



FRATERNAL ORDER OF POLICE

NATIONAL LEGISLATIVE PROGRAM

309 MASSACHUSETTS AVENUE, N.E. • WASHINGTON, DC 20002

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GILBERT G. GALLEGOS
NATIONAL PRESIDENTJAMES O. PASCO, JR.
EXECUTIVE DIRECTORBERNARD H. TEODORSKI
NATIONAL VICE PRESIDENT
CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE

FAX COVER SHEET

DATE: 3/6FROM: James O. Pasco, Jr.
Executive DirectorTO: Dennis Burke

NUMBER: _____

Comments: 456 7028Thanks againTransmitting 2 pages, including cover sheet. Please contact Fraternal Order of Police
Legislative Office if you did not receive all sheets.



FRATERNAL ORDER OF POLICE

D.C. Department of Corrections Labor Committee

715 8th Street, SE
 Washington, DC 20003
 (202) 547-0735 FAX (202) 547-7345

March 5, 1997

Carlton Butler
Acting Chairman

Jack Rosser
Acting Vice-Chairman

Teretha Spain
Acting Executive Secretary

Carissa Pittman
Acting Treasurer

Helen Barnett
Acting Recording Secretary

James Pasco, Executive Director
 Grand Lodge, F.O.P.
 309 Massachusetts Avenue, N.W.
 Washington, D.C. 20002

Dear Mr. Pasco,

This letter is to give you our most heartfelt thanks in arranging the meeting between our union office and President Clinton's policy advisors Mr. Dennis K. Burke and Leonne A. Shimabukuro. We feel the meeting was most productive and it enlightened the White House staff concerning the District of Columbia Fraternal Order of Police Department of Corrections Labor Committees' chief concerns. The policy advisors appeared to be most concerned with all the issues we addressed. They were especially impressed by how certain we were that Director Margaret Moore is positioning herself to be "The Receiver" once the federal initiative is passed. We still feel strongly on "The Receiver" issue.

Again, thanks a million and we hope we can continue to gain on your assistance especially as we attempt to meet with Mr. Steven Harlan, Vice Chairman, and the Control Board.

Sincerely,

Carlton Butler, Interim Chairman
 F.O.P.-D.O.C.

CC: Executive Board

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

THE FRATERNAL ORDER OF POLICE

DEFENDANTS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Washington
(EXCEPT IN U.S. PLAINTIFF CASES) DC

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Ellen A. Efros
Vorys, Sater, Seymour & Pease
1828 L Street, NW, 11th Floor
Washington, DC 20036
202-467-8800

ATTORNEYS (IF KNOWN)
Eric H. Holder, Jr.

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business in This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business in Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY: 28 U.S.C. Sec. 2201 Complaint alleges a case of actual controversy with adversarial parties and seeks declaratory and injunctive relief

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL INJURY ☐ 362 Personal Injury—Med Malpractice ☐ 365 Personal Injury—Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395a) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc. ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☒ 890 Other Statutory Actions

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- Transferred from
- ☐ 5 another district (specify)
- ☐ 6 Multidistrict Litigation
- Appeal to District
- ☐ 7 Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

January 21, 1997

Ellen Efros

UNITED STATES DISTRICT COURT

Category in which case belongs:

- _____ A. Anti-Trust Cases
- _____ B. Malpractice Cases (Legal/Medical)
- X D. Temporary Restraining Orders and Preliminary Injunctions (If a TRO is requested in an Anti-Trust or Labor Relations Case, the A or C designation will govern).
- _____ E. General Civil Cases
- _____ F. Pro Se General Civil Cases
- _____ G. Habeas Corpus Cases
- _____ H. Equal Employment Opportunity Cases (If filed by a pro se litigant, the case is to be assigned from this H Category).
- _____ I. Freedom of Information Act Cases (If filed by a pro se litigant, the case is to be assigned from this I Category).

United States District Court for the District of Columbia

THE FRATERNAL ORDER OF POLICE

Plaintiff

VS

UNITED STATES OF AMERICA

Defendant

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Civil Action No. _____

CERTIFICATE RULE 109

I, the undersigned, counsel of record for Order of Police,
certify that to the best of my knowledge and belief, the following
are parent companies, subsidiaries or affiliates of The Fraternal
Order of Police which have any outstanding securities in
the hands of the public. None

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Ellen A. Efron

Signature

250746

BAR IDENTIFICATION NO.

Ellen A. Efros

Print Name _____

Vorys, Sater, Seymour & Pease
1828 L Street, NW 11th Floor

Address

Washington	DC	20036
City	State	Zip Code

202-467-8800
Phone Number

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FRATERNAL ORDER OF POLICE,
309 Massachusetts Avenue, NW
Washington, DC 20002

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. _____

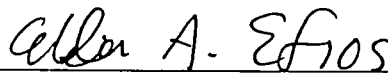
MOTION FOR APPEARANCE OF COUNSEL PRO HAC VICE

Pursuant to and in accordance with this Court's Local Rule 104, Plaintiff Fraternal Order of Police ("FOP") hereby moves and applies for permission for William J. Friedman to appear pro hac vice, and participate in this case as counsel for FOP for all purposes, including but not limited to pleadings, arguments, pretrial proceedings, and the trial of this action. In support of this motion, FOP respectfully refers the Court to the attached Memorandum.

Respectfully submitted,

FRATERNAL ORDER OF POLICE.

Dated: January 21, 1997


Ellen A. Efros D.C. Bar No. 250746
Timothy N. McGarey D.C. Bar No. 420598
VORYS, SATER, SEYMOUR AND PEASE
1828 L. Street, NW Suite 1111
Washington, DC 20036

Attorneys for Plaintiff

FRATERNAL ORDER OF POLICE,
309 Massachusetts Avenue, NW
Washington, DC 20002

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

Civil Action No. _____

THIS CAUSE is before the Court on the motion of Plaintiff Fraternal Order of Police (“FOP”) to permit Pro Hac Vice appearance of counsel. Upon consideration of FOP’s Motion, it is hereby

United States District Judge

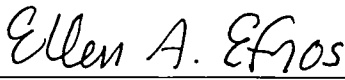
CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January, 1997, copies of the foregoing Motion for Appearance of Counsel Pro Hac Vice, Supporting Memorandum, and Proposed Order were served on the following by certified mail:

Janet Reno
U.S. Attorney General
U.S. Department of Justice
Constitution Avenue & 10th Street, NW
Washington, DC 20530

and hand delivery on the following:

Eric H. Holder, Jr.
U.S. Attorney for the District of Columbia
5806 Judiciary Center Bldg.
555 4th Street, NW
Washington, DC 20001



Ellen A. Efros

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE FRATERNAL ORDER OF POLICE,
309 Massachusetts Avenue, N.E., Washington, 20002,
A National Police Organization.

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff through counsel and pursuant to 28 U.S.C. Sec. 2201 submit this verified complaint seeking declaratory and injunctive relief. This complaint alleges a case of actual controversy with adversarial parties and is brought to enjoin the Defendant, United States of America from forcing federal, State and local law enforcement agencies to implement and enforce amendments to the Gun Control Act of 1968 (18 U.S.C. Section 921 et seq.)(hereinafter the "GCA") as adopted by Congress in 1996. See The Omnibus Consolidated Appropriation Act of 1997, Pub.Law No. 104-208, Div. A, Sec. 101(f), 58 Title VI, Sec. 658 (110 Stat. 309)(Sept. 30, 1996); see also 142 Cong. Rec. H11,743 (daily ed. Sept. 28, 1996). See Attachment No.1 (The attachments referenced herein are attached to Plaintiff's Memorandum in Support.)

JURISDICTION

1. This Court has jurisdiction of the subject matter of this action under 28 U.S.C.S Section 1331.

VENUE

2. Venue in this District is proper pursuant to 28 U.S.C.S 1391(b) in that the claim arose in the District of Columbia.
3. Defendant United States is subject to the jurisdiction of this court.

PARTIES

4. Plaintiff, Fraternal Order of Police (hereinafter “FOP”) is a non-profit corporation formed under the laws of Pennsylvania with its national office in Washington D.C., and claims a membership of nearly three hundred thousand (300,000).
5. The FOP’s membership is open to and includes Federal, State, County, Local and Campus law enforcement personnel that are regularly appointed and full-time law enforcement officers.
6. The FOP is an organization created to represent the interests of its membership including but not limited to, legal representation in contested matters. See Attachment No.9 (FOP Constitution preamble and excerpts).
7. In addition, the FOP fosters fraternalism among its members and seeks to encourage participation of the membership in the organization for the purpose of assisting the FOP in meeting and obtaining its goals. See Attachment No. 9.
8. Membership in the FOP by police officers is voluntary and entitles the member to legal representation by counsel in certain matters including actions such as those brought herein.
9. FOP membership criteria include employment with a recognized law enforcement agency whose employment standards meet certain FOP standards and whose employment responsibilities generally include the receipt, possession and authorization to use a firearm as defined in the GCA. See Attachment No.4 (Affidavit of FOP President Gilbert G. Gallegos).
10. FOP members include “state officials” elected or appointed by sovereign states. See Id.
11. FOP members include “state officials” who will incur additional responsibilities both fiscal and administrative as a result of the implementation of 18 U.S.C.A. 922(g)(9).

Id.

12. The majority of FOP members are law enforcement officials or employees authorized to carry government regulated and issued firearms for purposes of officer and public safety. Such firearms are generally received and possessed in the jurisdiction of employment solely.
13. The interests Plaintiff FOP seeks to protect in this proceeding are germane to the organization's purpose and its members' interests.
14. The affidavit of the FOP President attached hereto demonstrates that no claim asserted by the FOP herein nor the relief requested requires the participation of individual FOP members in this lawsuit because its members are all similarly situated with respect to the GCA amendments challenged herein.
15. Defendants, et al., are governmental actors with their principal place of operations in the District of Columbia and have issued implementing documents to the State and local law enforcement agencies from their headquarters. See Attachment Nos. 1,2, and 3.
16. Defendant Hon. Robert E. Rubin is the Secretary of the Treasury, a governmental actor within whose jurisdiction the Act's enforcement and implementation falls. Defendant Rubin is sued in his official capacity. See 18 U.S.C. § 921 *et seq.*
17. Defendant John Magaw is the Director of ATF, the bureau charged, inter alia, with enforcing the Gun Control Act. Defendant Magaw is sued in his official capacity.

BACKGROUND

18. This is an action for declaratory and injunctive relief.
19. Congress amended the GCA to add to the categories of persons not permitted by federal law to receive or possess firearms, and to place duties on State and Local officials to assist in identifying persons so disabled under the so-called "Brady Act" provisions.
20. The 1996 GCA amendments changed 18 U.S.C. Sec's 921(a), 922(d), 922(g) and 925(a)(1). The changes created new definitions [(Section 921(a)(33)(A) and (B)],

new possession prohibitions [Section 922(d) and (g)], new obligations on Chief Law Enforcement Officers of the States [Section 922(s)(3)(B)(i), and eliminated an exception for government entities. [Section 925(a)(1)]. Essentially, the amendments created a federal crime for receipt or possession of a firearm by those previously convicted of certain **misdemeanor** offenses having as an element the use of, or the attempted use or the threatening of the use of force if committed by the spouse, domestic partner, parent, or guardian of the victim **and** placed duties on local and State officials to implement and enforce the new enactment.

21. The new crime and firearm disability created by the 1996 amendments are completely retroactive regardless of how remote in time the misdemeanor conviction is and without regard to rehabilitation of a convicted misdemeanant under State law.
22. The GCA amendment at Sec. 925 removes a more general exemption appearing in the GCA that, had it remained unchanged, would have precluded application of the new disability to military and police officials. See 18 U.S.C. Sec. 925.
23. Many FOP members are "chief law enforcement officer[s]" as defined in 18 U.S.C. §922 (s)(8) and are local or state officials. See 59 Fed. Reg. 37,532, 37,533-34 (July 22, 1994); U.S. General Accounting Office, *Gun Control: Implementation of the Brady Handgun Violence Prevention Act* (GAO/GGD-96-22) (Jan. 1996) (hereinafter GAO Report) at 14 n.8 (state police departments serve as CLEOs in some States).

Implementation and Enforcement Actions Taken by Defendants

24. After enactment of the amendments challenged herein, the ATF issued an "open letter" to all State and local law enforcement agencies commanding those entities to take certain enforcement and implementation measures. See Attachments 1, 2 and 3. ATF stated that the amendments required State and local law enforcement agencies to implement the provision. Defendants, et al., have moved forward aggressively to compel compliance by State. Local and federal law enforcement officials. Defendants' interpretation and position are set forth in Attachment Nos. 1,2 and 3.

- (A) A December 6, 1996 Memorandum from the Department of Justice to "All Interested Law Enforcement Groups" from the Director of the Office of Intergovernmental Affairs regarding, "Identifying Law Enforcement Agents Who Have Misdemeanor convictions for Domestic Violence." Attachment No. 1.
 - (B) An undated "Open Letter to All State and Local Law Enforcement Officials" from John MaGaw, Director of the ATF, wherein ATF interpreted the GCA amendments to create a "firearm disability" that "does apply to all law enforcement officers" and applies to "firearms issued by government agencies" as well "personal firearms". ATF further determined that misdemeanor convictions for simple assault and battery may disable officers and any "employee" with a qualifying disability "must immediately dispose of all firearms and ammunition in their possession" or be exposed to "criminal penalties" and "seizure and forfeiture". Finally, ATF noted that the GCA amendments place new responsibilities on CLEOs. Attachment No. 2.
 - (C) An undated "Open Letter from the Director" from ATF director Magaw stating in briefer form the position taken in the "Open Letter" described in (B) above. Attachment No. 3.
 - (D) An undated "Open Letter to All Federal Firearms Licensees" from ATF director Magaw that promised implementing regulations and revised forms would be promptly provided to all licensees. Attachment No. 10.
25. Since on or about December 6, 1996, the issuance of the first Government memorandum, FOP members have been threatened with application of the GCA amendments resulting in the following: (a) in loss of their constitutional rights to possess firearms, (b) loss of ability to perform employment duties as peace officers, (c) loss of ability to completely fulfill their oaths of office to protect and serve, (d) loss of responsibility and reassignment to duties that do not require firearms and, in

some cases, (e) termination from employment.

26. Under the Gun Control Act of 1968 (GCA), ATF licenses and regulates firearms manufacturers, importers, and dealers. The regulation of firearms under the permanent provisions of the GCA is generally the exclusive responsibility of the federal government.¹
27. Defendants have interpreted the amendments to place upon State and local law enforcement officials certain duties that must be executed and are reviewed against a "reasonable effort" standard appearing in those portions of the GCA that are known as the "Brady Act".
28. The responsible State or local official must determine whether an individual is ineligible to receive or possess a firearm under the amendments.
29. The responsible State or local official must make a "reasonable effort" to determine an employee/officer's compliance (as well as any other Brady Act applicant for a handgun) with the amendments.
30. If it is determined that an employee has a disqualifying misdemeanor conviction, prior to taking any negative action, the responsible State or local official must also determine if any exceptions to the disqualification obtains. The exceptions are set forth in the amendments.
31. The burden and cost of determining the application of exceptions is increased because the federal information repository is the National Crime Information Center (hereinafter "NCIC") and NCIC databases do not contain the information needed to directly address the exceptions approved in the amendments.
32. There is no simple, inexpensive or convenient manner by which a State or local official may determine that the exceptions to the penalties contained in the Act

¹ . Interim background check provisions require state or local law enforcement officials to regulate handgun transfers between federal licensees and private purchasers. See §§922(s)(1)(A)(I)(1), 922(s)(3)(A) & (B); §922(s)(1)(A)(I) (III) & (IV).; § 922 (s) (1) (A) (ii). These interim provision are currently before the United States Supreme Court in Printz v. United States No. 95-1478 and Mack v. United States, No. 95-1503 (orally argued on Dec. 3, 1996).

obtain in a particular case to make eligible an officer or citizen otherwise disabled by the amendments.

33. Since on or about December 6, 1996, FOP members that are CLEOs as defined in the Brady Act, have been threatened with usurpation of their State and local statutory and ordinal obligations and administrative discretion, and have been burdened with duties and obligations imposed by the Act's amendments. This has resulted in the loss or significant impairment of their ability to perform employment duties as CLEOs, loss or significant impairment of their ability to perform as peace officers, loss or significant impairment of their ability to completely fulfill their oaths of office, compelled transfer of subordinate officers to duties that do not require firearms and in some cases, termination of subordinate officers if the officer meets the Act's disabling criteria.

COUNT I

The 1996 Amendments to the Gun Control Act Violate the Tenth Amendment

34. Plaintiff incorporates herein all preceding paragraphs as though set forth in full.
35. The GCA amendments at issue herein purport to create a firearm disability and criminal penalty for mere possession of a firearm by a convicted misdemeanor where such misdemeanor is found to be one of "domestic violence" as defined by Congress.
36. Defendants aggressively seek to implement the aforementioned amendments to the Gun Control Act with respect to state and local law enforcement agencies.
37. Defendants have noticed all state and local law enforcement agencies that such agencies now have a "duty" to identify law enforcement agents with disabling convictions under the amendments. See Attachments 1,2,3 and 10.
38. Defendants command a certification list be provided by all State, County, Local and Campus law enforcement agencies with non-disabled employees names appearing thereon. Id.
39. Defendant ATF commands a "reasonable effort" be forthcoming from such

enforcement agencies through their CLEOs to determine applicability of the amendments to all subordinate employees. Id.

40. Defendants are commandeering and coercing the CLEOs and other state and local officials into implementing a federal statutory and regulatory scheme not adopted by his or her State or local legislative body, and have further burdened non-federal officials with the non-discretionary duty to gather, review, assess and disclose, information and such persons are given no choice to reject that role.
41. Defendants mandate that CLEOs implement federal criminal law policy choices without authorization from appropriate State and local entities. Such action without authorizing legislation amounts to forced legislation and an usurpation of core State and local legislative and administrative functions.
42. The usurpation of integral and core State and local functions by defendants deprives State citizens of the liberty interest in the proper allocation of political responsibility under our federal system.
43. The creation of a new criminal penalty as well as the creation of unfunded mandates to undertake enforcement against currently employed officers otherwise in good standing under existing State and local law, without any authorizing State legislation or a choice afforded to the States whether to adopt such law, constitutes impermissible amendment to existing State and local criminal codes as well as an impermissible fiscal and administrative burden requiring new federally prescribed, non-discretionary tasks for officials whose offices and duties are the creation of State law.
44. Defendant ATF's mandates that State and local officials expend funds, manpower, administrative resources and time without authorizing State or local legislation amount to usurpation of the several States' resources as well as usurpation of the legislative function regarding the hiring criteria and qualifications of law enforcement officers.
45. The enactment of the GCA amendments, and their interpretation by defendants

challenged herein violate Plaintiffs' fundamental rights secured by the 10th Amendment to the United States Constitution and has caused irreparable harm to Plaintiff's members and if not immediately abated through injunctive relief will continue to cause irreparable harm.

COUNT II

The GCA Amendments are an Impermissible Exercise of the Congressional Power to Regulate Commerce under U.S. Const. Art. I, Sec. 8, Cl.3.

46. Plaintiff incorporates herein all preceding paragraphs as though set forth in full.
47. Congress made inadequate findings to reasonably conclude there exists a substantial impact on interstate commerce by the singular, intrastate act of possession of a government-issued or private firearm by a previously convicted misdemeanorant.
48. Congress made inadequate findings to reasonably conclude there exists a substantial impact on interstate commerce by the accretion throughout the country of singular, intrastate acts of possession of government-issued or private firearms by previously convicted misdemeanorants.
49. The movement at one time of a firearm in interstate commerce does not automatically result in a substantial impact on interstate commerce such that federal regulation of government-issued and private firearms will overall be harmed unless the intrastate activity of possession of such firearms by convicted misdemeanorants is regulated and foreclosed.
50. Absent a substantial impact on interstate commerce, the enactment purporting to create a new crime in the several states exceeds Congressional authority under the commerce clause and is therefore constitutionally infirm.
51. Absent a substantial impact on interstate commerce , no justification exists for distorting and impinging on the traditional division of duties in our federal system wherein the States possess the general police power to define substantive criminal law and Congress does not.

52. Absent a substantial impact on interstate commerce , no justification exists for distorting and impinging on the traditional division of duties in our federal system wherein the States possess the general police power to define the substantive qualifications, including training criteria, of those persons charged with implementing and enforcing the criminal law in the States.
53. Absent a substantial impact on interstate commerce , no justification exists for distorting and impinging on the traditional division of duties in our federal system wherein the States possess the general police power to define the substantive duties, functional capacities, scope of office and reach of discretion of elected and hired law enforcement officers.
54. The application to and enforcement obligations placed upon Plaintiffs' members has caused irremediable harm to Plaintiff's members and if not immediately abated through injunctive relief will continue to cause irreparable harm.

COUNT III
The GCA Amendments Create Impermissibly Disparate Burdens on
Different Classes of Persons and Deprives those so Burdened of Equal Protection and Due
Process under the Fourteenth Amendment.

55. Plaintiff incorporates herein all preceding paragraphs as though set forth in full.
56. The GCA amendments create a criminal penalty for "possession" of a firearm by a convicted misdemeanor without regard to whether such possessed firearm is issued by a governmental entity, is mandated as a condition of employment or contract or is otherwise required by state law or other oath of office taken by a person under State or local law .
57. The GCA amendments create a criminal penalty for "possession" of a firearm by a convicted misdemeanor without regard to the remoteness in time of the conviction, and without regard to State law presumptions regarding rehabilitation of such convicted persons and subsequent binding oaths of office or employment taken by such person.
59. The GCA amendments and defendants' interpretation of such amendments

violates rights of Plaintiffs' members as secured by the 14th Amendment to the United States Constitution in that those whose employment and fulfillment of well settled State and federal law duties compel possession of a government-issued firearm suffer an unequal impact compared with citizens that whose obligations and duties do not require that they possess firearms and there is no rational basis for such disparity.

60. The application to, and enforcement obligations placed upon Plaintiffs' members, has caused irremediable harm to Plaintiff's members and if not immediately abated through injunctive relief will continue to cause irreparable harm.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Plaintiff prays that:

- (1) this Court enter an Order declaring the amendments to the GCA invalid ab initio;
- (2) this Court enter an Order commanding withdrawal of defendants' communications directing certain actions be undertaken pursuant to the GCA amendments by State and local law enforcement officials;
- (3) this Court enter an Order enjoining Defendants from issuing any Order, command or other attempt to enforce these invalid statutory provisions as against Federal, State, County, local or campus law enforcement agencies and personnel.

Plaintiff also respectfully requests the court order such further relief as it deems necessary, proper and appropriate under the circumstances.

Respectfully submitted,
FRATERNAL ORDER OF POLICE,

1/21/97
Date

Ellen A. Efros
Ellen Efros, DC Bar No. 250746
Tim McGarey, D.C. Bar No. 420598
VORYS, SATER, SEYMOUR and PEASE
1828 L. Street N.W., Suite 1111
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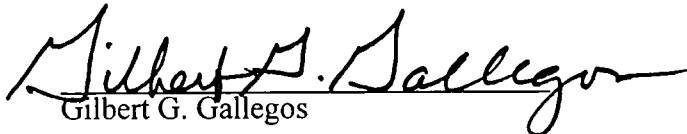
Of counsel:


William J. Friedman
P.O. Drawer 2147
Santa Fe, New Mexico 87504
N.M. Bar No6239
(505) 989-9800

Date: 1/21/97

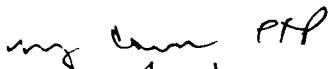
PARTY VERIFICATION

The undersigned, Gilbert G. Gallegos, President of the Fraternal Order of Police, hereby solemnly declares and affirms under the penalties of perjury that the factual representation set forth in the above Complaint for Declaratory and Injunctive Relief are true and accurate to the best of his knowledge except where such facts are set forth upon information and belief and as to those facts he believes them to be true.


Gilbert G. Gallegos

City of Washington }
District of Columbia } SS:

21st Sworn to me before me and subscribed in my presence by Gilbert G. Gallegos this
day of January 1997.


8/31/97


Notary Public

Plaintiff, through counsel respectfully moves this Court, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and Local Rule 205 of this Court for a preliminary injunction (i) directing Defendant to cease and desist from taking any steps to implement or enforce the amendments to the Gun Control Act as identified and challenged in the Complaint for Declaratory and Injunctive Relief filed simultaneously herewith. In support of this Motion, Plaintiffs submit the attached affidavits of the Fraternal Order of Police President Gilbert G. Gallegos and Fraternal Order of Police Executive Director James E. Pasco, Jr. and other evidentiary attachments as well as the points and authorities cited in the attached Memorandum of Points and Authorities in Support of this Motion for Preliminary Injunction.

Respectfully submitted,
FRATERNAL ORDER OF POLICE,

Date: 1/21/97

Ellen A. Efros

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Date: 1/21/97

CERTIFICATE OF SERVICE

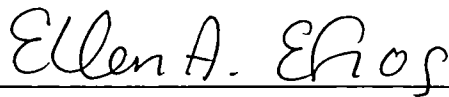
The undersigned has caused the attached Motion for Preliminary Injunction be served on the following persons and in the manner described this 22nd day of January 1997:

By Hand Delivery:

Mr. Eric H. Holder, Jr.
U.S. Attorney for the District of the District of Columbia
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By Certified Mail:

JANET RENO
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United States Department of Justice
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Ellen Efros, DC Bar No. 250746

Tim McGarey, D.C. Bar No. 420598

**THE FRATERNAL ORDER OF POLICE,
309 Massachusetts Avenue, N.E., Washington, 20002,
A National Police Organization.**

VS.

Defendant.

IT IS FURTHER ORDERED that Defendant is preliminarily enjoined from issuing any further directives or Open Letters or other form of information dissemination that seeks to cause the amendments to be implemented or enforced; and

IT IS FURTHER ORDERED that this Preliminary Injunction will continue in effect until this Court has made a final determination of the merits of Plaintiff's Complaint for Declaratory and Injunctive Relief.

THIS ORDER is granted without condition that a bond be filed by Plaintiff in view of the Court's determination that no economic or other injury will result to any Defendant or the public generally in consequence of the issuance of this Order.

IT IS SO ORDERED

U.S. District Judge for the District of Columbia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE FRATERNAL ORDER OF POLICE,
309 Massachusetts Avenue, N.E., Washington, 20002,
A National Police Organization.

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

Introduction

Plaintiff, through counsel and pursuant to 28 U.S.C. § 2201(a) (1988 ed., Supp. V)(Declaratory Judgment Act) filed a complaint seeking declaratory and injunctive relief. A separate application for injunctive relief has been filed under Local Rule 205. This memorandum discusses the propriety of granting the requested injunctive relief. See Doran v. Salem Inn, 422 U.S. 922, 931 (1988) (recognizing that "[o]rdinarily . . . , the practical effect of [injunctive and declaratory] relief will be virtually identical," Samuels, 401 U.S. at 73); see also 28 U.S.C. § 1331.

Brief Statement of Facts and Procedural History

18 U.S.C.A. Section 922 (Gun Control Act) was amended in September 1996. See Pub.L. No. 104-208; H.R.Rep. No. 104-863; 104 Cong. 2d.Sess. At 382-83 (1996) *reprinted at* 142 Cong.Rec. H11743 (daily ed. September 28, 1996). The amendments add to the categories of persons for whom it is a violation of federal law to receive or possess a firearm. The 1996 GCA amendments changed 18 U.S.C. Sec's 921(a), 922(d), 922(g) and 925(a)(1). The changes create new

definitions [(Section 921(a)(33)(A) and (B)], new possession prohibitions [Section 922(d) and (g)], new obligations on Chief Law Enforcement Officers of the States [Section 922(s)(3)(B)(I), and eliminated an exception for government entities. [Section 925(a)(1)]. Essentially, the amendments create a federal crime for receipt or possession of a firearm by those previously convicted of certain **misdemeanor** offenses having as an element the use of, or the attempted use or the threatening of the use of force if committed by the spouse, domestic partner, parent, or guardian of the victim **and** placed duties on state and local officials. The new crime and firearm disability appear to be completely retroactive regardless of how remote in time the misdemeanor conviction is and without regard to rehabilitation of a convicted misdemeanant under State law. The GCA amendment at Sec. 925 removes a more general exemption appearing in the GCA that, had it remained unchanged, would have precluded application of the new disability to military and police officials. In short, Fraternal Order of Police (hereinafter "FOP") members with an obligation arising from State or local enactment and contractual obligations to carry a government issued firearm may be disabled from certain duties or completely removed from service due to this enactment

The federal government, through the Bureau of Alcohol, Tobacco and Firearms, (hereinafter "ATF") has taken an immediate enforcement posture with respect to "all local and state law enforcement agencies." This posture includes mandating that the State chief law enforcement officer (hereinafter "CLEO") undertake certain measures to ensure compliance with the federal enactment.¹

ATF has issued several "open letter[s]" commanding to CLEOs to undertake implementation

¹. The GCA defines a "chief law enforcement officer" as "the chief of police, the sheriff, or an equivalent officer or the designee of any such individual." 18 U.S.C. § 922 (s) (8). A CLEO may be either a local or a state official. *See* 59 Fed. Reg. 37,532, 37,533-34 (July 22, 1994) (list of CLEOs includes both state and local officials); U.S. General Accounting Office, *Gun Control: Implementation of the Brady Handgun Violence Prevention Act* (GAO/GGD-96-22) (Jan. 1996) (hereinafter GAO Report) at 14 n.8 (state police departments serve as CLEOs in some States). The CLEO "**shall** make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General." 18 U.S.C. § 922 (s) (2).

and enforcement of the amendments. See Attachment Nos. 1, 2 3 and 10. ²

The affidavits of the FOP President Gilbert G. Gallegos (Attachment 4) and FOP Executive Director James O. Pasco, Jr. (Attachment 5) together with Attachment Nos. 6 (media reports of actions against FOP members); No. 7 (internal memorandum regarding enforcement in Cincinnati, Ohio) demonstrate that there is aggressive placement of duties upon, and enforcement against, FOP members by the defendants. Due to the nature of law enforcement employment, and the federal/state balance struck in our system of government, the enactment and enforcement as set forth by defendants deprives Plaintiffs of fundamental rights secured by the United States Constitution.

Argument

Plaintiff seeks an injunction primarily on the strength of New York v. United States, 505 U.S. 144 (1992) and United States v. Lopez, No. 93-1260 (1995) and request this Court declare unconstitutional the 1996 amendments to the GCA. Injunctive and declaratory relief is particularly appropriate in the instant case. See Payne v. Tennessee, 501 U.S. 808, 828 (1991)(correction [of constitutional defects] through legislative action is practically impossible.'" (quoting Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 407 (1932) (Brandeis, J., dissenting)).

The Injunction Application

A. Minimum Requirements

The traditional standard for granting a preliminary injunction requires the plaintiff to show that, in the absence of its issuance, he will suffer irreparable injury, and also that he is likely to prevail on the merits.

Doran v. Salem Inn, Inc., 422 U.S. 922, (1975); accord Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982):

An injunction should issue only where the intervention of a court of

² The Attorney General has designated the National Crime Information Center (NCIC) as the national recordkeeping system that CLEOs must consult under the GCA. See 59 Fed. Reg. 9498 (Feb. 28, 1994). In addition to these federal computer records, the Attorney General had previously noted that CLEOs could make a much more extensive search of "local, county, state, and national records-whether they are in file folders or computerized." Frank v. United States, 860 F. Supp. 1030, 1038 (D. Vt. 1994), *aff'd in part and rev'd in part*, 78 F.3d 815 (2d Cir. 1996), *petition for cert. filed*, 64 U.S.L.W. 3856 (U.S. June 13, 1996) (No. 95-2006) (quoting letter from Attorney General Reno to Rep. Charles Schumer, Nov. 9. 1993).

equity "is essential in order effectually to protect property rights against injuries otherwise irremediable." Cavanaugh v. Looney, 248 U.S. 453, 456 (1919). The Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies. Rondeau v. Mosinee Paper Corp., 422 U.S. 49, 61 (1975); Sampson v. Murray, 415 U.S. 61, 88 (1974); Beacon Theaters, Inc. v. Westover, 359 U.S. 500, 506-507 (1959).

Weinberger v. Romero-Barcelo, 456 U.S. at 312; see also Randolph-Sheppard Vendors of America v. Weinberger, 795 F.2d 90 (D.C. Cir. 1986); City of Las Vegas v. Lujan, 891 F.2d 927, 931 (D.C.Cir. 1987)(discussing standard). Plaintiffs must demonstrate:

- (1) a substantial likelihood of success on the merits;
- (2) whether plaintiff will suffer irreparable harm if interim relief is denied;
- (3) the harm to defendants if interim relief is granted; and
- (4) whether the public interest will be served by the grant of such relief.

Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n. v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958); Housing Study Group v. Kemp, 732 F. Supp. 180, 184-85 (D.D.C. 1990). Each factor is taken up separately below.

B. Success on the Merits

Each claim in the Complaint is discussed briefly herein. First, Plaintiffs contend they have established a prima facie entitlement to a finding of a likelihood of success on the merits under the authority of New York v. United States, 505 U.S. 144 (1992).

1. Application of New York v. United States to the Facts of This Case

In the GCA amendments challenged herein Congress essentially usurped the several states legislative function **and** imposed a duty on States to serve as "implements of regulation" in direct contravention of the holding and policy contours of New York v. United States, 505 U.S. at 161. In contrast to the Brady Act cases currently before the Supreme Court, the 1996 GCA amendments violate both of the substantive constitutional proscriptions identified by the New York court.³ Contrary to the holding of New York when it enacted the 1996 amendments, Congress made all the

³. These interim provision are currently before the United States Supreme Court in Printz v. United States No. 95-1478 and Mack v. United States, No. 95-1503 (orally argued on Dec. 3, 1996).

policy decisions for the States including determining the substantive criminal law by defining the offense, naming the punishment and the collateral firearm disability, defined the exceptions and commanded State and local officials to implement, enforce and pay for its choices. See See Pub.L. No. 104-208; H.R.Rep. No. 104-863; 104 Cong. 2d.Sess. At 382-83 (1996) *reprinted at* 142 Cong.Rec. H11743 (daily ed. September 28, 1996) (amendments). Whether viewed as an impermissible trenching on the States' rights under the 10th Amendment or as an impermissible exercise under the Commerce Clause, the enactments are invalid. Id.; see also United States v. Lopez, *supra*.

In a far more egregious deviation from applicable constitutional jurisprudence than was present in New York, the offending amendments command the States to abrogate well settled state law that misdemeanor convictions do not generally lead to deprivations of fundamental rights regarding firearm possession. See Halbrook, S., Firearm Deskbook, (5/96 release) at Appendix A (cataloging State laws)(43 States have State constitutional right to bear arms). It appears that fewer than 5 states permit any kind of firearm disability for non-felonies and those that do place temporal limits on the deprivation as well as provide for other avenues of rehabilitation. Id. Alabama, Idaho and Kentucky appear to have no **felony** firearm disability as a matter of State law. Id.

Moreover, from undersigned counsel's computer search it appears that many but not all of the several states have already defined "domestic abuse" or "domestic violence" through legislative enactment. Although similar, there are many potentially significant substantive differences between the various state laws. Congress has thus supplanted the State legislatures and redefined the substantive criminal law for those states already active in this area and has compelled enactment of the federal definition of domestic violence in those states that had previously declined to enact laws relating to domestic abuse or violence.

Finally, all 50 of the several states have some kind of statutory criteria and qualifications for the hiring and training of law enforcement officers that must be substantively amended under the 1996 GCA amendments. The invasion into the legislative arena of the states in two areas typically reserved to the states in our federal system demonstrate the extent to which Congress has

overstepped its role and usurped State legislative function.⁴

In New York v. United States, the Court measured Congress' power to use the States as "implements of regulation" by the political accountability of both state and federal officials. 505 U.S. at 167-69, 182-83. Two means of providing for state implementation of federal regulations are valid: conditional grants and "the choice of regulating [private] activity according to federal standards or having state law preempted by federal regulation." 505 U.S. at 167. Under each of "these two methods * * * of encouraging a State to conform to federal policy choices, the residents of the State retain the ultimate decision as to whether or not the State will comply." *Id.* at 168. The State "may elect to decline a federal grant," or it "may choose to have the Federal Government rather than the State bear the expense of a federally mandate regulatory program." *Id.* When "Congress encourages state regulation rather than compelling it, * * * state officials remain accountable to the people." 505 U.S. at 185. Using the States as "implements of regulation" is not valid. Congress cannot "cross[] the line distinguishing encouragement from coercion," 505 U.S. at 175, and "compel the States to enact or administer a federal regulatory program." 505 U.S. at 188. "[W]here the Federal Government compels States to regulate, the accountability of both state and federal officials is diminished." 505 U.S. at 68-69, 182-83.

In New York, the Court held that Congress cannot require a State either to take title to low level radioactive waste generated by private parties within its borders, or to regulate the disposal of such waste "according to the instructions of Congress." *Id.* at 175. Both of these alternatives are unconstitutional, and "[a] choice between two unconstitutionally coercive regulatory techniques is no choice at all." 505 U.S. at 176. With regard to the first alternative, Congress simply has no power "to transfer radioactive waste from generators to state governments." 505 U.S. at 175. Moreover, in language that speaks directly to the instant case, this Court found that "the second alternative held out to state governments-regulating pursuant to Congress' direction would, standing alone, present a simple command to implement legislation enacted by Congress [and] * * * the

⁴. In addition to Brady Act burdens on State and local entities, the 1996 amendments add another element to the background check as well as severely impinges on a State's right to determine the qualifications and roles of its law enforcement officers.

Constitution does not empower Congress to subject state governments to this type of instruction." 505 U.S. at 175-76.

In the instant case, in addition to disrupting the delicate federal state balance, Congress, did not provide federal personnel or federal funds to enforce these provisions. As with the Brady Act handgun transfer laws currently before the United States Supreme court, Congress imposed all the administrative and financial costs of enforcement on state and local officials. See fn 2 herein.

If the government takes the position in this case that it has taken in the Brady Act cases, a state or local "chief law enforcement officer" (CLEO) "shall" enforce the new domestic abuse amendments both generally against the public and internally against all employees of the law enforcement agencies. See 18 U.S.C. Section 922(s)(3)(B)(I). Brady duties are enforceable by an injunction. See GAO Report at 7, *supra*. CLEOs must allocate their limited administrative and financial resources to enforce federal law even though their constituents may prefer their government to "devote its attention and resources to problems other than those deemed important by Congress." New York v. United States, 505 U.S. at 168.

By leaving no choice to the States but to accept a new crime that either the State has not chosen to enact through its legislature or to accept a Congressional redefining of an existing state law, Congress has severely diminished "the accountability of both state and federal officials." 505 U.S. at 168-69, 182-83. The 1996 amendments impermissibly blur the political accountability of both Congress and state officials because responsibility for implementing and enforcing the substantive measure is divorced from the duty to provide the money and personnel to enforce these policies **and** Congress has commanded the States' to change their statutes with regard to the hiring, qualifications etc. of its law enforcement officers. Congress did not take into account the costs of enforcement or the cost of changing substantive hiring criteria. State and local governments are required to provide the personnel and funds necessary to enforce the amendments at the expense of implementing state policies and fulfilling the demands of their citizens. The 1996 GCA amendments blur political accountability in a way that threatens democratic self-governance because CLEOs will be held accountable by their constituents for decreased enforcement of state law or increased enforcement of federal law even though they did not have any choice about allocating resources to

enforce the federal mandate or any choice in the contours of the substance of the mandate.⁵

While Congress escapes political responsibility for the costs of the 1996 amendments and the alteration of substantive state law, state and local officials are held accountable for decisions made by the federal Government. State and local legislatures, as well as CLEOS, are thus compelled to allocate their limited administrative and financial resources to implement federal policies even though their constituents may "prefer their government to devote its attention and resources to problems other than those deemed important by Congress." New York v. United States, 505 U.S. at 168. CLEOs must allocate administrative and financial resources to perform the regulatory duties imposed by the Brady Act. If there is no increase in their budgets, these state and local officials will have to decrease enforcement of state and local laws. In these circumstances, state or local legislative bodies will then be forced either (1) to increase the budgets of CLEOs by raising taxes or reallocating resources from other areas of the budget or (2) to acquiesce in the reduction of state and local law enforcement by CLEOs. See Deborah L. Merritt, *Three Faces of Federalism: Finding A Formula For The Future*, 47 Vand. L. Rev. 1563, 1580 n. 65 (1994) ("Although the [Brady] Act specifically exempts local officers from civil liability for erroneous determinations, it does not shield them from popular criticism or electoral retaliation for those decisions.") (citation omitted). If the 1996 GCA amendments offered the States any choices "state governments [would] remain responsive to the local electorate's preferences; state officials [would] remain accountable to the people." 505 U.S. at 168.

Whatever the outer limits of that sovereignty may be, one thing is clear: The Federal Government may not compel the States to enact or administer a federal regulatory program.

505 U.S. at . Accordingly, New York stands for the proposition that interference with state

⁵. Instead of imposing duties on the States, the Framers anticipated voluntary state cooperation in the enforcement of federal law. See United States v. Jones, 109 U.S. 513, 519-20 (1883). For example, from 1789 forward Congress has authorized state officials to arrest federal offenders. With the special exception of Congress' power to enforce constitutional duties of state officers, the United States Supreme Court has consistently held that Congress cannot "compel the States to enact or administer a federal regulatory program." New York v. United States, 505 U.S. at 188. Pressing social problems do not justify departures from fundamental constitutional principles. Congress could reasonably have relied on voluntary enforcement or induced state and local officials to cooperate in enforcement of the amendments through means that respect constitutional principles of political accountability.

legislatures is impermissible and forcing the States to pay for enactments that have usurped their core legislative function is doubly so. But see Koog v. United States, 79 F.3d at 460-61 (discussing problems of political accountability raised by the Brady Act). The 1996 GCA amendments interfere with State functions and threatens the kind of future that stalls state government in its tracks by imposing all-consuming federal duties on the State's employees. 505 U.S. at 178 ("Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents." The 1996 GCA amendments are invalid enactments under New York v. United States.

2. *The 1996 GCA Amendments are Unconstitutional under United States v. Lopez*

In United States v. Lopez, 115 S.Ct. 1624 (1995) the Supreme Court held the "Gun Free School Zone Act" 18 U.S.C. 922(q)(1)(A)(Supp. 1993) exceeded Congress' power to regulate interstate commerce under the Commerce Clause. 115 S.Ct. at 1626. The court "identified three broad categories of activity that Congress may regulate under its Commerce power." 115 S.Ct. at 1629.

First Congress may regulate the "use of the channels of interstate commerce". The court cited inter alia Heart of Atlanta Motel Inc., v. United States, 379 U.S. 241 (1964) for this proposition only after noting that the court must nonetheless find "a rational basis existed for concluding that regulated activity *sufficiently affected interstate commerce*. Id. (emphasis added by Plaintiff). Second, Congress may regulate "the instrumentalities of interstate commerce, or persons or things in interstate commerce." Id. The Court cited cases generally dealing with a "class of activities" like loan-sharking in Perez v. United States, 402 U.S. 146 (1971) because Congress may consider the "total incidence" of the regulated economic activity on interstate commerce. 402 U.S. at 154. Third, Congress may regulate those activities that are not themselves commercial or commerce but bear a "substantial relation to interstate commerce." 115 S.Ct. at 1630.

As can readily be seen, the first two categories have nothing to do with the 1996 GCA amendments challenged in the instant case. But see U.S. v. Bates, 77 F.3d. 1101 (8th Cir. 1996)(declining to apply Lopez to a felon in possession case). As the Chief Justice noted in Lopez so it is in the instant case:

...Section 922(q) is not a regulation of the use of channels of interstate commerce, *nor is it an attempt to prohibit the interstate transportation of a commodity through the channels of interstate commerce.* (Emphasis added by Plaintiffs)

115 S.Ct. at 1630. Accordingly, the court turned to the final category:

Within this final category, admittedly, our case law has not been clear whether an activity must "affect" or "substantially affect" interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause. Compare Preseault v. ICC, 494 U.S. 1, 17 (1990), with Wirtz, *supra.*, at 196, n. 27 (the Court has never declared that "Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"). *We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity "substantially affects" interstate commerce.* (Emphasis added by Plaintiff)

Id.

With this simple statement the Supreme Court established that "interstate commerce" would no longer be invoked talismanically to justify extensions of Congressional authority into realms traditionally left to the States.

"[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so." Hodel, *supra* at 311 (Rehnquist, J., concurring in judgment).

115 S.Ct. at 1658; *but see* U.S. v. Imngren, 98 F.3d 811 (4th Cir. 1996)(distinguishing Lopez and upholding 18 U.S.C.A. 922(g); Congress' use of "shipped or transported" sufficient to create federal jurisdiction).⁶

Finally the Lopez court went further and distinguished statutes that "generally" relate to commerce from criminal statutes for purposes of applying the "substantial impact" test. The doctrine that permits intrastate activity to be aggregated to support a finding of "substantial impact" as in

⁶ The Fourth Circuit in Imngren appears to have misperceived the Supreme Court's analysis in Lopez. Lopez stands for the principle that while Congress may declare a particular activity affects interstate commerce, unless the court finds a "substantial" interstate commerce impact, the impact is legally insignificant and Congress cannot thereunder invoke the commerce clause. Lopez further concludes that the addition of an interstate commerce jurisdictional predicate to the statutory language defining the offense obligates the factfinder to make a determination of whether the regulated conduct in that particular case has a "substantial" impact on interstate commerce. See e.g. Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., 452 U.S. 264, 276-280 (1981); Perez v. United States, 402 U.S. 146, 155-156 (1971); Katzenbach v. McClung, 379 U.S. 294, 299-301 (1964); Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 252-253 (1964).

Wickard v. Filburn, 317 U.S. 111, 121 (1942) (describing development of Commerce Clause jurisprudence), applies most forcefully to situations where the conduct regulated by statute is inherently commercial.

[t]he Court has said only that where a general regulatory statute bears *a substantial relation to commerce*, the *de minimis* character of individual instances arising under that statute is of no consequence.

115 S.Ct. at (emphasis added by Plaintiffs).

These examples are by no means exhaustive, but the pattern is clear. Where *economic activity substantially affects interstate commerce*, legislation *regulating that activity* will be sustained. (emphasis added by Plaintiffs)

115 S.Ct. At Lopez at 1663. After the Lopez clarifications, the intrastate accretion cases are generally limited to “economic” activities and not “criminal” activities. Accordingly, it is the economic impact of possession of firearms and not the consequences or horror of domestic violence that must aggregate to a “substantial impact”. No such finding exists or can be made in the instant case. It is thus inescapably evident that the court now requires, whether there is “interstate commerce” language in the statute or not, that a finding upon a rational basis be made that a “substantial impact” on interstate commerce exists because of the *economic conduct* regulated by the enactment.

It can be expected that the Government will seize, as several appellate courts have since Lopez, on the Supreme Court’s reference to a lack of an express jurisdictional element in the Gun-Free School Zone Act as partially dispositive. 115 S.Ct. at 1630-31; *see e.g. United States v. Mosby*, 60 F.3d 454, 455, (8thCir. 1995), *cert. Denied* __ U.S. __, 116 S.Ct. 938 (1996); U.S. v. Bradford, 78 F.3d 1216 (7thCir. 1996)(holding Lopez casts no doubt on application of felon in possession law, 18 U.S.C. 922(g)(1); U.S. v. Lee, 72 F.3d 55, 58 (7thCir. 1995)(same); U.S. v. Sorrentino, 72 F.3d 294, 296 (2ndCir. 1995)(same). Such reliance however, would be misplaced under the overall rationale of the Lopez case and upon a non-felon fact pattern as in the instant case. While the court certainly noted that appropriate jurisdictional language would “ensure, through case by case inquiry, that the firearm possession in question affects interstate commerce,” 115 S.Ct. at 1630-31, this would not save an otherwise defective enactment. The case by case inquiry appears to be nothing

more than a restatement of the court's independent duty to ascertain the constitutionality of an enactment through evaluation of the impact of the regulated conduct on interstate commerce. The use of interstate commerce language in the statute merely identifies the power Congress seeks to invoke as a basis for its enactment authority and to give contour to the jurisdictional predicates that it intends must be found. The authority of Congress to enact the measure is a constitutional question for the court; it is not simply a rehashing of whether Congress set forth a jurisdictional element of a statute. Lopez.

Applying this rationale to the instant case demonstrates that to sustain the 1996 GCA amendments the government must show a rational basis for finding a substantial impact on interstate commerce exists, arising from a singular, intrastate possession of a firearm by a previously convicted domestic violence misdemeanor.⁷ The economic conduct regulated by the 1996 GCA amendments is "possession" of a firearm by those previously convicted of misdemeanor domestic abuse or violence. Undersigned counsel was unable to locate Congressional findings and has preliminarily determined almost no legislative history exists other than the remarks of Senator Lautenberg on the Senate floor. See Pub.L. No. 104-208; H.R.Rep. No. 104-863; 104 Cong. 2d.Sess. at 382-83 (1996) *reprinted at* 142 Cong.Rec. H11743 (daily ed. September 28, 1996); Attachment No. 8 (Lautenberg comments).

There appears to be nothing in the record of this enactment that finds possession of firearms by this class of person has any larger impact on interstate commerce than mere possession by any other individual or class of convicted misdemeanor. One thing is clear: the amendments are not affirmable upon a showing of the economic costs or impact of domestic violence on interstate commerce. Section 922(g) does not regulate domestic violence; it regulates possession of a firearm by a previously convicted misdemeanor. No federal case located by undersigned counsel finds

⁷. Plaintiff recognize that intrastate activity may be aggregated to find a substantial impact on interstate commerce. See e.g. Wickard v. Filburn, 317 U.S. 111, 121 (1942) (describing development of Commerce Clause jurisprudence). However, as discussed above, where the statute sought to be upheld is not a "commercial" statute generally, the significance of aggregated de minimis violations of the statute is lessened. This means that the 922(g) proscription, which does not purport to primarily regulate commercial behavior, is an unlikely candidate for affirmance if the only basis for finding a substantial impact on interstate commerce is singular, intrastate violations aggregated.

convicted misdemeanants, standing alone, to have a substantial impact on interstate commerce and the rationales advanced in the felon in possession cases are simply inapposite because no finding or proof of substantial interstate trafficking in firearms by previously convicted misdemeanants exists as was discussed in the felon cases. See Scarborough v. United States, 431 U.S. 563 (1977) Similarly,

The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce.

at 1634.

Contrary to the enactment rejected in Lopez, under the possession ban appearing in 922(g) the firearm is merely possessed and the proximity to a former or potential victim of domestic abuse is not relevant. In this sense 922(g) is a pure ban on possession and does not regulate any substantial impact on interstate commerce. If proximity of firearms to school children is insufficient to save the ban on possession near children, surely a ban on mere possession that does not include a proximity component to any at risk person must fail as well. Lopez held that possession of a firearm in a local school zone does not substantially affect interstate commerce and the basis asserted to create federal jurisdiction over mere possession of a firearm by a convicted misdemeanor is even more far-fetched than that offered, and rejected, in Lopez.⁸ Accord United States v. Bass, 404 U.S. 336 (1971)(conviction under 18 U.S.C. § 1202(a) for a felon to "receiv[e], posses[s], or transpor[t] in commerce or affecting commerce . . . any firearm" reversed; Government failed "to show the requisite nexus with interstate commerce." at 347.)

Congress has enacted many statutes (more than 100 sections of the United States Code), including criminal statutes (at least 25 sections),

⁸. Justice Breyer's dissent turns the car around and heads straight back to the rejected line of cases.

[A] court must consider, not the effect of an individual act (a single instance of gun possession), but rather the cumulative effect of all similar instances (i.e., the effect of all guns possessed in or near schools). See, e.g., Wickard, supra, at 127-128. As this Court put the matter almost 50 years ago:[I]t is enough that the individual activity when multiplied into a general practice . . . contains a threat to the interstate economy that requires preventative regulation. Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U.S. 219, 236 (1948) (citations omitted).

At 1658 (Breyer dissenting)

that use the words "affecting commerce" to define their scope, *see*, e.g., 18 U.S.C. § 844(I) (destruction of buildings used in activity affecting interstate commerce), and other statutes that contain no jurisdictional language at all, *see*, e.g., 18 U.S.C. § 922(o)(1) (possession of machine guns). Do these, or similar, statutes regulate noncommercial activities? If so, would that alter the meaning of "affecting commerce" in a jurisdictional element? Cf. United States v. Staszczuk, 517 F.2d 53, 57-58 (7th Cir. 1975) (en banc) (Stevens, J.) (evaluation of Congress' intent "requires more than a consideration of the consequences of the particular transaction"). More importantly, in the absence of a jurisdictional element, are the courts nevertheless to take Wickard, 317 U.S. at 127-128, (and later similar cases) as inapplicable, and to judge the effect of a single noncommercial activity on interstate commerce without considering similar instances of the forbidden conduct? However these questions are eventually resolved, the legal uncertainty now created will restrict Congress' ability to enact criminal laws aimed at criminal behavior that, considered problem by problem rather than instance by instance, seriously threatens the economic, as well as social, wellbeing of Americans.

at 1664 (Breyer, J. Dissenting). Justice Breyer gets the question right but completely misses its point: the proscribed conduct must have some substantial impact on interstate commerce and where no limitation on Congress' power is discernable from the enactment in question, affirmation requires far too many inferences.

Under the theories that Government presents in support of Section 922(q), it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where the States historically have been sovereign. Thus, if we were to accept the governments' arguments, we are hard-pressed to posit any activity by an individual that Congress is without power to regulate. * * *

Admittedly, a determination whether an activity is commercial or noncommercial may in some cases result in legal uncertainty. * * * The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation. See U.S. Const., Art. I, Sec.8.

115 S.C.. at 1632-33 (quoted so as to summarize). The holding and rationale of Lopez demonstrate that possession by a previously convicted misdemeanant is an inadequate basis for federal jurisdiction and is constitutionally infirm as lacking a "substantial impact" on interstate commerce.

3. The Amendments Violate Due Process and Equal Protection

Plaintiff contends an imminent deprivation of employment, demotion or other loss of professional status occasioned by the passage of a Congressional enactment that disproportionately impacts one class of person is a violation of the equal protection clause of the Fourteenth

Amendment as well as a deprivation of substantive and procedural due process. See U.S.C. Const. Amend. XIV.

The Equal Protection Claim

To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question; the individual interest affected by the classification; and the governmental interests asserted in support of the classification.

Dunn v. Blumenstein, 405 U.S. 330, 336 (1972). The type of review, or level of scrutiny is determined by the nature of the interest impinged upon. Id. Plaintiff does not contend that law enforcement personnel are a suspect class and therefore concedes the strictest standard of review is not applicable on that basis. See Miller v. Christopher, 96 F.3d 1467 (D.C.Cir. 1996). However it is equally well settled that courts may uphold enactments that impinge on a “fundamental right” *only* where it is demonstrated that a “compelling governmental interest” is met. See Sklar v. Bryne, 727 F.2d 633 (1984); accord City of Cleburne Texas v. Cleburne Living Center, 473 U.S. 432 (1985).

In the instant case the Second Amendment provides, “...the right of the people to keep and bear arms shall not be infringed.” U.S. Const. Amend. 2. While the right is clearly fundamental under the “textual basis” doctrine, federal jurisprudence on this issue is somewhat undeveloped. See San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 33 (1973)(fundamental right is one that is explicitly guaranteed by Constitution). While federal jurisprudence is not well developed regarding the Second Amendment, see van Alstyne, The Second Amendment and the Personal Right to Bear Arms, 43 Duke L.J. 1236, 1238-41, (1994), the Second amendment is operative against Congressional intrusion. See Pencak v. Concealed Weapon Licensing Board, 872 F.Supp. 410 (E.D. Mich. 1994); Quilici v. Village of Morton Grove, 695 F.2d 261, 269 (7thCir. 1982); see also United States v. Verdugo-Urquidez, 494 U.S. 259 (1990)(holding fourth amendment generally inapplicable outside U.S., noting right of people to “keep and bear arms.”). The Second amendment is generally inoperative against state based intrusions. U.S. v. Cruikshank, 92 U.S. 542, 551-53.

In the instant case the fundamental rights of some of Plaintiff’s members are impinged upon by the 1996 GCA amendments. The amendments create a clear deprivation of a fundamental right

to bear arms. Perhaps more significantly, the loss of the right to bear a firearm essentially deprives law enforcement personnel of their property interest in their employment where receipt and possession of a government issued firearm is usually mandatory. See Attachment No. 4. Moreover, the reliance interest arising from the extensive training and certification processes that most law enforcement personnel go through is strong and deserves to be balanced against the governments' new enactment. See City of New Orleans v. Dukes, 427 U.S. 297, 305 (1976)(upholding grandfather clause protecting established businesses). Because 43 States and the United States have some form of textual, Constitutional right to bear arms, the compelling interest standard should be utilized. Under the compelling interest standard the enactments fail because they are insufficiently tailored to a particular government end. Since there is nothing in the legislative record to demonstrate the need for such a drastic limitation on a fundamental right it is readily apparent that other, less drastic means of satisfying the state interest were not considered. Finally, even where a legitimate end is sought, "arbitrary and irrational classifications" are impermissible. See e.g. Heatherton v. Sears, Roebuck & Co., 653 F.2d 1152, 1157-59 (3rd.Cir. 1981).

The classification at issue here is a retroactive firearm disability applicable to a person previously convicted of a single misdemeanor involving "domestic" violence. One conviction is sufficient to create the disability. Out of the pantheon of violent misdemeanors, Congress chose one and only one and it is a crime that is not even defined in many states. The preferential treatment is for those members of society that have never had a disqualifying domestic violence misdemeanor conviction of this singular type only. The enactment permits those never convicted of domestic violence (despite other violent convictions) to possess firearms and those that have been convicted of such an offense solely may not.

Curiously, the enactment does not disable the vast class of violent misdemeanants previously convicted of assault and battery or other non-felonious crimes of violence. See 1996 amendments (disables domestic violence offenders only). The enactment does not consider the number or type of other violent misdemeanors. No legislative history exists to explain why Congress chose to disable the narrow class of persons that acted violently towards a person they knew previously, and chose to not disable the vast class of violent offenders that lashed out at unknown persons. It is

somewhat obscure from the Congressional record why a single conviction for misdemeanor violence against a family member is weighed so much more heavily than what could be ten convictions for violence towards strangers. In some ways the enactment deprives all persons not possessed of a sufficiently “domestic” relationship of the enactment’s protections. While perhaps not a compelling constitutional argument standing alone, it illuminates the ill-considered haste with which Congress adopted the challenged amendments. Counsel is not unmindful of the horror of domestic violence, however Congress gave no explicit or articulate substantiation for its enactment and this court should not lightly attribute a meaningful, rational purpose when it is not disclosed on the record by Congress. See Sklar 727 F.2d. at 641 (citing Delaware River Basin Comm’n v. Bucks County Water & Sewer Authority, 641 F.2d 1087, 1094-97 (3rdCir. 1981)).

This deficit is particularly significant when the disproportionate impact on law enforcement and those professionally required to carry firearms is examined. Many law enforcement personnel hold statutorily created positions with mandated duties. See Attachment No. 4. If elected to this office, the enactment deprives not only the office holder of employment and electoral entitlement under State law, but deprives the electorate of their chosen person for the role. When examined against the backdrop of extensive training according to criteria often set by the political process through a state legislature, the reliance interest looms even larger. While none of these points standing alone may be dispositive, combined they make a compelling case for finding the 1996 GCA amendments an impermissible enactment under an equal protection analysis. See Sklar 727 F.2d at 641. (Noting reliance interest is legitimate ground upon which to rest a finding of rational relation between ends and means).

[T]he purpose of protecting those who relied upon prior laws--and only to the extent they relied on prior law--is a matter of simple fairness. Governments enact laws which invite citizens to invest their money and time and to arrange their affairs in reliance upon those laws. Laws are not immutable, but we can see no reason to prohibit governments from protecting the interests of those who rely upon prior law.

Sklar 727 F.2d at 642. Under the above rationale, those whose employment depends on receipt and possession of a firearm because they undertook professional training to be so entitled, where such training and certification of skill level are mandated by state or local legislative or executive

enactment, and all employment benefits coming to such person depend on maintaining a capacity to possess a firearm, the tension arising under the GCA amendments should be resolved in favor of the Plaintiff. At a minimum this court should find the law enforcement reliance interest sufficiently strong to foreclose *retroactive* application against such persons and declare it solely *prospective* in application only. See Peterson v. Linder, 765 F.2d. 698, 706 (7th Cir. 1985)(rejecting piecemeal approach to problem by legislature where no showing of intent to address whole problem over time exists); see also Landgraf v. USI Film Products, 511 U.S. ___, 114 S.Ct. 1483 (1994)(discussing retroactivity, primarily in civil context) .

Substantive and Procedural Due Process Claim

Plaintiff contends that the 1996 GCA amendments violate both substantive and procedural due process. See Hoffman v. City of Warwick, 909 F.2d 608 (1st Cir. 1990). The right to bear arms and to not arbitrarily lose employment or status therein secured by existing state and federal law cannot be removed arbitrarily. The Supreme Court in Flemming v. Nestor, 363 U.S. 603, 610-611 (1960) noted that, given certain binding statutory rights, “[t]he interest of a covered employee under the Act is of sufficient substance to fall within the protection from arbitrary government action afforded by the Due Process Clause.” See also U.S.C.A. Const. Amend. 5 & 14. Relying on Hoffman, the Warwick court said:

Since plaintiffs do not argue that they relied on Section 30-21-3 in accepting employment with the Cities or in entering the service, there is no particular unfairness to them in the retroactive aspect of the Repeal Statute. (Citation omitted).

Warwick, 909 F.2d at 618. In the instant case it is unavoidably clear that law enforcement personnel rely on the right to bear arms when entering law enforcement training and ultimately upon entering into service to the public. The 1996 GCA amendments violate the substantive due process rights of Plaintiff’s members.

Any member of the FOP that holds a law enforcement position requiring receipt and possession of a weapon to execute the job, who will be disabled by the 1996 GCA amendments, has been deprived of an employment interest without procedural due process. Although Plaintiff acknowledges the well settled law that “the legislative determination provides all the process that

is due,” that rule is inoperative where other substantive constitutional defects exist such as those outlined above. See Warwick, 909 F.2d at 620-21 (discussing cases).

Plaintiffs Have Demonstrated a Likelihood of Success on the Merits

The foregoing sections demonstrate that Plaintiff has a substantial likelihood of success on the merits of its challenge to the constitutionality of the 1996 GCA amendments.

Irreparable Harm⁹

In the body of the above introductory discussion of the merits of the challenges raised herein, Plaintiff describes several immediate and irreparable impacts on Plaintiffs’ members . In particular the loss of employment, loss of professional status and professional role as well as the attendant loss of benefits for the law enforcement officer are severe. Due to the exigencies of law enforcement needs, most will no longer have jobs at the conclusion of lengthy constitutional litigation. Moreover, the consequences of disruption to child-support payments, debt service, and mortgage payments, are all immediate and while is perhaps possible to imagine monetary compensation satisfying these complaints, timeliness should not be cavalierly overlooked. Irreparable injury generally means that which money cannot set aright. See generally 11 C. Wright & Miller, Federal Practice and Procedure Sec. 2948 at 431-41 (1973). Four irreparable injuries arise in this case.

First, non-disabled chief law enforcement officers must undertake to implement and enforce the federal mandate. A federal command to a state official to implement and enforce a federal regulatory program for which no funding or federal assistance is forthcoming is in direct violation of the proscription appearing in New York v. United States, 505 U.S. 144 (1992). The New York court rejected federal efforts to force a States to implement federal regulatory programs. Expenditure of state appropriated funds, and commandeering of state officials to meet non-discretionary federal regulatory and administrative mandates creates immediate and irretrievable fiscal loss to the implementing State.

Second, the loss of citizen liberty interest through the loss of political accountability is

⁹. The factual basis for these assertions are primarily based on the Attachments 4 and 5 hereto.

irretrievable. Where the federal government coerces the states to either implement a federal program or enact a federal program, through state law, it places all elected and appointed officials in the position of having no proper response to their constituents. If state and local residents choose a different emphasis for their elected and appointed officers, and appropriate and legislate to vivify that emphasis, and it is frustrated by Congress, no remedy exists.

Third, the harm to the public that these officers are sworn to protect and serve is so extreme that it can be described but not measured. See Railroad Comm'n v. Pullman Co., 312 U.S. 496, 500 (1941)(public consequences are of particular significance in awarding injunctive relief). While it is unknown exactly to what extent the disabilities present in the enactments will harm the protection of the public, it is obvious that loss of any protection is unjustifiable. Every State and most local law enforcement agency have extensive training programs that must be completed prior to an applicant receiving a "certification" and a government issued firearm. The loss of front-line officers without adequately trained replacement officers puts the unsuspecting public in a dire situation. The loss of one life through the arbitrary and unconstitutional removal of highly trained officers and reduction in workforce levels is one life too many. The role in public safety of the nearly three hundred thousand members of the FOP is well known while the impact of the application of the enactments to public safety is unknown.

Fourth and finally, undersigned counsel could not locate a State law for simple domestic violence that contains a penalty that is typically considered a felony where the substance of the offense is of the same sort as that creating the disability under the federal enactments. While such law may exist, or under certain facts be applicable, it is imminently clear that the 1996 GCA amendments drastically change well settled rights throughout the land. Where fewer than five states have authorized this kind of elimination of fundamental rights for misdemeanor activity it is imprudent to rush to apply a new federal act to the contrary. To force the states to enact new laws, expend resources to implement federal programs and force from office state and local officials with otherwise exemplary record creates an irreparable harm to the overall functioning of a State.

Enforcement of the 1996 amendments amounts to an immediate amendment to every state criminal code to add an additional penalty to prior misdemeanor convictions, **and** to amend its law

enforcement hiring criteria as set forth by statute. Such interference with core State functions such as law enforcement resource allocation and the exercise of the police power cannot stand.

Harm to Defendants and the Public Interest

It is not anticipated that the 1996 amendments, without which this country and the several states have existed for over 200 years, will cause harm to the U.S. government in any immediate sense. The confusion as to the relative roles of the States and the federal government, even among the federal agencies with enforcement authority, is sufficient to demonstrate hasty and uncounselled enforcement is unwarranted. Awaiting implementing regulations is a minimal intrusion into the federal prerogative and should be undertaken at a minimum.

The public interest in such a situation is complex. While no one can dispute that one incident of domestic violence is one too many, the disruption to the efficient functioning of law enforcement agencies around the country from immediate enforcement of the GCA amendments could lead to far greater deficits in the protection of the public. As noted above, the impact of the new enactments on public safety overall is completely unknown and speculative; the impact from diminished and hamstrung law enforcement agencies has been demonstrated many times over. Preparedness, with the ability to rapidly respond with highly trained officers remains paramount to the public safety. Finally, as noted in the first section of this memorandum, the immediate loss of the liberty interest protected by a proper division of federal and state political accountability is detrimental to the public in ways that this country has fortunately never had to experience. We should not rush headlong down that road without an abiding certainty that the public interest is deeply benefitted in the long term. Accordingly, the public interest is well served by a period of time during which these issues can be fully briefed and this court may make an informed decision upon the merits.

Conclusion

The challenged amendments to the GCA are sufficiently suspect under our constitutional jurisprudence to find a likelihood of success on the merits by the Plaintiffs. The irreparable harm to the States, the public, and the Plaintiffs all militate against rapid implementation and justify the narrow request for injunctive relief. Injunctive relief is uniquely proper under the facts of this case because the government has not issued any implementing regulations and the other provisions of the

the Brady Act, to which the 1996 amendments add, are currently before the United States Supreme Court. The public interest is served if minimal disruption to law enforcement agencies, state legislatures and well settled expectations occurs prior to a full review of all parties' rights under these troubling new enactments that so dramatically change our legal landscape.

Respectfully submitted,
FRATERNAL ORDER OF POLICE,

1/21/97
Date

Ellen A. Efros
Ellen Efros, DC Bar No. 250746
Tim McGarey, D.C. Bar No. 420598
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Of counsel:

William J. Friedman
William J. Friedman
P.O. Drawer 2147
Santa Fe, New Mexico 87504
N.M. Bar No6239
(505) 989-9800

Date: 1/21/97

CERTIFICATE OF SERVICE

The undersigned has caused the attached Memorandum of Points and Authorities in Support of Plaintiff's Motion for Preliminary Injunction be served on the following persons and in the manner described this 22nd day of January 1997:

By Hand Delivery:

Mr. Eric H. Holder, Jr.
U.S. Attorney for the District of the District of Columbia
5806 Judiciary Center Bldg.
555 4th Street N.W.
Washington, D.C. 20001

By Certified Mail:

JANET RENO
Attorney General of the United States
United States Department of Justice
Constitution Avenue and 10th Street, N.W.
Washington, D.C. 20530

Ellen A. Efros

Ellen Efros, DC Bar No. 250746
Tim McGarey, D.C. Bar No. 420598

QUALIFICATION INQUIRY

Within ten (10) working days of receipt, you are required to complete this Qualification Inquiry and provide it to [your immediate supervisor]. In completing this form, you are advised:

- (a) The purpose is to obtain information which will assist in the determination of whether personnel reassignment and/or administrative action are warranted.
- (b) You have a duty to complete this form. Agency disciplinary action, including dismissal, may be undertaken if you refuse to answer or if you fail to reply fully and truthfully.
- (c) Neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal prosecution for a violation of Title 18, United States Code, Section 922(g)(9). However, the answers you furnish and any information or evidence resulting therefrom may be used against you in a prosecution for knowingly and willfully providing false statements or information, and in the course of agency disciplinary proceedings.

1. Have you ever been convicted of a misdemeanor crime of domestic violence within the meaning of the statute?

Initial and date: YES _____ NO _____

2. If you answered YES to the first question, provide the following information with respect to the conviction:

Court/Jurisdiction: _____

Docket/Case Number: _____

Statute/Charge: _____

Date sentenced: _____

I hereby certify that, to the best of my information and belief, all of the information provided by me is true, correct, complete, and made in good faith. I understand that false or fraudulent information provided herein may be grounds for adverse action, up to and including removal, and is also criminally punishable pursuant to federal law, including 18 U.S.C. §1001.

Name and Title:
[print or type] _____

Agency/Duty Station: _____

Signature

Date

EXHIBIT 2



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

DIRECTOR

NOV 26 1996

OPEN LETTER TO ALL STATE AND LOCAL
LAW ENFORCEMENT OFFICIALS

The purpose of this letter is to provide information to all State and local law enforcement agencies regarding one specific aspect of the recently enacted Omnibus Consolidated Appropriations Act of 1997 (the Act). One part of the Act amended the Gun Control Act of 1968 (GCA) to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor. This new prohibition does apply to all law enforcement officers.

Act adds new firearms disability

As defined in the GCA, a "misdemeanor crime of domestic violence" means an offense that:

- (1) is a misdemeanor under Federal or State law; and
- (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, 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.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery) if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her

spouse would be prohibited from receiving or possessing firearms or ammunition. Moreover, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer possess a firearm or ammunition. However, with respect to all persons, a conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

New disability applies to law enforcement officers

In addition, the Act amended the GCA so that employees of government agencies convicted of qualifying misdemeanors would not be exempt from this new disability with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other government officials who have been convicted of a qualifying misdemeanor will not be able to lawfully possess or receive firearms or ammunition for any purpose, including performing their official duties. This disability applies to firearms and ammunition issued by government agencies, firearms and ammunition purchased by officials for use in performing their official duties, and personal firearms and ammunition possessed by such officials.

In view of this amendment's effect on law enforcement officers, your department may want to determine if any employee who is authorized to carry a firearm is subject to this disability and what appropriate action should be taken. Employees subject to this disability must immediately dispose of all firearms and ammunition in their possession. The continued possession of firearms and ammunition by persons under this disability is a violation of law and may subject the possessor to criminal penalties. In addition, such firearms and ammunition are subject to seizure and forfeiture.

In cases where your agency becomes aware of individuals subject to this disability, we recommend that such persons be encouraged to relinquish all firearms and ammunition in their possession immediately to a third party, such as their attorney, their local police agency, or a firearms dealer.

If such person refuses to relinquish the firearm or ammunition, and your agency is without authority to retain or seize the firearm or ammunition, you should contact the local ATF office.

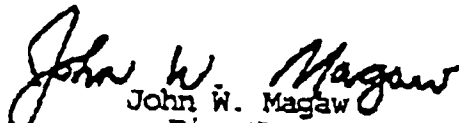
Brady Act

In the so-called "Brady States" Chief Law Enforcement Officers (CLEOs) "shall make a reasonable effort" to determine whether a prospective buyer's receipt of a handgun would be in violation of the law. CLEOs have five business days in which to make that reasonable effort. What constitutes a "reasonable effort" is to be determined by each law enforcement agency based on its own circumstances, e.g., the availability of resources, access to records, and the law enforcement priorities of the jurisdiction.

This "reasonable effort" standard is not altered by the addition of this new disqualifying category. It remains fully within the discretion of the CLEO to determine what effort is reasonable. For example, even if the CLEO determines that a misdemeanor assault conviction has occurred, it remains fully within the CLEO's discretion to determine whether to make further inquiry.

ATF forms are being revised to reflect the new category of prohibited persons.

If you have any questions concerning these new provisions, contact your local ATF office or the Firearms and Explosives Regulatory Division at 202-927-8300.


John W. Magaw
Director

6

QUESTIONS AND ANSWERS REGARDING
MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

Q. X was convicted of misdemeanor assault on October 10, 1996. The crime of assault does not make specific mention of domestic violence but the criminal complaint reflects that he assaulted his wife. May X still possess firearms or ammunition?

A. No. X may no longer possess firearms or ammunition.

Q. X was convicted of the same crime on September 20, 1996, 10 days before the effective date of the new statute. He possesses a firearm on October 10, 1996. May X lawfully possess firearms?

A. No. If a person was convicted of the crime at any time, he or she may not lawfully possess firearms or ammunition on or after September 30, 1996.

Q. Officer C was charged with felony assault on her child in 1989. She pled guilty to a misdemeanor and the felony charge was dismissed. She was suspended from the police force and ordered to undergo counseling. After successful completion of the counseling, she was reinstated. May Officer C lawfully possess firearms or ammunition?

A. No. Officer C may no longer lawfully possess firearms or ammunition either on or off duty.

Note: For one who has been convicted of a misdemeanor crime of domestic violence, the prohibition on the possession of firearms and ammunition does not apply if the individual has received a pardon for the crime, the conviction has been expunged or set-aside, or the person has had civil rights restored (if there was a loss of civil rights) AND the person is not otherwise prohibited from possessing firearms or ammunition.

QUESTIONS AND ANSWERS REGARDING
MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

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A. No. If a person was convicted of the crime at any time, he or she may not lawfully possess firearms or ammunition on or after September 30, 1996.

Q. Officer C was charged with felony assault on her child in 1989. She pled guilty to a misdemeanor and the felony charge was dismissed. She was suspended from the police force and ordered to undergo counseling. After successful completion of the counseling, she was reinstated. May Officer C lawfully possess firearms or ammunition?

A. No. Officer C may no longer lawfully possess firearms or ammunition either on or off duty.

Note: For one who has been convicted of a misdemeanor crime of domestic violence, the prohibition on the possession of firearms and ammunition does not apply if the individual has received a pardon for the crime, the conviction has been expunged or set-aside, or the person has had civil rights restored (if there was a loss of civil rights) AND the person is not otherwise prohibited from possessing firearms or ammunition.

EXHIBIT 3



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

OPEN LETTER FROM THE DIRECTOR
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

The purpose of this letter is to provide the public with information concerning a recent amendment to the Gun Control Act of 1968. This amendment makes it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor.

As defined in the new law, a "misdemeanor crime of domestic violence" means an offense that:

- (1) is a misdemeanor under Federal or State law; and
- (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, 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.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery), if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her spouse would be prohibited from receiving or possessing firearms. Moreover, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer possess a firearm or

- 2 -

ammunition. However, a conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

Individuals subject to this disability should immediately lawfully dispose of their firearms and ammunition. We recommend that such persons relinquish their firearms and ammunition to a third party, such as their attorney, to their local police agency, or a Federal firearms dealer. The continued possession of firearms or ammunition by persons under this disability is a violation of law and may subject the possessor to criminal penalties. In addition, such firearms and ammunition are subject to seizure and forfeiture.

If you have questions regarding this matter, please contact your local ATF office.


John W. Magaw
Director

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE FRATERNAL ORDER OF POLICE,
309 Massachusetts Avenue, N.E., Washington, 20002,
A National Police Organization.

Plaintiff,

vs.

Civil Action No.

HON. ROBERT E. RUBIN, Secretary of the Treasury,
1500 Pennsylvania Ave., N.W. Washington D.C., 20220 and

HON. JOHN MAGAW, Director Bureau of Alcohol,
Tobacco and Firearms,
650 Massachusetts Ave., Washington D.C. 20016.

Defendants.

AFFIDAVIT

1. I, Gilbert G. Gallegos, do hereby depose and state:
2. I am a United States citizen and am under no disability that prevents me from making this statement.
3. I am career law enforcement officer currently retired from the Albuquerque, New Mexico police department. (APD)
4. I am the duly elected president of the Fraternal Order of Police. (FOP)
5. The FOP is a duly organized fraternal organization incorporated in the State of Pennsylvania with an office in Washington, D.C. and whose membership includes Federal, State, County, Local and Campus law enforcement agencies and individual officers.
6. The FOP has several purposes including the protection of legal rights of its members. See Attachment No. 1 hereto (FOP Constitution excerpts).
7. The FOP has institutional or individual members in every state of these United States.
8. Upon information and belief, FOP members in each of the several States, including both law enforcement agencies and individual members are subject to recent Congressional enactments relating to firearms as set forth in the FOP's verified federal Complaint for Declaratory and Injunctive Relief.
9. I am submitting this sworn statement in support of the FOP's verified

Complaint for Declaratory and Injunctive Relief to be filed in United States District Court for the District of Columbia.

10. Purposes of this statement include but are not limited to:
 - a. illumination and demonstration of the impact of recent amendments to the federal Gun Control Act on the rank and file members of the FOP.
 - b. squarely placing the matters of FOP concern regarding the application the amendments into the record at the earliest possible point in the process of review.
 - c. protection of constitutional rights of the members of the FOP, in both their individual and official capacities.
 - d. demonstration of the national and far reaching impact on law enforcement activities as a result of the government's enforcement and implementation position.
11. This statement is submitted in lieu of use of affidavits from individual FOP members to emphasize the need for immediate and comprehensive review as well as conserve judicial and party resources.
12. The Verified Complaint and this affidavit are germane to the purposes of the FOP as an organization and to my role within the FOP as the President of the FOP.
13. In the normal course of executing my responsibilities as President I often gain direct and personal knowledge of issues and matters affecting rank and file members of the FOP.
16. The representations made herein regarding the impact on State and local and federal agencies are the result of information of which I am personally aware except where stated upon information and belief.

The Gun Control Act Amendments and Implementation and Enforcement

17. I have personal knowledge of the amendments to the Gun Control Act enacted by Congress and signed into law by President Clinton. See Attached Amendments hereto.
18. I have personal knowledge of the enforcement position taken by the federal government through correspondences received from the Bureau of Alcohol, Tobacco and Firearms. See Attachment Nos. 1, 2 and 3 to FOP's Verified Complaint.
19. Upon information and belief, no appropriation has been forthcoming by Congress or any State or local entity to provide law enforcement agencies with funds to execute the duties imposed by ATF's enforcement mandate.
20. I have personal knowledge of the confusion and uncertainty created within several state and local and federal law enforcement agencies as a result of the enactments and ATF's enforcement position.

21. In particular, I am aware of officers and FOP members at the State and local and Federal levels of law enforcement that have been requested to disclose information regarding the application of the enactment to themselves as well as others.
22. Upon information and belief, the general purpose of the information gathering and disclosure is to determine the application of the enactments to fully certified and employed law enforcement officers currently employed and authorized to possess government issued firearms for public safety purposes.
23. Under ATF's enforcement position, State, local and Federal law enforcement agencies bear a non-discretionary duty to gather information and those persons generally responsible are those charged with the responsibility of hiring, firing and promoting law enforcement officers, and further non-discretionary duty exists to disclose the results of such investigation to ATF for use, at a minimum, in determining whether federal deputations will be revoked.
24. Upon information and belief, every non-federal law enforcement officer must expend fiscal and administrative resources to fulfill the non-discretionary federal duty and must disable any member of the agency upon a finding that the enactment applies to a particular member of the agency.
25. Upon information and belief, no law enforcement agency has a well developed policy on how to implement this non-discretionary duty.
26. Upon information and belief, no law enforcement agency has a well developed policy how to respond to information indicating a particular member of an agency must be disabled.
27. Upon information and belief, the federal government does not know the overall impact on law enforcement agencies as a result of the application of the ATF enforcement policy and therefore cannot measure the impact on officer and public safety.
28. Upon information and belief the federally mandated duty forces law enforcement leaders to command their subordinate officers to provide information that may constitute an admission of a violation of federal law as well as a predicate for loss of status, role within an agency and ultimately with termination of employment.
29. Upon information and belief, the federally mandated duty to investigate all officers and compel disclosure of information that may result in demotion, reassignment or termination has a drastic and irremediable impact on agency and officer morale and trust.
30. Due to the nature of law enforcement activities, law enforcement agencies are highly dependent on professional trust and cohesiveness to ensure officer and public safety.
31. The loss of such trust and cohesiveness has an immediate and irremediable impact on the ability of law enforcement agencies and their officers to execute their statutorily mandated duties.

32. Upon information and belief, decreases in an agencies' ability to fulfill its statutorily mandated duties has an irremediable impact on officer and public safety.
33. Based on my personal experience as a law enforcement officer, both as a field officer and as an officer with administrative responsibilities, the rapid implementation and enforcement of the amendments will have an immediate and irremediable impact on the ability of law enforcement agencies throughout the country to perform their mandated duties.

FURTHER AFFIANT SAYETH NOT

Gilbert G. Gallegos
Gilbert G. Gallegos

1/21/97
Date

City of Washington)
District of Columbia) SS:

21st Sworn to me before me and subscribed in my presence by Gilbert G. Gallegos this
day of January 1997.

Notary Public

my com exp 8/31/97

CONSTITUTION AND BY-LAWS

OF THE

FRATERNAL ORDER OF POLICE

A NATIONAL POLICE ORGANIZATION



NATIONAL HEADQUARTERS
1410 DONELSON PIKE, A-17
NASHVILLE, TENNESSEE 37217

REVISED AT THE
52ND BIENNIAL CONFERENCE
JULY 31 - AUGUST 3, 1995
VIRGINIA BEACH, VIRGINIA

GILBERT G. GALLEGOS
NATIONAL PRESIDENT

JERRY W. ATNIP
NATIONAL SECRETARY

OFFICIAL STATEMENT

The Fraternal Order of Police is a non-profit corporation formed under the laws of the Commonwealth of Pennsylvania. The Court of Common Pleas of Allegheny County, Pennsylvania, entered the Decree of Incorporation on the 17th day of November 1915. The original Articles were recorded on the 18th day of November 1915, in the office of the Recorder of Deeds of Allegheny County, Pennsylvania, in Charter Book Volume 49, Page 350. Pursuant to the provisions of the laws of Pennsylvania application to the Court of Common Pleas of Allegheny County, Pennsylvania, to amend the original charter was duly made on the first day of June 1940, in the Office of the Recorder of Deeds of Allegheny County, Pennsylvania. Further Amendments were approved on February 22, 1974.

At the First Annual Convention a Grand Lodge of the Fraternal Order of Police was formed and by proper action said Grand Lodge was authorized and empowered to use the corporate name of the Fraternal Order of Police and to exercise and perform all corporate rights, privileges, powers, authorities and franchises of the Fraternal Order of Police.

The Constitution, as set forth herein, was adopted November 18, 1915, and amended at Official Annual Conventions subsequently, including the First Annual Convention held at Pittsburgh, October 15, 1917, the 36th National Biennial Conference held at Norfolk, Virginia, August 18-22, 1963, the 40th Biennial Conference held at Phoenix, Arizona, August 8-12, 1971, the 41st Biennial Conference held at Las Vegas, Nevada, August 5-10, 1973, the 43rd Biennial Conference held at Providence, Rhode Island, August 8-12, 1977, the 45th Biennial Conference held at Orlando, Florida, August 18-21, 1981, the 46th Biennial Conference held at Phoenix, Arizona, August 22-26, 1983, the 47th Biennial Conference held at Baltimore, Maryland, August 6-9, 1985, the 48th Biennial Conference held at Mobile, Alabama, August 11-14, 1987, and the 49th Biennial Conference held at Oklahoma City, Oklahoma, August 1-4, 1989, and the 50th Biennial Conference held at Pittsburgh, Pennsylvania, August 12-15, 1991, 51st Biennial Conference held at Louisville, Kentucky, August 9-12, 1993 and the 52nd Biennial Conference held at Virginia Beach, Virginia, July 31-August 3, 1995.

Prior to August 11, 1947, the By-laws were included in the Constitution. On August 11, 1947, at the 28th Annual Convention, the By-laws were adopted separately. On August 13, 1991, at the Fiftieth (50th) Biennial Conference held in Pittsburgh, Pennsylvania, a substantial revision of the Constitution and By-laws was adopted by the delegates there in attendance. While incorporating many portions of the Constitution and By-laws then in effect, the revision restructures the Constitution and By-laws.

This Official Statement, Contents, and Indices are provided for historical purposes and convenience. They are not a part of the Constitution and may not be relied on for any purpose.

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CONSTITUTION

Preamble

We, the law enforcement officers of the United States and of the several states and political subdivisions thereof, as representatives and delegates of state and subordinate lodges, do hereby associate the several lodges we represent and the members thereof for the following purposes:

To support and defend the Constitution of the United States; to inculcate loyalty and allegiance to the United States of America; to promote and foster the enforcement of law and order; to improve the individual and collective proficiency of our members in the performance of their duties; to encourage fraternal, educational, charitable and social activities among law enforcement officers; to advocate and strive for uniform application of the civil service merit system for appointment and promotion; to support the improvement of the standard of living and working conditions of the law enforcement profession through every legal and ethical means available; to create and maintain tradition of esprit de corps insuring fidelity to duty under all conditions and circumstances; to cultivate a spirit of fraternalism and mutual helpfulness among our members and the people we serve; to increase the efficiency of the law enforcement profession and thus more firmly to establish the confidence of the public in the service dedicated to the protection of life and property.

All terms used herein to denominate gender shall be generic and, whenever appropriate, the singular shall include the plural and the plural shall include the singular.

ARTICLE 1

Name

Section 1. This organization shall be known as the FRATERNAL ORDER OF POLICE.

Section 2. The National Board of Trustees shall have the sole and exclusive right to authorize, control, license and restrict the use of the name, insignia or emblem and mark, trademark or service mark of the Fraternal Order of Police. The National Secretary shall police the trademark of the Order and shall grant or refuse to grant permission to use the trademark of the Order as hereinafter set forth or as may be, from time to time, prescribed by the National Board of Trustees.

Section 3. State and subordinate lodges, by virtue of their affiliation with the Grand Lodge, shall have the right to use the name, insignia, emblem and mark, trademark or service mark of the Fraternal Order of Police in order to signify or denote their affiliation therewith. In the case of prospective for profit uses of the name, insignia, emblem or mark, trademark or service mark of the Fraternal Order of Police, or such other use that may place such state or subordinate lodge in competition with the Grand Lodge, such permission may be withheld by the National Board of Trustees.

ARTICLE 2

Character

Section 1. The Fraternal Order of Police is an organization consisting of state and subordinate lodges of professional law enforcement officers in the United States and such international affiliate lodges as shall, from time to time, be accepted in accordance herewith.

Section 2. The Fraternal Order of Police is a fraternal organization composed of professional law enforcement personnel who have joined together for their common good. In no event shall the Fraternal Order of Police join or be controlled by any labor organization, provided, however, that this Section shall not prohibit cooperative efforts by the National, state or subordinate lodges of the Fraternal Order of Police with labor organizations for their common good.

Section 3. The Fraternal Order of Police shall not strike or by concerted action cause a cessation of the performance of police duties, or induce other members or lodges to do likewise.

Section 4. This Constitution shall be the fundamental law of the Order and, with the Rituals adopted at the National Biennial Conferences, and such By-laws as may be adopted from time to time, shall govern the conduct of the Grand Lodge and all state and subordinate lodges.

Section 5. There shall be By-laws which shall govern the day to day operation and administration of the Grand Lodge. The By-laws of the Order may only be promulgated, amended, or revised by a vote of two-thirds (2/3) of the delegates voting at the Biennial Conference.

ARTICLE 3

Definitions

Section 1. As used herein, the following terms, phrases or words shall be defined as follows:

A. **"Elected law enforcement officer"** shall mean for purposes hereof any law enforcement officer who meets the qualifications in Article 4, Section 1, or who by law is exempted from meeting the minimum training standards.

B. **"Full-time employed"** shall mean law enforcement officers that are engaged in such employment as their full-time occupation.

C. **"Good Cause"** shall mean nonfeasance, malfeasance, dishonesty, or refusal to carry out the will of the Biennial Conference.

D. **"Lodge in good standing"** shall mean a lodge which is not greater than thirty (30) days in arrears in the payment of all dues, delinquency fees and assessments due and payable to or for the Grand Lodge on behalf of its members. Any lodge in arrears of payment of dues or assessments more than thirty (30) days and less than ninety (90) days shall be deemed to be delinquent and not in good standing. Any lodge in arrears of payment of dues or assessments more than eighty-nine (89) days shall be and is hereby automatically suspended from membership in good standing in the Fraternal Order of Police.

E. **"Member in good standing"** in respect to the Grand Lodge, shall mean a member who fulfilled all requirements of membership in good standing in his respective subordinate and state lodges and for whom appropriate per capita tax has been paid to the Grand Lodge. Any member belonging to a state or subordinate lodge that is delinquent or has been suspended shall not be a member in good standing.

F. **"National Board of Trustees"** shall refer to the collective body consisting of the National President, each of the Past National Presidents, the National Vice President, the National Secretary, the National Treasurer, the National Second Vice President, the National Sergeant at Arms, each National Trustee and the Chairman of the National Trustees.

G. **"National Executive Board"** shall mean and consist of the National President, National Vice President, National Secretary, National Treasurer, National Second Vice President, National Sergeant at Arms and the Chairman of the National Trustees.

H. **"National Trustees"** shall mean the individual elected National Trustees or the collective body thereof (excluding the National Executive Board) who may meet from time to time as provided in Article 8 and Article 16 of this Constitution.

I. **"Past National President"** shall be defined as any person elected to the office of National President by a Biennial Conference and who served not less than one (1) full term and was not removed from office.

J. "Regularly appointed law enforcement officer" shall mean, for purposes hereof, any law enforcement officer who meets the minimum standards, has received the training and education required by the United States, the state, the political subdivision or agency by which they are appointed, and is granted arrest powers.

ARTICLE 4

Membership

Section 1. Any regularly appointed or elected and full-time employed law enforcement officer of the United States, any state or political subdivision thereof, or any agency may be eligible for membership in the Fraternal Order of Police, subject to the provisions of this Constitution. No person shall be denied membership on account of race, religion, color, creed, sex, age or national origin.

Section 2. Subject only to the provisions of this Constitution, each state and subordinate lodge shall be the judge of its membership. Each state and subordinate lodge shall establish requirements for membership in good standing of its respective membership, which requirements shall not be inconsistent herewith.

Section 3. There shall be three (3) classes of membership: Active, Retired and Honorary.

A. Active Membership

1. Shall include regularly appointed or elected full-time law enforcement officers.
2. May include retired regularly appointed or elected law enforcement officers.
3. May include, subject to the approval of his state and subordinate lodges, regularly appointed or elected law enforcement officers who have resigned from their law enforcement duties and who have remained in good standing with their state and subordinate lodges.
4. Only active members, as herein defined, shall have voice and vote.

B. Retired Membership shall be comprised of retired regularly appointed or elected law enforcement officers who withdraw from active membership upon or after retirement from their law enforcement agency.

C. Honorary Membership shall be comprised of individuals recognized by the Grand Lodge, state lodge or subordinate lodges for exceptional service or contribution to the nation, the state, political subdivision, the law enforcement community or the Fraternal Order of Police.

Section 4. No person shall be a member of more than one state or subordinate lodge at

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE FRATERNAL ORDER OF POLICE,
309 Massachusetts Avenue, N.E., Washington, 20002,
A National Police Organization.

Plaintiff,

vs.

Civil Action No.

HON. ROBERT E. RUBIN, Secretary of the Treasury,
1500 Pennsylvania Ave., N.W. Washington D.C., 20220 and

HON. JOHN MAGAW, Director Bureau of Alcohol,
Tobacco and Firearms,
650 Massachusetts Ave., Washington D.C. 20016.

Defendants.

AFFIDAVIT

I, James O. Pasco Jr., do hereby depose and state:

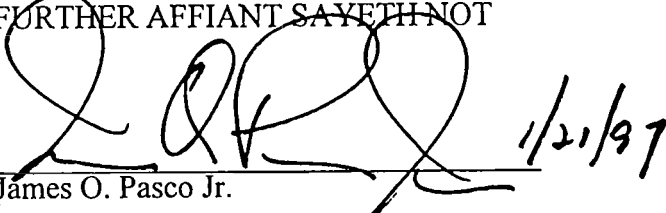
1. I am a United States citizen and am under no disability that prevents me from making this statement.
2. I am the Executive Director of the Fraternal Order of Police (FOP) and have had this role since 1995.
- 3.. This affidavit is submitted in furtherance of my duties as Executive Director and in support of the FOP's Verified Complaint for Declaratory and Injunctive Relief.

Legislative Issues Regarding the Challenged Amendments to the GCA

4. In the normal course of executing my responsibilities as Executive Director I receive, review, analyze and report to the FOP national leadership as well as the membership generally, on legislation or proposed legislation relating to the FOP and its members.
5. I am personally aware of the 1996 amendments to the GCA that themselves appeared as amendments to an extensive budget enactment that effectively precluded close debate regarding the merits and constitutionality of the proposed GCA amendments. See Attached copy of amendments.
6. Based on my personal knowledge of the legislative process prior to the GCA amendment adoption, and review of the the minimal legislative history generated, very little discussion, debate or other full airing and review of the proposed amendments occurred.

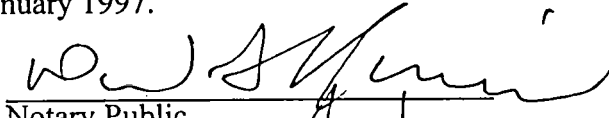
7. Based on my personal knowledge of the legislative process prior to GCA amendment adoption, I believe the amendments as adopted and enacted achieved results not intended by the majority of the members of Congress that voted for the legislation and in particular, almost no discussion regarding the removal of an exception for government employees was undertaken.
8. Upon information and belief, the impact of these retroactive amendments on the military, federal agencies including the Secret service, FBI, as well as State, County, Local and Campus law enforcement agencies is fiscally, administratively and professionally immense.
9. Upon information and belief, two bills have been prepared by members of Congress to address the enactment's results that were inconsistent with Congressional intent. See Attachment hereto.
10. Upon information and belief the Bills will be heard within 60 days of introduction.

FURTHER AFFIANT SAYETH NOT


James O. Pasco Jr.

City of Washington }
District of Columbia } SS:

21st Sworn to me before me and subscribed in my presence by Gilbert G. Gallegos this
day of January 1997.


Notary Public

my com exp 8/31/97

GUN BAN FOR INDIVIDUALS CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

(a) **DEFINITION.**--Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

(33) (A) Except as provided in subparagraph (C), the term 'misdemeanor crime of domestic violence' mean an offense that--

"(i) is a misdemeanor under Federal or State law; and

"(ii) has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapons, 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.

"(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless--

"(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

"(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

(b) **PROHIBITIONS.**--

(1) Section 922(d) of such title is amended--

(A) by striking "or" at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting ";or"; and

(C) by inserting after paragraph (8) the following:

"(9) has been convicted in any court of a misdemeanor crime of domestic violence."

(2) Section 922(g) of such title is amended--

(A) by striking "or" at the end of paragraph (7);

(B) by striking the comma at the end of paragraph (8) and inserting "; and

(C) by inserting after paragraph (8) the following:

"(9) who has been convicted in any court of a misdemeanor crime of domestic violence,".

(3) Section 922(s)(3)(B)(i) of such title is amended by inserting ", and has not been convicted in any court of a misdemeanor crime of domestic violence" before this semicolon.

(c) **GOVERNMENT ENTITIES NOT EXCEPTED.**--Section 925(a)(1) of such title is amended by inserting "sections 922(d)(9) and 922(g)(9) and" after "except for".

105TH CONGRESS
1ST SESSION

H. R. 26

IN THE HOUSE OF REPRESENTATIVES

Mr. BARR of Georgia introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend title 18, United States Code, to provide that
the firearms prohibitions applicable by reason of a do-
mestic violence misdemeanor conviction do not apply if
the conviction occurred before the prohibitions became
law.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. FIREARMS PROHIBITIONS APPLICABLE BY
2 REASON OF A DOMESTIC VIOLENCE MIS-
3 DEMEANOR CONVICTION NOT TO APPLY TO
4 CONVICTIONS OBTAINED BEFORE THE PRO-
5 HIBITIONS BECAME LAW.

6 Subsections (d)(9), (g)(9), and (s)(3)(B)(i) of section
7 922 of title 18, United States Code, are each amended
8 by inserting “, on or after September 28, 1996,” before
9 “of a misdemeanor”.

105TH CONGRESS
1ST SESSION

H. R. 445

IN THE HOUSE OF REPRESENTATIVES

Mr. STUPAK introduced the following bill; which was referred to the
Committee on _____

A BILL

To provide that the firearms prohibitions applicable by reason of a domestic violence misdemeanor conviction do not apply to government entities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. FIREARMS PROHIBITIONS APPLICABLE BY
2 REASON OF A DOMESTIC VIOLENCE MIS-
3 DEMEANOR CONVICTION MADE RETRO-
4 ACTIVELY INAPPLICABLE TO GOVERNMENT
5 ENTITIES.

6 (a) IN GENERAL.—Section 925(a)(1) of title 18,
7 United States Code, is amended by striking “sections
8 922(d)(9) and (g)(9) and”.

9 (b) RETROACTIVITY.—The amendment made by sub-
10 section (a) of this section shall take effect as if the amend-
11 ment had been included in section 658 of the Treasury,
12 Postal Service, and General Government Appropriations
13 Act, 1997 (as contained in section 101(f) of the Omnibus
14 Consolidated Appropriations Act, 1997), on the date of
15 the enactment of such Act. Any liability, penalty, or for-
16 feiture incurred by any person who would not have been
17 subject to the liability, penalty, or forfeiture if the amend-
18 ment made by subsection (a) had been so included, by rea-
19 son of the application of any amendment made by such
20 section 658 to a conviction for a misdemeanor crime of
21 domestic violence (as defined in section 921(a)(33) of title
22 18, United States Code) is hereby extinguished, and any
23 action or prosecution for the enforcement of any such li-
24 ability, penalty, or forfeiture shall not be sustained.

EXHIBIT 6

Federal gun law stops 3 cops

Officers convicted on domestic violence charges are ordered to surrender weapons

By John C. Ensslin

Rocky Mountain News Staff Writer



Alex Woods Jr.

domestic violence offenses.

The new law — an extension of the 1968 Gun Control Act — took effect Sept. 30. But it wasn't until the Bureau of Alcohol, Tobacco

and Firearms sent a memo to big city police departments that Denver police commanders acted.

The memo pointed out that the new law does not exempt law enforcement officers or the military personnel.

"It's going to have far-reaching effects for all citizens, but we'll make a good faith effort to comply," said Lt. John Lamb of the

department's civil liabilities unit.

The president of a union representing Denver's 1,426 police officers said his group and other national police organizations will challenge the new law in court.

"We're totally against it. We're angry and we're shocked," said Alex Woods Sr., president of the Police Protective Association. "It's ludicrous that they would come out with a bill like this."

Woods' son, Alex Jr., a patrolman with four years on the force, is one of three Denver officers affected. The others are Detective James A. Huff, a 26-year-veteran, and patrolman Alfred E. Koger, a 24-year veteran.

The three officers could not be reached for comment.

A Denver jury convicted Alex Woods Jr. in May 1995 of assaulting his girlfriend by choking and hitting her in an upstairs bedroom during a Christmas party.

He was sentenced to one year's probation and 36 weeks of domestic violence counseling.

"He just thinks it's unfair," his father said. "He paid his dues. He was suspended, and he did the counseling that the court mandated."

The other two officers' convictions involved domestic violence offenses against a 14-year-old child and a wife, police said.

Woods Sr. said he expects the new law to be overturned on grounds that it adds penalties to past violations of the law retroactively.

See GUN LAW on 10A

Rocky Mountain News—Tues., Dec. 3, 1996

Critics say law illegally adds penalties

GUN LAW from 4A

Many defendants would not have agreed to plea agreements or declined to appeal domestic-violence convictions if they had known then that the charge would someday bar them from possessing weapons.

Denver police Chief David Michaud said he'll wait and see what happens at the national level before deciding what to do with the three officers.

"Their worst-case scenario is, if there is no reversal, they'll lose their jobs," Michaud said.

Denver police also have questions about how the law affects six

other officers convicted of domestic violence offenses under city ordinance.

These are generally lesser charges than a third-degree assault and are not classified as misdemeanors. No action has been directed toward those six officers, pending clarification from ATF officials.

What the ATF memo does state is that the weapons ban applies to anyone convicted of a misdemeanor or under federal or state law. The memo urges law enforcement officials to encourage any such person to relinquish a firearm or ammunition to a third party, such as a police agency, lawyer or gun dealer. Police agencies Monday were still unsure how the law will be

enforced.

Aurora Deputy Chief Mike Stiers said his department has three officers who might be affected.

"We've decided to seek more information," Stiers said. "We won't be, as of right now, modifying anybody's job, until we get a more defined clarification."

Arapahoe County Sheriff Pat Sullivan said his department is still checking records but has not found anyone who is affected. Spokesmen for Fort Carson and the U.S. Air Force Academy said they are still discussing the issue with their attorneys.

Staff Writer Tillie Fong contributed to this report.

Gun law disarms 3 cops

By Peter G. Chronis
and Marilyn Robinson
Denver Post Staff Writers

Three Denver police officers were told to turn in their guns yesterday because a new federal law bans anybody with a misdemeanor domestic-violence conviction from possessing firearms or ammunition.

The three were identified as Detective James A. Huff, a 26-year veteran; officer Fred E. Kroger, a 24-year veteran; and Officer Alex Woods Jr., who has been on

NEW YORK POST 12/31/94 New domestic-violence rule invoked

the force four years. Police officials said the three would be reassigned to duties that don't require them to carry firearms for the time being. Ultimately, they could lose their jobs, officials said.

In the meantime, other metro-area law enforcement agencies were checking their records to see if any of their officers might fall under the new federal ban, signed into

law Sept. 30.

During a news conference at Denver Police Chief David Aichaud's office, Deputy Chief Tom Sanchez and Lt. John Lamb, the police departments legal adviser, said the U.S. Bureau of Alcohol, Tobacco and Firearms late last week notified law enforcement agencies that provisions of the new law applied to law enforcement officers as

well as ordinary citizens.

The city has 1,428 police officers. More than 8,000 domestic-violence cases are filed each year in Denver, so many ordinary citizens might have to surrender their firearms as well.

U.S. Attorney Henry Solano said the amendment to the Gun Control Act of 1968 applies to everybody convicted of misdemeanor domestic violence, including the

Please see DOMESTIC on 20A

Domestic-violence law disarms 3 cops

DOMESTIC from Page 1A

military and law enforcement, "and failure to dispose of firearms could result in federal prosecution."

Solano said several other large-city police departments were holding similar news conferences on the issue yesterday.

Violation is a federal felony, with a penalty of up to 10 years in prison and a \$250,000 fine, Solano said.

So far, said Jerry Petrilli, agent in charge of the ATF Denver office, there are no active cases involving police officers.

Last week, ATF Director John McGaw sent an advisory letter to state and local law enforcement agencies, saying the new provision "does apply to all law enforcement officers."

The amendment prohibits the possession of firearms or ammunition by anybody convicted of a domestic-violence misdemeanor under state or federal law. The conviction must have involved "the use or attempted use of physical force, or the threatened use of a deadly weapon."

The ATF also advised that those affected immediately relinquish guns and ammo to either a police agency, federally licensed fire-

arms dealer or other third party who can legally possess firearms.

Lamb and Sanchez said the department is seeking clarification as to whether the ban applies to a half-dozen officers with city-ordinance domestic-violence convictions, which are petty offenses. However, Solano said the ban doesn't apply to petty offenses.

The Denver Sheriff's Department is also seeking clarification from the ATF as to how the law applies to petty offenses, said John Simonet, Denver director of corrections.

He said the sheriff's department, which operates both the city and county jails and provides security in the Denver courts, has seven officers with domestic-violence violations of municipal ordinances. Another three or four deputies have similar cases pending in municipal court, he added.

Those deputies with petty-offense convictions for domestic violence already are required to leave their weapons at their duty stations at the end of their work shifts, he added.

Meantime, Deputy Aurora Police Chief Mike Stiers said that in checking internal-affairs records back to 1993, the suburban department has found five officers charged with domestic violence.

Stiers said he didn't know the outcome of those cases.

"Without going back and reading every report, I'm not sure whether it's applicable," he said.

Two of the officers are no longer on the force, he noted.

Arapahoe County Sheriff Pat Sullivan said his department would check all 360 sworn officers with the National Crime Information Center criminal history records system to see if there have been any misdemeanor convictions among the staff "that we're not aware of."

Sullivan said that as chairman of the congressional affairs committee of the National Sheriffs Association, he would fax information on the new law to sheriffs in Colorado, as well as mail a packet to 3,000 sheriffs nationwide.

"We would have to look at it on a case-by-case basis," said Deputy Jim Parr, spokesman for the Jefferson County Sheriff's Department, "and if the law applied to a particular situation, we would be bound by it."

"We're going to take a look at it," said Janet Young, legal adviser to the Lakewood Police Department. "We'll get a copy of the actual bill and decide what our policy is going to be."

One Strike and You're Out

If you've been convicted of domestic violence, you can't have a gun. Even, it turns out, if you're a cop.

BY LARRY REIBSTEIN
AND JOHN ENGEN

SHOULD PEOPLE CONVICTED OF beating their spouses or children be allowed to own a gun? Congress answered that this year: no. But suppose that incident happened years ago—and the someone is a cop or a soldier or an FBI agent whose livelihood essentially depends on carrying a gun? Still no?

This is no theoretical debate. A new federal law, slipped unobtrusively into a spending bill in September, says that anyone convicted of even a misdemeanor in a domestic-violence incident—ever—is prohibited from owning, carrying or transporting a gun. The law was widely praised then as a quick and easy way to curb an escalation of violent acts against wives and children—and if a cop got caught up, so be it. It also plugged a legal loophole; while felons were already barred from owning guns, most domestic-abuse cases are prosecuted as misdemeanors.

But so far, just about the only people giving up their guns are the cops. A dozen or so officers, in cities including Los Angeles, Denver and Detroit, have turned in their guns and been demoted to desk jobs—or told they might be fired. In Minneapolis four officers, two of them highly decorated, have been reassigned to desk duty or put on paid leave. "If you can't carry a gun you can't be a cop," said Police Chief Robert Olson. Denver's sheriff's department came up with a skirt-the-issue solution: it asks deputies with a misdemeanor record to hand in their guns before going home.

How many law-enforcement officers might be affected? There are about 700,000 at the federal, state and local levels, so it could reach into the thousands. In recent weeks law-enforcement agencies have scrambled to search their personnel records for convicted officers, though it's not always useful; some states don't list misdemeanors on rap sheets. The Justice Department is relying on the honor system. It has asked all employees who carry firearms, including

FBI and Drug Enforcement Administration agents, to declare in writing that they've never been convicted of a misdemeanor involving domestic abuse—or to turn in their weapons. The Pentagon admits it's not in compliance while it drafts new regulations. How many soldiers might be past abusers is anyone's guess.

Many law-enforcement agencies general-

to be held to a high standard. As The Denver Post editorialized, "Police officers who are guilty of domestic violence should lose the right to practice in a profession where the ability to make cool and clear decisions ... is absolutely critical."

Opponents also attack the law's retroactive reach. Some police-union lawyers say it may violate the Constitution's prohibition against ex post facto laws—in this case, increasing the punishment for a crime committed before the new law was passed. It also allows no room for changed behavior. In Minneapolis, two of the cops now on leave were convicted of misdemeanors more than a decade ago. And, according to their union, the offenses involved shouting matches, not physical violence. All four cops (who weren't identified) disclosed the misdemeanors on their own. Chief Olson, while



'The ability to make cool and clear decisions': Lots of police officers may end up sitting behind a desk under the new federal law. Above, police respond to a domestic dispute.

ly support the law. But not surprisingly, police organizations and unions aren't happy. They are complaining that the law is unenforceable and may be unconstitutional. Says Los Angeles County Sheriff Sherman Block, "This takes away the police officer's ability to make a living."

Up to now most gun-control laws, including the Brady bill requiring registration, have exempted police. They are, after all, trained law-enforcement officers. Police unions argue that under the new law civilians can still go about their jobs even if they must give up their guns. "It is patently unfair to police officers," said Beth Weaver, a spokeswoman for the National Association of Police Organizations. Still, supporters reasonably argue that cops especially need

supporting the law, says it needs to be sympathetic to someone "who, 20 years ago, made a mistake."

Such comments may sound distressingly familiar to domestic-abuse counselors, but they may yet get a sympathetic hearing in Congress. Several House members suggested that the Clinton administration misinterpreted the retroactivity provision, and are calling for making the law apply only to new cases of domestic abuse. The administration, however, is opposed to any changes, fearing it would remove any teeth and allow all past abusers—not just cops—free to own a gun. Given the new importance placed on reducing domestic violence, that's a risk it would rather not take.

With BRAD STONE in Chicago



PAPER

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FILE

Police job on line under new gun law

By Craig Schnelder
and Scott Marshall
STAFF WRITERS

A 10-year veteran of the Alpharetta police force has surrendered his gun and may lose his job as police departments across metro Atlanta address a new law taking guns out of the hands of people convicted of domestic abuse.

The action marks the first reported instance in the metro area of an officer being taken off the street because of the controversial federal law.

The law, approved Sept. 30, prohibits gun use by people convicted of any crimes of domestic abuse, including misdemeanors such as simple assault or harassment.

The state attorney general's office has interpreted that to mean no person convicted of misdemeanor domestic violence can be certified as a police officer.

Although some police departments across the nation have interpreted the law to mean officers may carry their guns on the job but not off duty, the federal Bureau of Alcohol, Tobacco and Firearms (ATF) says an officer convicted of a domestic abuse crime cannot possess a gun "for any purpose."

The Alpharetta police officer had pleaded guilty in the mid-1980s to a misdemeanor charge during his divorce, said Alpharetta Police Chief Buz Dillon.

The officer, who Dillon refused to identify, has been placed on desk duty for 90 days, during which Dillon hopes Congress will clarify the law. If the law stands as interpreted by the ATF, the police officer will lose his job, the police chief said.

Dillon criticized the law for making an officer pay a second time for an incident in his past. But the chief said he had no choice but to take action.

On Tuesday, the state agency that screens candidates for police academies said it will disqualify any person convicted of domestic abuse, even a misdemeanor. Moreover, the agency, called the Georgia Peace Officer Standards and Training Council (POST), will take away the certification for any police officer it learns has a history of domestic abuse convictions, said investigations director Eric Dierks.

But the task of checking whether a police officer is a spouse abuser lies with local departments, he said.

Police departments in Fayette, Fulton, Coweta, Rockdale, Clayton, Henry and Walton counties and Peachtree City and Covington said Tuesday they had no officers affected by the new law. The Atlanta Police Department is awaiting a legal opinion on the law before taking any action, a spokesman said.

Officer gets gun back, returns to work after court ruling

By Chris Graves
Star Tribune Staff Writer

A little-known Minnesota court rule paved the way for Minneapolis police Lt. Dale Barsness to get his gun — and his job — back.

The head of the homicide unit had been forced to comply with a new federal law that says anyone who has ever been convicted of misdemeanor domestic violence can no longer carry a firearm. Without a gun, Barsness could not be a police officer in the state.

But a section of the state's Rules of Criminal Procedure allowed a Hennepin County judge to avoid a "manifest injustice" by setting aside Barsness' guilty plea to fifth-degree domestic assault against his wife in 1991.

Barsness was one of five Minneapolis officers who had to turn their weapons over to the internal affairs unit Dec. 12. Four of the five, including Barsness, have gotten their guns back and have returned to work. The status of the fifth was unclear Monday.

"It's good to be back," Barsness said, noting the three weeks' worth of work on his desk.

*Turn to BARSNESS on B2 for:
— Bill to cancel retroactivity may
be introduced this month.*

Tuesday
JANUARY 7, 1997

Metro/State

B
SECTION

Star Tribune

BARSNESS from B1

'Manifest injustice' rule cited in decision to return cop's gun

Nationwide, the federal gun-law amendment has created consternation among police officers, military personnel and hunters.

Many have argued that it retroactively changed the legal consequences of a crime and is therefore unconstitutional.

U.S. Rep. Bob Barr, R-Ga., is drafting a bill to keep the law from being applied to cases before Sept. 30, 1996. It may be presented to Congress this month. It is not expected to be introduced in the three-day session starting today.

Last Friday, Hennepin County District Judge John Stanoch ruled that Barsness could avoid the consequences of the federal law by withdrawing the plea he entered the day after assaulting his wife at

their Brooklyn Center home.

A judge in Minnesota can allow someone to withdraw a guilty plea if extraordinary circumstances that surface later would create a "manifest injustice." The rule has usually been used when DNA tests show that a person who pleaded guilty to a crime could not have committed it.

Barsness' attorney, Michael Friedberg, said Monday that he was not aware of the rule until he started researching Barsness' case and that of another Minneapolis officer.

"The net effect will be that the plea was never entered," Friedberg said Monday. "But that's not the message Dale wants to get out. He said, and has said, what he did was wrong."

Police have not released the

names of the other four officers or complete details about the outcome of their cases. The department discovered that the federal law didn't apply to one officer who turned in his gun. Another is attempting to have his domestic-violence conviction expunged from his record. Like Barsness, another officer had his guilty plea set aside.

Bill McClelland, Brooklyn Center prosecuting attorney, said he didn't object to the tactic in Barsness' case because it seemed to fit the criteria.

"I don't see Barsness as a danger to society," McClelland said. If he lost his job because of the federal law, "Minneapolis would lose a valuable employee, and his family would suffer because of loss of income."

Barsness has said he pays his wife \$1,700 a month in support.

A memo attached to the judge's order said he granted the motion because Barsness admitted he was wrong, made no attempt to defend or justify the

abuse, completed "each and every condition of his probation," went through anger management counseling and sought out additional counseling on his own.

While the issue of whether the federal law is unconstitutional was not before the Hennepin County court, the judge said it was clear that Barsness could not have known six years ago that the plea could have jeopardized his livelihood.

"To allow that to happen to this citizen who has taken responsibility for his action, worked to resolve the issues leading to the assault and by all accounts served as a responsible and respected member of the community would be a manifest injustice," Stanoch said.

But he noted that Barsness' actions were still criminal:

"Domestic violence is a serious societal problem, and this decision should not be taken as minimizing the actions of Mr. Barsness in 1991. His assault was wrong."

EXHIBIT 7

City of Cincinnati



Interdepartmental
Correspondence Sheet

Date Nov. 6, 1996

To Colonel Michael C. Snowden, Police Chief

From Lieutenant Stephen R. Kramer, Planning Section

Copies to

Subject New Federal Regulations Regarding Domestic Violence and Officers' Firearms

Attached is a Planning Section rendition of revised sections 921, 922, 924, 925, and 926 of the United States Code as amended by House Bill 3355 in 1995 and House Bill 3610 in 1996. Both of these bills were signed into law. The latter one went into effect on September 30, 1996. The following is based on opinions based on same. These opinions were not made with benefit of legal counsel.

A Cincinnati Police Officer cannot possess a firearm, even a Division issued firearm, if the officer has been convicted of a misdemeanor domestic violence. A misdemeanor domestic violence is defined as a misdemeanor statute which includes the use or attempted use of physical force or the threatened use of a deadly weapon. It also includes those offenses 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.

Officers who are found guilty of misdemeanor violence by virtue of threats of physical force are not included in these provisions. Nor do these provisions appear to cover all the relationships that are covered in Ohio law.

Planning Section researched a similar project in February 1995. At that time, it was decided that police officers were exempted from Section 922 due to an expressed exemption in Section 925 (see attached solicitor's opinion). That exemption was specifically eliminated for purposes of convictions for misdemeanor domestic violence. The exemption still stands for those who are subjects of court orders as a result of and/or under indictment for domestic violence.

Once convicted of a misdemeanor domestic violence, there are two ways an officer can be issued a firearm:

1. The officer is not considered to be convicted if the conviction is expunged or set aside, or if the offense is one for which he/she has been pardoned or had his/her civil rights fully restored.
2. The officer can make application to the Secretary of the Treasury for relief from the disability. The Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.

Since these are most likely to be initiated by the officer or his/her counsel, we did not inquire as to administrative processes.

DRAFT

Mr. Dale Cayot, Chief Counsel the local office of the Bureau of Alcohol, Tobacco, and Firearms (BATF), does not have a copy of the law. However, they were issued a brief from the Department of Justice (DOJ). Based on the brief, it is also his opinion that there is no longer an exemption for a police officer if convicted of misdemeanor domestic violence. The only question appears to be the interpretation of the definition of "misdemeanor domestic violence." It is Mr. Cayot's opinion that the DOJ will interpret it to mean that a threatened use of a deadly weapon or the actual use or attempted use of force will be required to invoke the new Federal regulations regarding possessions of firearms by officers. Mr. Cayot will contact this office when the interpretation is rendered.

Planning Section requests your permission to ask the City Solicitor to review the new federal regulations and provide an opinion as to our responsibilities with respect to issuing firearms to officers convicted of Domestic Violence. We further recommend that, if there are currently any officers who, in the knowledge of the Division, have been convicted of Domestic Violence, and if that conviction involved allegations of force, attempted force, or threat of use of a deadly weapon, that those officers be relieved of their firearms until such opinion is received.

Planning Section will complete the request in anticipation of your approval. Upon approval, Planning Section will fax the request to the Solicitor and ask for an expedited response.

SRK/sk

DRAFT

City of Cincinnati



Interdepartmental
Correspondence Sheet

Date Nov. 7, 1996

To Colonel Michael C. Snowden, Police Chief

From Lieutenant Stephen R. Kramer, Planning Section

Copies to Fay D. Dupuis, City Solicitor

Subject Update - Domestic Violence, Police Officers, and Firearms

In a Form 17 completed to you yesterday we advised that Chief Counsel of the local Bureau of Alcohol, Tobacco, and Firearms (BATF) office, Dale Cayot, would call us with opinions when they were sent to him from the Department of Justice (DOJ). Coincidentally, many of the opinions we were looking for came to him this morning and are approved for oral, not written, dissemination.

"Misdemeanor domestic violence" means any misdemeanor conviction where one of the actions during the offense included the use of force, attempted use of force, or threatened use of a deadly weapon against any person whose relationship to the perpetrator is defined in the new Federal law. This includes misdemeanor charges of violations of State statutes wherein the above actions were taken by the perpetrator against the above mentioned class of victim, e.g., Assault, Aggravated Menacing, etc.

There is no exemption for police officers if convicted of the above offenses with the above stipulations, regardless of when it occurred. The law is clear that the subject officer may not have in his/her possession any firearm. It is suggested by BATF that officers pass their firearms to a third party, be it an attorney, local police agency, family member, or the BATF.

There is no relief other than those mentioned in yesterday's report. The only practical relief is by expungement or set aside of the conviction or a full pardon. The option to apply to the Secretary of the Treasury is not practical because the Secretary of Treasury is barred, by an appropriations statute, from processing any such applications except those submitted by corporations.

Section 925 of the United States Code (USC) does effectively provide an exemption to police officers regarding all other violations, court orders, indictments, convictions, etc. As a macabre aside, if the police officer uses a firearm to shoot his wife, that firearm is not subject to seizure under Federal law because it would be a *felony* domestic violence and the officer remains exempt under USC Section 925. But if tries to slap her, his firearms are subject to seizure.

Planning Section's recommendation for pulling Division-owned firearms from affected personnel still stands and is reinforced. BATF will make near-future cases against police officers and agencies a low priority - an unofficial grace period of sorts. However, the civil liability potential, even in a "good" shooting, is probably extraordinary, especially to the policy maker, i.e., Police Chief.

SRK/sk

DRAFT

EXHIBIT 8

112.9m.....	Drug interdiction.....	172B
63m.....	Watershed and flood Prevention.	Title V
25m.....	Emergency Conservation--hurricane.	Title V
57.9m.....	FAA security activities....	Chapter 5
147.7m.....	Facilities and Equipment...	Chapter 5
21m.....	Research, Engineering and Development.	Chapter 5
82m.....	Emergency Relief--hurricane	Chapter 5
6m.....	NTSB--salaries.....	Chapter 5
1m.....	NTSB--emergency.....	Chapter 5
3m.....	Research and Special Programs.	Chapter 5

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\$1.757 billion in emergency designation.

Mr. MCCAIN. I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I yield myself 10 minutes on this side.

The PRESIDING OFFICER. The Senator is recognized.

Mr. LAUTENBERG. Mr. President, the legislation before us includes a provision that I authored that will prohibit anyone convicted of a crime involving domestic violence from possessing firearms. I want to take a few minutes of the Senate's time to reflect on just what that means.

We are today about to perform a great and moral act that a human being can perform--one of the best. We are about to save the life of another person. Today, we are going to save the life of the ordinary American woman, a woman who loves her kids, a woman who loves her family. Today, this ordinary American woman is married to someone who is generally a decent, law-abiding guy, but with one exception. Sometimes when things get rough and the stresses of life build, he loses his temper because his emotions get the best of him. He loses control, flies into a rage and then strikes out violently at those closest to him.

Once he beat his wife brutally and was prosecuted, but like most wife beaters, he pleaded down to a misdemeanor and got away with a slap on the wrist.

Mr. President, next year, this fellow is going to lose his cool at work, or with the boys, and he is going to go home one day and get into another argument with his wife. As arguments often do, it will escalate, and this time, as before, it will get out of control. As their children huddle in fear, the anger will get physical, and almost without knowing what he is doing, with one hand he will strike his wife and with the other hand he will reach for the gun he keeps in his drawer. In an instant their world will change. And this woman, this loving mother, this ordinary American, will die or be severely wounded.

Later, maybe the husband will go to prison. The children will be left parentless, and the effects of the tragedy will ripple for years throughout their lives and throughout the lives of so many others.

Except, Mr. President, because of what we are about to do, this story is going to have a different ending.

Yes, the husband may lose his cool at work and, yes, maybe they will get into the same argument; yes, his rage will fly out of control; and yes, it will probably lead to violence. But when this man's hand reaches into that drawer, there will not be a gun there. So that fatal instant, that moment of fleeting madness, will never happen.

In the end, that ordinary American woman, that loving mother, will end up being bruised, maybe she will end up unconscious in the hospital. But when the next day comes, hopefully, she will awaken, she will see the morning Sun through her swollen eyes, and, if lucky, she will leave the hospital and get on with her life, a life to see that frightened child grow up and go to school. She will live to see him graduate, find a job, and create his own family. That will happen because--and only because--we are about to save her life this day.

Mr. President, over the years there will be thousands of women like

... just there will be thousands of women like this, each one with a family of loved ones, each one with their own dreams. And there will be children. And they will all live, Mr. President. They will all live because of what we do here this day.

Mr. President, you and I will never know the women and children whose lives we are about to save. They will never have a chance to thank us. They will never know that their lives were spared.

But for the rest of our lives, you and I and other Senators, we will have the privilege of knowing that we have lived up to the very highest of our own ideals. We have done nothing less than reach forward into time, put our hands around tragedy and death and remolded it back into life itself. We have done that many, many times, over and over and over again.

Mr. President, this tremendous victory for the forces of life would not

[[Page S11877]]

have happened but for the hard work and dedication of many people. I want to express my deep appreciation to all of those who played a role.

In particular, I want to thank President Clinton, Leon Panetta, many dedicated men and women in the Clinton administration.

A moment ago, we saw the distinguished chairman of the Appropriations Committee, Senator Mark Hatfield, on the floor. I want to thank him. He was solidly behind our effort.

The commitment of the people I just mentioned to this cause was absolutely essential to getting this done. I am grateful to the President for that support.

I also want to thank our distinguished Democratic leader, Senator Daschle. He supported me in this effort from the beginning, from way back in the beginning of the year. His efforts in the final hours were of great help. I very much appreciate his commitment to the victims of domestic abuse and for his friendship, notwithstanding my repeated phone calls to him to discuss this legislation.

I also want to publicly thank those who work in my office and in the Senate and many others here in Washington and around the country who have helped make this possible. Over 30 national organizations got behind this effort. Many, many people made significant contributions.

I particularly am appreciative of Sarah Brady and Handgun Control for raising this issue at the Democratic convention and giving it the public attention that it required and deserved.

I want to thank the American Bar Association, whose public statement on a weaker alternative version was critical in persuading my colleagues not to try to water down the proposal. Also, the Coalition to Stop Gun Violence, who took the initiative to build support among a wide variety of other organizations, and the Violence Policy Center, the National Coalition Against Domestic Violence, the National Network Against Domestic Violence, all of whom helped sound the trumpet about this legislation.

Many other groups also played important roles.

Mr. President, for the historical record, I would like to take the opportunity to discuss some of the history behind the domestic violence gun ban, and the changes in the legislative language that are incorporated into the final agreement.

Mr. President, I originally introduced the domestic violence gun ban as S. 1632 on March 21 of this year. After extensive negotiations with the Republican leadership, including Senator Lott, Senator Craig, and Senator Hutchison, the proposal was then modified slightly and incorporated into an antistalking bill by a voice vote. Unfortunately, the House failed to act on the antistalking bill. I then offered the modified version of the legislation as an amendment to the fiscal year 1997 Treasury, Postal Service and general Government appropriations bill, and the amendment was approved by a vote of 97 to 2. However, Senator Lott pulled the Treasury, Postal bill from the floor, and a version of that legislation has now been incorporated into this omnibus spending bill.

The language in the final agreement was worked out early Saturday morning, September 28, through further negotiations with the Republican leadership. Initially, opponents of my legislation had proposed to gut the legislation, primarily by inserting three major loopholes. First,

they proposed to exclude child abusers from the ban, by limiting its application only to crimes against intimate partners. This outrageous proposal was withdrawn once it was held up to public scrutiny.

Second, opponents of the gun ban proposed to limit the ban only to offenders who had been notified of the ban when they originally were charged. This effectively would have exempted all currently convicted offenders from the ban. It also would have meant that most offenders in the future would escape the ban, since there was no requirement that they actually be notified. In effect, gun ban opponents wanted to say that ignorance of the law would be an excuse for wife beaters, even though it is not an excuse for anybody else. Eventually, this proposal, too, was dropped.

The third major loophole proposed by gun ban opponents was to limit the ban only to offenders who had been entitled to a jury trial. This would have rendered the ban close to meaningless, as the vast majority of these cases are heard before a judge, in a bench trial.

Those who proposed this new loophole eventually agreed to drop it entirely. Therefore, the ban will apply to all wife beaters and all child abusers, regardless of whether they were convicted in a trial heard by a judge or a jury.

Mr. President, after agreeing to drop the jury trial requirement, opponents of a strong gun ban continued to express concern that gun rights should not be lost without an assurance that offenders will be provided with all appropriate due process protections. To reassure them on this point, we agreed to include in the final agreement a provision that has no real substantive effect, but that may help to assure some people that nobody will lose their ability to possess a gun because of a flawed trial. This provision, in essence, states that the ban will not apply to someone who was wrongly denied the right to a jury trial. More specifically, the language protects from the ban anyone who had been entitled to a jury trial, but who did not receive such a jury trial, or who did not knowingly and intelligently waive his right to a jury trial.

Of course, Mr. President, if an offender was wrongly denied the right to a jury trial, he was not legally convicted. And so this language really does not change anything. But, again, as it provided needed reassurance to some, I agreed to it in order to facilitate the final agreement.

I do want to make very clear, however, that this language should not be interpreted to indirectly include any requirement of notice for a waiver to be considered to have been made knowingly and intelligently. That is, one can plead guilty or otherwise effectively waive one's constitutional right to a jury trial, and in considering the validity of such a waiver it is irrelevant whether the individual knew that a conviction will lead to a firearm ban. Although that should be clear from the face of the statute, given opponents' efforts to seek a notice requirement, I wanted to state this definitively for the record. This point was made very explicitly in the negotiations, and was agreed to by all sides.

Mr. President, the final agreement does include some minor changes to the Senate-passed version that actually strengthen the ban slightly. Let me review some of them now.

First, the revised language includes a new definition of the crimes for which the gun ban will be imposed. Under the original version, these were defined as crimes of violence against certain individuals, essentially family members. Some argued that the term crime of violence was too broad, and could be interpreted to include an act such as cutting up a credit card with a pair of scissors. Although this concern seemed far-fetched to me, I did agree to a new definition of covered crimes that is more precise, and probably broader.

Under the final agreement, the ban applies to crimes that have, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon. This is an improvement over the earlier version, which did not explicitly include within the ban crimes involving an attempt to use force, or the threatened use of a weapon, if such an attempt or threat did not also involve actual physical violence. In my view, anyone who attempts or threatens violence against

and should be prohibited from possessing firearms.

Mr. President, another new provision in the final agreement clarifies that a conviction will not lead to a firearm disability if the conviction has been expunged or set aside, or is for an offense for which the person has been pardoned or has had civil rights restored. This language mirrors similar language in current law that applies to those convicted of felonies.

I would note that the language on civil rights restoration, as it has been applied in the past, and as it should be interpreted in the future, refers only to major civil rights, such as the right to vote, to hold public office, and to serve on a jury. Loss of these rights generally does not flow from a misdemeanor conviction, and so this language is probably irrelevant to most, if

[[Page S11878]]

not all, of those offenders covered because of the new ban. But I want to make it clear that the restoration of any firearm rights under state law would not amount to a civil rights restoration for these purposes. In fact, any such State law effectively would be preempted by this language, and so could not have any legal effect.

Mr. President, I now want to take a moment to briefly discuss the implementation of this new law.

Mr. President, the final agreement does not merely make it against the law for someone convicted of a misdemeanor crime of domestic violence from possessing firearms. It also incorporates this new category of offenders into the Brady law, which provides for a waiting period for handgun purchases. Under the Brady law, local law enforcement authorities are required to make reasonable efforts to ensure that those who are seeking to purchase a handgun are not prohibited under Federal law from doing so.

Mr. President, convictions for domestic violence-related crimes often are for crimes, such as assault, that are not explicitly identified as related to domestic violence. Therefore, it will not always be possible for law enforcement authorities to determine from the face of someone's criminal record whether a particular misdemeanor conviction involves domestic violence, as defined in the new law.

Mr. President, I would strongly urge law enforcement authorities to thoroughly investigate misdemeanor convictions on an applicant's criminal record to ensure that none involves domestic violence, before allowing the sale of a handgun. After all, for many battered women and abused children, whether their abuser gets access to a gun will be nothing short of a matter of life and death. I am hopeful that law enforcement officials always will keep that in mind as they implement this requirement.

Having said this, Mr. President, I recognize that there are limits to the ability of many law enforcement agencies to conduct in depth investigations of large numbers of applicants for handgun purchases. The law requires that these agencies make a reasonable effort to investigate applicants. What is a reasonable effort depends upon the local law enforcement officials' available time, resources, access to records, and their own law enforcement priorities.

In my view, the reasonable effort requirement should not be interpreted so broadly that it would substantially interfere with the ability of a law enforcement agency to carry out its central mission of apprehending criminals and protecting the public from crime. At the same time, it should not be interpreted so narrowly that it would allow law enforcement agencies to routinely ignore misdemeanor convictions for violent crimes, without further exploration into whether these crimes involved domestic violence. So long as an agency makes a reasonable effort to do so, the requirements of the law would be met. However, again, I would strongly urge law enforcement officials to make this a top priority.

Finally, Mr. President, I want to acknowledge some of the many people who have played a role in moving this legislation forward.

As I noted earlier, I am especially grateful to President Clinton for his strong support of this initiative, which was absolutely essential

to its enactment.

I also want to again thank many of the organizations and people who have supported the effort. In addition to those I mentioned earlier, these include the American Academy of Pediatrics; Children's Defense Fund; Consumer Federation of America; Family Violence Prevention Fund; the National Center on Women and Family Law; the Center for Women Policy Studies; American Ethical Union; Church of the Brethren; American Friends Service Committee; Friends Committee on National Legislation; Lutheran Office for Governmental Affairs; American Public Health Association; American Jewish Committee; AYUDA; Church Women United; Congress of National Black Churches; Evangelical Lutheran Church in America; YWCA of the USA; United Methodist Church, General Board of Church and Society; Peace Action, National Clearinghouse for the Defense of Battered Women, National Urban League; NOW; National Council of Jewish Women; Pennsylvania Coalition Against Domestic Violence; Physicians for Social Responsibility; Presbyterian Church USA; Union of American Hebrew Congregations; Unitarian Universalists Association; United Church of Christ; and Justice for Kids.

In conclusion, Mr. President, I believe that this legislation will save the lives of many battered wives and abused children. And it will send a message that, as a nation, we are determined to take the problem of domestic violence seriously.

Mr. President, getting this legislation enacted has been a long and very difficult struggle. We had to overcome intense opposition from one of the most powerful special interests in American politics. We have overcome one roadblock after the next, and there have been several times when I did not think we would make it.

But throughout it all, the supporters of this bill have always kept in mind that we were fighting for literally a matter of life and death. That knowledge has helped sustain us and make us that much more determined as we have worked our way through the legislative minefield.

So, in the end, we have a glorious victory, a victory for America's frightened, battered women, a victory for our abused children, a victory of life over death.

I am honored and humbled to have been able to play a part in this legislation. We hope that the enforcement of the law will be as rigid as the law very simply defines it. If you beat your wife, if you beat your child, if you abuse your family and you are convicted, even of a misdemeanor, you have no right to possess a gun. That is the way it ought to be. Lord willing, it will be. I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, I ask unanimous consent that I be permitted to speak for 4 minutes and Senator Helms be permitted to speak for 4 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. I may not use all of my time.

Mr. President, first, I want to say this is not a pretty bill. There are plenty of reasons to be against it. But there are far more reasons to be for it, not the least of which is the fact that this bill will close out the appropriations for the year and the Government of the United States will continue to operate for the next 12 months.

Having said that, I think there are a couple of people we should thank: First of all, the chairman of the full committee, Senator Mark Hatfield, for his hard work, long hours, and diligent insistence on getting this done. To our distinguished majority leader, who, in a short time as leader, has understood these processes better than most of us who have been here a long time. Indeed, he did what most of us thought was the right thing to do, and he got right in the middle of it and got this job done. My compliments go out to him.

Mr. President, I have commented here on the floor and included an amendment heretofore in the foreign operations appropriations bill with reference to the drugs that are coming across the southwest border. I have not been very congenial with the Mexican Government because I believe they are not doing everything they can to prosecute the drug kingpins residing in Mexico. I think these kingpins are going to bring Mexico's Government to a standstill in the very near future.

So, to make sure that the United States is doing its share with respect to the southwest border, where 70 percent of the cocaine comes

EXHIBIT 9

CONSTITUTION AND BY-LAWS

OF THE

FRATERNAL ORDER OF POLICE

A NATIONAL POLICE ORGANIZATION



NATIONAL HEADQUARTERS
1410 DONELSON PIKE, A-17
NASHVILLE, TENNESSEE 37217

REVISED AT THE
52ND BIENNIAL CONFERENCE
JULY 31 - AUGUST 3, 1995
VIRGINIA BEACH, VIRGINIA

GILBERT G. GALLEGOS
NATIONAL PRESIDENT

JERRY W. ATNIP
NATIONAL SECRETARY

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CONSTITUTION

Preamble

We, the law enforcement officers of the United States and of the several states and political subdivisions thereof, as representatives and delegates of state and subordinate lodges, do hereby associate the several lodges we represent and the members thereof for the following purposes:

To support and defend the Constitution of the United States; to inculcate loyalty and allegiance to the United States of America; to promote and foster the enforcement of law and order; to improve the individual and collective proficiency of our members in the performance of their duties; to encourage fraternal, educational, charitable and social activities among law enforcement officers; to advocate and strive for uniform application of the civil service merit system for appointment and promotion; to support the improvement of the standard of living and working conditions of the law enforcement profession through every legal and ethical means available; to create and maintain tradition of esprit de corps insuring fidelity to duty under all conditions and circumstances; to cultivate a spirit of fraternalism and mutual helpfulness among our members and the people we serve; to increase the efficiency of the law enforcement profession and thus more firmly to establish the confidence of the public in the service dedicated to the protection of life and property.

All terms used herein to denominate gender shall be generic and, whenever appropriate, the singular shall include the plural and the plural shall include the singular.

ARTICLE 3

Definitions

Section 1. As used herein, the following terms, phrases or words shall be defined as follows:

A. **"Elected law enforcement officer"** shall mean for purposes hereof any law enforcement officer who meets the qualifications in Article 4, Section 1, or who by law is exempted from meeting the minimum training standards.

B. **"Full-time employed"** shall mean law enforcement officers that are engaged in such employment as their full-time occupation.

C. **"Good Cause"** shall mean nonfeasance, malfeasance, dishonesty, or refusal to carry out the will of the Biennial Conference.

D. **"Lodge in good standing"** shall mean a lodge which is not greater than thirty (30) days in arrears in the payment of all dues, delinquency fees and assessments due and payable to or for the Grand Lodge on behalf of its members. Any lodge in arrears of payment of dues or assessments more than thirty (30) days and less than ninety (90) days shall be deemed to be delinquent and not in good standing. Any lodge in arrears of payment of dues or assessments more than eighty-nine (89) days shall be and is hereby automatically suspended from membership in good standing in the Fraternal Order of Police.

E. **"Member in good standing"** in respect to the Grand Lodge, shall mean a member who fulfilled all requirements of membership in good standing in his respective subordinate and state lodges and for whom appropriate per capita tax has been paid to the Grand Lodge. Any member belonging to a state or subordinate lodge that is delinquent or has been suspended shall not be a member in good standing.

F. **"National Board of Trustees"** shall refer to the collective body consisting of the National President, each of the Past National Presidents, the National Vice President, the National Secretary, the National Treasurer, the National Second Vice President, the National Sergeant at Arms, each National Trustee and the Chairman of the National Trustees.

G. **"National Executive Board"** shall mean and consist of the National President, National Vice President, National Secretary, National Treasurer, National Second Vice President, National Sergeant at Arms and the Chairman of the National Trustees.

H. **"National Trustees"** shall mean the individual elected National Trustees or the collective body thereof (excluding the National Executive Board) who may meet from time to time as provided in Article 8 and Article 16 of this Constitution.

I. **"Past National President"** shall be defined as any person elected to the office of National President by a Biennial Conference and who served not less than one (1) full term and was not removed from office.

J. **"Regularly appointed law enforcement officer"** shall mean, for purposes hereof, any law enforcement officer who meets the minimum standards, has received the training and education required by the United States, the state, the political subdivision or agency by which they are appointed, and is granted arrest powers.

ARTICLE 4

Membership

Section 1. Any regularly appointed or elected and full-time employed law enforcement officer of the United States, any state or political subdivision thereof, or any agency may be eligible for membership in the Fraternal Order of Police, subject to the provisions of this Constitution. No person shall be denied membership on account of race, religion, color, creed, sex, age or national origin.

Section 2. Subject only to the provisions of this Constitution, each state and subordinate lodge shall be the judge of its membership. Each state and subordinate lodge shall establish requirements for membership in good standing of its respective membership, which requirements shall not be inconsistent herewith.

Section 3. There shall be three (3) classes of membership: Active, Retired and Honorary.

A. Active Membership

1. Shall include regularly appointed or elected full-time law enforcement officers.

2. May include retired regularly appointed or elected law enforcement officers.

3. May include, subject to the approval of his state and subordinate lodges, regularly appointed or elected law enforcement officers who have resigned from their law enforcement duties and who have remained in good standing with their state and subordinate lodges.

4. Only active members, as herein defined, shall have voice and vote.

B. Retired Membership shall be comprised of retired regularly appointed or elected law enforcement officers who withdraw from active membership upon or after retirement from their law enforcement agency.

C. Honorary Membership shall be comprised of individuals recognized by the Grand Lodge, state lodge or subordinate lodges for exceptional service or contribution to the nation, the state, political subdivision, the law enforcement community or the Fraternal Order of Police.

Section 4. No person shall be a member of more than one state or subordinate lodge at

EXHIBIT 10



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

OPEN LETTER TO ALL FEDERAL FIREARMS LICENSEES

The purpose of this letter is to provide you with information on the provisions of the recently enacted Omnibus Consolidated Appropriations Act of 1997 (the Act). This legislation made two amendments to the Gun Control Act of 1968 (GCA) that directly affect Federal firearms licensees. The amendments were effective on the date of enactment, September 30, 1996.

The following is a description of those two amendments of concern to Federal firearms licensees. Regulations explaining the requirements will be published shortly.

Sales of curio or relic firearms

The Act amended 18 U.S.C. § 923(j) to allow Federal firearms licensees to sell curio or relic firearms to other licensees away from their licensed premises. This amendment applies only to firearms that are classified as a curio or relic. Federal regulations define the term "curios or relics" as firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

- (1) Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof;
- (2) Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios or relics of museum interest; or
- (3) Any other firearms which derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less.

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Licensees are still subject to all recordkeeping requirements in the regulations concerning their sale of curios or relics. In addition, it is suggested that licensees selling a curio or relic firearm away from their licensed premises indicate in their acquisition/disposition record where the sale took place.

Persons convicted of a misdemeanor crime of domestic violence

The Act also amended the GCA to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also made it unlawful for any person to sell or otherwise dispose of firearms or ammunition to any recipient knowing or having reasonable cause to believe that the person has been convicted of such a misdemeanor.

As defined in the GCA, a "misdemeanor crime of domestic violence" means an offense that:

- (1) is a misdemeanor under Federal or State law; and
- (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, 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.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery), if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her spouse would be prohibited from receiving or possessing firearms or ammunition. Moreover, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer possess a firearm or ammunition. However, a conviction would not be disabling if it has been expunged, set-aside, pardoned or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

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The Act also amended the GCA so that employees of government agencies convicted of a qualifying misdemeanor would not be exempt from this new disability with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other government officials who have been convicted of a qualifying misdemeanor will not be able to lawfully possess or receive firearms or ammunition for any purpose including performing their official duties. This disability applies to firearms and ammunition issued by government agencies, firearms and ammunition purchased by officials for use in performing their official duties, and personal firearms and ammunition possessed by such officials.

We are in the process of revising all applicable forms to reflect this new provision. These will be provided to you as soon as possible. In the meantime, you should inquire of your customers whether they have been convicted of a disqualifying domestic violence misdemeanor and avoid any firearm or ammunition transfers to such persons.

If you have any questions concerning these new requirements, contact your local ATF office or the Firearms and Explosives Regulatory Division at (202) 927-8300.


John W. Magaw
Director