

# *Nova Law Review*

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*Volume 41, Issue 2*

2017

*Article 5*

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## Check “Mate”: Australia’s Gun Law Reform Presents The United States With The Challenge To Safeguard Their Citizens From Mass Shootings

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# Check “Mate”: Australia’s Gun Law Reform Presents The United States With The Challenge To Safeguard Their Citizens From Mass Shootings

Denise Cartolano

## **Abstract**

“My biggest frustration [as President] so far is the fact that this society has not been willing to take some basic steps to keep guns out of the hands of people who can do just unbelievable damage.”<sup>2</sup> “We know that other countries, in response to one mass shooting, have . . . [managed] to craft laws that almost eliminate mass shootings. Friends of ours; allies of ours—Great Britain, Australia; countries like ours.”<sup>3</sup>

—President Barack Obama

**KEYWORDS:** shootings, citizens, mass

# CHECK “MATE”: AUSTRALIA’S GUN LAW REFORM PRESENTS THE UNITED STATES WITH THE CHALLENGE TO SAFEGUARD THEIR CITIZENS FROM MASS SHOOTINGS<sup>1</sup>

BY DENISE CARTOLANO\*

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1. See *Urban Dictionary: Mate*, available at [www.urbandictionary.com/define.php?term=mate](http://www.urbandictionary.com/define.php?term=mate) (last visited Apr. 9, 2017) (defining the word “mate” as a slang term Australian’s commonly use when referring to a friend); *Dictionary: Checkmate*, DICTIONARY.COM, available at [www.dictionary.com/browse/checkmate](http://www.dictionary.com/browse/checkmate) (last visited Apr. 9, 2017) (defining the word checkmate as a maneuver in chess where the opponent’s king is in a position from which it cannot escape; which brings the game to a victorious conclusion). Therefore, the title of the article is in reference to Australia gaining an advantage over the United States in regard to gun control and the reduction of mass shootings.

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## I. INTRODUCTION

“My biggest frustration [as President] so far is the fact that this society has not been willing to take some basic steps to keep guns out of the hands of people who can do just unbelievable damage.”<sup>2</sup> “We know that other countries, in response to one mass shooting, have . . . [managed] to craft laws that almost eliminate mass shootings. Friends of ours; allies of ours—Great Britain, Australia; countries like ours.”<sup>3</sup>

—President Barack Obama

The morning of June 12, 2016, I awoke in my apartment in Orlando, Florida. Everything felt like a typical relaxing Sunday morning. As I rolled over and scratched my dog on the head, I picked up my phone lying beside me. As part of my typical routine, I started to scroll through the news feed on my Facebook account. Through the myriad of posts and pictures, I came across one from a colleague of mine stating that there had been a shooting at Pulse Nightclub in Downtown Orlando. Having lived in New York City on September 11, 2001, waking up to a morning of tragedy in my hometown was not a new experience for me; but the same questions still arise: Why did

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2. Press Release, The White House Office of the Press Sec’y, Remarks by the President in Q&A with David Karp, CEO of Tumblr (June 10, 2014), <http://obamawhitehouse.archives.gov/the-press-office/2014/06/10/remarks-president-qa-david-karp-ceo-tumblr>; see also Jonathan Weg, *We Don’t Come from a Land Down Under: How Adopting Australia’s Gun Laws Would Violate the Second Amendment of the U.S. Constitution*, 24 CARDOZO J. INT’L & COMP. L. 657, 658 (2016).

3. Press Release, Barack Obama, President, Statement by the President at Umpqua Cmty. Coll., Roseburg, Or. (Oct. 1, 2015), <http://www.whitehouse.gov/the-press-office/2015/10/01/statement-president-shootings-umpqua-community-college-roseburg-oregon> (statement made at a press conference on October 1, 2015, after a college campus shooting in Oregon where a twenty-six-year-old student shot a professor and eight students); see also Jacqueline Howard, *Australia’s Mass Shootings Dropped to Zero After Gun Reforms*, CNN, <http://www.cnn.com/2016/06/23/health/australia-gun-law-reform-study> (last updated June 23, 2016).

this occur and what can we do as a nation to prevent this from happening again?

Mass shootings—defined by the Federal Bureau of Investigation (“FBI”) as “the slaying of four or more people”—have begun to occur at record numbers and with devastating results in the United States.<sup>4</sup> Americans are saturated with the stories and images of those who suddenly lost their lives at the hands of a person equipped with a powerful weapon.<sup>5</sup>

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4. *There Have Been More Mass Shootings Since Newtown than You've Heard About (INFOGRAPHIC)*, HUFFINGTON POST (Sept. 17, 2013, 5:31 PM), [http://www.huffingtonpost.com/2013/09/17/mass-shootings-2013\\_n\\_3941889.html](http://www.huffingtonpost.com/2013/09/17/mass-shootings-2013_n_3941889.html); NAT'L CTR. FOR THE ANALYSIS OF VIOLENT CRIME, U.S. DEP'T OF JUSTICE, SERIAL MURDER: MULTI-DISCIPLINARY PERSPECTIVES FOR INVESTIGATORS 8 (Mark A. Hilts & Robert J. Morton eds., 2005); *see also infra* Part II.

5. *See August 01, 1966: An Ex-Marine Goes on a Killing Spree at the University of Texas*, HISTORY, <http://www.history.com/this-day-in-history/an-ex-marine-goes-on-a-killing-spre-at-the-university-of-texas> (last visited Apr. 9, 2017).

Charles Whitman [took] a stockpile of guns and ammunition to the observatory platform atop a 300-foot tower at the University of Texas and [proceeded] to shoot [forty-six] people, killing [fourteen] people and wounding [thirty-one]. A fifteenth died in 2001 because of his injuries. Whitman, who had killed both his wife and mother the night before, was eventually shot to death after courageous Austin police officers, including Ramiro Martinez, charged up the stairs of the tower to subdue the attacker.

*Id.*

On . . . [July 18, 1984], James Huberty drove to the McDonald's, 200 yards from his apartment, carrying a semi-automatic pistol, an Uzi, a [twelve]-gauge shotgun and a cloth bag filled with hundreds of rounds of ammunition and told his daughter, “Goodbye. I [will not] be back.”

He began to gun down his victims—who ranged in age from eight months to [seventy-four] years old—and after an hour and ten minutes, a [sixty]-member [Special Weapons and Tactics] (“SWAT”) team surrounded the building and killed James Huberty with a sniper shot.

Paul Liotta, *Daughter of 1984 Gunman James Huberty Speaks Out and Gives Advice to Daughter of San Bernardino Terrorists*, DAILY NEWS (Dec. 13, 2015, 2:42 PM), <http://www.nydailynews.com/news/national/daughter-1984-gunman-speaks-article-1.2464531>. (He killed twenty and wounded twenty others.). *Id.*

On the morning of Aug[ust] 20, 1986, part-time letter carrier Patrick Sherrill, [forty-four], barged through the back door of the post office in Edmond, just north of Oklahoma City. A quarter of an hour later, [fourteen] people were dead and six wounded. By the time the SWAT team stormed the place, Sherrill had put a gun to his own head and pulled the trigger.

Mara Bovsun, *Mailman Massacre: 14 Die After Patrick Sherrill 'Goes Postal' in 1986 Shootings*, DAILY NEWS (Aug. 15, 2010, 4:00 AM), <http://www.nydailynews.com/news/crime/mailman-massacre-14-die-patrick-sherrill-postal-1986-shootings-article-1.204101>. On October 16, 1991, in Killeen, Texas,

[a] man smashed a pickup truck into a busy restaurant at lunchtime, . . . stepped out of the cab, shot [twenty-two] people dead and wounded at least [twenty] others.

As blood-drenched patrons and employees tried to scramble to safety, dozens of police officers arrived and exchanged gunfire with the man, apparently wounding him. He then shot and killed himself with a bullet through the left eye, witnesses said.

... The police said the killer, a [thirty-five]-year-old man, reloaded and emptied his Glock-17, a semiautomatic .9-millimeter pistol, several times. Thomas C. Hayes, *Gunman Kills 22 and Himself in Texas Cafeteria*, N.Y. TIMES (Oct. 17, 1991), <http://www.nytimes.com/1991/10/17/us/gunman-kills-22-and-himself-in-texas-cafeteria.html>. “On April 20, 1999, two teens went on a shooting spree at Columbine High School in Littleton, Colorado, killing [thirteen] people and wounding more than [twenty] others before turning their guns on themselves and committing suicide.” *Columbine High School Shootings*, HISTORY, <http://www.history.com/topics/columbine-high-school-shootings> (last visited Apr. 9, 2017). “Twenty-three year old Seung-Hui Cho killed [thirty-two] people on the Virginia Polytechnic Institute and State University campus in Blacksburg, Virginia, before taking his own life.” *Virginia Tech Shootings Fast Facts*, CNN, <http://www.cnn.com/2013/10/31/us/virginia-tech-shootings-fast-facts/> (last updated Apr. 3, 2017).

On ... [November 5], 2009, [thirteen] people are killed and more than [thirty] others are wounded, nearly all of them unarmed soldiers, when a [United States] Army officer goes on a shooting rampage at Fort Hood in central Texas. The deadly assault, carried out by Major Nidal Malik Hasan, an Army psychiatrist, was the worst mass murder at a [United States] military installation.

*November 05, 2009: Army Major Kills 13 People in Fort Hood Shooting Spree*, HISTORY, <http://www.history.com/this-day-in-history/army-major-kills-13-people-in-fort-hood-shooting-sprees> (last visited Apr. 9, 2017). On July 20, 2012, a gunman, dressed in tactical clothing, entered a movie theater in Aurora, Colorado, set off tear gas grenades and shot into the audience with multiple firearms. Dan Frosch & Kirk Johnson, *Gunman Kills 12 in Colorado, Reviving Gun Debate*, N.Y. TIMES (July 20, 2012), <http://www.nytimes.com/2012/07/21/us/shooting-at-colorado-theater-showing-batman-movie.html>. “[Twelve] people ... [were killed] and [around seventy] others [were] injured, making it [one of] the largest number of casualties” in a shooting in the United States until the Orlando nightclub shooting four years later. *Colo. Shooting DA Says Two Evaluations Found Holmes Sane*, PBS: NEWS HOUR (Apr. 27, 2015, 6:15 PM), <http://www.pbs.org/newshour/bb/colo-shooting-da-says-two-evaluations-found-holmes-sane/>; Julie Shapiro & Melissa Chan, *What to Know About the Pulse Nightclub Shooting in Orlando*, TIME, <http://www.time.com/4365260/orlando-shooting-pulse-nightclub-what-know/> (last updated June 12, 2016). On December 14, 2012,

[a] gunman forces his way into Sandy Hook Elementary School in Newtown, Conn[ecticut], and shoots and kills [twenty] first-graders and six adults. The shooter, Adam Lanza, [twenty], kills himself at the scene. Lanza also killed his mother at the home they shared, prior to his shooting rampage.

*Deadliest U.S. Mass Shootings, 1984–2016*, L.A. TIMES (June 12, 2016, 8:50 AM), <http://timelines.latimes.com/deadliest-shooting-rampages/>; accord Steve Vogel et al., *Sandy Hook Elementary Shooting Leaves 28 Dead, Law Enforcement Sources Say*, WASH. POST (Dec. 14, 2012), [http://www.washingtonpost.com/politics/sandy-hook-elementary-school-shooting-leaves-students-staff-dead/2012/12/14/24334570-461e-11e2-8e70-e1993528222d\\_story.html](http://www.washingtonpost.com/politics/sandy-hook-elementary-school-shooting-leaves-students-staff-dead/2012/12/14/24334570-461e-11e2-8e70-e1993528222d_story.html). On June 18, 2015,

Dylann Storm Roof is charged with nine counts of murder and three counts of attempted murder in an attack that killed nine people at a historic black church in Charleston, S[outh] C[arolina].

Authorities say Roof, a suspected white supremacist, started firing on a group gathered at Emanuel African Methodist Episcopal Church after first praying with them. He fled authorities before being arrested in North Carolina.

*Deadliest U.S. Mass Shootings, 1984–2016, supra*. On December 2, 2015, two assailants killed [fourteen] people and wounded [twenty-two] more in a shooting at the Inland Regional Center in San Bernardino. The two attackers, who

As guns become more technologically advanced and capable of expelling a large number of rounds in an instant, the devastation and number of those killed or harmed increases.<sup>6</sup> American citizens typically respond to the news of mass shootings that occur on American soil by either disavowing guns and urging the government to remove them from the public's use<sup>7</sup> or feeling the need to acquire more guns in order to protect themselves and their families.<sup>8</sup> Regardless of the response to the horrific news of a mass shooting, what is clear to all American citizens is that mass shootings are a modern day reality and a serious issue that needs to be resolved or mitigated.<sup>9</sup>

In an effort to explore what the United States can do to prevent or eliminate the occurrence of mass shootings, this Article will explore the gun control legislation in Australia.<sup>10</sup> First, this Article will present statistics

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were married, were killed in a gun battle with police. They were [United States] born Syed Rizwan Farook and Pakistan-national Tashfeen Malik and [they] had an arsenal of ammunition and pipe bombs in their Redlands home.

*Deadliest U.S. Mass Shootings, 1984–2016, supra; see also San Bernardino Shooting Updates*, L.A. TIMES (Dec. 9, 2015, 11:00 AM), <http://www.latimes.com/local/lanow/la-me-ln-san-bernardino-shooting-live-updates-htlmstory.html>. On June 12, 2016,

the United States suffered the worst mass shooting in its modern history when [forty-nine] people were killed and fifty-three injured in Orlando, Florida, after a gunman stormed into a packed gay nightclub. The gunman was killed by a SWAT team after taking hostages at Pulse, a popular gay club. He was . . . identified as [twenty-nine] year old Omar Mateen.

*Deadliest U.S. Mass Shootings, 1984–2016, supra; see also Shapiro & Chan, supra.*

6. Nick Wing & Mollie Reilly, *Here's What You Need to Know About the Weapons of War Used in Mass Shootings*, HUFFINGTON POST (June 13, 2016, 9:23 PM), [http://www.huffingtonpost.com/entry/mass-shootings-weapons-ar-15\\_us\\_575ec6b7e4b00f97fba8de0e](http://www.huffingtonpost.com/entry/mass-shootings-weapons-ar-15_us_575ec6b7e4b00f97fba8de0e) (finding that “modern AR-style rifles are modeled off” the ones created for the United States military during the Vietnam War and that “[t]hese weapons are designed to fire off bullets” rapidly with “[s]ome manufacturers boast[ing] that an experienced shooter could fire as many as [forty-five] rounds in one minute.”).

7. Nathan Rott & Jeff Landa, *After Mass Shootings, Action on Gun Legislation Soars at State Level*, NPR (July 12, 2016, 6:12 PM), <http://www.npr.org/2016/07/12/485726439/mass-shootings-influence-spike-in-gun-related-laws-at-state-level>.

8. Gregor Aisch & Josh Keller, *What Happens After Calls for New Gun Restrictions? Sales Go Up*, N.Y. TIMES, <http://www.nytimes.com/interactive/2015/12/10/us/gun-sales-terrorism-obama-restrictions.html> (last updated June 13, 2016); Zachary Crockett, *What Happens After a Mass Shooting? Americans Buy More Guns.*, VOX (June 15, 2016, 11:00 AM), <http://www.vox.com/2016/6/15/11936494/after-mass-shooting-americans-buy-more-guns>; Rott & Landa, *supra* note 7.

9. See James Barron, *Gunman Massacres 20 Children at School in Connecticut; 28 Dead, Including Killer*, N.Y. TIMES, Dec. 15, 2012, at A16; Rick Orlov, *Gun Buyback Nets 1,500 Weapons — and Debate Over Program's Value*, L.A. DAILY NEWS (Dec. 16, 2013, 3:54 PM), <http://www.dailynews.com/government-and-politics/20131216/gun-buyback-nets-1500-weapons-x2014-and-debate-over-programs-value>.

10. See *infra* Parts VI–VII.

relating to gun ownership and shootings in the United States.<sup>11</sup> Next, this Article will discuss the details surrounding four of the most recent mass shooting tragedies in the United States to extrapolate why these events happened and what the United States deduced was the main reason for the shootings.<sup>12</sup> In the next section, this Article will explore the legal precedents that enable U.S. citizens to purchase firearms for private use.<sup>13</sup> Next, this Article will discuss a mass shooting event that took place in Australia and the resulting gun laws.<sup>14</sup> Finally, this Article will analyze whether or not the United States could implement Australia's gun laws, in order to reduce or eliminate—as Australia has—the occurrence of mass shootings.<sup>15</sup>

## II. STATISTICS REGARDING GUN OWNERSHIP AND HOMICIDES IN THE UNITED STATES

In order to understand the gun control issue in the United States, it helps to understand the current statistics regarding gun ownership and homicides by firearms.<sup>16</sup> According to a 2007 survey, the United States has about 35-50% of the world's *civilian-owned guns*, despite holding 5% of the world's population.<sup>17</sup> According to a 2016 study, completed by Harvard University and Northeastern University, “there are about 265 million guns” in the United States “for only 242 million adults,” which results in more than one gun for every adult.<sup>18</sup> However, the study estimates that there are fifty-five million gun owners in the United States that have on average three guns, with “3% of the adult population . . . hav[ing] anywhere between eight and 140 guns each.”<sup>19</sup> Further, “[a] November 2012 Congressional Research Service report found that, as of 2009, there were approximately . . . 110 million rifles and 86 million shotguns” owned by American citizens in the

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11. See *infra* Part II.

12. See *infra* Part III.

13. See *infra* Part IV.

14. See *infra* Parts V–VI.

15. See Jonathan Masters, *U.S. Gun Policy: Global Comparisons*, COUNCIL ON FOREIGN REL., <http://www.cfr.org/society-and-culture/us-gun-policy-global-comparisons/p29735> (last updated Jan. 12, 2016); *infra* Parts VI–VII.

16. See Masters, *supra* note 15.

17. Aaron Karp, *Completing the Count: Civilian Firearms*, in *SMALL ARMS SURVEY 2007* 39, 46 (Eric G. Berman et al. eds., 2007); Masters, *supra* note 15.

18. Michal Addady, *A Tiny Percentage of U.S. Adults Own Half the Country's Guns*, FORTUNE (Sept. 19, 2016), <http://www.fortune.com/2016/09/19/us-gun-ownership>; see also Lois Beckett, *Gun Inequality: US Study Charts Rise of Hardcore Super Owners*, GUARDIAN (Sept. 19, 2016, 1:47 PM), <http://www.theguardian.com/us-news/2016/sep/19/us-gun-ownership-survey>.

19. Addady, *supra* note 18; Beckett, *supra* note 18.

United States.<sup>20</sup> The author found that “data [is] not available on the number of ‘assault weapons’ in private possession or available for sale, but one study estimated that 1.5 million assault weapons were privately owned in 1994.”<sup>21</sup> These findings indicate that the United States is saturated with guns and an alarming amount of assault weapons.<sup>22</sup>

“The United States also has the highest homicide-by-firearm rate among the world’s most developed nations.”<sup>23</sup> A 2016 study, published by the American Journal of Medicine, found that “Americans are [ten] times more likely to be killed by guns than [other] people in . . . developed countries.”<sup>24</sup> Erin Grinshteyn, the author of the study and a professor at the University of Nevada-Reno School of Community Health Science, stated: “Overall, our results show that the United States, which has the most firearms per capita in the world, suffers disproportionately from firearms compared with other high-income countries. These results are consistent with the hypothesis that our firearms are killing us rather than protecting us.”<sup>25</sup> Further, according to the Wall Street Journal, between 1966 and 2012 the United States had “five times as many [mass shootings] as the next highest country—the Philippines.”<sup>26</sup>

When gun homicide rates in the United States are compared to those in some of the most violent nations in the world, the findings are astonishing.<sup>27</sup> The Atlantic Online found that American cities have rates of gun homicides comparable to some of the most violent nations in the

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20. Justin Peters, *How Many Assault Weapons Are There in America? How Much Would It Cost the Government to Buy Them Back?*, SLATE: CRIME (Dec. 20, 2012, 4:50 PM), [http://www.slate.com/blogs/crime/2012/12/20/assault\\_rifle\\_stats\\_how\\_many\\_assault\\_rifles\\_are\\_there\\_in\\_america.html](http://www.slate.com/blogs/crime/2012/12/20/assault_rifle_stats_how_many_assault_rifles_are_there_in_america.html).

21. *Id.*

22. *See id.*

23. Masters, *supra* note 15.

24. Robert Preidt, *How U.S. Gun Deaths Compare to Other Countries*, CBS NEWS (Feb. 3, 2016, 1:44 PM), <http://www.cbsnews.com/news/how-u-s-gun-deaths-compare-to-other-countries/>; *see also* Erin Grinshteyn & David Hemenway, *Violent Death Rates: The US Compared with Other High-Income OECD Countries, 2010*, 129 AM. J. MED. 266, 269 (2016).

25. Grinshteyn & Hemenway, *supra* note 24, at 272 (footnote omitted).

26. Joe Palazzolo & Alexis Flynn, *U.S. Leads World in Mass Shootings*, WALL STREET J., <http://www.wsj.com/articles/u-s-leads-world-in-mass-shootings-1443905359> (last updated Oct. 3, 2015) (study completed by Adam Lankford, an Associate Professor at the University of Alabama Department of Criminal Justice, looking at the years spanning from 1966 to 2012).

27. *See* Richard Florida, *Gun Violence in U.S. Cities Compared to the Deadliest Nations in the World*, CITYLAB (Jan. 22, 2013), <http://www.citylab.com/politics/2013/01/gun-violence-us-cities-compared-deadliest-nations-world/4412/>.

world.<sup>28</sup> Using data provided by the Center for Disease Control and Prevention and the United Nations Office on Drugs and Crime, a study compared the rate of gun murders in American cities to nations around the world.<sup>29</sup> According to the study:

- If it were a country, New Orleans, with a rate [of] 62.1 gun murders per 100,000 people, would rank second in the world;
- Detroit's gun homicide rate, 35.9, is just a bit less than El Salvador, 39.9;
- Baltimore's rate, 29.7, is not too far off that of Guatemala, 34.8;
- gun murder in Newark, 25.4, and Miami, 23.7, is comparable to Colombia, 27.1;
- Washington, D.C., 19, has a higher rate of gun homicide than Brazil, 18.1;
- Atlanta's rate, 17.2, is about the same as South Africa, 17;
- Cleveland, 17.4, has a higher rate than the Dominican Republic, 16.3;
- gun murder in Buffalo, 16.5, is similar to Panama, 16.2;
- Houston's rate, 12.9, is slightly higher than Ecuador's, 12.7;
- gun homicide in Chicago, 11.6, is similar to Guyana, 11.5;
- Phoenix's rate, 10.6, is slightly higher than Mexico, 10;
- Los Angeles, 9.2, is comparable to the Philippines, 8.9;
- Boston's rate, 6.2, is higher than Nicaragua, 5.9;
- New York, where gun murders have declined to just four per 100,000, is still higher than Argentina, 3;
- even the cities with the lowest homicide rates by American standards, like San Jose and Austin, compare to Albania and Cambodia respectively.<sup>30</sup>

These statistics are alarming, as the countries being compared to the various United States cities are designated as some of the most violent countries in the world.<sup>31</sup> For example, El Salvador, which has comparable gun homicides as Detroit, Michigan, has been recently coined the "murder capital of the world."<sup>32</sup> Most of the countries listed appear on the U.S.

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28. *See id.*

29. *Id.*

30. *Id.*

31. *See id.*

32. Alan Gomez, *El Salvador: World's New Murder Capital*, USA TODAY (Jan. 7, 2016, 10:57 AM), <http://www.usatoday.com/story/news/world/2016/01/07/el-salvador-homicide-rate-honduras-guatemala-illegal-immigration-to-united-states/78358042/> ("Government data show[s] 6657 people were murdered in the small country [in 2015], a 70% increase from 2014."); *see also* Florida, *supra* note 27.

Department of State's travel warnings website, which urges American citizens to avoid visiting the areas or to take serious precautions if traveling to one of these countries is necessary.<sup>33</sup>

As the above statistics indicate, the United States has a high level of gun saturation and a startling number of guns that are categorized as assault weapons.<sup>34</sup> As will be demonstrated in the next section, semi-automatic and assault style weapons are commonly used during mass shootings because of their ability to effectuate the greatest amount of damage in a fraction of the time that a handgun would.<sup>35</sup> These statistics make it clear that there is a problem pertaining to gun violence in the United States, and new legislation needs to be implemented to prevent further mass shootings and deaths by firearms.<sup>36</sup>

### III. OVERVIEW OF FOUR OF THE MOST RECENT MASS SHOOTINGS IN THE UNITED STATES

In order to explore possible solutions to prevent mass shootings in the United States, it is beneficial to analyze the facts and circumstances surrounding mass shooting tragedies that have occurred in the United States.<sup>37</sup> This Article will explain the events that unfolded in: Newtown, Connecticut; Charleston, South Carolina; San Bernardino, California; and Orlando, Florida.<sup>38</sup>

#### A. *Newtown, Connecticut—December 14, 2012*

On December 14, 2012, a gunman forced his way into Sandy Hook Elementary School in Newtown, Connecticut, where he shot and killed

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33. See *Alerts and Warnings*, U.S. PASSPORTS & INT'L TRAVEL, <http://travel.state.gov/content/passports/en/alertswarnings.html> (last visited Apr. 9, 2017); Florida, *supra* note 27.

34. See Florida, *supra* note 27; Peters, *supra* note 20.

35. Aisch & Keller, *supra* note 8; *Connecticut Shootings Fast Facts*, CNN, <http://www.cnn.com/2013/06/07/US/Connecticut-shootings-fast-facts/> (last updated Dec. 14, 2016); Jack Date et al., *Orlando Shooter Bought Weapons at Nearby Gun Shop*, ABC NEWS (June 13, 2016, 12:19 PM), <http://www.abcnews.go.com/US/Orlando-shooter-brought-weapons-nearbygun-shop/story?id=39817471>; see also *infra* Section III.A–D.

36. See Florida, *supra* note 27; Palazzolo & Flynn, *supra* note 26.

37. Palazzolo & Flynn, *supra* note 26; see also Peters, *supra* note 20; *infra* Section III.A–D.

38. See *Connecticut Shootings Fast Facts*, *supra* note 35; Date et al., *supra* note 35; Katie Zavadski, *Everything Known About Charleston Church Shooting Suspect Dylan Roof*, DAILY BEAST (June 20, 2015, 5:29 PM), <http://www.thedailybeast.com/articles/2015/06/18/everything-known-about-charleston-church-shooting-suspect-dylann-roof.html>; *San Bernardino Shooting Updates*, *supra* note 5.

twenty first graders and six adults.<sup>39</sup> The shooter, Adam Lanza, was twenty years old and killed himself at the scene.<sup>40</sup> Lanza also killed his mother at the home they shared, prior to his shooting rampage.<sup>41</sup> This was “the third deadliest mass shooting in U.S. history.”<sup>42</sup>

“Lanza used a Bushmaster Model XM15-E2S rifle during the shooting spree. Three weapons were found next to his body: the semiautomatic .223-caliber rifle made by Bushmaster and two handguns. A[] . . . [twelve] gauge semi-automatic shotgun was found in his car.”<sup>43</sup> All of the “[w]eapons found . . . were legally purchased by [the shooter’s mother], Nancy Lanza.”<sup>44</sup> The entire shooting spree, which killed twenty-six total, only took eleven minutes to complete from the time he entered the school, walked through the halls, and entered two separate classrooms performing the shootings.<sup>45</sup> The bulk of the killings, which occurred inside the classrooms, only took 264 seconds to complete.<sup>46</sup>

The families of nine children who were killed, along with one teacher who survived the attack, filed a wrongful death suit against the manufacturers and distributors of the Bushmaster rifle.<sup>47</sup> The lawsuit alleged that the gun used should not have been entrusted to the general public because it is a military assault weapon that is unsuited for civilian use.<sup>48</sup> Connecticut “Superior Court Judge Barbara Bellis [dismissed the lawsuit], invok[ing] a federal statute known as . . . the Protection of Lawful Commerce in Arms Act.”<sup>49</sup> “The law prohibits lawsuits against gun manufacturers and distributors if their firearms were used in the commission of a criminal act.”<sup>50</sup>

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39. See Barron, *supra* note 9, at A1.

40. *Id.*; *Connecticut Shootings Fast Facts*, *supra* note 35.

41. Barron, *supra* note 9, at A1; *Connecticut Shootings Fast Facts*, *supra* note 35.

42. *Connecticut Shootings Fast Facts*, *supra* note 35.

43. *Id.*

44. *Id.*

45. *Id.*; Matt Smith, *Sandy Hook Killer Took Motive to His Grave*, CNN (Nov. 26, 2013, 7:33 AM), <http://www.cnn.com/2013/11/25/justice/sandy-hook-shooting-report/>.

46. See *Connecticut Shootings Fast Facts*, *supra* note 35; Smith, *supra* note 45.

47. See George Zornick, *Can Sandy Hook Families Hold the Gun Industry Accountable?*, THE NATION (Feb. 22, 2016), <http://www.thenation.com/article/can-sandy-hook-families-hold-the-gun-industry-accountable/>.

48. See Deborah Feyerick & Chris Welch, *Sandy Hook: Judge Dismisses Families’ Lawsuit Against Gunmaker*, CNN (Oct. 14, 2016, 9:49 PM), <http://www.cnn.com/2016/10/14/health/sandy-hook-lawsuit-gun-maker/>; Zornick, *supra* note 47.

49. Feyerick & Welch, *supra* note 48.

50. *Id.*

B. *Charleston, South Carolina—June 18, 2015*

On June 18, 2015, “Dylann Storm Roof . . . kill[ed] nine people at a historic black church in Charleston, [South Carolina].”<sup>51</sup> Authorities say Roof started firing at a group gathered at Emanuel African Methodist Episcopal Church after having first prayed with them.<sup>52</sup> He fled authorities and was later arrested in North Carolina.<sup>53</sup> “According to Roof’s grandfather, [Roof’s] family gave him money for his birthday [in] April, which it is believed he used to purchase a .45-caliber Glock pistol” that was used during this attack.<sup>54</sup>

Roof told friends that he wanted to commit the shooting to start a *race war* and wrote online: “We have no skinheads, no real KKK, no one doing anything but talking on the internet. Well, someone has to have the bravery to take it to the real world and I guess that has to be me.”<sup>55</sup> These statements were found on a website that Roof started in February 2015.<sup>56</sup> “The site shows a stash of [sixty] photographs, many of them of . . . Roof at Confederate heritage sites or slavery museums, and includes a nearly 2500-word manifesto in which the author criticized blacks as being inferior while lamenting the cowardice of white flight.”<sup>57</sup>

The Department of Justice charged him with murder, attempted murder, and use of a firearm, all in the commission of a hate crime.<sup>58</sup> Even with the statements he made about the intent of the shootings, he was not charged as a terrorist.<sup>59</sup> “Critics [argued] that the label of terrorism is too often only applied to Islamic extremists and not white supremacists or anti-government anarchists.”<sup>60</sup>

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51. Zavadski, *supra* note 38.

52. Frances Robles, *Dylann Roof Photos and a Manifesto Are Posted on Website*, N.Y. TIMES (June 20, 2015), <http://www.nytimes.com/2015/06/21/us/dylann-storm-roof-photos-website-charleston-church-shooting.html>.

53. Zavadski, *supra* note 38.

54. *Id.*

55. Robles, *supra* note 52; Zavadski, *supra* note 38.

56. *See* Zavadski, *supra* note 38.

57. Robles, *supra* note 52.

58. Loretta Lynch, U.S. Atty Gen., Statement Following the Federal Grand Jury Indictment Against Dylann Storm Roof (July 22, 2015) [hereinafter Attorney General Lynch Statement].

59. *See* Jenna McLaughlin, *Why Wasn't Dylann Roof Charged with Terrorism?*, INTERCEPT (July 22, 2015, 5:43 PM), <http://theintercept.com/2015/07/22/departement-justice-didnt-charge-dylan-roof-domestic-terrorism/>.

60. *Id.*

Roof's crime . . . seems to fit the federal description of domestic terrorism, which the FBI defines as: activities . . . [that] involve acts dangerous to human life that violate federal or state law . . . appear [to be] intended (i) to . . . intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.<sup>61</sup>

However, Attorney General Loretta Lynch stated that “there is no specific domestic terrorism statute.”<sup>62</sup> She went on to state that “[e]ven when the USA Patriot Act . . . redefined terrorism to include domestic crimes, the provision simply allowed the government to investigate more broadly what it called ‘terrorism,’” and that “[a]ctually charging someone with domestic terrorism remains a separate matter.”<sup>63</sup>

### C. *San Bernardino, California—December 2, 2015*

On December 2, 2015, two shooters killed fourteen people and wounded twenty-two in a shooting at the Inland Regional Center in San Bernardino, California.<sup>64</sup> The attackers were United States born Syed Rizwan Farook and Pakistan-national Tashfeen Malik, who were married.<sup>65</sup> On the day of the attack, “the San Bernardino health department employees . . . gathered for an event in a conference room at the center, which provides services to disabled people.”<sup>66</sup> “A police official said that Mr. Farook, a county health inspector, was at the event and left early.”<sup>67</sup> At approximately eleven o’clock in the morning, “Mr. Farook returned with his wife, Ms. Malik.”<sup>68</sup> The couple was

[d]ressed in combat gear [when] they entered the building’s east side and sprayed [sixty-five] to [seventy-five] rounds with assault

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61. See Jenna McLaughlin, *Charging Crimes as “Terrorism”*, 6 U. MIAMI NAT’L SECURITY & ARMED CONFLICT L. REV. 101, 102 (2016) (quoting 18 U.S.C. § 2331 (2012)).

62. McLaughlin, *supra* note 61, at 102; McLaughlin, *supra* note 59.

63. McLaughlin, *supra* note 61, at 103; McLaughlin, *supra* note 59.

64. Gregor Aisch et al., *What Investigators Know About the San Bernardino Shooting*, N.Y. TIMES, <http://www.nytimes.com/interactive/2015/12/02/us/california-mass-shooting-san-bernardino.html> (last updated Dec. 10, 2015); *San Bernardino Shooting Updates*, *supra* note 5.

65. Aisch et al., *supra* note 64; *San Bernardino Shooting Updates*, *supra* note 5.

66. Aisch et al., *supra* note 64.

67. *Id.*

68. *Id.*

rifles. People, in nearby buildings, sheltered in place [and] remain[ed] hidden in their offices for two hours. Within four minutes, the police began clearing the scene and evacuating the injured.<sup>69</sup>

“The suspects . . . escaped . . . in a black S.U.V.” and were later “killed in a gun battle with police.”<sup>70</sup> It was later found that the two “had an arsenal of ammunition and pipe bombs in their Redlands, [California], home.”<sup>71</sup>

When the FBI took over the investigation, they declared that they were treating it as a terrorist attack.<sup>72</sup> The female shooter made a public declaration of loyalty to the Islamic State of Iraq and Syria (“ISIS”) while the attack was underway by posting to Facebook a pledge of allegiance to ISIS leader Abu Bakr al-Baghdadi.<sup>73</sup> The FBI director found that the assailants “had been talking of an attack as far back as two years” before they acted.<sup>74</sup> The FBI also “uncovered evidence that the couple were radicalized long before they got married in 2014.”<sup>75</sup> “They have video evidence that the couple participated in target practice at ranges in the Los Angeles area and had even gone to a shooting range just days before the attack.”<sup>76</sup> The suspects used

two .223-caliber semiautomatic weapons and two 9mm semiautomatic pistols . . . . While they were originally sold legally, with magazine locking devices, commonly known as bullet buttons, the rifles were subsequently altered in different ways to [enhance] them . . . . Those alterations made the weapons unlawful under California’s ban on assault weapons, which bans guns with magazines that can detach for quick reloading.<sup>77</sup>

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69. *Id.*

70. *Id.*; *San Bernardino Shooting Updates*, *supra* note 5.

71. *San Bernardino Shooting Updates*, *supra* note 5.

72. See Michael S. Schmidt & Richard Pérez-Peña, *F.B.I. is Treating Rampage as Act of Terrorism*: [National Desk], N.Y. TIMES, Dec. 5, 2015, at A1.

73. *Id.*; Aisch et al., *supra* note 64; Pete Williams et al., *Tashfeen Malik, Mother in San Bernardino Massacre, Pledged Allegiance to ISIS Leader: Sources*, NBC NEWS (Dec. 4, 2015, 5:04 PM), <http://www.nbcnews.com/storyline/sanbernardino-shooting/tashfeen-malik-mother-san-bernardino-massacre-pledged-allegiance-isis-leader-n474246>.

74. Aisch et al., *supra* note 64.

75. *Id.*; see also Schmidt & Perez-Pena, *supra* note 72, at A1.

76. Aisch et al., *supra* note 64.

77. Ashby Jones & Dan Frosch, *Rifles Used in San Bernardino Shooting Illegal Under State Law*, WALL STREET J., <http://www.wsj.com/articles/rifles-used-in-san-bernardino-shooting-illegal-under-state-law-1449201057> (last updated Dec. 3, 2015).

D. *Orlando, Florida—June 12, 2016*

On June 12, 2016, the United States suffered the worst mass shooting in modern history when forty-nine people were killed and fifty-three injured in Orlando, Florida, after a gunman stormed into a packed gay nightclub known as *Pulse*.<sup>78</sup> The gunman, later identified as twenty-nine year old Omar Mateen, was killed by a SWAT team after taking hostages.<sup>79</sup> During the attack, Mateen called 911 and pledged his allegiance to ISIS.<sup>80</sup> Mateen had purchased a Sig Sauer .223 caliber assault rifle at St. Lucie Shooting Center, a firearms shop near his Florida home on June 4, 2016 and, later, a Glock 17 at the same store on June 5, 2016.<sup>81</sup> “Mateen had returned to the store a third time on June 9, [2016], to buy magazines for his weapons.”<sup>82</sup> “Mateen left a third weapon [in his van], a revolver, [which is only] capable of firing . . . six shots . . . .”<sup>83</sup>

The store [that sold him the weapons] is a federally licensed firearms dealer. Under law, the seller would have had to notify the [FBI] of Mateen’s purchase so that his name could be checked against the National Instant Criminal Background Check System . . . . Mateen was actually listed on two federal watch lists . . . : The Terrorist Identities Datamart Environment, which contains

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78. Date et al., *supra* note 35; Ralph Ellis, *Pulse Nightclub: Chilling 911 Tapes Capture Killer’s Voice*, CNN, <http://www.cnn.com/2016/10/31/us/orlando-pulse-911-calls/> (last updated Oct. 31, 2016); *How Did Orlando Shooter Legally Buy Guns? Your Questions Answered*, USA TODAY (June 13, 2016, 9:20 AM), <http://www.usatoday.com/story/news/nation/2016/06/13/orlando-shooting-what-we-dont-know/85811424/>; Shapiro & Chan, *supra* note 5.

79. Date et al., *supra* note 35; *How Did Orlando Shooter Legally Buy Guns? Your Questions Answered*, *supra* note 78; Shapiro & Chan, *supra* note 5.

80. Ellis, *supra* note 78.

Mateen first made contact with police, calling 911 at 2:35 [A.M.] to say, “I want to let you know [I am] in Orlando and I did the shooting.” When the dispatcher asked his identity, he said, “My name is I pledge allegiance to Abu Bakr al-Baghdadi of the Islamic State.” Then, he hung up. The negotiator stationed at the 911 center then called and got through three times to Mateen, who was inside the nightclub. Mateen started out repeating phrases in an insistent, almost robotic manner. When the negotiator asked what was going on, meaning at the nightclub, Mateen replied, “What [is] going on is that I feel the pain of the people getting killed in Syria and Iraq,” a subject he returned to repeatedly.

*Id.*

81. Date et al., *supra* note 35.

82. Michael Daly & Shane Harris, *How the Orlando Killer Omar Mateen Got His Guns*, DAILY BEAST (June 13, 2016, 11:26 AM), <http://www.thedailybeast.com/articles/2016/06/13/how-the-orlando-killer-omar-mateen-got-his-guns.html>.

83. *Id.*

classified information, and the Terrorist Screening Database, which is the FBI's central watch list.<sup>84</sup>

Mateen's name had been removed from the second watch list in 2014.<sup>85</sup>

Even if his name had been in the system, "it [still] might not have prevented him from purchasing weapons."<sup>86</sup> "In December [2015], the Senate voted down an amendment that would have kept suspected terrorists from purchasing firearms."<sup>87</sup> The amendment was introduced by the Democratic Senator of California, Dianne Feinstein.<sup>88</sup> It would have allowed "the attorney general to prevent someone from buying a gun if that person is a known or suspected terrorist. A person could also be barred from buying a firearm if the attorney general has a 'reasonable belief' that the individual would use it in connection with a terrorist act."<sup>89</sup>

#### IV. CONSTITUTIONAL AUTHORITY FOR GUN OWNERSHIP AND GUN LAWS IN THE UNITED STATES

The Second Amendment of the United States Constitution, passed by Congress on September 25, 1789 and ratified on December 15, 1791 as part of the Bill of Rights, has made it possible for U.S. citizens to own firearms for personal use.<sup>90</sup> The Second Amendment states that "[a] well regulated [m]ilitia, being necessary to the security of a free [s]tate, the right of the people to keep and bear [a]rms, shall not be infringed."<sup>91</sup> There has been a great deal of controversy and debate regarding what was meant by the text of

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84. *Id.*

85. *Id.*; Michelle Ye Hee Lee, *Does a Known or Suspected Terrorist Face 'a Long Waiting Period' Before Buying a Gun?*, WASH. POST (June 21, 2016), <http://www.washingtonpost.com/news/fact-checker/wp/2016/06/21/does-a-known-or-suspected-terrorist-face-a-long-waiting-period-before-buying-a-gun/>.

86. *How Did Orlando Shooter Legally Buy Guns? Your Questions Answered*, *supra* note 78.

87. *Id.*; see also Khorri Atkinson, *GOP Blocks Bill to Stop Terrorists From Buying Guns*, MSNBC (Dec. 4, 2015, 12:23 PM), <http://www.msnbc.com/msnbc/gop-blocks-bill-stop-terrorists-buying-guns>.

88. Atkinson, *supra* note 87; *How Did Orlando Shooter Legally Buy Guns? Your Questions Answered*, *supra* note 78.

89. *How did Orlando Shooter Legally Buy Guns? Your Questions Answered*, *supra* note 78.

90. U.S. CONST. amend. II; see also Nelson Lund & Adam Winkler, *The Second Amendment*, NAT'L CONST. CTR., <http://www.constitutioncenter.org/interactive-constitution/amendments/amendment-ii/> (last visited Apr. 9, 2017).

91. U.S. CONST. amend. II.

the Second Amendment.<sup>92</sup> Scholars differ on their interpretations of the text, with some finding that the Second Amendment only allows for firearms to be owned by the militia and others arguing that it allows for firearms both in the military and for personal use.<sup>93</sup> The Supreme Court of the United States clarified the scope of the Second Amendment in three seminal cases.<sup>94</sup>

#### A. *Supreme Court Decisions*

In 1939, the Supreme Court of the United States heard *United States v. Miller*.<sup>95</sup> In *Miller*, the Court rejected a claim that indictments under the National Firearms Act of 1934 violated the right to keep and bear arms.<sup>96</sup> The defendants were charged with possessing a short-barreled shotgun, a firearm that was considered illegal under the Act.<sup>97</sup> The defendants initially persuaded the lower court to quash the indictment as a violation of the Second Amendment, but a unanimous Supreme Court reversed.<sup>98</sup> Justice McReynolds found that the Second Amendment “must be interpreted and applied with [the] end” of maintaining a *well-regulated militia*.<sup>99</sup> The Court also held:

In the absence of any evidence tending to show that possession or use of a “shotgun having a barrel of less than eighteen inches in length,” at this time, has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly, it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.<sup>100</sup>

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92. See Robert Hardaway et al., *The Inconvenient Militia Clause of the Second Amendment: Why the Supreme Court Declines to Resolve the Debate Over the Right to Bear Arms*, 16 ST. JOHN’S J. LEGAL COMMENT. 41, 94–95 (2002).

93. David B. Kopel, *The Right to Arms in the Living Constitution*, 2010 CARDOZO L. REV. DE NOVO 99, 104–07, 118 (2010); see also U.S. CONST. amend. II.

94. See *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 595, 635 (2008); *United States v. Miller*, 307 U.S. 174, 178 (1939).

95. 307 U.S. 174 (1939).

96. *Id.* at 176–78.

97. *Id.* at 175.

98. *United States v. Miller*, 26 F. Supp. 1002, 1003 (W.D. Ark. 1939), *rev’d*, 307 U.S. 174 (1939).

99. *Miller*, 307 U.S. at 178.

100. *Id.*

Therefore, the defendants were not entitled to any constitutional protection because a civilian-owned short-barreled shotgun did not relate to the ability to maintain a well-regulated militia.<sup>101</sup> The Court's decision in *Miller* was precedent for almost seventy years, until the Supreme Court of the United States heard *District of Columbia v. Heller* ("*Heller I*")<sup>102</sup> in 2008.<sup>103</sup>

In 2008, in *Heller I*, the Supreme Court of the United States held for the first time that the Second Amendment protects the right of an individual law-abiding adult citizen to possess an operable firearm, including a handgun, in his or her home for self-defense.<sup>104</sup> *Heller I* dealt with provisions in the District of Columbia Code that made it illegal to carry an unregistered firearm and prohibited the registration of handguns.<sup>105</sup> The Code also contained provisions that required owners of lawfully registered firearms to keep them "'unloaded and disassembled or bound by a trigger lock or other similar device' unless [the firearms were] located in a place of business or . . . being used for [legal] recreational activities."<sup>106</sup> Dick Anthony Heller was a District of Columbia "special police officer [that was] authorized to carry a handgun while on duty."<sup>107</sup> He applied for a one-year license for a handgun that he wanted to keep at home, but his application was denied.<sup>108</sup> Heller sued the District of Columbia, seeking an injunction against the enforcement of the relevant parts of the Code, by arguing that it violated his Second Amendment right to keep a functional firearm in his home without a license.<sup>109</sup>

Justice Scalia, writing for the *Heller I* majority, revisited the Second Amendment's text and broke it apart.<sup>110</sup> He found that the first clause relating to a *well-regulated militia* is *prefatory* and the second clause concerning "the right of the people to keep and bear [a]rms" is *operative*.<sup>111</sup> To illustrate this point, Justice Scalia stated that "[t]he Amendment could be rephrased [as]: 'Because a well-regulated [m]ilitia is necessary to the security of a free [s]tate, the right of the people to keep and bear [a]rms shall not be infringed.'"<sup>112</sup> The Court ultimately decided that the operative portion

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101. *See id.*  
 102. 554 U.S. 570 (2008).  
 103. *Id.* at 623–25; *Miller*, 307 U.S. at 183.  
 104. *Heller*, 554 U.S. at 635.  
 105. *Id.* at 574–75.  
 106. *Id.* at 575.  
 107. *Id.*  
 108. *Id.*  
 109. *Heller*, 554 U.S. at 575–76.  
 110. *Id.* at 576–77.  
 111. *Id.* at 576, 579, 595.  
 112. *Id.* at 577.

“unambiguously refer[s] to individual rights, not ‘collective’ rights or rights that may be exercised only through participation in some corporate body.”<sup>113</sup> Although this enabled individuals to keep a handgun in their home for self-defense, the Court clarified that “[l]ike most rights, the right secured by the Second Amendment is not unlimited.”<sup>114</sup> Justice Scalia stated:

[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.<sup>115</sup>

The Court also reaffirmed a portion of the holding in *Miller* by finding that the sorts of weapons that would be protected “were those ‘in common use at the time.’”<sup>116</sup> In responding to the dissent, Justice Scalia reaffirmed that although handguns are not the type of weapon that would ordinarily be used in modern day militia, that would not prevent the interpretation of the Second Amendment, which would be to allow handguns to be owned by civilians.<sup>117</sup> Therefore, after *Heller I*, adult citizens were deemed to be allowed to possess an operable handgun in their home for self-defense.<sup>118</sup>

In 2010, in *McDonald v. City of Chicago*,<sup>119</sup> the Supreme Court of the United States held “that the Due Process Clause of the Fourteenth Amendment incorporate[d] the Second Amendment right, recognized in *Heller*,” to the states.<sup>120</sup> In this case, “Otis McDonald, Adam Orlov, Colleen

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113. *Id.* at 579.

114. *Heller*, 554 U.S. at 626.

115. *Id.* at 626–27.

116. *Id.* at 627 (citing *United States v. Miller*, 307 U.S. 174, 179 (1939)).

117. *Id.* at 627–28.

It may be objected that if weapons that are most useful in military service—M–16 rifles and the like—may be banned, then the Second Amendment right is completely detached from the prefatory clause. But, as we have said, the conception of the militia at the time of the Second Amendment’s ratification was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty. It may well be true today that a militia, to be as effective as militias in the [eighteenth] century, would require sophisticated arms that are highly unusual in society at large. Indeed, it may be true that no amount of small arms could be useful against modern-day bombers and tanks. But, the fact that modern developments have limited the degree of fit between the prefatory clause and the protected right cannot change our interpretation of the right.

*Id.*

118. *Heller*, 554 U.S. at 635.

119. 561 U.S. 742 (2010).

120. *Id.* at 750, 791; *see also Heller*, 554 U.S. at 635.

Lawson, and David Lawson . . . [were] Chicago residents who [wanted] to keep handguns in their homes for self-defense.”<sup>121</sup> They were “prohibited from doing so by Chicago’s firearms laws.”<sup>122</sup> A city ordinance required that, in order to possess a firearm, a person must have a “valid registration certificate for [the] firearm.”<sup>123</sup> “The Code [also] prohibit[ed] registration of most handguns, thus, effectively banning handgun possession by almost all private citizens who reside in the City.”<sup>124</sup> The Court found “that *Heller* had explicitly refrained from ‘opin[ing] on [whether] . . . the Second Amendment’” applied to the states.<sup>125</sup> Justice Alito found:

We have previously held that most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the [s]tates. Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the [s]tates.<sup>126</sup>

Therefore, after *McDonald*, the Second Amendment rights were incorporated to the states.<sup>127</sup>

#### B. *How Gun Laws Are Established in the United States*

In light of the Supreme Court holdings that firearms ownership does extend to civilians, the structure for gun laws and regulations is also important to understand.<sup>128</sup> Currently, the gun laws of the United States are defined and established by both state and federal statutes.<sup>129</sup> The federal gun laws of the United States are enforced by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”).<sup>130</sup> The ATF establishes the minimum requirements and leaves it to the states to develop additional legislation.<sup>131</sup> Most of the legislation pertaining to firearms comes from the states, and

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121. *McDonald*, 561 U.S. at 750.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* at 752.

126. *McDonald*, 561 U.S. at 750.

127. *See id.*

128. *See id.* at 767–68, 785; *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008); *Firearms*, ATF, <http://www.atf.gov/firearms> (last visited Apr. 9, 2017).

129. *See* 18 U.S.C. § 921 (2012); Nicholas Duva, *Gun Laws Vary State by State: CNBC Explains*, CNBC (Nov. 20, 2014, 8:47 AM), <http://www.cnn.com/2014/11/20/gun-laws-vary-state-by-state-cnn-explains.html>; *Firearms*, *supra* note 128.

130. *See Firearms*, *supra* note 128.

131. Duva, *supra* note 129; *Firearms*, *supra* note 128.

there is a varying degree of what is allowed depending on the state.<sup>132</sup> For example, Texas allows citizens to apply for open carry permits—which enables them to carry their firearms out in public without having to conceal it under clothing or within a bag—whereas New York City does not generally allow citizens to carry any firearms, whether open carry or concealed.<sup>133</sup> State legislation is typically necessary in today’s political climate in order to see any changes to gun laws.<sup>134</sup> After the 2016 mass shooting in Orlando, Florida, House Democrats conducted a twenty-six hour sit-in at the Capitol, in order “to push for [federal] gun . . . legislation.”<sup>135</sup> During the sit-in, the House Democrats chanted “‘No Bill, No Break’ and wav[ed] posters with the names of victims of gun violence.”<sup>136</sup> The House Democrats stated that their intention was to forestall “House business . . . until . . . vot[ing began] on . . . gun control measures.”<sup>137</sup> “A total of 168 House Democrats, out of 188 total, joined at least part of the sit-in . . . . A number of senators [also] joined them . . . .”<sup>138</sup> However, no new gun legislation at the federal level was passed.<sup>139</sup>

States typically see an increase in proposed legislation after a mass shooting tragedy occurs.<sup>140</sup> The tragedy spurs debate on gun issues and brings them to the forefront of the people’s minds, and legislators see it as an opportunity to pass legislation they have been contemplating.<sup>141</sup> According

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132. See Duva, *supra* note 129.

133. *Id.*; see also *Getting a NYC Handgun Permit License*, N.Y.C. GUNS, <http://www.newyorkcityguns.com/getting-a-nyc-handgun-permit> (last visited Apr. 9, 2017).

134. See Camila Domonoske & Jessica Taylor, *Almost 26 Hours Later, House Democrats End Gun Control Sit-In*, NPR (June 23, 2016, 7:51 AM), <http://www.npr.org/sections/thetwo-way/2016/06/23/483205589/house-democrats-continue-gun-control-sit-in>.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. See Domonoske & Taylor, *supra* note 134.

140. Rott & Landa, *supra* note 7; see also Neil Irwin, *After Mass Shootings, It’s Often Easier to Buy a Gun*, N.Y. TIMES: THE UPSHOT (June 14, 2016), <http://www.nytimes.com/2016/06/15/upshot/policy-changes-after-mass-shootings-tend-to-make-guns-easier-to-buy.html>.

A mass shooting takes place, followed by emotional vigils, intensive news media coverage and sorrowful statements by politicians. But what does it actually mean for laws and policies around guns? Lots of gun laws are proposed in the aftermath of an attack, new research shows. But in terms of what actually is enacted, the results [are not] what you might expect. In states where a mass shooting happened, 15[%] more gun-related bills were introduced in state legislatures, three Harvard Business School professors found in a working paper published last month.

*Irwin, supra.*

141. See *id.*

[There is] no doubt that there is a surge of attention around gun policy when a major shooting takes place. Polling data from the Pew Research Center

to a working paper released by researchers at Harvard Business School, “[m]ore than 20,400 pieces of gun-related legislation have been proposed following mass shooting events in the past [twenty-five] years. Of those bills, more than 3000 have become law . . . .”<sup>142</sup> One of the authors of the paper, Deepak Malhotra, stated that, “[it is] not that nothing changes after a mass shooting . . . . A lot of the action on [gun control] happens across states instead of at the federal level.”<sup>143</sup> This was the case after the Newton, Connecticut, shooting at the elementary school.<sup>144</sup> According to the New York Times, “almost every state enacted at least one new gun law” in the year following Newtown; “1500 state gun bills were introduced” of which 178 passed one chamber, and of which 109 subsequently became state law.<sup>145</sup> Where many thought these laws would result in tightened gun restrictions, “[n]early two-thirds of the . . . laws [enacted instead] ease[d] restrictions and expand[ed] the rights of gun owners.”<sup>146</sup>

Further, a Pew Research poll conducted between December 2012 and December 2014 asked individuals whether gun ownership in the United States did more to protect people from being crime victims or put people’s safety at risk.<sup>147</sup> There was a nine point increase since 2012—when the Newtown, Connecticut, massacre occurred—in the percentage of Americans that said gun ownership protects people from becoming crime victims, as opposed to putting people’s safety at risk; nearly 40% said gun ownership does more to put people’s safety at risk.<sup>148</sup>

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shows sharp, but temporary, swings in public opinion on gun control after particularly high-profile, emotionally resonant attacks like the ones at Columbine High School in 1999 and Sandy Hook Elementary School in 2012. . . . [H]igh-profile shootings create a “policy window” in which an issue comes to the forefront for media and politicians alike, even if “mass shooting” [does not] automatically translate into “more restrictive gun laws.”

*Id.*

142. Rott & Landa, *supra* note 7; see also Michael Luca et al., *The Impact of Mass Shootings on Gun Policy* 6–7 (Harvard Bus. Sch., Working Paper No. 16-126, 2016).

143. Rott & Landa, *supra* note 7 (alteration in original).

144. Barron, *supra* note 9, at A1.

145. Karen Yourish et al., *State Gun Laws Enacted in the Year After Newtown*, N.Y. TIMES (Dec. 10, 2013), <http://www.nytimes.com/interactive/2013/12/10/us/state-gun-laws-enacted-in-the-year-since-newtown.html>.

146. *Id.*

147. *More Conservative Republicans, African Americans Say Gun Ownership Protects People from Crime*, PEW RES. CTR. (Dec. 10, 2014), <http://www.people-press.org/2014/12/10/growing-public-support-for-gun-rights/12-10-2014-2-23-41-pm>.

148. *Id.*

### C. *Current Federal Gun Laws*

Although most of the gun laws in the United States are created by the states, there are federal laws regarding gun control—specifically, in relation to background checks.<sup>149</sup> The Brady Handgun Violence Prevention Act of 1993 (“Brady Act”) requires federally licensed firearms dealers (“FFLs”) to perform background checks on prospective firearms purchasers to ensure that the firearm transfer will not violate federal, state, or local laws.<sup>150</sup> Through the Brady Act, the National Instant Criminal Background Check System (“NICS”) was established.<sup>151</sup> States have the option of serving as a state point of contact and conducting their own NICS checks or having those checks performed by the FBI.<sup>152</sup>

FBI searches will include three federal databases: (1) The National Crime Information Center (“NCIC”), “which includes . . . records [regarding] wanted persons” and persons subject to protective or restraining orders; (2) The Interstate Identification Index, which contains state criminal history records; and (3) The NICS Index, which contains records of other persons prohibited under federal law from receiving or possessing firearms.<sup>153</sup> Once the initial search is complete, the FBI or point of contact notifies the dealer that the sale: (1) may proceed; (2) may not proceed; or (3) is delayed pending further investigation.<sup>154</sup>

Under the Brady Act, if the dealer has not been notified within three business days that the sale would violate federal or state laws, the sale may proceed by default.<sup>155</sup> This is known as the default proceed loophole.<sup>156</sup> The law pertaining to the default loophole provides:

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149. See Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, § 102, 107 Stat. 1536 (1993) (codified as amended at 18 U.S.C. §§ 921–925A (2012)); Rott & Landa, *supra* note 7.

150. Brady Handgun Violence Prevention Act § 102(a).

151. CRIMINAL JUSTICE INFO. SERVS. DIV., U.S. DEP’T OF JUSTICE, NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) (2015), <https://www.fbi.gov/file-repository/nics-overview-brochure.pdf>; see also Brady Handgun Violence Prevention Act § 102(b).

152. *Id.*

153. CRIMINAL JUSTICE INFO. SERVS. DIV., U.S. DEP’T OF JUSTICE, NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS): 2000 OPERATIONS REPORT 1 (2001), [https://www.fbi.gov/file-repository/operations\\_report\\_2000.pdf](https://www.fbi.gov/file-repository/operations_report_2000.pdf); see also John Pike, *National Crime Information Center (NCIC)*, FED’N AM. SCIENTISTS, <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm> (last updated June 2, 2008).

154. See CRIMINAL JUSTICE INFO. SERVS. DIV., *supra* note 153, at 3, 40.

155. *Id.* at 17, 37; see also Press Release, Richard Blumenthal, Senator, Senators Introduce “No Check, No Sale” Bill to Close Loophole Allowing Gun Sales Without a Completed Background Check (Oct. 28, 2015).

## Section 25.6(c)(1)(iv)(B)—Delayed response provided to FFL:

“Delayed” response, if the NICS search finds a record that requires more research to determine whether the prospective transferee is disqualified from possessing a firearm by [f]ederal or state law. A “[d]elayed” response to the FFL indicates that the firearm transfer should not proceed pending receipt of a follow-up “[p]roceed” response from the NICS *or the expiration of three business days*—exclusive of the day on which the query is made—whichever occurs first. Example: An FFL requests a NICS check on a prospective firearm transferee at 9:00 [A.M.] on Friday and, shortly thereafter, receives a “[d]elayed” response from the NICS. If state offices in the state in which the FFL is located are closed on Saturday and Sunday and open the following Monday, Tuesday, and Wednesday, and the NICS has not yet responded with a “[p]roceed” or “[d]enied” response, the FFL may transfer the firearm at 12:01 [A.M.] Thursday.<sup>157</sup>

Section 25.2—Definition of *Open* transaction:

“Open” means those non-canceled transactions where the FFL has not been notified of the final determination. In cases of “open” responses, the NICS continues researching potentially prohibiting records regarding the transferee and, if definitive information is obtained, communicates to the FFL the final determination that the check resulted in a proceed or a deny. An “open” response *does not prohibit an FFL from transferring a firearm after three business days have elapsed* since the FFL provided to the system the identifying information about the prospective transferee.<sup>158</sup>

The default loophole “allowed 3849 prohibited purchasers to buy guns during the first year of operation, November 30, 1998, through November 30, 1999, of NICS.”<sup>159</sup> “[T]he FBI has found that a purchaser whose NICS check takes longer than [twenty-four] hours to complete is [twenty] times more likely to be a prohibited purchaser than other

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156. See Jennifer Mascia, *How America Wound Up with a Gun Background Check System Built More for Speed Than Certainty*, TRACE (July 21, 2015), <https://www.thetrace.org/2015/07/brady-bill-amendment-default-proceed-loophole-amendment-nra/>.

157. 28 C.F.R. § 25.6(c)(1)(iv)(B) (2012) (emphasis added).

158. 28 C.F.R. § 25.2 (2012) (emphasis added).

159. *Federal Law on Background Checks*, L. CTR. TO PREVENT GUN VIOLENCE, <http://www.smartgunlaws.org/gun-laws/federal-law/sales-transfers/background-checks/> (last visited Apr. 9, 2017).

applicants.”<sup>160</sup> Further, “between November 1998 and December 31, 2005, ATF received 26,600 referrals from the FBI requesting further review, evaluation, and possible retrieval of firearms that had been sold to ineligible persons by default.”<sup>161</sup>

There is also a *gun show loophole* where persons who purchase firearms from private sellers are not required to undergo background checks.<sup>162</sup> It is estimated that 40% of all gun purchasers buy their guns from private sellers and do not have to undergo background checks.<sup>163</sup> The most common arena for these purchases are gun shows, however the ability to purchase a gun without a background check is available when a person purchases a firearm by any private dealer in any setting.<sup>164</sup>

## V. MASS SHOOTING TRAGEDY IN AUSTRALIA

In order to compare gun laws in the United States to those of Australia, it is necessary to understand where Australia’s motive in creating their current gun laws derives from.<sup>165</sup> Australia had a focusing event

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160. *Federal Law on Background Checks*, *supra* note 159.

161. *Id.*

162. Andrew Goddard, *A View Through the Gun Show Loophole*, 12 RICH. J.L. & PUB. INT. 357, 357 (2009).

The term *Gun Show Loophole* came about as a result of the passage of the Firearm Owners Protection Act of 1986 and the Brady Handgun Violence Prevention Act of 1993. These laws effectively created a dual standard for gun sales based on the federal license status of the seller. The Brady Act mandated that licensed gun dealers must conduct criminal background checks on potential buyers regardless of whether the sale takes place at the dealer’s store or at a gun show, whereas the Firearm Owners Protection Act expressly exempted “persons making occasional sales or selling all or part of a personal collection” from the need to obtain a federal license to sell firearms. Thus, a private individual who is not considered to be “engaged in the business” of buying and selling guns, or who sells occasionally, is not required, or even allowed, to conduct a background check on a prospective buyer. The reason for the exception to the background check requirement for private sellers [is] to allow for the unregulated sale or transfer of guns between friends and relatives or the “occasional” sale of guns by individuals from their personal collection.

*Id.*

163. Kate Masters, *Just How Many People Get Guns Without a Background Check? Fast-Tracked Research Is Set to Provide an Answer*, TRACE (Oct. 21, 2015), <http://www.thetrace.org/2015/10/private-sale-loophole-background-check-harvard-research/>.

164. See Goddard, *supra* note 162, at 357.

165. Matthew Grimson, *Port Arthur Massacre: The Shooting Spree that Changed Australia’s Gun Laws*, NBC NEWS (Apr. 28, 2016, 6:52 AM), <http://www.nbcnews.com/news/world/port-arthur-massacre-shooting-spree-changed-australia-gun-laws-n396476>; see also Emily Crane, *Martin Bryant’s Old Volvo Crammed with Weapons, a Surfboard on the Roof and 35 Innocent Lives Lost: Harrowing Photos Show How Australia’s Worst Massacre Unfolded at Port Arthur 20 Years Ago Today*, DAILYMAIL.COM

pertaining to mass shootings on April 28, 1996, at a seaside resort in Port Arthur, Tasmania.<sup>166</sup> It was considered the worst massacre in Australian history.<sup>167</sup> The gunman Martin Bryant, a twenty-eight year old that was armed with a semi-automatic rifle, killed thirty-five people and wounded twenty-three others.<sup>168</sup> He “drove a yellow Volvo to Port Arthur armed with a sports bag full of ammunition and a military-style semi-automatic rifle.”<sup>169</sup> Bryant “ate lunch before pulling [out the] semi-automatic rifle from his bag and embarking on a killing spree.”<sup>170</sup> Bryant was found guilty of the shootings and given “[thirty-five] life sentences without [the possibility of] parole.”<sup>171</sup> After this tragedy, John Howard, the Australian Prime Minister at the time, urged for more restrictive gun laws commenting, “‘I hate guns’ . . . . ‘One of the things I [do not] admire about America is their slavish love of guns . . . . [w]e do not want the American disease imported into Australia.’”<sup>172</sup>

## VI. AUSTRALIA’S GUN LAWS

On May 10, 1996, twelve days after the attacks at Port Arthur, Australia enacted uniform gun control laws.<sup>173</sup> “Between June 1996 and August 1998, the new restrictions were . . . implemented in all six states and two territories.”<sup>174</sup> The act is known as the National Firearms Agreement.<sup>175</sup>

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(Apr. 27, 2016, 11:17 PM), <http://www.dailymail.co.uk/news/article-3562751/Harrowing-photos-Port-Arthur-massacre-unfolded-20-years-ago.html>.

166. Crane, *supra* note 165; Grimson, *supra* note 165.

167. Crane, *supra* note 165; Grimson, *supra* note 165.

168. Crane, *supra* note 165; Grimson, *supra* note 165.

169. Crane, *supra* note 165.

170. Grimson, *supra* note 165.

171. Crane, *supra* note 165.

172. Daniel Williams, *Australia’s Gun Laws: Little Effect*, TIME (May 1, 2008), <http://content.time.com/time/world/article/0,8599,1736501,00.html>; see also Calla Wahlquist, *It Took One Massacre: How Australia Embraced Gun Control After Port Arthur*, GUARDIAN (Mar. 14, 2016, 4:49 PM), <http://www.theguardian.com/world/2016/mar/15/it-took-one-massacre-how-australia-made-gun-control-happen-after-port-arthur>.

173. See *How Australia Dealt with Mass Shootings*, CBS NEWS (Mar. 13, 2016, 10:14 AM), <http://www.cbsnews.com/news/how-australia-dealt-with-mass-shootings/>; Laura Smith-Spark, *This Is What Happened When Australia Introduced Tight Gun Controls*, CNN, <http://www.cnn.com/2015/06/19/world/us-australia-gun-control/> (last updated June 19, 2015, 12:35 PM). “Only [twelve] days after the shootings, in John Howard’s first major act of leadership and by far the most popular in his first year as Prime Minister, his government announced nationwide gun law reform.” Smith-Spark, *supra*.

174. See Simon Chapman et al., *Australia’s 1996 Gun Law Reforms: Faster Falls in Firearm Deaths, Firearm Suicides, and a Decade Without Mass Shootings*, 12 INJ. PREVENTION 365, 365 (2006).

The National Firearms Agreement: (1) prohibits automatic and semiautomatic assault rifles; (2) stiffened licensing and ownership rules—for example, the private sale and transfer of firearms is prohibited unless conducted and registered by a *licensed firearms dealer*; (3) instituted a temporary gun buyback program that took approximately 700,000 assault weapons out of public circulation; (4) requires licensees to demonstrate a *genuine need* for a particular type of gun—self-defense does not qualify; (5) requires a firearm safety course; (6) determined that licenses cannot be issued until after a waiting period of not less than twenty-eight days and for a period of no more than five years; (7) mandates that licensees need to comply with storage requirements and submit to inspection by licensing authorities, subject to immediate withdrawal of license and confiscation of firearms in certain circumstances; and (8) requires separate permits for the acquisition of every firearm.<sup>176</sup>

Before the National Firearms Agreement, only handguns were required to be registered.<sup>177</sup> As previously mentioned, after the Agreement, all jurisdictions in Australia banned the sale, resale, transfer, ownership, possession, manufacture, and the use of automatic and semi-automatic long-arms.<sup>178</sup> Further, the requirement that owners of guns needed a genuine reason for owning the gun only encompassed the uses of recreational shooting and hunting, bona fide gun collection, and sporting shooters with a valid membership to an approved club.<sup>179</sup> This effectively removed any person from claiming self-protection as a genuine reason for gun ownership.<sup>180</sup>

An article in Time Magazine contains a firsthand account of an avid gun owner and collector living in Australia during the time when the National Firearms Agreement was implemented.<sup>181</sup> The gun owner is

175. See Kelly Buchanan, *Australia*, in FIREARMS-CONTROL LEGISLATION AND POLICY 16, 17 (2013). What emerged from the APMC's meeting was the implementation of the Nationwide Agreement on Firearms, "commonly referred to as the National Firearms Agreement" (the "Agreement") in 1996. *Id.* at 17. *Legislative Reforms*, AUSTL. INST. CRIMINOLOGY [http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp116/06\\_reforms.html](http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp116/06_reforms.html) (last modified June 29, 2012). The Australian government responded swiftly, and "the Australasian Police Ministers' Council ("APMC") convened a special meeting" and made resolutions to create a national plan for the regulation of firearms.

176. Buchanan, *supra* note 175, at 19–21.

177. *Legislative Reforms*, *supra* note 175.

178. *Id.*

179. *Id.*; Jeffrey Sachs, *Australia Gun Ownership Regulations*, JEFFSACHS.ORG (Dec. 16, 2012), <http://www.jeffsachs.org/2012/12/australis-gun-ownership-regulations/>.

180. See *Legislative Reforms*, *supra* note 175; Sachs, *supra* note 179.

181. Peter, *What It's Like to Own Guns in a Country with Strict Gun Control*, TIME (Jan. 13, 2016), <http://www.time.com/4172274/what-its-like-to-own-guns-in-a-country-with-strict-gun-control/>.

referenced in the article only by his first name, Peter, due to his fear that disclosing the contents of his gun collection might make him a target for weapon thieves.<sup>182</sup> Peter admitted that he was not thrilled about the idea of having to turn in six to eight semiautomatic rifles and shotguns to the police, but he came to the realization that the laws are actually an improvement.<sup>183</sup> Peter stated:

[It is] actually not that hard to own a gun. But, you do have to have a genuine reason. You have to be a member of a target shooting club, or a hunter, and you have to prove it. For hunting, you can get written permission from a landowner who says you are hunting on his land. Or, you can join a hunting club. Pistols [handguns], on the other hand, are heavily restricted. All applicants undergo a background check by the police and there is a mandatory [thirty] day cooling off period for all license applications, both long arms and pistols. Firearms safety training courses are mandatory as well.<sup>184</sup>

Peter also mentions the requirements of having a trigger lock on all firearms that are being transported throughout Australia and the provision requiring firearms to only be transported unloaded with ammunition in a separate locked container.<sup>185</sup> Approving of the restrictions, he stated:

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182. *Id.*

183. *Id.*

[A]fter the 1996 massacre, I probably had to hand in six to eight semiautomatic rifles and shotguns to the police. We got fair value for them but I [was not] thrilled to be doing it because I thought "Well gee, what have I done wrong?" Would anything untoward ever have happened with the firearms I owned? No.

*Id.*

184. *Id.*

One of the biggest changes is that the government established different types of firearms for different categories of guns and ruled that each would need different licenses. [Here is] roughly how it works: Category A is .22s, shotguns and air rifles. [That is] the easiest license to obtain. No semiautomatics are allowed. Category B is for center fire rifles. You have to provide a reason for why you need a more powerful gun. I shoot feral pigs and foxes; [that is] a valid reason. Again, no semiautomatics. Category C is available only to farmers; they can own a semiautomatic shotgun or .22 but the cartridges are limited to five shots for the shotgun and [ten] shots for the .22. Category D, for semiautomatic guns and rifles, is only for professional shooters: [Y]ou have to have a registered business and prove that you are earning an income through shooting. An H license is for handguns. If you want to buy a pistol in Australia, [you have] . . . to be a member of a target pistol club. [You have] . . . to do a minimum of eight competition shoots per year to keep your license. If you [do not], you lose it. Category G is for collectors. For that, [you have] . . . to attend at least one meeting per year.

Peter, *supra* note 181.

185. *Id.*

All these things I agree with. I would feel less safe in Texas where [everybody is] walking around with open carry. That would freak me out. It freaks me out enough to see the police all armed at the airport. Would I walk around the street with a pistol loaded on my waist? No way.<sup>186</sup>

Although he found the provision requiring a new permit for each additional firearm acquired to be tedious, overall, he believes that most Australians think the law is beneficial and still allows them to enjoy the use of firearms for particular purposes.<sup>187</sup>

In 2002, Australia also implemented the National Trafficking and Handgun Agreement.<sup>188</sup> This agreement was implemented to control the illegal trade of firearms in Australia.<sup>189</sup> The agreement: (1) increased border protection; (2) introduced nationally consistent regulations of the legal manufacture of firearms; (3) created tighter recording and reporting provisions for dealer transactions involving firearm and major firearm parts; and (4) established new offenses or penalties for the illegal possession and supply of firearms, the defacing of serial numbers, and conspiracy to commit interstate crimes with firearm.<sup>190</sup> “The [F]ederal Parliament also enacted the National Handgun Buyback Act [in] 2003,” resulting in the surrender of “about 70,000 handguns and more than 278,000 parts and accessories” “that did not comply with the new restrictions.”<sup>191</sup>

According to a study published in the Journal of the American Medical Association, after the enactment of nationwide gun law reform in May of 1996, there have been no mass shootings in Australia.<sup>192</sup> In Australia, mass shootings are defined as *fatal shootings*, “with five or more victims killed, not including the perpetrator.”<sup>193</sup> The study also found that since the passing of the legislation, “gun suicides declined by an average of

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186. *Id.*

187. *Id.*

Australia is a great country. You can go hunting, you can go shooting. And, as long as you hurt nobody and abide the law, you can continue to do it. That, to me, is freedom. The idea of having people own guns with no concept of gun safety and no reason to have a gun? That is not my idea of freedom.

*Id.*

188. Buchanan, *supra* note 175, at 22.

189. *Id.*

190. *Id.* at 22–23.

191. *Id.* at 24.

192. Simon Chapman et al., *Association Between Gun Law Reforms and Intentional Firearm Deaths in Australia, 1979-2013*, 316 AM. MED. ASS'N 291, 298 (2016); Howard, *supra* note 3.

193. Chapman et al., *supra* note 192, at 293; Howard, *supra* note 3.

4.8% per year and gun-related homicides declined by an average of 5.5% per year.”<sup>194</sup>

So, how was Australia able to pass sweeping legislative change so quickly? First, the Australian Constitution does not provide an explicit individual right to bear arms.<sup>195</sup> Second, firearms regulation in Australia is the sole responsibility of the individual states and territories, as Section 51 of the Australian Constitution does not confer lawmaking powers to the Federal Parliament in relation to firearms.<sup>196</sup> “Federal laws . . . regarding the import of firearms and other weapons [can be enacted] under the overseas trade and commerce powers of the . . . Parliament.”<sup>197</sup> Third, Australia does not have a powerful gun rights lobbying organization that has unyielding control to influence legislative reform.<sup>198</sup> These details are helpful in order to determine if the structure of the United States government would enable America to adopt Australia’s gun law policy.

## VII. CAPABILITY OF THE UNITED STATES TO ADOPT AUSTRALIA’S GUN LAW PROVISIONS

This Article will now look at the various provisions of Australia’s comprehensive gun control agreement and determine if the United States can implement a similar law.<sup>199</sup>

### A. *Australia’s Genuine Use for Owning, Possessing, or Using a Firearm*

As previously mentioned, Australia’s gun laws include a provision to show a genuine use for owning, possessing, or using a firearm.<sup>200</sup> *Personal protection*, or *self-defense*, does not qualify as a genuine reason to own a firearm in Australia.<sup>201</sup> Only “reasons relating to sport shooting, recreational

194. Chapman et al., *supra* note 192, at 298; Howard, *supra* note 3.

195. See John Howard, *I Went After Guns. Obama Can, Too*, N.Y. TIMES, Jan. 17, 2013, at A27. John Howard, the prime minister who oversaw the passage of Australia’s current gun laws, stated that “we have no constitutional right to bear arms. After all, the British granted us nationhood peacefully; the United States had to fight for it.” *Id.*

196. See *Australian Constitution* s 51.

197. Buchanan, *supra* note 175, at 17.

198. Howard, *supra* note 195, at A27. “Our challenges were different from America’s. . . . Our gun lobby [is not] as powerful, or well-financed, as the National Rifle Association in the United States.” *Id.*

199. See Buchanan, *supra* note 175, at 19–24; *infra* Sections VII.A-D.

200. Buchanan, *supra* note 175, at 20.

201. *Id.*

shooting, [or] hunting, collecting, and occupational requirements” are valid reasons for gun ownership or use in Australia.<sup>202</sup>

As discussed, the Supreme Court of the United States’ cases *Heller I* and *McDonald* held that the Second Amendment protects an individual’s right to keep and bear arms in the home for traditionally lawful purposes, such as self-defense, and that the Second Amendment applies against the states through the Fourteenth Amendment.<sup>203</sup>

Therefore, in light of the Court’s interpretation of the Second Amendment, it follows that the United States cannot implement a law that excludes *self-defense* as a genuine reason for owning, possessing, or using a firearm.<sup>204</sup>

## B. *Ban on Assault Weapons*

Although banning all handgun sales—purchased for the purpose of *self-defense*—cannot be instituted in light of the Supreme Court of the United States’ decisions, a ban on assault weapons—similar to the one adopted in Australia—can be implemented.<sup>205</sup>

First, the United States had a nationwide ban on semiautomatic assault weapons and large capacity ammunition feeding devices from 1994 through 2004.<sup>206</sup> This law was known as the Federal Assault Weapons Ban.<sup>207</sup> The law eventually expired in 2004 and has not been reinstated since.<sup>208</sup> However, the Federal Assault Weapons Ban was riddled with loopholes and did not mirror the Australian ban on assault weapons.<sup>209</sup> In an effort to not ban all semiautomatic weapons, Congress focused on eighteen specific firearms, thus, allowing some semi-automatic weapons to be deemed legal.<sup>210</sup> Further, although the law made it illegal to manufacture any of the

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202. *Id.*

203. *McDonald v. City of Chicago*, 561 U.S. 742, 749–50 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

204. *See Heller*, 554 U.S. at 636.

205. *See id.*; Buchanan, *supra* note 175 at 19.

206. Public Safety and Recreational Firearms Use Protection Act of 1994, Pub. L. No. 103-332, §§ 110102(a), 110103(a), 108 Stat. 1996; Brad Plumer, *Everything You Need to Know About the Assault Weapons Ban, in One Post*, WASH. POST: WONKBLOG (Dec. 17, 2012), <http://www.washingtonpost.com/news/wonk/wp/2012/12/17/everything-you-need-to-know-about-banning-assault-weapons-in-one-post>.

207. Plumer, *supra* note 206; *see also* Public Safety and Recreational Firearms Use Protection Act § 110101.

208. Plumer, *supra* note 206. “The original assault weapons law was written so that it would expire after ten years. When 2004 came around, some Democrats tried to renew it but there [was not] much interest in Congress.” *Id.*

209. *Id.*

210. *Id.*

assault weapons laid out in the act—for use by private citizens—“[a]ny assault weapon . . . that was manufactured before the law went into effect . . . was . . . legal to own or resell.”<sup>211</sup> There were approximately 1.5 million assault weapons already owned by private citizens at the time.<sup>212</sup> However, even with these loopholes, a Princeton study indicated that “the number of people [murdered] in mass shootings did go down in the years the ban was in effect.”<sup>213</sup>

Second, seven states have taken it upon themselves to ban assault weapons in their particular states.<sup>214</sup> These include: California, Connecticut, the District of Columbia, Maryland, Massachusetts, New Jersey, and New York.<sup>215</sup>

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[I]n crafting the 1994 ban, lawmakers mainly focused on [eighteen] specific firearms, as well as certain military-type features on guns. Complicated flow charts laid it all out. Certain models of AR-15s and AK-47s were banned. Any semiautomatic rifle with a pistol grip and a bayonet mount was an “assault weapon.” But, a semiautomatic rifle with just a pistol grip might be okay. It was complicated. And its complexity made it easy to evade.

*Id.*

211. Plumer, *supra* note 206.

212. *Id.*

213. *Id.*

214. *Assault Weapons*, L. CTR. TO PREVENT GUN VIOLENCE, <http://www.smartgunlaws.org/gun-laws/policy-areas/classes-of-weapons/assault-weapons/> (last visited Apr. 9, 2017).

215. *Id.*

Some state assault weapon bans prohibit specific weapons by listing them by name. Some bans list features that, when present, make a gun an assault weapon. The latter are known as generic feature tests. Generic feature tests, emphasizing high capacity and enhanced control during firing, are intended to identify assault weapons based on the military features that enhance a weapon’s lethality. Generic feature tests that require a weapon to have only one of a list of features are more comprehensive than those that require two. A one-feature test captures more assault weapons and makes it harder for the gun industry to evade the law by modifying banned weapons. California, Connecticut, New York, and the District of Columbia have the most comprehensive approaches to defining assault weapons. California law bans roughly [seventy-five] assault weapon types, models, and series by name and provides a one-feature generic test for rifles and pistols. Connecticut bans roughly [seventy] assault weapon types, models, and series by name and uses a one-feature generic test for rifles and pistols. The District of Columbia includes a list of assault weapon types, models, and series by name that closely follows the California list and provides a one-feature generic test for rifles, pistols, and shotguns. The District also allows its Chief of Police to designate a firearm as an assault weapon based on a determination that the firearm would pose the same or similar danger to the residents of the District as other assault weapons. New York has adopted a one-feature test for assault pistols, shotguns, and rifles. New Jersey bans roughly [sixty-five] assault weapon types, models, and series and copies of those weapons by name and uses a one-feature generic test for shotguns. Connecticut and New Jersey also ban parts that may be readily assembled into an assault weapon.

*Id.*

Third, in several states that have enacted a ban on assault weapons, courts have found the bans to be constitutional.<sup>216</sup> For example, in the District of Columbia, the United States Court of Appeals for the District of Columbia heard *Heller v. District of Columbia* (“*Heller II*”).<sup>217</sup> In this case, the court reviewed amended legislation that was introduced after *Heller I* was decided by the Supreme Court of the United States.<sup>218</sup> This new legislation, among other limitations, banned assault weapons in the District of Columbia.<sup>219</sup> In *Heller II*, the court adopted the following test: (1) Does the regulation infringe upon a Second Amendment right, and (2) If so, does the regulation pass muster under intermediate scrutiny?<sup>220</sup>

“The plaintiffs contend[ed] [that] semi-automatic [weapons] . . . are commonly possessed for self-protection in the home [and] for sport.”<sup>221</sup> They also argued that high capacity magazines are needed in a stressful situation when reloading might be difficult and imposing a ban on them would be an undue burden.<sup>222</sup> The district court argued that “neither assault weapons, nor weapons with large-capacity magazines, are among the [a]rms protected by the Second Amendment because they are both *dangerous and unusual* and because prohibiting them minimally burdens the plaintiffs.”<sup>223</sup> Additionally, “[t]he [d]istrict [court] . . . contends magazines holding more than ten rounds are disproportionately involved in the murder of law enforcement officers, as well as mass shootings, and have little value for self-defense or sport.”<sup>224</sup> The court held:

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216. *Heller v. District of Columbia*, 670 F.3d 1244, 1247–48, 1264 (D.C. Cir. 2011); *Assault Weapons*, *supra* note 214; *Duva*, *supra* note 129.

217. 670 F.3d 1244 (D.C. Cir. 2011).

218. *Id.* at 1247–48; *see also* *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

219. *Heller*, 670 F.3d at 1247.

220. *Id.* at 1260–61. Intermediate scrutiny is one test used to determine a law’s constitutionality. *Id.* at 1261. To pass intermediate scrutiny, the challenged law must further an important government interest by means that are substantially related to that interest. *Id.* at 1262. The court in *Heller II* determined that intermediate scrutiny is the proper standard by finding:

As we did in evaluating the constitutionality of certain of the registration requirements, we determine the appropriate standard of review by assessing how severely the prohibitions burden the Second Amendment right. Unlike the law held unconstitutional in *Heller*, the laws at issue here do not prohibit the possession of “the quintessential self-defense weapon,” to wit, the handgun. Nor does the ban on certain semi-automatic rifles prevent a person from keeping a suitable and commonly used weapon for protection in the home or for hunting, whether a handgun or a non-automatic long gun.

*Id.* at 1261–62 (citation omitted).

221. *Heller*, 670 F.3d at 1260.

222. *Id.* at 1260–61.

223. *Id.* at 1261 (citation omitted).

224. *Id.*

We think it [is] clear enough in the record that semi-automatic rifles and magazines holding more than ten rounds are indeed in “common use,” as the plaintiffs contend. Approximately 1.6 million AR-15s alone have been manufactured since 1986 and, in 2007, this one popular model accounted for 5.5[%] of all firearms, and 14.4[%] of all rifles, produced in the [United States] for the domestic market. As for magazines, . . . 18[%] of all firearms owned by civilians in 1994 were equipped with magazines holding more than ten rounds and approximately 4.7 million more such magazines were imported into the United States between 1995 and 2000. There may well be some capacity above which magazines are not in common use but, if so, the record is devoid of evidence as to what that capacity is; in any event, that capacity surely is not ten.

Nevertheless, based upon the record as it stands, we cannot be certain whether these weapons are commonly used, or are useful specifically for self-defense or hunting, and, therefore, whether the prohibitions of certain semi-automatic rifles and magazines holding more than ten rounds meaningfully affect the right to keep and bear arms. We need not resolve that question, however, because even assuming they do impinge upon the right protected by the Second Amendment, we think intermediate scrutiny is the appropriate standard of review and the prohibitions survive that standard.<sup>225</sup>

Therefore, the court concluded that the ban on assault weapons had a substantial relationship with the government’s interest in protecting the police and the public and upheld the ban as constitutional.<sup>226</sup>

Further, the California Court of Appeal held that Section 12280 of the California Penal Code, which bans assault weapons, was constitutional.<sup>227</sup> Here, the defendant was convicted “of unlawful possession of an assault weapon” and argued that the statute was an unconstitutional infringement on his Second Amendment rights.<sup>228</sup> The California Court of Appeal held that the Second Amendment did not extend to assault weapons.<sup>229</sup> The court looked to the legislative intent for implementing the

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225. *Id.*

226. *Heller*, 670 F.3d at 1264.

227. CAL. PENAL CODE § 12280 (West 2017), *repealed* by S.B. 1080, 2010 Leg., Reg. Sess. (Cal. 2012), CAL. PENAL CODE § 30600 (West 2017); *People v. James*, 94 Cal. Rptr. 3d 576, 585–86 (Ct. App. 2009).

228. *James*, 94 Cal. Rptr. 3d at 583–84.

229. *Id.* at 585.

assault weapons ban and determined that the primary concern was the increase in the use of unusually dangerous weapons.<sup>230</sup> The court found that:

[T]he Legislature enacted the [Roberti-Roos] Assault Weapons Control Act of 1989, and the .50 Caliber BMG Regulation Act of 2004, in order to address the proliferation and use of unusually dangerous weapons: [A]ssault weapons, with an incredibly “high rate of fire and capacity for firepower,” which can be used to indiscriminately “kill and injure human beings;” and .50 caliber BMG rifles, which “have such a high capacity for long distance and highly destructive firepower that they pose an unacceptable risk to the death and serious injury of human beings, destruction or serious damage of vital public and private buildings, civilian, police and military vehicles, power generation and transmission facilities, petrochemical production and storage facilities, and transportation infrastructure.”<sup>231</sup>

The court went on to conclude that the California Penal Code classifies assault weapons as *weapons of war*, and since there was no indication in *Heller I* that Second Amendment rights protected the use or possession of atypical weapons, California’s ban on assault weapons was constitutional.<sup>232</sup>

Therefore, the United States could successfully implement a ban on all assault weapons as Australia did.<sup>233</sup> The ban would not violate the Second Amendment of the Constitution as it would pass muster under constitutional analysis by the courts.<sup>234</sup>

### C. *Gun Buyback Programs*

If the United States is successful in banning assault weapons, the next issue for consideration would be to determine if the United States could

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230. *Id.*

231. *Id.* at 583–84 (citations omitted).

232. *Id.* at 576, 586; *see also* CAL. PENAL CODE § 12280; District of Columbia v. *Heller*, 554 U.S. 570, 636 (2008).

233. *See Heller*, 554 U.S. at 636; *Heller v. District of Columbia*, 670 F.3d 1244, 1264 (D.C. Cir. 2011); *James*, 94 Cal. Rptr. at 576, 579, 585–86; Christina Sterbenz, *Australia Enacted One of the Largest Gun Reforms Ever 2 Decades Ago — and Gun Deaths Plummeted*, BUS. INSIDER (Jun. 14, 2016, 10:32 AM), <http://www.businessinsider.com/australia-gun-control-shootings-2016-6>. “Australia’s government . . . purchase[d] nearly 700,000 guns. Percentage-wise, that [is] the equivalent of forty million in the US.” Sterbenz, *supra* note.

234. *See Heller*, 554 U.S. at 636; *Heller*, 670 F.3d at 1264; *James*, 94 Cal. Rptr. 3d at 576.

legally implement a buyback program like Australia's.<sup>235</sup> The buyback program that Australia instituted after the National Firearms Agreement was extremely successful and removed approximately 700,000 assault weapons from civilian use.<sup>236</sup> A 2010 study from the Australian National University "found that the gun buyback program lowered the proportion of Australian homes with guns from 15% to 8%."<sup>237</sup> The author of the study stated that, "[o]ur gun buyback took about a fifth of our guns out of circulation but it approximately halved the number of gun-owning households."<sup>238</sup>

In order to determine if the United States could compel citizens to turn in their guns—as part of a buyback program—the underlying laws of the United States need to be assessed and compared to those of Australia.<sup>239</sup> The Australian and United States Constitutions each contain a Takings Clause, which allows the governments to actually or constructively seize private properties for public use as long as just compensation is provided.<sup>240</sup> Australia's Takings Clause is located in Section 51 of the Australian Constitution and states that

[t]he Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to . . . the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.<sup>241</sup>

The United States Takings Clause is found in the last clause of the Fifth Amendment.<sup>242</sup> The clause reads, "nor shall private property be taken for public use, without just compensation."<sup>243</sup>

Although the United States has a long history of taking real property,<sup>244</sup> the Supreme Court of the United States recently held that the

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235. See Sterbenz, *supra* note 233.

236. *Id.*

237. Doug Stanglin, *Researcher: U.S. Could Learn from Aussie Gun Buyback*, USA TODAY (Dec. 17, 2012, 11:00 AM), <http://www.usatoday.com/story/news/nation/2012/12/17/australia-gun-reform-buyback-us-national-firearm-agreement/1774549>.

238. *Id.*

239. See U.S. CONST. amend. V; *Australian Constitution* s 51; Stanglin, *supra* note 238.

240. See U.S. CONST. amend. V; *Australian Constitution* s 51.

241. See *Australian Constitution* s 51 (footnote omitted).

242. U.S. CONST. amend. V.

243. *Id.*

244. See, e.g., *Kelo v. City of New London*, 545 U.S. 469, 469–70 (2005); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1027–28 (1992); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 825, 841–42 (1987); *Loretto v. Teleprompter Manhattan CATV*

Takings Clause requires the government to pay *just compensation* for takings of personal property.<sup>245</sup> Justice Roberts stated that,

Nothing in the text or history of the Takings Clause, or our precedents, suggests that the rule is any different when it comes to appropriation of personal property. The Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home.<sup>246</sup>

Therefore, in light of the Takings Clause,<sup>247</sup> and the Supreme Court's holding,<sup>248</sup> the United States would be required to pay *just compensation*, which is normally described as *fair market value* for any guns the government requires citizens to turn over as part of a buyback program, which is what Australia was required to do.<sup>249</sup>

In Australia, the Federal Parliament introduced the Medicare Levy Amendment Act of 1996.<sup>250</sup> This Act was implemented to raise the funds for the gun buyback program—which was estimated to be 500 million dollars.<sup>251</sup> This Act increased the rate of the Medicare levy for the 1996-1997 financial year.<sup>252</sup> Although there has never been a mandatory gun buyback program in the United States, there have been several voluntary buyback programs in various states.<sup>253</sup> Los Angeles has provided grocery-store gift cards in seven buybacks since 2009, receiving more than 12,000 guns in all.<sup>254</sup> On

Corp., 458 U.S. 419, 419, 441 (1982); *Penn Cent. Transp. Co. v. City of N.Y.*, 438 U.S. 104, 105, 125 (1978); *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 397 (1926); *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 412 (1922).

245. *Horne v. Dep't of Agric.*, 135 S. Ct. 2419, 2426 (2015); Debra Cassens Weiss, *Takings Clause Applies to Personal Property, SCOTUS Rules in 'Major Blow' to Set-Aside Programs*, A.B.A. J. (June 22, 2015, 9:23 AM), [http://www.abajournal.com/news/article/us\\_taking\\_of\\_personal\\_property\\_requires\\_compensation\\_scotus\\_rules\\_in\\_major/](http://www.abajournal.com/news/article/us_taking_of_personal_property_requires_compensation_scotus_rules_in_major/). See, e.g., *Kelo*, 545 U.S. at 469–70; *Lucas*, 505 U.S. at 1027–28; *Nollan*, 483 U.S. at 825; *Loretto*, 458 U.S. at 419, 441; *Penn Cent. Transp. Co.*, 438 U.S. at 105, 125; *Vill. of Euclid*, 272 U.S. at 397; *Pa. Coal Co.*, 260 U.S. at 412.

246. *Horne*, 135 S. Ct. at 2426; see also Weiss, *supra* note 245.

247. U.S. CONST. amend. V.

248. *Horne*, 135 S. Ct. at 2419, 2426, 2429, 2432.

249. See U.S. CONST. amend. V; *Horne*, 135 S. Ct. at 2419, 2423, 2429, 2432; Sterbenz, *supra* note 233.

250. Medicare Levy Amendment Act, No. 16 (1996) (Austl.).

251. *Id.*; see also Larry Sharpe, *Australia's Landmark Gun Reforms: The Aftermath of the Port Arthur Massacre*, HUFFINGTON POST AUSTRALIA (Apr. 28, 2016, 6:30 AM), [http://www.huffingtonpost.com.au/2016/04/28/port-arthur-gun-reform\\_n\\_9717980.html](http://www.huffingtonpost.com.au/2016/04/28/port-arthur-gun-reform_n_9717980.html).

252. Medicare Levy Amendment Act, No. 16; Sharpe, *supra* note 251.

253. See Eric P. Dolce, *To Keep and Bear Arms: Reconciling Firearms and the Public Health After Heller and McDonald*, 15 QUINNIPIAC HEALTH L.J. 155, 169 (2012).

254. Rick Orlov, *Gun Buyback Nets 1,500 Weapons — and Debate Over Program's Value*, L.A. DAILY NEWS (Dec. 16, 2013, 3:54 PM),

December 14, 2013, the one-year anniversary of the Sandy Hook massacre, California held a *statewide gun-buyback program* where more than 1500 firearms were voluntarily surrendered.<sup>255</sup> Further, the New Jersey Attorney General's Office launched a gun buyback initiative in 2012.<sup>256</sup> Through this initiative, ten events have been conducted where approximately 16,000 firearms, including 7300 handguns and 1900 illegal guns were received.<sup>257</sup>

Therefore, buyback programs could be implemented for guns that are made illegal—such as assault weapons—and voluntary ones can encourage citizens to turn in legal guns.<sup>258</sup> The United States would be required to pay *just compensation* for the guns in order to satisfy the Takings Clause of the Fifth Amendment,<sup>259</sup> which is plausible from what has been done with voluntary programs in various states.<sup>260</sup>

#### D. *Universal Background Checks*

Regardless of whether or not the United States implements a ban on assault weapons and introduces a buyback program, the United States should close the gun show loophole and require background checks for all gun sale purchases, as Australia has done.<sup>261</sup>

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<http://www.dailynews.com/government-and-politics/20131216/gun-buyback-nets-1500-weapons-x2014-and-debate-over-programs-value>; see also Kate Mather, *LAPD Collects Nearly 780 Firearms in Latest Gun Buyback Event*, L.A. TIMES (Dec. 16, 2014, 5:00 AM), <http://www.latimes.com/local/crime/la-me-gun-buyback-20141216-story.html>.

255. *Id.*

256. Press Release, Governor Chris Christie, *Fighting to Keep New Jersey Safe* (June 7, 2013); Marli Horwitz, *Gun Buyback in Hudson, Union Counties Brings in 1,600 Weapons*, NJ.COM (July 16, 2013, 5:05 PM), [http://www.nj.com/hudson/index.ssf/2013/07/gun\\_buyback\\_in\\_hudson\\_union\\_counties\\_brings\\_in\\_almost\\_1600\\_weapons.html](http://www.nj.com/hudson/index.ssf/2013/07/gun_buyback_in_hudson_union_counties_brings_in_almost_1600_weapons.html); *Record Number of Weapons Obtained Through Gun Buyback Initiative in Camden County*, CNBNEWS.NET (Dec. 19, 2012, 6:15 PM), <http://www.gloucestercitynews.net/clearysnotebook/2012/12/attorney-general-chiesa-announces-record-number-of-weapons-obtained-through-gun-buyback-initiative-in-camden-county-click-o.html>.

257. See Press Release, Governor Chris Christie, *supra* note 256; Horwitz, *supra* note 256; *Record Number of Weapons Obtained Through Gun Buyback Initiative in Camden County*, *supra* note 256.

258. See Press Release, Governor Chris Christie, *supra* note 256; Horwitz, *supra* note 256; *Record Number of Weapons Obtained Through Gun Buyback Initiative in Camden County*, *supra* note 256.

259. U.S. CONST. amend. V; *Kelo v. City of New London*, 545 U.S. 469, 477 (2005).

260. See Horwitz, *supra* note 256; Mather, *supra* note 254; Orlov, *supra* note 254; *Record Number of Weapons Obtained Through Gun Buyback Initiative in Camden County*, *supra* note 256.

261. See Buchanan, *supra* note 175, at 19–20.

Although not flawless, NICS “has prevented more than two million convicted felons and other prohibited purchasers from buying guns.”<sup>262</sup> The law also provides a deterrent to prohibited purchasers who “are less likely to try to buy guns when they know comprehensive background check requirements are in place.”<sup>263</sup> The United States should also look into extending the waiting period from three days to at least twenty-eight days, like Australia.<sup>264</sup> This can allow for a more thorough background check and a *cooling-off* period.<sup>265</sup>

Even though there are not any legal restrictions to implementing universal background checks, initiatives to pass a law on the issue have not been successful.<sup>266</sup> In April of 2013, a few months after the shooting at Sandy Hook Elementary School, a bipartisan proposal from Senators Joe Manchin, Democrat of West Virginia, and Pat Toomey, Republican of Pennsylvania, was rejected in a fifty-four to forty-six vote.<sup>267</sup> This legislation would have expanded background checks to cover all firearms sales at gun shows and online.<sup>268</sup>

One explanation for the inability to pass a universal background check law is the unyielding power of the National Rifle Association

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262. *Universal Background Checks*, CSGV, <http://www.csgv.org/issues/universal-background-checks/> (last visited Apr. 9, 2017); *see also Background Check Procedures*, L. CTR. TO PREVENT GUN VIOLENCE, <http://www.smartgunlaws.org/gun-laws/policy-areas/gun-dealer-sales/background-check-procedures/> (last visited Apr. 9, 2017); Miles Kohrman & Jennifer Mascia, *Everything You Need to Know About Federal Background Checks*, TRACE (July 11, 2015), <http://www.thetrace.org/2015/07/background-checks-nics-guns-dylann-roof-charleston-church-shooting>.

263. *Universal Background Checks*, *supra* note 262.

264. *See* Buchanan, *supra* note 175, at 20–21; Sharpe, *supra* note 251.

265. Sharpe, *supra* note 251; *see also Background Check Procedures*, *supra* note 262.

266. Ted Barrett & Tom Cohen, *Senate Rejects Expanded Gun Background Checks*, CNN, [www.cnn.com/2013/04/17/politics/senate-guns-vote](http://www.cnn.com/2013/04/17/politics/senate-guns-vote) (last updated Apr. 18, 2013); *see also Background Check Procedures*, *supra* note 262; *Universal Background Checks*, *supra* note 262.

267. Barrett & Cohen, *supra* note 266; Laura Matthews, *Background Checks Bill Rejected by Senate by 54-46*, INT’L BUS. TIMES (Apr. 17, 2013, 4:40 PM), <http://www.ibtimes.com/background-checks-bill-rejected-senate-54-46-1199553>; Molly Moorhead, *A Summary of the Manchin-Toomey Gun Proposal*, POLITIFACT (Apr. 30, 2013, 2:26 PM), <http://www.politifact.com/truth-o-meter/article/2013/apr/30/summary-manchin-toomey-gun-proposal/>; John Whitesides & David Lawder, *Senate Democratic Leader Reid Hits “Pause” on Gun-Control Bill*, CHICAGO TRIBUNE (Apr. 18, 2013), [http://articles.chicagotribune.com/2013-04-18/news/sns-rt-us-usa-gunsbre93f00d-20130415\\_1\\_gun-legislation-gun-control-proposals-nevada-democrat](http://articles.chicagotribune.com/2013-04-18/news/sns-rt-us-usa-gunsbre93f00d-20130415_1_gun-legislation-gun-control-proposals-nevada-democrat).

268. Barrett & Cohen, *supra* note 266; Matthews, *supra* note 267; Moorhead, *supra* note 269.

(“NRA”).<sup>269</sup> The NRA was founded in 1871 and currently has over four million members.<sup>270</sup> It has been referred to as the “most powerful lobbying group] in Washington.”<sup>271</sup> The NRA contributed twenty-five million dollars of lobbying funds over the past fourteen years and plays a large role in the federal elections process.<sup>272</sup> From 1990 to 2010, the NRA contributed over eighteen million dollars to congressional election campaigns.<sup>273</sup> Nearly 85% of that money went solely to Republican candidates.<sup>274</sup> This extensive

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269. Barrett & Cohen, *supra* note 266; Matthews, *supra* note 267; *see also A Brief History of the NRA*, NAT'L RIFLE ASS'N, <http://home.nra.org/about-the-nra> (last visited Apr. 9, 2017).

270. *A Brief History of the NRA*, *supra* note 269; Fox Butterfield, *Aggressive Strategy By N.R.A. Has Left Its Finances Reeling*, N.Y. TIMES, June 26, 1995, at A1.

271. Walter Hickey, *How the NRA Became the Most Powerful Special Interest in Washington*, BUS. INSIDER (Dec. 18, 2012, 1:43 PM), <http://www.businessinsider.com/nra-lobbying-money-national-rifle-association-washington-2012-12>; *see also* James Surowiecki, *Taking on the N.R.A.*, NEW YORKER (Oct. 19, 2015), <http://www.newyorker.com/magazine/2015/10/19/taking-on-the-n-r-a#>; *US Gun Control: What Is the NRA and Why Is It So Powerful?*, BBC (Jan. 8, 2016), <http://www.bbc.com/news/world-us-canada-35261394>; Sarah Westwood, *How Powerful Is the 'Gun Lobby?'*, WASH. EXAMINER (Dec. 5, 2015, 12:01 AM), <http://www.washingtonexaminer.com/how-powerful-is-the-gun-lobby/article/2577699>.

272. *See* Chris Amico & Sarah Childress, *How Loaded Is the Gun Lobby?*, FRONTLINE (Jan. 6, 2015), <http://www.pbs.org/wgbh/frontline/article/how-loaded-is-the-gun-lobby>; Blake Ellis & Melanie Hicken, *The Money Powering the NRA*, CNNMONEY (Oct. 15, 2015), <http://money.cnn.com/news/cnnmoney-investigates/nra-funding-donors>; Evan Horowitz, *Gun Rights Lobbyists Netted 7 Times the Money as Gun Control Counterparts*, BOSTON GLOBE (June 19, 2015), <http://www.bostonglobe.com/news/nation/2015/06/19/tracking-influence-gun-rights-lobby/wldnirHWAqdHh6AsiPXzGI/story.html>; Elisabeth Parker, *The NRA Gave These 9 Senators Over \$22 Million to Vote Down Gun Laws*, REVERBPRESS (Dec. 6, 2015), <http://reverbpres.com/politics/nra-pays-senators-millions/>.

273. Alan Berlow & Gordon Witkin, *Gun Lobby's Money and Power Still Holds Sway Over Congress*, CTR. FOR PUB. INTEGRITY (May 1, 2013, 9:00 AM), <http://www.publicintegrity.org/2013/05/01/12591/gun-lobbys-money-and-power-still-holds-sway-over-congress>; Leigh Ann Caldwell, *How the NRA Exerts Influence Beyond Political Contributions*, NBC NEWS (June 15, 2016, 5:47 PM), <http://www.nbcnews.com/storyline/orlando-nightclub-massacre/nra-s-political-influence-far-goes-beyond-campaign-contributions-n593051>; *National Rifle Ass'n*, OPENSECRETS.ORG, <http://www.opensecrets.org/pacs/lookup2.php?strID=C00053553> (last visited Apr. 9, 2017).

274. *See* Mike Spies & Sarah Ryley, *NRA Spending More Money Than Ever, Only to Help Pro-Gun GOP*, N.Y. DAILY NEWS (May 19, 2016, 9:47 PM), <http://www.nydailynews.com/news/politics/nra-big-spending-stop-congress-enacting-gun-safety-laws-article-1.2643408> [hereinafter *NRA Spending More Money Than Ever, Only to Help Pro-Gun GOP*]; Mike Spies & Sarah Ryley, *The NRA's New Campaign Math: Pour More Money into Fewer Races, Defeat Democrats at Any Cost*, THE TRACE (May 19, 2016), <http://www.thetrace.org/2016/05/nra-election-campaign-spending> [hereinafter *The NRA's New Campaign Math*]; *How the NRA Exerts Influence Over Congress*, WASH. POST (Jan. 15, 2013), <http://www.washingtonpost.com/wp-srv/special/politics/nra-congress>.

lobbying has prevented legislators from exercising their ability to vote in favor of gun legislation that favors universal background checks.<sup>275</sup> In contrast, Australia's gun lobby—Sporting Shooters Association of Australia—has not experienced the strength or success of the NRA.<sup>276</sup> They gained momentum in the early 1990s, but the Port Author Massacre shifted the public focus towards stricter gun laws and defused any attempt to reduce firearm restrictions.<sup>277</sup>

However, even though the NRA pushed for an agenda that would not require universal background checks, numerous “[g]un owners . . . believe . . . the NRA is out of touch with them on [the] issues.”<sup>278</sup> According to a survey:

- 83[%] of gun owners nationally support criminal background checks on all sales of firearms, while only 14[%] of gun owners oppose them;
- there is strong bipartisan agreement on the issue, with 90[%] of Democrat and 81[%] of Republican gun owners in support of background checks; . . .
- 72[%] of NRA members support [universal background checks];
- 79[%] of gun owners nationally want to see their politicians take action on this issue and require more gun sellers to conduct criminal background checks before they sell guns, while only 19[%] do not want to see their elected leaders act on this issue.<sup>279</sup>

These statistics demonstrate that politicians need to start listening to what their constituents actually want when it comes to particular firearm regulations, such as background checks.<sup>280</sup> Transitioning to background

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275. See Tom Cahill, *See How Much the NRA Paid Your Senator to Vote Against Gun Reform*, U.S. UNCUT (June 21, 2016), <http://usuncut.com/politics/see-how-much-nra-paid-your-senator/>.

276. Will Oremus, *How Many Shootings Will it Take for America to Control Its Guns?*, SLATE: CRIME (Dec. 12, 2012, 10:00 PM), [http://www.slate.com/blogs/crime/2012/12/16/gun\\_control\\_after\\_connecticut\\_shooting\\_could\\_australia\\_s\\_laws\\_provide\\_a.html](http://www.slate.com/blogs/crime/2012/12/16/gun_control_after_connecticut_shooting_could_australia_s_laws_provide_a.html); see also *Sporting Shooters' Association of Australia*, SSAA, <http://www.ssaa.org.au/> (last visited Apr. 9, 2017).

277. *How Australia Dealt with Mass Shootings*, *supra* note 173.

278. Benton Strong, *Release: Gun Owners Overwhelmingly Support Background Checks, See NRA as Out of Touch, New Poll Finds*, CTR. FOR AM. PROGRESS (Nov. 17, 2015), <http://www.americanprogress.org/press/release/2015/11/17/125618/release-gun-owners-overwhelmingly-support-background-checks-see-nra-as-out-of-touch-new-poll-finds/>.

279. *Id.*

280. See *Background Check Procedures*, *supra* note 262.

checks for all firearm purchases would not be difficult to implement, as the systems to perform the checks are already in place and as background checks are required at licensed dealers.<sup>281</sup> Therefore, the United States should follow in Australia's footsteps and implement universal background checks.

## VIII. CONCLUSION

What is clear from the glaring statistics and media coverage of multiple mass shootings occurring at elevating rates in the United States is that the gun control issue needs to be tackled and new legislation implemented. Members of federal and state legislators need to start a conversation on gun control and work collaboratively to establish policies that effectuate change. The murder of innocent American citizens at the hands of those with firearms is an issue of national importance and should be a bipartisan one. America's culture and climate of gun ownership needs to be analyzed and reevaluated in order to spare the United States from another mass shooting tragedy. Australia was able to implement sweeping legislative reform regarding gun control only twelve days after one mass shooting event.<sup>282</sup> As discussed in this Article, the United States can effectively implement most of the Australian gun control legislation and should work towards making that a priority.<sup>283</sup>

Take a moment to reflect on the following statement from former Australian Prime Minister John Howard, the conservative leader behind the Australian reform.<sup>284</sup> Former Prime Minister Howard made the statement after visiting the United States in the wake of the Aurora, Colorado, shooting.<sup>285</sup> In the Aurora shooting, a gunman dressed in tactical clothing entered a movie theater, where he set off tear gas grenades and shot into the audience with multiple firearms.<sup>286</sup> Twelve people were killed and around seventy others were injured.<sup>287</sup> The Prime Minister said:

There is more to this than merely the lobbying strength of the National Rifle Association and the proximity of the November presidential election. It is hard to believe that their reaction would have been any different if the murders in Aurora had taken place

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281. *Id.*

282. *How Australia Dealt with Mass Shootings, supra* note 173.

283. *See* Howard, *supra* note 3; Masters, *supra* note 15; *see also supra* Parts

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284. *See* Oremus, *supra* note 276.

285. Stanglin, *supra* note 237.

286. Frosch & Johnson, *supra* note 5.

287. *Colo. Shooting DA Says Two Evaluations Found Holmes Sane, supra* note

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immediately after the election of either Obama or Romney. So deeply embedded is the gun culture of the [United States] that millions of law-abiding Americans truly believe that it is safer to own a gun, based on the chilling logic that because there are so many guns in circulation, one's own weapon is needed for self-protection. To put it another way, the situation is so far gone there can be no turning back.<sup>288</sup>

In this statement, the former Prime Minister believes that America's gun culture and attitude towards gun ownership is blinding the United States from being able to effectuate change.<sup>289</sup> Instead of conceding to the belief that the United States will never be able to implement stricter gun control laws, the United States should set an example for the world and truly become "the land of the free" in reference to freedom from gun violence and fear.

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288. Oremus, *supra* note 276.

289. *See id.*