

Dealer Regulation and Gun Trafficking

Background

The ATF found that, between 2017 and 2023, more than half of traced crime guns originated from federally licensed firearms dealers. There is evidence, however, that just 5% of gun stores are responsible for 90% of traced crime guns, meaning that a small minority of negligent or potentially criminal gun dealers are complicit in the vast majority of the damage inflicted by these crime guns. While the ATF is responsible for inspecting federally licensed dealers, their resources and reach in states are often limited. The addition of state-level efforts aimed at regulating firearms dealers and preventing gun trafficking has been found to be effective in reducing crime guns and combatting gun trafficking; such state-level efforts are the focus of this policy.

About the Policy

This policy adds substantial new gun violence prevention protections at the state level through a completely novel approach: setting up a gun dealer task force made up of state law enforcement and criminal investigation personnel who constantly monitor gun dealers for sale of guns used in crime and are authorized to investigate the dealers selling the highest volume of crime guns and potentially recommending sanctions. Rather than place burdensome regulations on all gun dealers—the majority of whom are not responsible for the problem—this policy focuses on working with the small minority of dealers from whom the majority of traced crime guns originate. Furthermore, rather than relying on ATF to enforce the law, the state takes it upon itself to ensure safe gun sales practices. Finally, the policy explicitly bans gun trafficking and straw purchasing and potentially holds both the seller and the purchaser liable in such transactions.

Protection of Gun Rights

This policy enforces best practices to prevent trafficking, theft and straw purchases for all gun dealers, while taking care to differentiate between responsible dealers, dealers who have committed a crime, and those who have committed no crime but may have failed to follow best practices, and takes a restorative and education-based approach with the latter category. Such cases also follow a “three strikes” approach, with increasing fines for the first two offenses, and a criminal negligence complaint for the third offense. It is important to note, however, that such leniency is reserved for dealers whom the state task force has determined did not *willfully and knowingly* sell to a trafficker, straw purchaser, or

other prohibited person, and *not* for the dealers who have been determined to knowingly engage in such practices.

This policy also aims to protect gun dealers, manufacturers, and distributors from lawsuits that attempt to hold them responsible for negligent actions of third-party individuals or entities over which they have no control. It does this by codifying much of the Protection of Lawful Commerce in Arms Act (PLCAA) into state law. It ensures that only lawsuits that are based on violation of state or federal laws, negligent entrustment, or negligence are able to proceed. Furthermore, in lawsuits based on a claim of negligence, it provides protection to gun dealers and manufacturers by placing the burden of proof on the plaintiff to demonstrate that negligence on the part of the defendant was directly related to the damages for which relief is being sought.

Protection of Public Health

The policy establishes a Responsible Firearm Dealer Practice Task Force made up of stakeholders from law enforcement and the firearms community, tasked with developing sales and security protocols, guidelines, and materials based on best practices aimed at deterring straw purchasers, theft and trafficking, which all dealers will be required to follow. Furthermore, there shall also be a Firearm Sales Practices Investigation Team made up of law enforcement tasked with investigating the top dealers for crime guns within the state, either working along the cooperating dealers to improve their practices or referring them to the prosecuting authorities when appropriate. These resources will provide significant support in curbing trafficking caused by bad dealer practices in states where this policy is implemented, as it will greatly supplement work done by the ATF through significantly increased oversight, education, and enforcement of laws and regulations. Finally, this policy will require by law that all gun thefts to be reported by the owner within 48 hours.

Consent Tally

This proposal received the consent of 22 of 23 panelists.