has endowed a professorship at George Mason University, created its own gun magazines (including “American Rifleman”), gun shops, and gun clubs across the country, as well as a weekly television show on the Outdoor Channel and a satellite news service, the NRA News.¹²⁵ The NRA’s various endeavors and media platforms enable it to easily spread its messages to its members, and selling advertisement increases the organization’s revenue.¹²⁶

Second, the NRA-ILA focuses its messaging on the emotions of their members, which has helped shape a culture war between them and gun control advocates.¹²⁷ The NRA-ILA motivates members by invoking fear with their own clear message: gun-control advocates’ ultimate goal is confiscation and total disarmament.¹²⁸ By extension, Americans are paranoid and tend to buy more firearms when they believe their guns are about to be taken away.¹²⁹ For instance, there are inevitable gun control

123. The top eighty-one members of Congress with the most career NRA contributions were all Republicans. Brennan Weiss & Skye Gould, *5 Charts that Show How Powerful the NRA Is*, BUS. INSIDER (Feb. 20, 2018, 5:00 PM), <https://www.businessinsider.com/nra-power-lobbying-statistics-gun-control-2017-10>.

124. Sam Musa, *The Impact of NRA on the American Policy*, 4 J. POL. SCI. PUB. AFF. 222 (Sept. 8, 2016), <https://www.omicsonline.org/open-access/the-impact-of-nra-on-the-american-policy-2332-0761-1000222.php?aid=83220&view=mobile>.

125. *Id.*; Joel Achenbach, Scott Higham, & Sari Horwitz, *How NRA’s True Believers Converted A Marksmanship Group into a Mighty Gun Lobby*, WASH. POST (Jan. 12, 2013), https://www.washingtonpost.com/politics/how-nras-true-believers-converted-a-marksmanship-group-into-a-mighty-gun-lobby/2013/01/12/51c62288-59b9-11e2-88d0-c4cf65c3ad15_story.html?utm_term=.19c7677ac763.

126. Joel Achenbach, Scott Higham, & Sari Horwitz, *How NRA’s True Believers Converted A Marksmanship Group into a Mighty Gun Lobby*, WASH. POST (Jan. 12, 2013), https://www.washingtonpost.com/politics/how-nras-true-believers-converted-a-marksmanship-group-into-a-mighty-gun-lobby/2013/01/12/51c62288-59b9-11e2-88d0-c4cf65c3ad15_story.html?utm_term=.19c7677ac763.

127. Sam Musa, *The Impact of NRA on the American Policy*, 4 J. POL. SCI. PUB. AFF. 222 (Sept. 8, 2016), <https://www.omicsonline.org/open-access/the-impact-of-nra-on-the-american-policy-2332-0761-1000222.php?aid=83220&view=mobile>.

128. Joel Achenbach, Scott Higham, & Sari Horwitz, *How NRA’s True Believers Converted A Marksmanship Group into a Mighty Gun Lobby*, WASH. POST (Jan. 12, 2013), https://www.washingtonpost.com/politics/how-nras-true-believers-converted-a-marksmanship-group-into-a-mighty-gun-lobby/2013/01/12/51c62288-59b9-11e2-88d0-c4cf65c3ad15_story.html?utm_term=.19c7677ac763.

129. Gun sales spike after nearly every mass shooting in the United States. Neil J. Young, *The NRA Wasn’t Always A Front for Gun Makers*, HUFFPOST (Feb. 24, 2018,

discussions after nearly every mass shooting in the United States, but the NRA warns its members that the Second Amendment is under attack and stokes this paranoia.¹³⁰ This ignites its members grassroots efforts, and thus, any meaningful policies that Congress would consider passing are quashed.

With the push of a button, the NRA can inundate local, state, or congressional offices with phone calls from its members.¹³¹ The NRA has used its influence to block government-funded gun violence research by lobbying Congressional Republicans to remove all federal funding to the Center for Disease Control that would have funded research into the effect of guns and the root causes of gun violence.¹³² Without funding to sustain research, scientific research into the public health effects of firearms has virtually been eliminated.¹³³ Effective change is all but impossible without unimpeachable statistics, and the most available statistics regarding gun violence is raw data collected through the FBI and from stakeholders in the gun debate, such as the NRA and the Brady Campaign to Prevent Gun Violence.¹³⁴ The NRA was also successful in blocking an assaults weapons ban that was proposed after the mass shootings at Sandy Hook Elementary, in which twenty children and six adults were shot and killed, and the Aurora Colorado movie theater that left twelve people dead and fifty-eight injured.¹³⁵

8:01 AM), https://www.huffpost.com/entry/opinion-young-nra-history_n_5a907fbee4b03b55731c2169.

130. Gun sales spike after nearly every mass shooting in the United States. Neil J. Young, *The NRA Wasn't Always A Front for Gun Makers*, HUFFPOST (Feb. 24, 2018, 8:01 AM), https://www.huffpost.com/entry/opinion-young-nra-history_n_5a907fbee4b03b55731c2169.

131. Joel Achenbach, Scott Higham, & Sari Horwitz, *How NRA's True Believers Converted A Marksmanship Group into a Mighty Gun Lobby*, WASH. POST (Jan. 12, 2013), https://www.washingtonpost.com/politics/how-nras-true-believers-converted-a-marksmanship-group-into-a-mighty-gun-lobby/2013/01/12/51c62288-59b9-11e2-88d0-c4cf65c3ad15_story.html?utm_term=.19c7677ac763.

132. The current law reads: "None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control." Walt Hickey, *How the NRA Killed Federal Funds For Gun Violence Research*, BUS. INSIDER (Jan. 16, 2013, 12:18 P.M.), <https://www.businessinsider.com/cdc-nra-kills-gun-violence-research-2013-1>.

133. *Id.*

134. *Id.*

135. Dan Friedman, Daniel Beekman, & Bill Hutchinson, *Assault Weapons Ban Dropped Due to Lack of Support as Gun Control Package with Tighter Background Checks Moves Forward for Vote*, N.Y. DAILY NEWS (Mar. 20, 2013), <https://www.nydailynews.com/news/politics/assault-weapons-ban-dropped-gun-package-article-1.1292862>.

One of the most notable successes of the NRA's lobbying efforts culminated with *District of Columbia v. Heller*.¹³⁶ While many people have always believed the Second Amendment guarantees an individual right to possess a firearm, it was not until 2008 that the Supreme Court of the United States read this into the amendment.¹³⁷ The District of Columbia prohibited the possession of handguns.¹³⁸ Mr. Heller, a D.C. special policeman, applied to register a handgun he wanted to keep in his home, but the District denied his request.¹³⁹ Heller filed a lawsuit seeking to enjoin the District of Columbia on Second Amendment grounds.¹⁴⁰ His case made it all the way to the United States Supreme Court where the Court was tasked with interpreting the Second Amendment.¹⁴¹ The NRA filed an amicus brief, and lobbied forty-six additional interest groups with stakeholders in the interpretation of the Second Amendment to file amicus briefs, supporting Heller.¹⁴² Fifty-five members of the United States Senate, the President of the United States Senate, and 250 members of the United States House of Representatives filed an amicus brief supporting Heller as well.¹⁴³ Ultimately, Justice Scalia, writing for the Court, held that the Second Amendment conferred an individual right to keep and bear arms and statutes banning handgun possession in the home violated the Second Amendment.¹⁴⁴ After a decades-long campaign, the NRA was victorious.

But how much of this influence is used to really protect “the right to bear arms” and how much is used to line the pockets of gun manufacturers? Gun manufacturers and other supporters of the gun industry gave between \$20 million and \$52.6 million to the NRA between 2005 and 2013.¹⁴⁵ Additionally, the NRA makes

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

137. *See id.*

138. *Id.* at 574.

139. *Id.* at 575.

140. *Id.* at 575-76.

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

142. Sam Musa, *The Impact of NRA on the American Policy*, 4 J. POL. SCI. PUB. AFF. 222 (Sept. 8, 2016), <https://www.omicsonline.org/open-access/the-impact-of-nra-on-the-american-policy-2332-0761-1000222.php?aid=83220&view=mobile>.

143. Brief for Amici Curiae 55 Members of United States Senate, the President of the United States Senate, and 250 Members of United States House of Representatives in Support of Respondent, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (No. 07-290), 2008 WL 383530.

144. *Heller*, 554 U.S. at 570.

145. Walt Hickey, *How the Gun Industry Funnels Millions of Dollars to the NRA*,

about ten percent of its revenue from selling advertising to the gun industry in the aforementioned magazines it publishes.¹⁴⁶ Some companies even donate portions of sales directly to the NRA or purchase NRA memberships for everyone who buys one of their guns—which amounts to millions of dollars being funneled straight to the NRA.¹⁴⁷ Regardless of its actual purpose, the NRA develops and maintains a viable market for the gun manufacturers, and this influence is linked to the success of the gun industry.

Despite being experts in their field on lobbying and grassroots messaging, the NRA does not have a grasp on the intricacies of domestic violence. A recent campaign demonstrates “how much the NRA *does not know, or care to know*, about the deadly reality of women, firearms, and violent husbands or boyfriends.”¹⁴⁸ In a video directed toward women, NRA spokeswoman, Dana Loesch, discussed empowering women who have survived domestic violence through armament.¹⁴⁹ Loesch made a diatribe on ‘real empowerment’ for women by proclaiming that it can occur only when women are armed and ready to kill their domestic abusers.¹⁵⁰ Not only does this perpetuate a message that will increase the woman’s likelihood of getting killed by her abuser, but it puts an onerous responsibility on victims akin to victim-blaming. If a woman is in an abusive relationship and for whatever reason (emotional attachment, financial security, he’s the father of her children) cannot leave it, what is going to make it easier for this woman to go out and buy a gun and shoot/kill her abuser? This idea of woman empowerment might make for a good sound bite for NRA members, but in reality, it is quite preposterous and literally dangerous. Despite its efforts to allegedly combat domestic violence, the NRA has opposed nearly every gun safety policy Congress has proposed in an effort to protect domestic violence survivors. The NRA opposes closing the boyfriend loophole,

BUS. INSIDER (Jan. 16, 2013, 1:25 PM), <https://www.businessinsider.com/gun-industry-funds-nra-2013-1>.

146. Walt Hickey, *How the Gun Industry Funnels Millions of Dollars to the NRA*, BUS. INSIDER (Jan. 16, 2013, 1:25 PM), <https://www.businessinsider.com/gun-industry-funds-nra-2013-1>.

147. *Id.*

148. Kit Gruelle, *The NRA’s cynical campaign on domestic violence*, WOMEN’S MEDIA CTR. (Aug. 1, 2017), <https://www.womensmediacenter.com/news-features/the-nras-cynical-campaign-on-domestic-violence>.

149. *Id.*

150. *Id.*

universally opposes red flag laws, and opposes efforts to create the authority to confiscate guns of prohibited possessors.¹⁵¹

Any effort to change the status quo in gun safety policies will ultimately be met with hurdles financed by the NRA. The NRA's latest target is blocking the reauthorization of the Violence Against Women Act.¹⁵² If Congress is going to enact the proposal outlined in part V of this Comment, or any other type of common-sense gun safety policies, proponents must take a page from the NRA—using grassroots efforts to fundraise and spread their messages—to get Congress's attention. Even more, proponents must understand the comprehensive inner workings of the NRA in order to overcome all of the hurdles it will erect in its efforts to defeat such policies.

V. A CALL FOR COMMON SENSE GUN SAFETY POLICIES

I hadn't talked to my parents in over a year. He had isolated me from most of my friends and Family. I sold my car to save money because 'we could just share one.' He convinced me that if I couldn't make things work with him, I'd never find anyone else who would love me. I had nowhere to go and no way to get there. #WhyIStayed¹⁵³

Relationships embedded with intimate partner violence can be complicated beyond logical understanding. Sometimes that common-sense response to “just leave” is not always as easy as it may seem.¹⁵⁴ Women killed by an intimate partner are more likely to be murdered with a firearm than all other means combined.¹⁵⁵ To save lives from intimate partner homicide, it is critical that

151. Ben Jackson, *The NRA's policies are deadly for women*, HILL (Dec. 19, 2018, 5:00 PM), <https://thehill.com/opinion/civil-rights/422112-the-nras-policies-are-deadly-for-women>.

152. Sheryl Gay Stolberg, *Why the N.R.A. Opposes New Domestic Abuse Legislation*, N.Y. TIMES (Apr. 1, 2019), <https://www.nytimes.com/2019/04/01/us/politics/nra-domestic-violence-congress.html>.

153. Twitter's #WhyIStayed stories reveal why domestic violence cannot “just leave.” Author Beverly Gooden started the viral trend on Twitter in 2014 to illuminate why “just leaving” is never as easy as it sounds for victims of domestic violence after a video was released of former Baltimore Ravens running back Ray Rice assaulting Janay Palmer and dragging her unconscious body out of an elevator. Nina Bahadur, *#WhyIStayed Stories Reveal Why Domestic Violence Survivors Can't 'Just Leave,'* HUFFPOST (Sept. 9, 2014), https://www.huffingtonpost.com/entry/whyistayed-twitter-domestic-violence_n_5790320.

154. *Id.*

155. *When Men Murder Women: An Analysis of 2016 Homicide Data*, VIOLENCE POL'Y CTR. (Sept. 2018), <http://vpc.org/studies/wmmw2018.pdf>.

federal and state lawmakers work together to keep firearms out of the hands of domestic abusers.

First, Congress must close the boyfriend loophole in the Lautenberg Amendment to the Gun Control Act of 1968 by broadly defining domestic violence to include intimate partners and stalkers. Then, Congress should reauthorize the Violence Against Women Act with an amendment to create a regulatory scheme by means of cooperative federalism that 1) incentivizes states to pass meaningful gun safety policies like red flag laws, gun relinquishment laws and automatic reporting of prohibited abusers, 2) closes the background check loopholes also known as the Charleston loophole, and 3) requires universal background checks for any and all sales or transfers of firearms. Funding should be allocated to states who comply with this scheme to include administrative and court costs, firearm buyback programs, and additional training for police officers and social services.

Cooperative federalism is a concept that puts forward the idea that the national government and state governments are partners in the exercise of governmental authority.¹⁵⁶ Each level of government takes responsibility in creating interdependent policy for a particular area of the law.¹⁵⁷ For example, the Clean Air Act (CAA) is structured around the concept of cooperative federalism.¹⁵⁸ Congress underscored that “air pollution control at its source is the primary responsibility of States and local governments.”¹⁵⁹ However, federal leadership is needed for “the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.”¹⁶⁰ A tenet of the CAA is that the States develop and enforce State Implementation Plans (SIPs), and the Environmental Protection Agency (EPA), a federal administrative agency, approves SIPs and may call for a state to revise its SIP if the EPA determines it is substantially inadequate to enforce the CAA.¹⁶¹

156. *Cooperative Federalism Law and Legal Definition*, US LEGAL, <https://definitions.uslegal.com/c/cooperative-federalism/>.

157. *Id.*

158. *See* 42 U.S.C. § 7401 (2020).

159. *Id.*

160. *Id.*

161. Kurt G. Kastorf, *Cooperative Federalism: Is There a Trend Towards Uniform National Standards under the Clean Air Act?*, ABA (May 1, 2014), https://www.americanbar.org/groups/environment_energy_resources/publications/trends/2013-14/may-june-2014/cooperative_federalism_there_trend_towards_uniform_national_standards_under_clean_air_act/.

The proposed regulatory scheme in the amendment to the Violence Against Women Act is ideal for cooperative federalism principles. The federal government is able to establish uniform minimum metrics that states would have to comply with to receive funding, while states and local governments have the expertise to decide how best to implement these measures in their respective localities. Moreover, federalism boundaries and constitutional challenges should not be an issue since Congress should use its spending power to create this regulatory scheme and states are not being coerced to opt in.

To be sure, several states have enacted one or more of the provisions within this proposal. Red flag laws enable family members or law enforcement officers to ask a judge for a “gun violence restraining order” or an “extreme risk protection order.”¹⁶² California, Washington, Oregon, Indiana, and Connecticut have enacted such statutes.¹⁶³ Lawmakers in eighteen other states, including Florida and the District of Columbia, have proposed similar measures.¹⁶⁴ In effect, research of Connecticut’s red flag law implementation between 1999 and 2013 provide that police served 762 “risk warrants” and estimated that a gun suicide was prevented for every ten to twenty seizures.¹⁶⁵ In ninety-nine percent of these cases, police removed an average of *seven* firearms from each person.¹⁶⁶ Further, three states currently require people convicted of misdemeanor domestic violence crimes to relinquish their guns.¹⁶⁷ And while ninety percent of Americans support background checks for all gun sales, nine states require *all* firearm transfers to be conducted or processed by licensed dealers.¹⁶⁸

162. Lenny Bernstein, *Five states allow guns to be seized before someone can commit violence*, WASH. POST (Feb. 16, 2018), https://www.washingtonpost.com/national/health-science/five-states-allow-guns-to-be-seized-before-someone-can-commit-violence/2018/02/16/78ee4cc8-128c-11e8-9570-29c9830535e5_story.html?utm_term=.fb9d423ae2cc.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. Lenny Bernstein, *Five states allow guns to be seized before someone can commit violence*, WASH. POST (Feb. 16, 2018), https://www.washingtonpost.com/national/health-science/five-states-allow-guns-to-be-seized-before-someone-can-commit-violence/2018/02/16/78ee4cc8-128c-11e8-9570-29c9830535e5_story.html?utm_term=.fb9d423ae2cc.

168. *Universal Background Checks*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/universal-background-checks/> (last visited Jan. 27, 2019).

For this Comment's proposal, red flag laws or "risk protection orders" would permit police or family members to petition a state court to order the temporary removal of firearms from a person who may present a danger to others or themselves. These orders would include orders for people with mental illness, dangerous substance abuse, or a history of domestic violence. These orders would also allow police to seize guns from people and restrict their access until they are no longer deemed dangerous.¹⁶⁹

Federal law does not require abusers to *surrender* guns that are already in their possession.¹⁷⁰ Accordingly, without an effective relinquishment policy, intimate partner abusers can still have access to firearms. This proposal would require permanent relinquishment for people convicted of domestic violence misdemeanors and felonies. Furthermore, it would allow temporary relinquishment of firearms pre-conviction to provide for "cooling off" periods, when abusers are more likely to try to use a firearm.

In addition to red flag laws and a relinquishment policy, this proposal would require states, as a condition of funding, to automatically report prohibited abusers and submit the appropriate records to the National Instance Criminal Background System. This automatic reporting should alleviate the challenges surrounding the Charleston loophole and enable the FBI to conduct background checks within three days. Nonetheless, the policy for default proceed, which allows a licensed gun dealer to sell a firearm to a customer *without* a completed background check after three business days if the background check is not completed, should be struck from the Brady Act. Finally, states that do not want to require all transfers to go through a licensed dealer, at minimum, should require private dealers to conduct background checks, maintain their records for a lengthy period, and report all transfers to state and local law enforcement.

169. Representative Slaud Carbajal (D-CA) and Senator Dianne Feinstein (D-CA) have previously introduced legislation that would encourage states to adopt this approach. Lenny Bernstein, *Five states allow guns to be seized before someone can commit violence*, WASH. POST (Feb. 16, 2018), https://www.washingtonpost.com/national/health-science/five-states-allow-guns-to-be-seized-before-someone-can-commit-violence/2018/02/16/78ee4cc8-128c-11e8-9570-29c9830535e5_story.html?utm_term=.fb9d423ae2cc.

170. Carolina Diez et al., *State Intimate Partner Violence-Related Firearm Laws and Homicide Rates*, ANNALS INTERNAL MED. (Oct. 17, 2017), <https://annals.org/aim/fullarticle/2654047/state-intimate-partner-violence-related-firearm-laws-intimate-partner-homicide>.

To that end, this proposal seeks to abate the thousands of gun-related deaths of women (and men) at the hands of their abusers in the United States. Undoubtedly, these common-sense gun safety policies could have a positive effect in lessening other types of gun violence, but its true purpose is to keep firearms out of the hands of abusers convicted of domestic violence misdemeanors and felonies. Its true purpose is to keep firearms out of the hands of abusers who, under current laws, should not have access to them anyway.

VI. CONCLUSION

To say that we live in a country obsessed with guns would be an understatement. There are more guns than people in the United States, yet three percent of Americans own half of them.¹⁷¹ At the same time, the culture toward guns is changing and more advocates are fighting for gun safety policies in America to keep up with that change. While we might not be able to overcome all aspects of gun violence, addressing intimate partner violence can “easily” be addressed with common sense gun safety policies such as the proposal outlined above.

Stacie J. Osborn

171. Natalie Gontcharova, *The NRA is Protecting Dangerous Men. It's Time to Close the "Boyfriend Loophole."* REFINERY29 (Apr. 5, 2019, 12:36 PM), <https://www.refinery29.com/en-us/2019/04/228977/house-votes-violence-against-women-act-reauthorization-boyfriend-loophole>.