

TESTIMONY OF

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&

H. ANTHONY SEMONE, PhD



**PUBLIC HEARING BEFORE THE PENNSYLVANIA SENATE
JUDICIARY COMMITTEE ON MENTAL AND BEHAVIORAL
HEALTH, SECOND AMENDMENT and OTHER GUN RELATED
ISSUES**

SEPTEMBER 25, 2019

Joshua Prince, Esq.

Chairwoman Baker and Honorable Members of the Committee, Doctor Semone and I appreciate the opportunity to be here today to discuss these important issues with you. As Doctor Semone is unable to be here in person today, his affidavit is attached hereto as Exhibit A.

I am a licensed member, in good standing, of the Pennsylvania and Maryland Bars and am admitted to numerous courts, including: Pennsylvania Supreme Court, U.S. Supreme Court, U.S. Court of Appeals for the Third, Sixth and District of Columbia Circuits, and District Courts for the Eastern, Middle, and Western Districts of Pennsylvania. As my curriculum vitae is beyond the scope of my testimony today, I am attaching it as Exhibit B.

While we have gathered here yesterday and today to discuss mental and behavioral health, the Second Amendment, and other gun related issues, there has been too little – if any – actual focus and discussion on the root causes of what actually brings us here and *it is not guns*. We are here because of the breakdown of the family unit in American society, the unchecked proliferation of psychotropic and SSRI drug use among juveniles and adults, and the way individuals seeking mental and behavioral health treatment have been stigmatized. While there are dozens of firearms-related bills before the Senate that seek to further restrict law-abiding individuals' inviolate right¹ to bear arms,² no bill pending in the General Assembly seeks to address the true issues, some of

¹ Article 1, Section 25 of the Pennsylvania Constitution.

² Article 1, Section 21 of the Pennsylvania Constitution; Second Amendment to the U.S. Constitution.

which, cannot be addressed through legislation.³ If this Committee or the Pennsylvania General Assembly wishes to address the true root cause of the epidemic of violence we are seeing across this Nation, it should be the first – across the Nation – to utilize its powers pursuant to Section XIV, subsection (5), of the Senate Rules, to issue subpoenas to the Pharmaceutical Industry and force them to disclose the studies and evidence they have regarding the harmful, violent and suicidal effects of psychotropic/SSRI drugs on the juvenile and adult brains – the same psychotropic drugs, as discussed *infra*, that are being prescribed at beyond an alarming rate and which, in relation to that increased rate, directly coincide with the epidemic of violence we are seeing in society. Furthermore, this Committee must recognize the current stigma attached to seeking out mental health treatment – the concern among those, who recognize that they would potentially benefit from treatment but are too fearful to seek it out for fear of collateral consequences that could stem from seeking such, because of the lack of sufficient protections under the law. Therefore, this Committee should investigate and propose legislation either establishing or funding a pro-rights mental and behavioral health treatment facility, which will ardently defend all patients’ rights against disclosure of any discussions and treatments with mental and behavioral health specialists, as well as, enact enhanced statutory protections for patients seeking out treatment.^{4, 5}

³ *E.g.* breakdown of the family unit.

⁴ Although 42 Pa.C.S. § 5944 seemingly provides protection for patients, there are a number of disconcerting court decisions that draw into question its application. *See e.g.*, *Gormley v. Edgar*, 995 A.2d 1197, 1204 (Pa. Super. Ct. 2010)(holding that the “[Section 5944] pertains *only* to confidential communications between psychiatrists or psychologists and their patients/clients that were made in the course of treatment, *not to all records and documents regarding mental health treatment*)(emphasis added); *Grimminger v. Maitra*, 887 A.2d 276, 279 (Pa. Super. Ct. 2005)(declaring that “our case law has drawn a distinction between information learned by a physician through

I. Breakdown of the Family Unit

Firearms are tools capable of nothing more than mechanically conforming to their possessor's intent and the more we focus on them, the more we let languish the true underlying root causes that bring us here. Studies have shown that 42% of marriages of

communication to him by a patient and information acquired through examination and observation.”); *Commonwealth v. Carter*, 821 A.2d 601, 608 (Pa.Super.2003) (“The [psychiatrist-patient] privilege is not designed to specifically protect the psychotherapist's own opinion, observations, [or] diagnosis.”).

It is due to decisions such as these that have caused individuals not to seek out treatment. If the General Assembly desires to allay these fears, it should specifically respond to this case law by enacting an all-encompassing statutory protection that precludes disclosure of all records, documents, test results, opinions, observations, and diagnosis related to mental and behavioral health treatment.

⁵ The General Assembly must also address the abhorrent case law eviscerating this Legislature's enactment in 50 P.S. § 7102 that “[t]reatment on a voluntary basis shall be preferred to involuntary treatment; and in every case, the least restrictions consistent with adequate treatment shall be employed.” *See e.g., In re Jacobs*, 15 A.3d 509, 511 (Pa. Super. Ct. 2011)(holding that there is no “notice requirement that a person be informed that he may voluntarily commit him or herself.”).

Furthermore, as acknowledged by the Pennsylvania Supreme Court in *Appeal of Niccoli*, 472 Pa. 389, 399-400 (1977) in declaring that “[a]side from the social stigma and psychological complications which may result when a *person who voluntarily chooses to be hospitalized is involuntarily committed*,”

‘The advantages of voluntary admissions flow from the absence of compulsion in the initiation of psychiatric treatment. Psychiatric evidence indicates that a patient who recognizes his condition and voluntarily undertakes therapy is more likely to be rehabilitated than one upon whom treatment is forced. Moreover, the consensual relationship between the voluntary patient and the hospital may obviate the legal problems of involuntary commitment-the state's power to infringe fundamental liberties, the procedures by which such power may be exercised, the permissible conditions of hospitalization, and the ability of the patient to obtain release.’ (Footnotes omitted.) *Developments in the Law, Civil Commitment of the Mentally Ill*, 87 Harv.L.Rev. 1190, 1399 (1974). Clearly, however, these advantages are less likely to be realized and persons who recognize their need for hospitalization are less likely to seek it if, after they have applied for voluntary admission or commitment and have been accepted by or commitment and have been accepted by an appropriate facility on a voluntary basis, they then can be subjected to involuntary commitment without a significant change in their condition, the perception of their condition, or their willingness to be hospitalized.

individuals between the ages of 15 and 46 end in divorce by age 46.⁶ This staggering divorce rate has spawned numerous issues that are frequently attributed to the epidemic of violence and anti-social behavior, as reviewed by Doctor Semone. *See*, Exhibit A at pgs. 2 - 4. As Doctor Semone declares, “children who grow up in [broken] families, especially at early developmental stages, become the unwitting recipients of trauma induced structural and physiological changes to the brain, the consequences of which predispose those children to extreme problems with living productive, responsible lives.” *Id.* at pg. 3, ¶ 18.

Suicide in Relation to Divorce

According to the National Vital Statistics System, suicide is the 10th leading cause of death in the United States, killing 47,173 people in 2017.⁷ Additionally, the suicide rate has increased 33% since 1999 – concurrently with the proliferation of psychotropic/SSRI drugs, as discussed *infra* – with the most significant increases occurring from 2006 onward.⁸ Attacking and stigmatizing “gun culture”⁹ and regulating firearms will not address the social and cultural factors, like fractured family relationships, causing people to attempt suicide. Firearms accounted for barely half of all suicide fatalities in 2017, and are not responsible for the high rates, their rapid and troubling increase, or their stark gender disparity. Men account for approximately 77% of

⁶ Bureau of Labor Statistics, *Marriage and divorce: patterns by gender, race, and educational attainment* (2013), <https://www.bls.gov/opub/mlr/2013/article/marriage-and-divorce-patterns-by-gender-race-and-educational-attainment.htm>

⁷ National Vital Statistics Reports, *Deaths: Final Data for 2017* (2019).

⁸ *Id.*

⁹ David Yamane, *On Making Guns Seem Less Socially Acceptable*, (2019), https://guncurious.wordpress.com/2019/09/10/on-making-guns-seem-less-socially-acceptable/?fbclid=IwAR1pPuVX4m68eMWCmple2L5t5U3Ns_94mPPnZL9Ng4pZSHo3aspjwNDFjyU

suicide victims, and divorced men are over two times as likely to commit suicide as men in any other category of marital status.¹⁰ Perhaps, as Charlie Hoehn explains, the cause, among other things, is that men in the U.S. are chronically lonely, due to conditioning that “[r]eal men do everything on their own. Real men don’t cry. Real men express anger through violence” and that “[w]e live in a culture that continually neglects the emotional health of our boys, and our men.”¹¹ Regardless, divorce has also been shown to increase the risk of adult children attempting suicide by as much as 14%.¹²

*Effects on Children: Psychological Consequences,
Juvenile Delinquency, and Adult Recidivism*

Divorces also have a pronounced effect on minor children, diminishing their future competence in all aspects of life, including: academic achievement, conduct, psychological adjustment, self-concept, and social relations.¹³ In 1970, 84% of children lived with their married biological parents, a figure which had fallen to 60% by 2009 and was far lower for some groups when broken down by race.¹⁴ As recently as 2016, 29% of children were living in a single-mother household, with a far smaller percentage living

¹⁰ Augustine J. Kposowa, *Marital status and suicide in the National Longitudinal Mortality Study*, 54 *Epidemiol Cmty. Health* 254 (2000).

¹¹ *Mass Shootings in America, and Why Men (and Boys) Keep Doing This*, Oct. 3, 2017, <https://byrslf.co/thoughts-on-the-vegas-shooting-14af397cee2c>; however, see also, Devin Foley, *Why We Need Alpha Males*, May 24, 2016, <https://www.intellectualtakeout.org/blog/why-we-need-alpha-males>

¹² American Psychological Association, *Adults at Higher Risk of Suicide Attempt if Parent Abused Alcohol, Research Finds* (2014), <https://www.apa.org/news/press/releases/2014/05/suicide-alcohol>

¹³ Jane Anderson, *The impact of family structure on the health of children: Effects of divorce*, 81(4) *The Linacre Q.* (2014).

¹⁴ *Id.* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4240051/>

with single fathers.¹⁵ The increasing number of single-parent families is alarming because generally, a 10% increase in the number of children living in a single-parent family is accompanied by a 17% increase in juvenile crime.¹⁶ Increased juvenile crime leads to increased adult crime, which is typically more serious, because 52-57% of juvenile delinquents continue to offend until age 25.¹⁷ As they age, their crimes increase in severity and lethal violence becomes more common, typically directed at victims of the same age group.¹⁸

It is a well-accepted fact that children, during their formative years, imitate the behaviors they witness through a process called “observational learning,” which is technically referred to in psychological community as “modeling.”¹⁹ While this can be used to teach positive behaviors like seatbelt use, appropriate conflict response, and polite manners, children will also learn negative behaviors like texting while driving and smoking cigarettes. Observational learning expands to patterns in familial relationships from one generation to the next as a phenomenon called the “intergenerational transmission of divorce.”²⁰ Children who grow up in broken families are significantly more likely to encounter similar troubles later on in their own lives. For example,

¹⁵ United States Census Bureau, *The Majority of Children Live With Two Parents*, *Census Bureau Reports* (2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-192.html>

¹⁶ The Heritage Foundation, *The Real Root Causes of Violent Crime: The Breakdown of Marriage, Family, and Community*, 9 (1995).

¹⁷ National Institute of Justice, *From Juvenile Delinquency to Young Adult Offending*, (2014), <https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending>

¹⁸ *Id.*

¹⁹ Kylie Rymanowicz, *Monkey see, monkey do: Model behavior in early childhood*, Michigan State University Extension (2015), https://www.canr.msu.edu/news/monkey_see_monkey_do_model_behavior_in_early_childhood

²⁰ Sarah W. Whitton et al., *Effects of Parental Divorce on Marital Commitment and Confidence*, *Journal of Family Psychology* (2008).

children whose parents divorce are more likely to disagree with the notion that marriage is a lifelong, permanent relationship, ultimately undermining people's commitment to, and confidence in, particular relationships.²¹

Living in single-parent households greatly increases poverty, inhibits earning power, and further limits children's access to a parent who must work more to compensate for living on a single income.²² However, single-parent families are only part of the picture. Between 1962 and 2000, the percentage of women 16 and older working or looking for work increased from 37% to 61%.²³ That has paralleled an increase in the number of families with both parents working, from 35.9% to 61.1% between 1970²⁴ and 2016.²⁵ Approximately 40% of full-time working mothers and 50% of full-time working fathers say they spend too little time with their children.²⁶ Equally as important as the quantity of time working parents spend with their children, is the quality of that time. When children only have limited access to their working parents in any given day, the harmful effects of marital conflict are more likely to occur. There is also limited evidence suggesting mixed positive and negative outcomes of living in a home with two working parents. These include: child's risk of unemployment in early adulthood increased by having a working mother, but decreased by having a working father; increased risk of psychological distress in early adulthood by having a working

²¹ *Id.*

²² Anderson, *supra*.

²³ Ronald E. Bulanda & Stephen Lippman, *Wrinkles in Parental Time with Children: Work Family Structure, and Gender*, Michigan Family Review 5, 9 (2009).

²⁴ Bulanda & Lippman, *supra*.

²⁵ Bureau of Labor Statistics, *Employment in families with children in 2016* (2017).

²⁶ Eileen Patten, *How American parents balance work and family life when both work*, Pew Research Center (2015), <https://www.pewresearch.org/fact-tank/2015/11/04/how-american-parents-balance-work-and-family-life-when-both-work/>

mother, but decreased by having a working father; and reduced chances of high educational achievement.²⁷

II. Psychotropic and Selective Serotonin Reuptake Inhibitor (SSRI) Drugs

Antidepressant drugs have been available in the United States in some form for over 50 years.²⁸ Recently, usage rates have climbed exponentially, with the number of people using antidepressants increasing by nearly 65% between 1999 and 2014 – *and no, that is not a misprint.*²⁹ At the time the National Health and Nutrition Examination Survey was administered, 12.7% of all persons aged 12 and over had taken an antidepressant medication in the past month.³⁰ Specifically, Selective Serotonin Reuptake Inhibitors (SSRIs) are a type of psychotropic drug first developed in 1969. They have now become the most widely prescribed class of antidepressant in the United States.^{31,32} Many SSRI drugs are not FDA approved for use by children under the age of 18; however, doctors still can and do prescribe them as an off-label use for patients under the age of 18.³³ Perhaps most disconcerting, “Prozac (fluoxetine) is the *only* FDA-

²⁷ John Ermisch & Marco Francesconi, *The effect of parents' employment on outcomes for children*, Joseph Rotundree Foundation (2001)

²⁸ Todd M. Hillhouse & Joseph H. Porter, *A brief history of the development of antidepressant drugs: From monoamines to glutamate*, 23(1) Exp. Clin. Psychopharmacol. 1 (2015).

²⁹ National Center for Health Statistics, *Antidepressant Use Among Persons Aged 12 and Over: United States, 2011-2014*, NCHS Data Brief No. 283 (2017).

³⁰ *Id.*

³¹ K. K. Jain, *SSRIs*, Neurology Medlink (2009), <https://www.medlink.com/index.php/article/ssris>

³² S. H. Preskorn, R. Ross, & C. Y. Stanga, *Selective Serotonin Reuptake Inhibitors, Antidepressants: Past, Present, and Future*, 241 (2004).

³³ Drugwatch, *SSRI Antidepressants: Types, Uses & Risks*, <https://www.drugwatch.com/ssri/>

approved medication for treating depression in children 8 and older, while Lexapro (escitalopram) is approved for children 12 to 17.”³⁴ And even then, as discussed *infra*, the FDA has only approved those two based on the studies performed by the drug manufacture and turned over to the FDA; the FDA has not independently studied the drugs and the drug manufacture can pick and choose what studies to divulge to the FDA.³⁵

This is deeply troubling due to the dearth of publicly available information relating to the effects of SSRIs on the developing juvenile brain. What little information we have managed to gather indicates two things.

*First: SSRIs have a potentially different effect
on the adolescent/juvenile brain*

There are significant increases in rates of harmful side effects when the drugs are administered to adolescents.³⁶ In 2010, selective serotonin reuptake inhibitors (“SSRIs”) – which include Citalopram (Celexa), Escitalopram (Lexapro), Fluoxetine (Prozac), Paroxetine (Paxil, Pexeva), Sertraline (Zoloft), and Vilazodone (Viibryd) – were discovered to be the drugs *most strongly and consistently implicated with acts of violence*

³⁴ *Id.* (emphasis added).

³⁵ Diana Zuckerman, President of the national Center for Health Research, declaring “FDA approval is based on evidence – provided by the company that makes the medical product – that the benefits of the product outweigh the risks for most patients for a specific use. It doesn’t necessarily mean the product is safe,”

<https://www.drugwatch.com/featured/misplaced-trust-fda-approval-concerns>. As Alexander Bingham, Clinical Psychiatrist and Professor at John F. Kennedy University, declared, “The FDA is supposedly a watchdog agency mandated to protect the public from dangerous and ineffective drugs. In fact, the FDA is ineffective and dangerous to the public.”

³⁶ Tarang Sharma, *et al.*, *Suicidality and aggression during antidepressant treatment: systematic review and meta-analyses based on clinical study reports*, 352 *BMJ* 65 (2016).

towards others.³⁷ One study found a significant association between SSRIs and convictions for violent crimes in persons aged 15 to 24 years.³⁸ Another study, which examined SSRI clinical trials, only had access to individual patient listing appendices for 32 of 70 trials and zero case report forms, but still identified *a doubled risk of suicidality and aggression in children and adolescents*.³⁹ As detailed by Sam Jacobs in *Prescription for Violence, The Corresponding Rise of Antidepressants, SSRIs & Mass Shootings*, May 20, 2019,⁴⁰

According to a review of the FDA’s database, 484 drugs were identified as triggers to serious adverse events significant enough to warrant a case study during the five-year period from 2004 through 2009. Of these 484 medications, 31 were identified to have a “disproportionate” association with violence. These 31 drugs make up 78.8 percent of all cases of violence toward others in the FDA’s database and included multiple psychotropic medications:

- 11 antidepressants
- 6 hypnotic/sedatives
- 3 ADHD medications
- 1 smoking cessation drug

Researchers concluded that violence against others was a “genuine and serious adverse drug event” and that of the 484 medications, the drugs that were most consistently and strongly associated with violence were the smoking cessation medication, varenicline (Chantix), and SSRIs.

What were five of the SSRI antidepressants? Fluoxetine: Prozac increased aggressive behavior 10.9 times; Paroxetine: Paxil increased violent behavior 10.3 times;⁴¹

³⁷ Exhibit A, H. Anthony Semone, *AFFIDAVIT IN SUPPORT OF THE TESTIMONY of JOSHUA G. PRINCE, ESQ.* 7 (2019)

³⁸ Yasmina Molero, *et al.*, *Selective Serotonin Reuptake Inhibitors and Violent Crime: A Cohort Study*, *PLoS Medicine* 12(9) (2015)

³⁹ Sharma, *supra*.

⁴⁰ <https://libertarianinstitute.org/articles/prescription-for-violence-the-corresponding-rise-of-antidepressants-ssris-mass-shootings>

⁴¹ As detailed by Sam Jacobs, “In one 2001 case, Cory Baadsgaard, a 16-year-old who attended Wahluke High School in Washington, was first prescribed Paxil, which caused hallucinations, and then was switched to Effexor. He started at a 40 mg dosage that, over

Fluvoxamine: Luvox increased violent behavior 8.4 times; Venlafaxine: Effexor increased violent behavior 8.3 times; Desvenlafaxine: Pristiq increased violent behavior 7.9 times.^{42, 43} Joanna Moncrieff, a psychiatrist and researcher at University College London, commented that “[t]his is obviously important in the debate about school shootings in the States and in other places where the perpetrators are frequently taking antidepressants.”⁴⁴ This was echoed more recently by Kelly Hayford, in *Still At Large: Are Psychiatric Drugs the Hidden Culprit in Mass Shootings?*, Issue #38, Children’s Health & Wellness, Family Life, June 1, 2019,⁴⁵ where she declared that

we must demand that policymakers start answering the tough, but obvious, questions. For example, *why has there never been a federal investigation on the link between psychiatric drugs and acts of senseless violence, including school shootings, given the evidence and the FDA warnings? Why are people who are already mentally unstable prescribed drugs that have the potential to exacerbate their symptoms or develop new ones, including suicidal thoughts and violent aggression toward others, in some cases 11 times more frequently than the average pharmaceutical drug?*

Or better yet, why are drugs with such dangerous side effects allowed on the market? When bunches of spinach or certain models of cars have been linked to sickness or death, the whole lot of them have been recalled or removed from store shelves for public safety purposes—even those that aren’t contaminated or defective. Why? Because there is a strong possibility that they could cause further

the course of three weeks, increased to 300 mg. On the first day of that high dose, he woke with a headache and returned to bed. He then got up, took a rifle to his high school, and held 23 classmates hostage. Baadsgaard’s testimony claims he has no recollection of the event, or of his principal convincing him to put the gun down and release the hostages.” *Id.*

⁴² *Id.*

⁴³ In 2009, after investigating the connection between SSRIs and violence, the Japanese Ministry of Health, Labor, and Welfare revised the label warnings on these drugs to read: “There are cases where we cannot rule out a causal relationship [of hostility, anxiety, and sudden acts of violence] with the medication.” <https://www.medicalnewstoday.com/releases/151688.php>

⁴⁴ Diana Kwon, *The Hidden Harm of Antidepressants*, Scientific American (2016), <https://www.scientificamerican.com/article/the-hidden-harm-of-antidepressants/>

⁴⁵ <https://pathwaystofamilywellness.org/Family-Life/still-at-large-are-psychiatric-drugs-the-hidden-culprit-in-mass-shootings.html>

harm. Why aren't pharmaceutical companies held to a similar standard of safety, especially when it comes to our children?

These are not the first times that the link between SSRIs and the American gun violence debate has been made. In 2012, David Healy linked over 90% of school shootings to medication intake.⁴⁶ In 2013, Ammoland News also pointed out that dozens of incidents of gun and school violence, including Columbine, shared *one* common factor – psychotropic drugs taken close in time to the violence.⁴⁷ We now know that a yet unidentified antidepressant was also found in the Dayton shooter's bloodstream.⁴⁸

*Second: The Pharmaceutical Industry has taken over the FDA
and failed to disclose key, harmful studies –
A Tale of the lengths SmithKline Beecham Went to, to deceive the FDA*

It is beyond question that pharmaceutical companies have exaggerated efficacy of the drugs and underreported, or failed to report entirely, harm to adolescents.⁴⁹ But that cannot be, right? We would “know” if that were the case, right? The signs would be out there, right? Open your eyes.

What if I told you that in 2001, Doctor Peter R. Breggin raised significant and serious issues in relation to “the inadequacy of safety warnings given to the physician on the drug Paxil” by SmithKline Beecham Corporation (“SKB”) and that Paxil caused “Mr.

⁴⁶ Jerome Corsi, *Psych meds linked to 90% of school shootings*, WND (2012), <https://www.wnd.com/2012/12/psych-meds-linked-to-90-of-school-shootings/>

⁴⁷ Dan Roberts, *Every Mass Shooting Shares One Thing In Common & It's NOT Weapons* (2013), <https://www.ammoland.com/2013/04/every-mass-shooting-in-the-last-20-years-shares-psychotropic-drugs/#axzz5xMDGYwGz>

⁴⁸ Dan Zimmerman, *Dayton Shooter Had Drugs, Alcohol in His System, Hit by 'At Least' 24 Rounds Fired By Police* (2019), <https://www.thetruthaboutguns.com/dayton-shooter-had-drugs-alcohol-in-his-system-hit-by-at-least-24-rounds-fired-by-police/>

⁴⁹ Kwon, *supra*.

Reynaldo Lacuzong to commit destructive acts”?⁵⁰ What if I told you that Doctor Breggin concluded that SmithKline Beecham defrauded the FDA and made “it impossible for the FDA or anyone else to accurately determine the total number of patients who suffered from akathisia⁵¹ as a result of taking Paxil.”⁵² And this is just the tip of the iceberg in relation to what Dr. Breggin found in 2001 – almost twenty years ago – in relation to Paxil. *See*, Exhibit C, Declaration of Peter R. Breggin, M.D. in *Shirley Lacuzong, et al., v. Smithkline Beecham Pharmaceuticals, et al.*, Case No. CV 773623, Superior Court of California, County of Santa Clara.

If you care *at all* about your family, loved ones, and constituents, you need to read Dr. Breggin’s declaration. If that does not have you concerned about the lengths the Pharmaceutical Industry will go to, to deceive and takeover the FDA, and the absolute lack of concern for individuals taking their drugs, so that it can profit off of these drugs – well, I guess nothing will. As just a couple examples, Dr. Breggin declares,

In an 8.31.94 11-page letter another lengthy critique of SKB drafts of promotional efforts was sent from Sherry Danese, Regulatory Review Officer, Division of Drug Marketing to Michael J. Brennen, PhD of SKB (00002339). The letter lists 7 materials, such as “A Unique Profile of Benefits Brochure” (Px 1004; also Px 1014, BRS-Px:L4, Px 1634, Px 1614, Px 1554, and Px 1604). *Apparently, these materials were already in use.* The FDA declared, “These materials misrepresent the safety and efficacy of Paxil; contain claims and representations of superiority of Paxil over Prozac (fluoxetine); and fail to provide fair balance. Therefore, these materials are in violation of the Federal Food, Drug and Cosmetics Act. We will address each violation individually.” The letter concluded, “SKB should immediately discontinue use of these and all other similar violative materials on receipt of this letter.”⁵³

⁵⁰ Exhibit C at 1.

⁵¹ “Akathisia, as a term, signals the dangers of emotional anguish and the potential for inducing suicide and violence.” Exhibit C at 6.

⁵² *Id.* at 7 – 8.

⁵³ *Id.* at 3.

But that would not dissuade or have any effect on SKB's actions. In fact, it would continue on in the same manner.

In earlier letters, SKB had been criticized by the FDA for making unfounded “pseudoscientific” claims about the safety and efficacy of Paxil in the elderly. Now the FDA criticized the company for doing the same thing in regard to children. Those SKB was unconscionably attempting to push Paxil at both ends of the spectrum of age vulnerability. Both children and the elderly are especially susceptible to adverse drug reactions. These fraudulent efforts not only illustrate a pattern of deception, they directly encourage the false notion that Paxil is especially safe for everyone, including an adult male like Mr. Lacuzong, because they are supposedly safe for children and the elderly.

Leber acknowledged a 12.17.96 letter from SKB requesting that the FDA approve “a pediatric depression indication” for the drug. Leber responded with uncharacteristic directness, “*In fact, the preponderance of negative studies of antidepressants in adolescents and childhood depression raises a significant concern about such extrapolations.*”⁵⁴

But that too would be of little concern to SKB and its conduct would continue, virtually unchecked.

Clearly SKB preferred not to let the FDA or the medical profession know that Paxil causes akathisia. Indeed, they left it out of the section entitled “Adverse Experiences in Clinical Trials: Worldwide Data” (Section V—NDA. PAR Safety Summary 20-Nov-1989, pp. 83-88; also see Table V.7, p. 114). Similarly, akathisia was left out of the section entitled “Adverse Experience which occurred during active treatment—U.S. Phase II & III Studies,” “Nervous System” (Appendix V.8, in NDA 20031-Vol 422 November 1989, pp. 189/190-275/276).⁵⁵

And then there is this

The five completed Paxil suicides (acknowledged by SKB) must be added together with the 42 (from table XI.21) attempted suicides to create the category of Suicidal Behavior or Suicides, Attempted and Completed. The category contains, at the least, 47 cases of suicidal behavior (42 + 5 = 47). SKB's analysis obscures and hides the actual rate of suicidal behavior by evaluation attempted and completed suicides as separate entities. We also need to know the overall rate of suicidal behavior.⁵⁶

⁵⁴ *Id.* at 4.

⁵⁵ *Id.* at 6 – 7.

⁵⁶ *Id.* at 16. It also notes the “two completed suicides that seem to have been left out of the data.”

And perhaps more disconcerting, “there were 12-14 suicide attempts, among twelve patients on Paxil and none of the placebo or on imipramine.”⁵⁷ However, even that is not as disconcerting as Dr. Breggin’s final conclusions:

SKB was deceptive, fraudulent and negligent in hiding data concerning the stimulating effects of Paxil, including agitation, anxiety, nervousness, insomnia, and irritability. The label for Paxil was constructed to hide the stimulating pattern or profile of effects. Indeed, SKB attempted to promote Paxil as relatively free of these symptoms and even as an effective treatment for patients suffering from these symptoms and was criticized by the FDA for doing so. Stimulation is an especially dangerous adverse effect in depressed patients, producing an agitated depression that can lead to suicide and violence. Physicians and patient need to know that a drug is potentially stimulating.

SKB systematically eliminated the term akathisia as an investigational term and as a preferred term. In doing so, it acted in defiance of the FDA’s own coding system. In this regard, SKB purposely misled the medical profession. When eventually forced by the FDA to include akathisia in the label, SKB allowed the term to be placed in the postmarketing section, lumped together with other adverse effects, rather than acknowledging to the FDA and in the label that it was detected at a high frequency in the premarketing clinical trials. Akathisia is an extremely disturbing syndrome and is known to be associated with violence and suicide. Physicians and patients need to know the implications of akathisia and that a drug can cause akathisia.

SKB hid and distorted data concerning the danger of suicide attempts and completed suicide. It manipulated the data to minimize the danger of suicidal behavior when in fact suicidal behavior was frequent on Paxil. The harm in doing this is great.

SKB made no effort to develop additional controlled clinical trials to further investigate the alarming data concerning the high rate of Paxil-induced stimulation, akathisia, and especially suicidal behavior (confirmed by SKB's David Wheadon, deposition 10.18.00, p. 42 & p. 184)

SKB attempted to make Paxil seem safer and more effective than other SSRIs, increasingly the likelihood that it would be prescribed to Mr. Lacuzong and that his physician and the clinic would lack sufficient concern about its dangerousness. *In general SKB conducted a campaign of exaggerating the safety of Paxil, even trying to promote it for children and the elderly.* Their efforts created an

⁵⁷ *Id.* at 19.

atmosphere in which Paxil was considered by the medical profession to be more safe than it is.

SKB failed to act on the known fact that SSRIs tend to share the same adverse reaction profile, including the production of stimulation and akathisia. Instead, it tried to cover up this similarity, falsely encouraging physicians and patients to believe that Paxil is safer than Prozac and other drugs in the same class.

SKB representatives were discussing with at least one FDA official the possibility of future employment in the pharmaceutical industry. This could encourage leniency on the part of the FDA official. *The same FDA official helped SKB manipulate their suicide data to their advantage.*⁵⁸

But why, other than harsh words, would the FDA fail to hold SKB accountable and even go so far as to allow SKB to “add akathisia as a postmarketing finding without insisting on causation”?⁵⁹ The answer is simple, to any attorney that handles administrative law. It is referred to as “agency capture” or “regulatory capture” and there have been extensive law review and even U.S. Senate hearings⁶⁰ on it and the concern it poses. And the FDA has been the source of many articles regarding agency capture. In fact, as David S. Egilman, MD, MPH, *et al.*, noted in 2007 in *Avoiding the Regulatory Capture of the Food and Drug Administration*,⁶¹

We agree with the recommendations of Furberg et al and their observations of the weaknesses in the drug safety process of the FDA. While meetings of FDA advisory panels are public, most other discussions and negotiations that figure prominently into FDA decisions involve *only* FDA employees and drug industry representatives, with the FDA outmanned and out-financed by industry. A single FDA officer generally has major responsibility for the approval of a drug in a process that involves negotiation with a host of industry physicians, scientists, lawyers, and marketing experts over a number of years. This psychologically, scientifically, and financially imbalanced relationship and the absence of other

⁵⁸ *Id.* at 28 – 29.

⁵⁹ *Id.* at 7.

⁶⁰ *See, Protecting the Public Interest: Understanding the Threat of Agency Capture, U.S. Senate*, Subcommittee on Administrative Oversight and the Courts, Committee on the Judiciary, August 3, 2010, <https://www.govinfo.gov/content/pkg/CHRG-111shrg64724/html/CHRG-111shrg64724.htm>

⁶¹ <https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/412111>

parties forces the FDA to ration its demands and puts the agency at risk of being captured by the economic interests it regulates. We recommend additional measures to prevent regulatory capture and to improve the independent analysis of postmarketing adverse events.

See also, Sydney Lupkin, *A Look At How The Revolving Door Spins From FDA To Industry*,⁶² September 28, 2016, declaring that “more than a quarter of the Food and Drug Administration employees who approved cancer and hematology drugs from 2001 through 2010 left the agency and now work or consult for pharmaceutical companies.” Perhaps more horrifying is David Hilzenrath’s article, *FDA Depends on Industry Funding; Money Comes with “Strings Attached,”* Dec. 1, 2016, where he reviews how Pharmaceutical Industry funds the lion’s share of the FDA’s annual budget and the fact that federal law leaves the “regulator beholden to the regulated.”⁶³ As Michael A. Carome, Director, Public Citizen’s Health Research Group, declared, “User fees fundamentally changed the relationship between the FDA and the pharmaceutical industry such that the agency now views industry as a partner and a client, rather than a regulated entity.”⁶⁴

As such, the FDA is not likely to demand that the Pharmaceutical Industry turn over negative studies relative to the drugs that they are pumping into millions – if not billions – of people across the world. As explained by Dr. Alexander Bingham, since the FDA does not perform its own independent studies on drug safety and effectiveness when approving drugs, “the FDA can only base its approval or denial on the information the

⁶² <https://www.npr.org/sections/health-shots/2016/09/28/495694559/a-look-at-how-the-revolving-door-spins-from-fda-to-industry>

⁶³ <https://www.pogo.org/investigation/2016/12/fda-depends-on-industry-funding-money-comes-with-strings-attached>

⁶⁴ <https://www.drugwatch.com/featured/misplaced-trust-fda-approval-concerns>

drug company provides, and drug companies may cherry-pick the data they want the FDA to see.”⁶⁵ As Dr. Bingham declared

Eli Lilly Pharmaceuticals conducted 20 studies to prove the antidepressant effect of fluoxetine hydrochloride, more popularly known as Prozac. Only three studies were ever submitted to the FDA for approval due to 17 outright failures. By its own report, the FDA challenged the validity of all three studies citing both procedural and statistic errors and denied Lilly approval for Prozac twice. After Lilly sent in a third data submission, the FDA finally approved the drug. *But, there were no new trials, only statistical manipulation and repackaging of existing data to create more favorable results.*⁶⁶

So how does the public obtain the harmful data known by the Pharmaceutical Industry? A 2006 study very succinctly advised that “[l]egal systems are likely to continue to be faced with cases of violence associated with the use of psychotropic drugs, and it may fall to the courts to demand access to currently unavailable data.”⁶⁷ But, there’s another option: this Committee or the General Assembly can take the bold steps – *being the first in the Nation* – to utilize its subpoena power and force disclosure of these studies and tests to protect the lives not only of the residents of Pennsylvania but of those across the world.

Perhaps foreshadowing this, following a 1999 hearing on the connection between violent crime and psychotropic drugs, Colorado State Representative Penn Pfiffner made what is perhaps the most pertinent comment on the subject, “There is enough opinion from legitimate scientists to cause us to raise the issue and to ask further questions.” He

⁶⁵ <https://www.drugwatch.com/featured/misplaced-trust-fda-approval-concerns>

⁶⁶ *Id.*

⁶⁷ David Healy et al., *Antidepressants and Violence: Problems at the interface of Medicine and Law*, PLoS Medicine (2006).

continued: “If we’re only interested in debating gun laws and metal detectors, then we as legislators aren’t doing our job.”⁶⁸

III. Stigmatization of Mental Health Treatment

Mental health treatment has been and continues to be stigmatized in the United States to the point that it creates a significant barrier to those who need it the most. The Substance Abuse and Mental Health Services Administration (SAMHSA) found that of 44.7 million individuals with mental illnesses in 2016, only 43.1% received services in the previous year.⁶⁹

Mental health stigma is also a strong discouraging factor preventing firearm owners from seeking treatment, especially as states are increasingly considering and adopting red flag laws, discussed *infra*, which allow for confiscation orders on extremely loose categories of persons deemed threatening by their friends, families, medical care providers, and even marriage counselors. President Trump demonstrated the thought process behind these laws for the nation to see, stating, “take the firearms first, and then go to court...take the guns first, go through due process second.”^{70, 71} Firearms owners

⁶⁸ Citizens Commission on Human Rights International, *Psychiatric Drugs: Create Violence and Suicide* 7 (2018).

⁶⁹ Eunice Park-Lee et al., *Receipt of Services for Substance Use and Mental Health Issues among Adults: Results from the 2016 National Survey on Drug Use and Health*, Substance Abuse and Mental Health Services Administration (2017), <https://www.samhsa.gov/data/report/receipt-services-substance-use-and-mental-health-issues-among-adults-results-2016-national>

⁷⁰ CNBC, <https://www.youtube.com/watch?v=yxgybgEKHHI>

⁷¹ President Trump’s statement and seeming support for red flag orders is extremely surprising, given the lengths the courts, especially in liberal states, have gone to, to express their disdain for him and to thwart his agenda, as well as, the daily – albeit absurd – comments that he is “unhinged.” With President Trump having previously stated that he owns firearms and has a concealed carry permit in New York, with New York’s red flag

are further discouraged by media publication of stories where a nonviolent person's lawful firearms collection is confiscated based only on a vague "concern" that someone expressed to the police.⁷²

Despite the significant research that has been conducted into this topic, stigma proves a difficult social and institutional issue to erase. Guaranteed anonymity has been shown to increase response to mental health screenings by two- to four-fold in U.S. soldiers returning from a combat deployment.⁷³

As discussed extensively *supra* in footnotes 4 and 5, in Pennsylvania, the judiciary's erosion of the protections afforded by 42 Pa.C.S. § 5944 has dissuaded individuals from seeking treatment for fear of disclosure of their mental and behavioral health treatment, related testing and mental health specialist's opinions. The General Assembly must take immediate action, enacting an all-encompassing statutory protection that precludes disclosure of all records, documents, test results, opinions, observations, and diagnosis related to mental and behavioral health treatment. Furthermore, it should either establish or fund a pro-rights mental and behavioral health treatment facility, which will ardently defend all patients' rights against disclosure of any discussions and treatments with mental and behavioral health specialists.

law recently going into effect, it seems that it is only a matter of time before an individual in New York petitions to have President Trump deemed a danger to himself or others and that a court will grant an order against him.

⁷² Dann Cuellar, *Police: Family worried after finding military weapons in elderly couple's Montgomery County home*, 6ABC Philadelphia, <https://6abc.com/guns-ammunition-bombs-and-mortars-found-in-montco-home/5519469/>

⁷³ Christopher Warner et al., *Importance of Anonymity to Encourage Honest Reporting in Mental Health Screening After Combat Deployment*, Arch. Gen. Psychiatry 68(10) (2011).

Review of Pending Bills ⁷⁴

First and foremost, the Second Amendment to the United States Constitution reads: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” ⁷⁵ The Constitution of the Commonwealth of Pennsylvania proclaims: “The right of the citizens to bear arms in defence of themselves and the State shall not be questioned.” ⁷⁶ All rights in Article 1, inclusive of the right to keep and bear arms, are “inviolable.” ⁷⁷ And, each member of the General Assembly is required to affirm the oath – “I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity.” ⁷⁸

Red Flag – Extreme Risk Protection Orders

Although I could easily write more than a dozen pages on the issues with the Extreme Risk Protection Order (“ERPO”) or “red flag” bills pending before this Legislature, I will limit my testimony to the most egregious. ⁷⁹ The first, and perhaps

⁷⁴ As I understand that my written testimony, prior to this part, is already longer than some Members of the Committee might otherwise prefer, I have drastically reduced the length of this part and would respectfully ask that if this Committee is to consider any particular proposal regarding firearms and ammunition that I be afforded an opportunity to submit testimony regarding that proposal before any vote, so that the Members may make an informed and educated vote.

⁷⁵ U.S. CONST. amend. II.

⁷⁶ P.A. CONST. art. I, § 21

⁷⁷ P.A. CONST. art. I, § 25

⁷⁸ P.A. CONST. art. VI, § 3

⁷⁹ For a more robust, albeit still limited, review of the issues with the ERPO bills pending in the General Assembly, *see*, Joshua Prince, *PA Republican Leadership Is Pushing Legislators to Enact Extreme Risk Protection Order (ERPO) Bills*, Apr. 15, 2019, <https://blog.princelaw.com/2019/04/15/pa-republican-leadership-is-pushing-legislators-to-enact-extreme-risk-protection-order-erpo-bills>

most important – yet seemingly lost on members of the General Assembly, the media, and the public – is that in every state,⁸⁰ inclusive of Pennsylvania, there *already exists* a mental health procedures law that allows one to have someone brought to a hospital and evaluated to determine whether that individual poses a risk to him/herself or others. In Pennsylvania, this law is the Mental Health and Procedures Act (“MHPA”), 50 P.S. § 7101, *et seq.* Thus, there is absolutely no need for an ERPO bill, as the MHPA, unlike the ERPO bills pending, not only preclude the individual, while being evaluated and treated, from having access to firearms and ammunition, but *explicitly* provide for evaluation and, if necessary, treatment of the individual. If the individual is involuntarily committed, the individual is prohibited from purchasing, possessing and utilizing firearms and ammunition, under state⁸¹ and federal⁸² law.⁸³ The pending ERPO bills, on the other hand, *only* take the firearms from the individual – without concern for the atrocities that the individual may commit – which is why many consider ERPO and red flag bills to be “gun confiscation bills,” and properly so. If we are so concerned with the danger the individual poses, why are we not having the person evaluated and treated? More disconcerting, and as addressed by Doctor Semone, *inter alia*, why are we having a judge, with no training in determining future dangerousness, making the decision?^{84, 85}

⁸⁰ <http://lawatlas.org/datasets/long-term-involuntary-commitment-laws>;
<http://lawatlas.org/datasets/short-term-civil-commitment>

⁸¹ 18 Pa.C.S. § 6105(c)(4)

⁸² 18 U.S.C. § 922(g)(4)

⁸³ It also bears noting that Pennsylvania does have relief from disabilities section applicable to mental health commitments – 18 Pa.C.S. § 6105(f) – which on July 1, 2019 was certified by ATF as compliant with the NICS Improvement Amendments Act (“NIAA”); thereby resulting in a grant of state relief, also relieving the federal disability. See, <https://blog.princelaw.com/2019/07/03/monumental-determination-from-atf-grant-of-state-relief-relieves-federal-prohibition-relating-to-mental-health-commitments>

⁸⁴ See, Exhibit A at pg. 15, ¶¶ 78 – 81.

A second issue of monumental concern is the due process protections, or more aptly, the lack of due process protections and the desire to hide the *ex parte* nature of the initial proceedings from the public.⁸⁶ Extreme Risk Protection Orders lack the most basic due process protections and relief opportunities for those they would be used against.⁸⁷ These bills provide for *ex parte* or “temporary” orders to be issued and notifications to be given to family members and other non-respondent parties before the respondent knows, possibly damaging reputations and relationships irreparably without any opportunity to contest the issuance.⁸⁸ After the issuance and notifications have already occurred, *then* (at some point in the future) the respondent is offered an opportunity at a hearing to contest the order (after spending thousands of dollars to procure counsel, a psychological evaluation and expert to defend against the potentially baseless claims), and if he does not contest the order, for any reason, it simply remains in effect, perpetually depriving a person who has committed no crime of his/her constitutional right. Even more

⁸⁵ More disconcerting, no medical or psychological testimony is necessary for issuance of an *ex parte* or final ERPO order.

⁸⁶ For example, in [HB 2227 of 2017-2018](#), which was offered by Representative Stephens, the initial ERPO order was referred to as “*ex parte* extreme risk protection order” but, without any other changes, when Representative Stephens offered the proposal again in the new legislative session as [HB 1075 of 2019-2020](#), it was now referred to as an “interim extreme risk protection order.” For further discussion of this, see, <https://blog.princelaw.com/2019/04/15/pa-republican-leadership-is-pushing-legislators-to-enact-extreme-risk-protection-order-erpo-bills>

⁸⁷ For an extensive analysis of what due process requires, see, Brief of *Amici Curiae* Allegheny County Sportsmen’s League, Firearm Owners Against Crime, Gun Owners Foundation, and Second Amendment Organization, pgs. 6 – 16, <https://princelaw.files.wordpress.com/2019/09/amicus-brief-filed.pdf>

⁸⁸ As a result of the constitutional due process mandate, 18 U.S.C. § 922(g)(8) only permits an individual to be stripped of their right to keep and bear arms in relation to a restraining order that “was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate.”

concerning, SB 293 would only allow for a petition to terminate an order once every twelve-month period.

Of significant importance, on September 12, 2019, the Nevada Supreme Court in *Anderson v. The Eighth Judicial District, et al.*, 135 Nev. Adv. Op. 42, ___ P.3d ___ (2019) held that in any case where a prohibition on the right to bear arms flows directly from an act of the legislature, the crime is sufficiently serious that it is subject to the Sixth Amendment right to a trial by jury.⁸⁹ Although it was not an issue in *Anderson*, the ruling would likewise require the other protections afforded by the Sixth Amendment, including the right to confront witnesses and the right to counsel. The currently pending ERPO proposals would deprive those rights without even *alleging* a criminal act.

In relation to a similar bill, the ACLU of Rhode Island expressed concern about “the breadth of this legislation, its impact on civil liberties, and the precedent it sets for the use of coercive measures against individuals not because they are alleged to have committed any crime, but because somebody believes they *might, someday, commit one.*”

90

The purpose of an ERPO is to deprive a specific person of his/her right to keep and bear arms without that person’s knowledge. For an order to be granted, a petitioner needs to demonstrate to the court an imminent threat to the respondent’s self or others. ERPO proposals foresee just how difficult it would be to prove this kind of a negative and thus, the burden of proof is fixed at preponderance of the evidence – meaning the slightest bit more than 50% certainty – which is in direct defiance of the U.S. Supreme

⁸⁹ Eugene Volokh, *The Second and Sixth Amendments*, Reason (2019), <https://reason.com/2019/09/13/the-second-and-sixth-amendments/>

⁹⁰ ACLU of Rhode Island. <http://www.riaclu.org/news/post/aclu-of-rhode-island-raises-red-flags-over-red-flag-gun-legislation>

Court’s requirement of clear and convincing standard of proof to meet the rigors of due process.⁹¹ Any admitted attorney can convince a judge that, in the current political and media environment, a person who owns a firearm, is an imminent danger by preponderance of the evidence. “[A]s skilled as judges are, they are NOT trained Threat Assessment professionals. Threat Assessment is a specialized art/science and no competent, ethical professional would ever rely entirely and only upon the unsubstantiated, likely self-serving claim, of an adversarial complainant.”⁹²

Consider ERPOs against the most common analog in existing law – restraining or protection from abuse orders. Multiple studies have found that these types of orders are commonly requested, issued, and weaponized and are frequently frivolous, unnecessary, unverifiable, or even fraudulent. A 2008 study found that 72% of civil restraining orders were frivolous, based on exaggerated claims, or otherwise unneeded.⁹³ A 2005 study found that 59% of domestic violence allegations in a custody dispute could not be substantiated.⁹⁴ A 2008 review of one West Virginia county family court found that 81% of issued restraining orders were unnecessary or false.⁹⁵ Finally, the Illinois State Bar Association in 2007 called the abuse of restraining orders “part of the gamesmanship of divorce.”⁹⁶ In New York, Erie County District Attorney John Flynn, who supports New York’s red flag law, agreed that there was potential for abuse if a spouse is mad at their

⁹¹ *Addington v. Texas*, 441 U.S. 418, 432-33 (1979)

⁹² Exhibit A, H. Anthony Semone, *AFFIDAVIT IN SUPPORT OF THE TESTIMONY of JOSHUA G. PRINCE, ESQ.* 15 (2019).

⁹³ B. P. Foster, *Analyzing the cost and effectiveness of governmental policies*, 22 Cost Mgmt. (2008).

⁹⁴ J. Johnston et al., *Allegations and substantiations of abuse in custody-disputing families*, 43 Fam. Ct. Rev. (2005).

⁹⁵ B.P. Foster, *supra*.

⁹⁶ Scott Lerner, *Sword or Shield: Combating Orders-of-Protection Abuse in Divorce*, Ill. Bar J. (2007).

husband or wife. Yet he claims that it won't happen because he can "see through nonsense."⁹⁷ I was unaware that we rely on a governmental official's ability to "see through nonsense" for our constitutional rights; and, after a thorough review of the Pennsylvania and U.S. Constitutions, as well as the Declaration of Independence, I have confirmed that we are no longer subjects to the King and that our inalienable and inviolate rights are not subject to the whim or clairvoyant abilities of governmental officials.

Universal Background Checks

The state of Pennsylvania currently does not require background checks for the sale of rifles or shotguns between private parties; however, there are no known instances in PA of an individual acquiring a rifle or shotgun through a private party sale and thereafter utilizing it in a crime. Given CeaseFirePA's constant demands for "universal background checks," this author has asked Executive Director Shira Goodman of CeaseFirePA on numerous occasions for such an example and she has been unable to produce one. Yet, there are bills pending before this Legislature to require background checks under all circumstances, directly burdening the ability of private parties to transfer their private property. The most glaring issue is the lack of consideration put into these bills for the circumstances under which firearms are transferred. Let us consider some of the most common examples:

⁹⁷ Jacob Sullum, *New York's New 'Red Flag' Law Illustrates the Due Process Problems Posed by Gun Confiscation Orders*, Reason (2019), <https://reason.com/2019/08/23/new-yorks-new-red-flag-law-illustrates-the-due-process-problems-raised-by-gun-confiscation-orders/>

- Two individuals (*i.e.* spouses, intimate partners, parents and children, friends, etc.), who have purchased firearms and store them in a safe that they both have access to; whereby, that firearm is constructively transferred every single time one of them leaves the location where the firearms are stored.
- A young lady, with limited means, who just had a Protection from Abuse Order granted in her favor, but lacks the requisite resources to buy a firearm, so a friend lends her one.
- An individual seeks to try a firearm at a gun range before purchasing it.
- A child is lent a firearm by his/her parents or guardian to go hunt.
- A child, family member or friend inherits a firearm.

Another problem with this type of enactment is that it is simply impossible to enforce and it depends on the willingness of private FFL dealers to facilitate transfers. States that have enacted these types of laws have found many firearms dealers unwilling to conduct the transfers as a result of the time they require. These states have also found law enforcement assigning a very low priority to enforcement and stating that they will not enforce it because of resource deficiencies and incredible difficulty in proving the offense.⁹⁸

Moreover, there is the inconvenient fact that even self-professed gun-control advocate Garen Wintemute admitted – universal background checks do not actually work.⁹⁹ In reviewing the data from Washington, Colorado and Delaware, after they

⁹⁸ Saul Hubbard, *background check laws lead to some misfires*, The Register-Guard (2015), <https://www.registerguard.com/rg/news/local/33386692-75/oregon-gun-sale-background-checks-law-gets-off-to-rough-start.html.csp>

⁹⁹ <https://www.nationalreview.com/2019/08/against-universal-background-checks>

passed laws mandating universal background checks, Wintemute admitted “[t]hese aren’t the results I hoped to see. I hoped to see an effect.”¹⁰⁰

Regardless, perhaps the most controlling issue of why the public is opposed to universal background check is that it would create a *defacto* registry of firearms.¹⁰¹

Assault Weapons & Large Capacity Magazines

Assault weapons bans are one of the most commonly suggested gun control measures in modern media discourse and also the least likely to have any effect on gun violence. Rifles, of any description, are responsible for a minuscule fraction of all firearm related fatalities.¹⁰² The term “assault weapon” is a colloquial way to target the largely aesthetic characteristics of some firearms that have gained immense popularity among American citizens¹⁰³ for their unparalleled modularity. These unconstitutional proposals seek to make current possessors of these firearms pay a recurring fee¹⁰⁴ to retain that possession and meet such subjective and vague criteria as having a character and

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Federal Bureau of Investigation, *Expanded Homicide Data Table 11, Murder Circumstances by Weapon, 2017*, Uniform Crime Reporting Program (2017), <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/expanded-homicide-data-table-11.xls>

¹⁰³ For example, there’s a reason that AR in AR-15 stands for America’s Rifle. Although this is said somewhat tongue-in-cheek, as the AR in AR-15 originally stood for ArmaLite Rifle, the AR-15 has truly become “America’s Rifle,” given its versatility and that it is everything that is American. As one might say, it is as American as American pie. If you hold up an AR-15, the first thing that comes to one’s mind is “America.”

¹⁰⁴ It is somewhat astonishing that Pennsylvania has so quickly forgotten the U.S. Supreme Court’s holding in *Murdock v. Com. of Pennsylvania*, 319 U.S. 105, 113, (1943) that “[a] state may not impose a charge for the enjoyment of a right granted by the federal constitution.”

Perhaps a refresher course on the Pennsylvania and U.S. Constitutions is in order, rather than spending taxpayer money on unconstitutional proposals.

reputation such that they are not likely to “act in a manner dangerous to public safety”.¹⁰⁵

It would seem that SB 292’s very intent is to monitor these ordinary citizens as if “dangerous to public safety” is exactly what they are, while simultaneously billing them to exercise their constitutional right.

And let there be no dispute, these types of firearms and magazines have already been held by the Pennsylvania Supreme Court to come under the inviolate right found in Article 1, Section 21. Specifically, in reviewing the City of Philadelphia’s and the City of Pittsburgh’s firearm ordinances, the Court found the ordinance – which regulated, *inter alia*, “large capacity ammunition belts” and “assault weapons” – to be unconstitutional. *Ortiz v. Com.*, 545 Pa. 279, 283, 287 (1996).

“Common Sense” Proposals

If there is a desire to enact truly common sense proposals, then these are the proposals this Committee and the General Assembly should be focused on:

1. Passing a law requiring notification by the Pennsylvania State Police when a person becomes prohibited from purchasing and possessing firearms and ammunition under state or federal law. If our goal is to ensure that prohibited individuals are not even attempting to obtain firearms and ammunition, I cannot fathom how, regardless of political affiliation, the members of the General Assembly cannot pass such a common sense proposal. A draft proposal is attached as Exhibit D.

¹⁰⁵ Such would also be violative of the non-delegation clause of Article 2, Section 1 of the Pennsylvania Constitution and the PA Supreme Court’s precedent in *W. Phila. Achievement Charter Elem. Sch. v. Sch. Dist. of Phila.*, 635 Pa. 127 (2016), *Protz v. Workers’ Comp. Appeal Bd. (Derry Area Sch. Dist.)*, 639 Pa. 645 (2017).

2. Encouraging treatment by specifically responding to case law, discussed *supra* at footnote 4, by enacting an all-encompassing statutory protection that precludes disclosure of all records, documents, test results, opinions, observations, and diagnosis related to mental and behavioral health treatment. This legislation should also mandate that an individual be notified of his/her right to voluntarily commit him/herself and that a doctor may not override a patient's decision to voluntarily commit him/herself.
3. Investigating and proposing legislation either establishing or funding a privacy-oriented mental and behavioral health treatment facility, which will ardently defend all patients' rights against disclosure of any discussions and treatments with mental and behavioral health specialists.
4. Enacting Constitutional Carry – HB 1412 or SB 830 – as the top three safest states are those, which have passed constitutional carry.¹⁰⁶
5. Making a violation of 18 Pa.C.S. § 6120 a felony. Mayors Peduto and Papenfuse seem to believe that they are above the law and therefore can violate it with impunity, while we, the mere peasants, must adhere to their illegal enactments.
6. Passing HB 1066 or SB 531, requiring municipalities to pay attorney fees and costs when a court finds that they have violated 18 Pa.C.S. § 6120.
7. Amending Section 6105.1 to provide for relief from disabilities for misdemeanor offenses, especially in light of the Third Circuit's *en banc* decision in *Binderup, v. AG of United States, et al.*,¹⁰⁷ where the court held that such prohibitions can

¹⁰⁶ <https://www.ammoland.com/2019/09/top-three-rated-safe-states-are-constitutional-carry-states>

¹⁰⁷ 836 F.3d 336 (3d Cir. 2016) (*en banc*)

violate an individual's Second Amendment rights. A draft proposal is attached as Exhibit E.

8. Providing the Pennsylvania State Police with the authority to issue legal determinations under the Uniform Firearms Act, like we have in relation to the Liquor Control Board laws,¹⁰⁸ so that individuals can ensure their compliance with the law. A draft proposal is attached as Exhibit F.

Closing Remarks

In closing, an attack on the right to keep and bear arms of law-abiding citizens is an attack on our Republic and our founding constitutional agreement. As written by Thomas Jefferson –

The laws that forbid the carrying of arms are laws of such a nature. They disarm only those who are neither inclined nor committed to commit crimes. Such laws make things far worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicide for an unarmed man may be attacked with greater confidence than an armed man.

Thank you Mr. Chairman and Members of the Committee for the opportunity to testify before you today.



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¹⁰⁸ See, 47 P.S. §2-211.1