

**VAWA NEXT STEPS: PROTECTING
WOMEN FROM GUN VIOLENCE**

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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CONTENTS

JULY 30, 2014, 10:04 A.M.

STATEMENTS OF COMMITTEE MEMBERS

	Page
Blumenthal, Hon. Richard, a U.S. Senator from the State of Connecticut	8
Durbin, Hon. Richard J., a U.S. Senator from the State of Illinois	9
Feinstein, Hon. Dianne, a U.S. Senator from the State of California, prepared statement	62
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa	3
Klobuchar, Hon. Amy, a U.S. Senator from the State of Minnesota	6
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement	60
Whitehouse, Hon. Sheldon, a U.S. Senator from the State of Rhode Island	1
prepared statement	64

WITNESSES

Witness List	39
Campbell, Jacquelyn, Ph.D., Professor and Anna D. Wolf Chair, Department of Community–Public Health, Johns Hopkins University School of Nursing, Baltimore, Maryland	11
prepared statement	40
Daniel, Elvin, McHenry, Illinois	19
prepared statement	53
Malcolm, Joyce Lee, Ph.D., Patrick Henry Professor of Constitutional Law and the Second Amendment, George Mason University School of Law, Arlington, Virginia	13
prepared statement	43
McCaffery, Hon. Seamus P., Justice, Supreme Court of Pennsylvania, Harris- burg, Pennsylvania	17
prepared statement	50
Schmaling, Christopher, Sheriff, Racine County, Racine, Wisconsin	15
prepared statement	47

QUESTIONS

Questions submitted to Jacquelyn Campbell, Ph.D., by Senator Blumenthal ...	66
Questions submitted to Joyce Lee Malcolm, Ph.D., by Senator Flake	69
Questions submitted to Joyce Lee Malcolm, Ph.D., by Senator Grassley	71
Questions submitted to Hon. Seamus P. McCaffery by Senator Grassley	72
Questions submitted to Sheriff Christopher Schmaling by Senator Blumenthal	67
Questions submitted to Sheriff Christopher Schmaling by Senator Grassley ...	73

ANSWERS

[Note: At the time of printing, after several attempts to obtain responses to the written questions, the Committee had not received responses from Jacquelyn Campbell, Ph.D.]	
Responses of Joyce Lee Malcolm, Ph.D., to questions submitted by Senator Flake	75
Responses of Joyce Lee Malcolm, Ph.D., to questions submitted by Senator Grassley	74

IV

	Page
Responses of Hon. Seamus P. McCaffery to questions submitted by Senator Grassley	79
[Note: At the time of printing, after several attempts to obtain responses to the written questions, the Committee had not received responses from Sheriff Christopher Schmaling.]	

MISCELLANEOUS SUBMISSIONS FOR THE RECORD

American Academy of Nursing, Washington, DC, July 31, 2014, letter	103
Campbell, Bonnie, Former Director, Office on Violence Against Women, U.S. Department of Justice, statement	85
Center for American Progress (CAP), Washington, DC, August 5, 2014, letter .	88
Coalition to Stop Gun Violence (CSGV), Washington, DC, statement	81
Everytown for Gun Safety, New York, New York, statement	97
Martin, Christy Salters, Former American World Champion Boxer, statement	93
National Center for Victims of Crime, Washington, DC, statement	95
National Network to End Domestic Violence (NNEDV), Washington, DC, statement	101
National Physicians Alliance, Washington, DC, July 30, 2014, letter	105
Ponce, Laura, Mother of a Domestic Violence Victim, Berryville, Arkansas, statement	107
States United to Prevent Gun Violence, New York, New York, statement	106

VAWA NEXT STEPS: PROTECTING WOMEN FROM GUN VIOLENCE

WEDNESDAY, JULY 30, 2014

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in Room SD-106, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Whitehouse, Durbin, Klobuchar, Franken, Blumenthal, Hirono, and Grassley.

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Chairman WHITEHOUSE. Good morning, everyone. The hearing will come to order. I am delighted to see you all here, and I welcome the witnesses and thank them for coming. I welcome my Ranking Member, the distinguished Senator from Iowa. I welcome Senators Klobuchar and Blumenthal from Minnesota and Connecticut. And I have one procedural announcement, which is that we evidently have a vote scheduled at 10:45, and so toward the end of that vote, I plan to—and, Senator Hirono, from Hawaii, nice to see you. I plan to adjourn the hearing or recess the hearing briefly to allow us to go over and catch the end of one vote, the beginning of the next, and then reconvene. That will probably take about 15 minutes total, just so you all know.

On June 18, 1999, Carmen Cruz was watching television with her 8-year-old son, Travis, when her ex-boyfriend, Frederick Escobar, broke into her apartment and calmly walked toward her, carrying a pillow. When he was just a few feet away from Ms. Cruz, Mr. Escobar pulled a gun from the pillow, pointed it at her, and pulled the trigger. Travis watched as his mother collapsed, felled by a bullet shot by his own father.

Ms. Cruz spent hours in surgery while doctors removed the bullet from her abdomen. She was hospitalized for 3 weeks and wore a colostomy bag for almost 2 years following the shooting. Today Ms. Cruz is a passionate advocate in Rhode Island's domestic violence community, but her scars serve as a constant reminder that, as a survivor, she is one of the lucky ones.

American women are 11 times more likely to be killed with guns than women in any other industrialized country. As this chart shows, the red line, which you may not be able to see, stands far beyond any other industrialized country.

Put another way, women in the United States account for 84 percent of all female firearm victims in the developed world.

Let me repeat that: Women in the United States account for 84 percent of all female firearm victims in the developed world.

Of all the women murdered in this country, more than half are killed by family members or intimate partners.

In fact, when a gun is present in a domestic violence situation, it increases the risk of homicide for women by 500 percent.

Protecting women from gun violence by domestic abusers should not be, and has not been, a partisan issue. In the late 1990s, Congress passed important laws prohibiting the possession or purchase of firearms by individuals convicted of misdemeanor domestic violence or subject to domestic violence protective orders. These laws, which were part of the Violence Against Women Act and an amendment authored by the late Senator Frank Lautenberg, complemented the prohibitions on convicted felons and passed Congress with broad bipartisan support.

These laws have saved lives. In States with rigorous background check laws, 38 percent fewer women are shot to death by intimate partners. But they are not enough.

Current law prohibits domestic abusers from possessing guns only if they are—or were—married to the victim, if they have lived with the victim, or if they have a child in common with the victim. Dating partners who have been convicted of domestic violence offenses are not covered, even though the most recent data shows that more domestic abuse is committed by dating partners than spouses. Closing the dating partner loophole would save lives, plain and simple. There are other steps we can take as well. These include requiring universal background checks and helping States collect and share the data necessary to ensure that those who we already agree should be prohibited under existing law are, in actual practice and fact, prohibited when they try to purchase firearms. Along these lines, I am willing to work with anyone who wants to strengthen the National Instant Criminal Background Check System, or NICS, to ensure that it operates as Congress intended it to.

Nobody on this Committee has been working harder than Senators Blumenthal and Klobuchar to shine a light on the role of guns in domestic violence and to address the loopholes that allow abusers to use guns to kill, injure, and threaten their victims. I know we will hear more about their initiatives, and I want to thank them both at the outset for their commitment and their efforts.

I also would like to thank Chairman Leahy for his leadership in reauthorizing the Violence Against Women Act last year and for his longstanding recognition of the role of guns in domestic violence.

Finally, it bears mentioning that this is not a hearing about the Second Amendment or the right of law-abiding Americans to own firearms. Nobody on this Committee wants to deprive individuals—women or men—from legally owning guns, and none of the solutions we are here to discuss involve doing that. What we are here to consider is how guns in domestic violence situations threaten American women and how best to ensure that those who should

not possess guns do not possess guns. I understand that there are a number of domestic violence survivors and advocates here with us today. I would be honored to recognize them right now if they would not mind standing up.

[Applause.]

Chairman WHITEHOUSE. Thank you.

I would also like to submit the statements of our Chairman, Senator Patrick Leahy; of Christy Salters Martin, Bonnie Campbell, Laura Ponce, Katie Ray Jones, and Everytown for Gun Safety, and the National Center for Victims of Crime into the record. Without objection, they will be added to the record. Thank you all for your support of this effort and for your courage.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

[The information referred to appears as submissions for the record.]

Chairman WHITEHOUSE. I would like to welcome all our witnesses and thank them for participating in the hearing and turn the microphone to my distinguished Ranking Member, Senator Grassley.

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. Bonnie Campbell, whom you just mentioned, is a former Attorney General of the State of Iowa.

Mr. Chairman, we are here to discuss a very important subject. Thanks to our experts who have agreed to be panelists for us. All of us want to see the Federal Government take appropriate action to assist in fighting domestic violence, and especially domestic homicides.

I have met with many victims of domestic violence over the years. I feel compassion for the physical, mental, and emotional injuries they have suffered, and you particularly feel that when you talk to people that have experienced that. They have told me of the fear that they confront. And I want to take effective action against perpetrators of violence against women.

So today I am one of the lead Republicans in a group of bipartisan Senators who have come together on a bill to address sexual assault on our Nation's college campuses.

But to me, all domestic homicides are tragedies. It does not matter how the victim died. Forty-five percent of domestic homicides now do not involve guns, a figure considerably higher than in the 1980s.

In 1996, I had the pleasure of voting for the Lautenberg amendment. Those convicted of domestic violence misdemeanors were prohibited from owning firearms. So were those against whom permanent restraining orders were entered because of domestic violence.

For these prohibitions to be effective, obviously records of the convictions and restraining orders must be entered into the National Instant Background Check System. And the Chairman just spoke about his interest in that, for that to be an effective system.

So it distresses me that even now, all these years later, according to the Center for American Progress, "only 36 States have submitted any domestic violence misdemeanor convictions to the NICS

Index, and of these, 21 States have submitted 20 or fewer of these records. An even smaller number of States have submitted records regarding restraining orders: 19 States have submitted domestic violence restraining order records to the NICS Index, and of these, 9 States have submitted 10 or fewer.”

I note that Rhode Island has submitted exactly zero misdemeanor domestic violence records to NICS and exactly zero domestic violence restraining order records. The corresponding numbers for Delaware are zero and zero; Hawaii, three and zero; Illinois, one and zero; Minnesota, 16 and two; New York, zero and ten; Vermont, two and zero.

These States are failing to do their jobs.

Iowa ranks near the top among the States in this regard, but I can confess to you we still have to do a better job in my State.

Seventy-nine percent of the records submitted come from three small States. As the report says, “If all States submitted records of misdemeanor domestic violence convictions at the average rate of these three States, we can project there would be 2.9 million records in the NICS Index in this category, more than 40 times the number currently submitted.”

This means that large numbers of prohibited persons under the law today can purchase a firearm through legal channels because the instant background check system fails to identify them as such. Our NICS system is full of holes with respect to the current gun prohibitions, greatly reducing the effectiveness of background checks.

Last year, Senator Cruz and I offered an amendment to legislation before the Senate that would have helped fix the NICS system. Our amendment would have improved State compliance with NICS reporting for mental health records for prohibited persons.

It received the most bipartisan support of any similar legislation, but it did not move because it did not receive the 60 required votes. We should do the same with respect to persons who have been convicted of domestic violence crimes and subject to permanent restraining orders. We should be able to gain a bipartisan effort to enact legislation of this type.

But that is not the majority’s approach.

There are two bills before the Committee on domestic gun violence.

One of them, from Senator Klobuchar, expands the definition of prohibited persons to include dating violence, beyond the cohabitating relationships in current law, as well as to add convicted stalkers to the list of prohibited persons.

Another, by Senator Blumenthal, also expands the relationships and would make those subject to temporary restraining orders, entered without notice to the alleged abuser, prohibited persons.

A significant problem exists with the completeness of background checks under the law. It is hard to believe that expanding the universe of prohibited persons whose records will not show up when a background check is performed will reduce gun homicides.

I fear that false hopes are again being raised. In many states, few persons are convicted of misdemeanor stalking. In Maryland, for instance, zero were convicted of that crime last year, one in Arkansas, and five in New Mexico. Making these offenders prohibited

persons will not accomplish very much, even if their records made it into NICS, which is a questionable assumption.

These bills would expand retroactively the definition of “prohibited person.” But they will also make actual individuals who were allowed to own guns criminals retroactively, not by virtue of their crime, but by the passing of the legislation.

Who is going to spend the time and the personnel to go over every domestic violence conviction record and examine the relationships between the parties to determine whether they fit the definition of these bills? Who is going to actually input those records into NICS?

Suppose someone determines erroneously that a prior conviction was for conduct against a dating partner. What recourse will the individual have to demonstrate that he is not a prohibited person? How will guns actually be taken from that prohibited person? How soon would an officer be diverted from another law enforcement activity to remove those guns?

The restraining order provisions could pose some problems. In a large percentage of cases, temporary restraining orders issued without notice to the defendant do not lead to permanent orders. Yet the constitutional rights of the accused could be taken without due process. That person will not know that he or she is a prohibited person if, during the brief period the order is in effect, law enforcement should show up to take away a gun.

We should also be very skeptical that a temporary order will be entered into NICS in time to stop someone from passing a background check. Making existing NICS records more complete is far more likely to make the difference in domestic violence homicides, especially gun homicides, than the bills the Committee is considering.

I understand that domestic violence advocates asked the majority to hold a hearing on domestic violence homicides many months ago but were repeatedly put off. For instance, the Klobuchar bill was introduced more than a year ago. But only as we are about to head out of town, with very few legislative days remaining, has this hearing taken place responding to the request of advocates. Only as the number of days until the election grew short did the Committee schedule the hearing.

The Committee has not held a markup for bills for 2 weeks now. Had the majority been serious about reducing domestic, we had the time to work together to come up with a bipartisan solution. There was a real opportunity in this Congress for a bipartisan effort to combat intimate homicides of all kinds. That opportunity I believe has been squandered.

The bills before the Committee today deal with the problem of keeping currently prohibited persons from owning firearms. I hope that going forward, we will work together to find bipartisan, well-thought-out, practical ways to protect women and men from violence of all kinds.

Thank you, Mr. Chairman.

Chairman WHITEHOUSE. I am sure we will, Senator Grassley, and I think this hearing will help advance that cause. And because Senator Klobuchar and Senator Blumenthal have both shown such leadership in this area and have bills in this area, they have re-

requested making an opening statement, so I will recognize the two of them for opening statements, first Senator Klobuchar, and then we will proceed with the witnesses.

**OPENING STATEMENT OF HON. AMY KLOBUCHAR,
A U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Chairman Whitehouse, thank you, Senator Grassley, and thank you also to Chairman Leahy for holding this hearing, and thank you to Senator Blumenthal for his work in this area.

Tragically, we have had a number of major shootings that have killed multiple people over the last few years in our country. From Newtown to Nevada, we have seen that there is still more to be done in terms of closing loopholes in our background check system and looking at mental health issues.

I would point out that some of the issues raised by Senator Grassley, which are good ones, about the recordkeeping, some of that would have been helped by the Manchin-Toomey bill, which contained penalties for States and also grants to make it easier for them to enter in this data. In States that do require a background check for private handgun sales, 38 percent fewer women are shot to death by their intimate partners.

As a former prosecutor, I have seen firsthand how domestic violence and sexual assault can destroy lives and tear apart families. For 8 years, I ran an office of over 400 people. I was charged with protecting domestic violence victims and enforcing the gun laws we had on the books. Enforcing the laws involving felons in possession of a gun was one of my major priorities for those 8 years.

But one of the things I learned as a prosecutor is that there is still more work to be done. I was reminded of this over the Christmas holidays in 2011 when I went to one of the saddest funerals I have ever attended for Officer Shawn Schneider. He was a young Lake City police officer with three children. His department had received a domestic violence call from a 17-year-old victim. It was someone that she had dated. Officer Schneider, just doing his job, showed up at the door that day. He was wearing a bulletproof vest, but no vest could have protected him when the perpetrator shot him in the head and killed him.

At the funeral in that church were his three children. Only a week ago, the officer had been there with the family at the church nativity play. That day he was in the front in a coffin, and his three little children walked down the aisle of the church. And the one thing I will never forget was the little girl in a blue dress covered with stars. That is what this is about.

Last year, the women of the Senate stood together to reauthorize the Violence Against Women Act. The bill that was signed into law included the provision that I worked on with former Republican Senator Kay Bailey Hutchison that strengthens and updates Federal anti-stalking laws to better address a new technology that predators are using to harass their victims. Passing that bill was a critical step in protecting women, but there is more to be done.

A recent report found that 57 percent of recent mass shootings involved domestic violence. That is why last July I introduced,

along with Senator Hirono, the Domestic Violence and Stalking Victims Protection Act. Our bill really does two things.

Our common-sense bill would help protect stalking victims and keep guns out of the hands of dangerous people that stalk. It makes sure that stalkers cannot get guns. Many States are already starting to do this on a bipartisan basis with Democratic and Republican support, including my own State.

One in six women have been stalked during their lifetime. Stalking is often the first step in an escalating pattern of criminal behavior that culminates in physical violence. The Department of Justice reports that 76 percent of women who are murdered by intimate partners were first stalked by their partner.

Second, our bill would make an important change to expand the definition of victims who are covered. Right now, people who are not married and have not either lived together or had a child together are not covered under the current definition of "intimate partner." They are vulnerable because their stalkers and their abusers are legally able to obtain firearms despite having committed a domestic violence crime or being subject to a permanent restraining order. Our bill fixes this problem by expanding the definition of "intimate partners" to include dating partners. Many States have already done it. We are simply bringing the Federal law in line with what many States have already done.

I have been proud to stand up for this bill with former Representative Gabby Giffords and her husband, astronaut Captain Mark Kelly, in support of this bill. Like Gabby and Mark, in my home State of Minnesota, we value hunting and the outdoors. If it is not duck season or pheasant season in Minnesota, it is deer season. And when I looked at doing this bill, I always thought of my Uncle Dick in his deer stand and would this do anything to hurt him in that deer stand. The answer is clearly no.

This bill is about preventing a person with a documented history of domestic violence or stalking or mental illness from having a firearm. That is it.

I know that Senator Blumenthal has been working on these issues as well, especially for dating partners and temporary restraining orders, and I want to thank him for his leadership.

One of the things that Justice McCaffery said in his testimony was that our bills "look to strengthen current Federal domestic violence laws to bring them more in line with the current laws that many States have dealing with crimes of violence toward women [and] same-sex partners . . ."

These bills are simple. These bills are designed to focus on an area where we know we have seen rampant violence.

I want to thank all our witnesses for being here, and I hope that our colleagues will join us in supporting these bills. And one of the reasons, Senator Grassley, that we waited to do this hearing was that I have been trying to get a Republican cosponsor on this bill. I have been very close several times. I know I am going to get it done. But that is the reason that we waited to have this hearing.

Thank you, Senator Grassley, Senator Whitehouse.
Chairman WHITEHOUSE. Senator Blumenthal.

**OPENING STATEMENT OF HON. RICHARD BLUMENTHAL,
A U.S. SENATOR FROM THE STATE OF CONNECTICUT**

Senator BLUMENTHAL. Thank you very, very much, Senator Whitehouse, for convening this hearing and for yourself spearheading and advocating measures to stop domestic violence, and I want to join you in thanking our Chairman, Senator Leahy, for permitting this hearing to go forward.

I also want to particularly salute and thank my colleague Senator Klobuchar, who has been so steadfast and strong in advancing this cause, and I am proud to be working with her and to be supporting her bill as a cosponsor. And I think our measures are very much complementary.

I want to thank also the other Members of this Committee, including Senator Durbin and Senator Hirono, Senator Feinstein, and the late Senator Lautenberg for their leadership, really incomparable leadership in this cause. And, of course, the many advocates around the country who are championing common-sense, sensible measures to stop gun violence and domestic violence. The two together are a toxic, deadly combination. Women are five times as likely, more likely to die from domestic violence when there are guns in their household.

I especially want to thank the survivors, the loved ones of victims who are here today. I know how much courage and strength it takes for you to be with us. But your presence is so powerful and meaningful, far more eloquent than anything I could say here or anywhere else. And I want to say a particular thanks to a Connecticut family who are here, Mary and Doug Jackson. Their daughter, Lori, was a victim of domestic violence. But she chose not to accept it. She displayed the courage that her parents taught her, and she decided to break with it. As many of you know, that decision takes such enormous bravery and resoluteness. She broke with her husband. She went to live with her parents. She took with her her 18-month-old twins. She left her abusive husband, and she decided to begin a new life.

Lori's act of courage should have liberated her, should have freed her. But instead she became a victim again, and this time fatally. Her estranged husband tracked her down in her mother's house, and he used the gun that he was still legally allowed to possess to gun her down and to seriously injure her mother, firing bullets at her that almost killed Mary Jackson. Mary and Doug Jackson are with us today, and I am so deeply grateful to you for joining us.

Lori Jackson sought, successfully, a temporary restraining order, which should have protected her. The law failed Lori Jackson. The judge granted that restraining order after determining that her husband posed a clear threat to her safety and the safety of her children. But even after that determination, Lori's husband was still able to keep the gun that killed her.

Even if he had not possessed that gun, he could have legally purchased a new one, even at the moment of heightened rage when he learned that she had left and was seeking that restraining order. In most States, somebody subject to a temporary restraining order can lose access to his house, to his children, to his car, but under Federal law he can still keep his guns.

Somebody might be considered too dangerous to see their son but not too dangerous to buy a handgun. And because of that loophole in our law, abuse victims are the least protected by the laws of our Nation at the moment they are in the most danger. At the moment when they are most likely to be physically harmed because of the rage and wrath of their estranged spouse or intimate partner, they are less protected than any other time.

I have offered legislation to close this loophole and require a period after the domestic abuser becomes subject to a temporary restraining order. During that period when a judge has found that someone poses a threat and issues a temporary restraining order, the subject of that order should be barred from purchasing or possessing a gun, and the justice system should be helping the potential victim.

Unfortunately, and tragically, and unacceptably, most victims are still at the mercy of their abuser's rage, despite the kind of courage that Lori Jackson demonstrated in breaking with an abusive spouse.

I have also introduced a measure, the Gun Homicide Prevention Act, to make sure that there are incentives and resources and grants available to States so that they will enforce these laws. These States are provided with grants under this legislation that encourages them to get illegal guns out of the hands of dangerous people and away from dangerous situations, and it gives them the resources to do so effectively.

Enforcement, as I know from my own background as Attorney General of the State of Connecticut for a couple of decades and as a Federal law enforcement officer as United States Attorney, is the key to making the law real in people's lives. Right now Federal law is a shadow of what it should be in protecting against gun violence and domestic abuse.

I want to recognize again the thousands of men and women who have become victims as a result of this gaping, unforgivable loophole in Federal law. Their strength and courage will inspire me and I hope inspire this body, just as Lori Jackson's parents being here today should give us the resoluteness and the strength to make this law real. I want to thank again them, the advocates who are before us today on this panel, and, Mr. Chairman, thank you very much.

Chairman WHITEHOUSE. Senator Durbin, do I understand you wish to make a statement as well?

**OPENING STATEMENT OF HON. DICK DURBIN,
A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator DURBIN. Mr. Chairman, I know we want to hear from the panel. I want to especially recognize the attendance of Mr. Elvin Daniel, who is a resident of Illinois and is going to tell us the sad story of his sister. Mr. Daniel makes a declaration early in his statement that he is a conservative, constitutionalist, member of the NRA, and he comes to us today still asking for protection for women like his sister and others who might have a chance if we pass the Manchin-Toomey background check to keep guns out of the hands of convicted felons and people who are mentally unstable as well as the Klobuchar and Blumenthal legislation to protect

women who are victims of domestic violence and stalking. Thank you, Mr. Daniel, for being here.

Chairman WHITEHOUSE. Thank you, Senator.

Will the witnesses please stand to be sworn? Do you affirm that the testimony you will give here today will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. CAMPBELL. I do.

Ms. MALCOLM. I do.

Sheriff SCHMALING. I do.

Justice MCCAFFERY. I do.

Mr. DANIEL. I do.

Chairman WHITEHOUSE. Thank you.

I will introduce the whole panel, and then we will go through their testimony.

I will first introduce Jacqueline Campbell, who is the Anna D. Wolf Chair of the Johns Hopkins University School of Nursing and the national program director of the Robert Wood Johnson Foundation Nurse Faculty Scholars Program. In 2012, she was recognized by the Centers for Disease Control and Prevention as one of 20 national leaders in injury and violence prevention for her work related to domestic violence. Dr. Campbell is on the board of directors of Futures Without Violence, has served on the board of five domestic violence shelters, and was a member of the congressionally appointed Department of Defense Task Force on Domestic Violence. She has published more than 225 articles and 7 books and has extensive policy-related service nationally and internationally related to women and violence, and she has cut a vacation short to be with us, so we are particularly honored that she is here.

Joyce Lee Malcolm will testify after Dr. Campbell. She is the Patrick Henry Professor of Constitutional Law and the Second Amendment at George Mason University School of Law. She holds a Ph.D. in history and specializes in constitutional law, legal history, and law and war. Malcolm is the author of seven books and numerous articles for legal and historical journals and the popular press. Her book, "To Keep and Bear Arms: The Origins of an Anglo-American Right," was cited by the Supreme Court in the recent Second Amendment case of *District of Columbia v. Heller*.

After her, we will hear from Sheriff Christopher Schmaling. Sheriff Schmaling was elected sheriff of Racine County, Wisconsin, in 2010. In that role, he established the first ever domestic violence specialist position in the State. Sheriff Schmaling has served as a law enforcement officer for two decades and resides with his family in the village of Mount Pleasant. And I understand that it is his son's 16th birthday today, so we are particularly grateful for his participation in this hearing. It is a pleasure to have you with us, Sheriff. I know your son must be very proud.

Next we will hear from Justice McCaffery, who was born in Belfast, Northern Ireland, but has called Philadelphia his home since the age of 5. He has made a career of public service, serving his country as a United States Marine, his city as a police officer for 20 years, and his State as first a trial and now an appellate judge. Justice McCaffery is the liaison justice for problem-solving courts across Pennsylvania as well as the liaison justice to the special

court judges of Pennsylvania. He has been at the forefront in creating veterans courts across Pennsylvania.

And, finally, already introduced by his Senator, Senator Durbin, Elvin Daniel joins us from Illinois, where he is a salesman for Blackhawk Industrial. He is here to share the story of his sister, Zina, who was killed by her estranged husband just days after she obtained a restraining order against him. Unfortunately, Zina's story highlights only too well the urgent need for universal background checks. We are very grateful that Mr. Daniel is here and thank him for coming and for his courage.

Let me begin now with Dr. Campbell. We have a terrific panel. Lead us off. Thank you.

STATEMENT OF JACQUELYN CAMPBELL, Ph.D., PROFESSOR AND ANNA D. WOLF CHAIR, DEPARTMENT OF COMMUNITY-PUBLIC HEALTH, JOHNS HOPKINS UNIVERSITY SCHOOL OF NURSING, BALTIMORE, MARYLAND

Ms. CAMPBELL. Senators, I am grateful for the opportunity to testify in these very important hearings today. I will present data from my own research on domestic violence homicide of women, as well as from other important research and national data bases on this topic. I testify today as a citizen, as a nurse, and with the endorsement of the American Academy of Nursing.

The United States, as has been said, has a higher homicide rate of women than all other westernized countries and amongst the highest rate in the world. This disparity is particularly pronounced for homicides of women committed with guns, in which the country, as was said, the rate exceeds by 11 times the average rate in other industrialized countries.

Much of this fatal violence against women is committed by intimate partners. Although neither entirely complete and nor without coding errors, the FBI's Supplemental Homicide Reports are the most complete national data base of homicide with information on the relationship of the perpetrator to the victim. In the most recent data available, from 2011, at least 45 percent of the murders of women were committed by a current husband or boyfriend or ex-husband. If we only examine the homicides where the perpetrator relationship to the victim was identified, more than half—54 percent—of the homicides of women are committed by a husband, boyfriend, or former husband. There were 10 times as many women killed by a current husband or boyfriend or ex-husband as by a male stranger in that data base.

The majority of this violence is perpetrated with firearms. In the Violence Policy Center analysis of the 2011 murders of women, there were 1,707 females murdered by males in single-victim/single-offender incidents. Of those incidents of homicides in which the weapon could be determined, more of these homicides were committed with firearms—51 percent—than with any other weapon.

Women are also killed by partner or ex-partners when they are pregnant. In an important study of maternal mortality in the State of Maryland from 1993 to 2008, Dr. Diana Cheng and Dr. Isabelle Horon examined medical records of women who died during the pregnancy and the first postpartum year. Homicides were the leading cause of death to those pregnant women and immediately

postpartum. Firearms were the most common method of death, 61.8 percent. A current or former intimate partner was the perpetrator in more than half of those murders, and nearly two-thirds of intimate partner homicide victims in this study were killed with guns. In a national study of pregnancy-associated homicide, firearms again accounted for the majority of homicides. And a majority of those perpetrators were not married to their victims.

Research my peers and I have conducted provides further insights into how firearm access and domestic abuse elevate the risk of homicide for American women and explain why existing Federal laws restrict certain convicted domestic abusers from buying or possessing guns.

Survey research of battered women indicates that when a firearm is present, a majority of abusers will use the gun to threaten or injure a victim. In a study Susan Sorenson and Douglas Weibe conducted with over 400 women in domestic violence shelters in California, two-thirds of those abused women who reported a firearm in their home said their intimate partner used a gun against them, with 71.4 percent threatening to shoot or kill her and 5.1 percent actually shooting at her.

Among the most rigorous research available on factors that influence a woman's likelihood of homicide is the national, 12-city case-control study of intimate partner homicide by a husband, boyfriend, ex-husband, or ex-boyfriend conducted by myself and my colleagues. In the study we compared a group of abused women who were murdered by their partner or ex-partner to another group of abused women who were not. Controlling for other factors, we found that gun access or ownership increased the risk of homicide over and above prior domestic violence by 5.4 times. Gun access was the strongest risk factor for an abused woman to be killed by her partner or ex-partner. When the perpetrator committed suicide after killing his partner, the gun ownership increased the chances of this homicide-suicide by an adjusted odds ratio of 13.

Neither of those studies found evidence that women frequently use firearms to defend themselves against abuse or that access to a firearm reduces the risk of homicide for the woman victim.

In leaving out abusive dating partners, current Federal firearm prohibitions ignore the perpetrators of a large and growing share of intimate partner homicides. The U.S. Department of Justice data shows that the share of domestic violence homicides committed by dating partners has been rising for three decades, and boyfriends now commit more homicides than do spouses. The Supplemental Homicide Reports does not accurately code for ex-boyfriends, and this is a category that is also growing. Estimating from our study, we find that approximately 300 to 500 female intimate partner homicides each year should be added to the approximately 1,000 already counted in those Supplemental Homicide Reports.

Bill 1290, the Protecting Domestic Violence and Stalking Victims Act, would expand our national domestic violence laws to include both former and current dating partners who together represented 48 percent of those male domestic violence perpetrators in our study and, therefore, is an extremely important way to keep women safe and to save lives.

There is also evidence that State laws to strengthen firearm prohibitions against domestic abusers reduce intimate partner homicide. Two separate important studies—one of 46 of the largest cities in the United States, and one of State-level data—found that State statutes restricting those under domestic violence restraining orders from accessing or possessing firearms are associated with reductions in intimate partner homicides, driven by a reduction in those committed by firearms. Vigdor and Mercy’s study also found that State laws that prohibit firearm possession by people under domestic violence restraining orders, along with entering state domestic violence restraining orders into that Federal data base, reduced intimate partner homicide of women by firearms by 12 to 13 percent and decreased overall intimate partner homicide by 10 percent.

In conclusion, women who suffer abuse are among the most important for society to protect. Congress has an opportunity to do so by strengthening the laws to keep domestic abusers from getting guns. Ample scientific evidence also shows that in doing so you will save lives.

And I want to end with a quote from a woman that I interviewed who was the mother of one of the women who was killed in our study, and she said, “Please let her story be told. Do not let her death be for nothing.”

Thank you.

[The prepared statement of Ms. Campbell appears as a submission for the record.]

Chairman WHITEHOUSE. Thank you, Dr. Campbell.
Dr. Malcolm.

STATEMENT OF JOYCE LEE MALCOLM, PH.D., PATRICK HENRY PROFESSOR OF CONSTITUTIONAL LAW AND THE SECOND AMENDMENT, GEORGE MASON UNIVERSITY SCHOOL OF LAW, ARLINGTON, VIRGINIA

Ms. MALCOLM. Yes, first I would like to thank the Committee for inviting me. It is a real honor to be present at this important hearing.

I think that we can all agree that we have the same goals here: that we want to protect victims of domestic violence, and more generally we are interested in public safety.

The current laws on the books are not perfect, but they have the great virtue of according with longstanding traditions of American law by protecting the rights of everyone concerned, rights that the Supreme Court defines as “deeply rooted in the Nation’s history and tradition,” “fundamental to our scheme of ordered liberty.” And with due respect to Chairman Whitehouse, these bills that are behind this hearing do violence to the right of the Second Amendment, Fourth Amendment rights against unreasonable search and seizure, and most importantly, I think, to due process, providing due process in the normal way.

I would like to first start with some statistics to put this whole debate in context. A fact that is very seldom advertised is that homicides in this country have been down sharply for the last 20 years, as well as other violent crime. The last time that the crime rate for serious crime—murder, rape, robbery, and assault—was

this low, gasoline was 29 cents a gallon. And the average American working person was earning \$5,807. It is hard for us to remember gas at 29 cents a gallon.

The rate of family violence, which is much more the focus of this hearing, has also fallen between 1993 and 2002, and it continues to fall. Only one in ten violent victimizations involve family violence, and most family violence is simple assault. Less than one-half of 1 percent of the victims are killed.

The proportion of female homicides during this time period of women who are killed by guns is also down while women who have been killed by other means has gone up.

The Blumenthal and Klobuchar bills present various problems for the right of individuals to keep and bear arms, for the protection against unreasonable search and seizure, and due process. There is this new focus on stalking expanding to non-cohabiting individuals and involving not only serious incidents of actual violence, but bullying and a wide range of other acts under a definition of "harassment," which can be verbal and very vague and seems to often tend to grow depending on what you regard as harassment. Large numbers of people who are likely to be convicted or might be convicted of simply verbally harassing somebody might lose the right to have a firearm.

The most concerning thing, I think, is the change in the temporary restraining order. The temporary restraining order would mean that the person who is alleging that they are endangered, after they file for this, after the mere allegation, can send the police to the person that they are citing's home searching for guns or any other weapon that they find, without any kind of a hearing. In other words, as the Red Queen in "Alice in Wonderland" said, it is, "Sentence first and verdict afterwards." And that is a true violation of the right of everyone to be heard. And, in fact, in temporary restraining order hearings in the past, half of those who have been cited as being potentially dangerous have been found not guilty. But all of these people would in the future have their weapons taken away from them first, and then sometime later there would be a hearing at which they would be allowed to produce some kind of evidence to the contrary.

The other aspect that is troubling is making this retroactive so that anyone who is ever convicted of harassment or had a temporary restraining order against them would lose their right to be armed indefinitely. Many people who have accepted plea bargains on the assumption that they knew what that entailed would find that they now no longer have a right to be armed for the rest of their lives.

I think that the intention is there to do good and to protect women, but I think that both of these bills have the wrong approach. It is wrong to deprive people of their basic rights. It is wrong to deprive people of the right of due process and the opportunity to present evidence before they are actually treated as if they were guilty and afterwards things are sorted out.

I would like to just conclude with the majority opinion written by Justice Scalia in *Heller*, where he ends by saying, "the enshrinement of constitutional rights necessarily takes certain policy choices off the table." I think there are other and better ways

that women can be protected without having to violate the rights of anyone in the process.

Thank you.

[The prepared statement of Ms. Malcolm appears as a submission for the record.]

Chairman WHITEHOUSE. We now turn to Sheriff Schmaling.

Thank you very much for being here.

**STATEMENT OF CHRISTOPHER SCHMALING, SHERIFF,
RACINE COUNTY, RACINE, WISCONSIN**

Sheriff SCHMALING. Thank you. Thank you, Mr. Chairman. Chairman Whitehouse, Senator Grassley, and other Members of the Committee, thank you for hosting this hearing today. It is quite an honor to be here before you today. My name is Christopher Schmaling. I am the sheriff of Racine County, Wisconsin. I have been a law enforcement officer for nearly 20 years. I am a conservative Republican, and I am here today to ask you to pass two very common-sense laws that will protect our sisters, our daughters, and our mothers by keeping guns out of the hands of domestic abusers.

As the top law enforcement officer in Racine County, and with over two decades of law enforcement experience, I have seen firsthand the tragic events firsthand. I want to tell you about one such domestic violence incident, a tragedy that changed my career.

Back in 2004, Teri Jendusa-Nicolai was violently abused and left for dead by her ex-husband. After 3 years of a violently abusive marriage, Teri had the courage to divorce her husband. She had taken out multiple restraining orders during this timeframe. On that horrible day, a very cold January day in 2004, he beat her in the head with a baseball bat, and as she tried to fight back, he then threatened her with a .38 caliber handgun. He bound and gagged her, filled a garbage can full of snow, pushed her into the garbage can, and placed her in an unheated storage locker for 26 hours.

My partner and I were the lead investigators on this particular case, and through some great breaks and some great luck and a blessing from above, we were able to rescue Teri before she died. As a result of this ordeal, Teri had a miscarriage, and she lost all ten of her toes on both feet due to frostbite.

Teri is one of the most wonderful people I have ever known and has been a tremendous advocate for victims of abuse over a decade since she was nearly killed at gunpoint. We have become very close since then, and my eyes have been wide open to the reality of domestic violence and gun violence, as they seem to go hand in hand. I have also been close with Elvin Daniel, who is sitting here today, and I have been moved by his sister Zina's story.

I am proud to say that in Racine County we were the first in the State to have a full-time domestic violence specialist. We work closely with domestic violence victims to see how we can best protect them. Any cop will tell you that domestic violence calls are the most dangerous calls that law enforcement officers will respond to. The last thing that the victim needs and the last thing that my deputies need is a dangerous abuser armed with illegal weapons.

Abusers routinely threaten to shoot my deputies prior to our arrival at domestic violence calls. And, in fact, according to the FBI statistics, 150 law enforcement officers have been killed in action while responding to domestic disturbances.

I am proud to have worked on a great domestic violence bill in Wisconsin earlier this year. It was called "The Safe Act" that ensures guns are kept out of the hands of domestic abusers. This bill was passed by a bipartisan majority and signed by our Republican Governor Scott Walker.

The first bill I am asking you to pass today is the Protecting Domestic Violence and Stalking Victims Act, S. 1290, introduced by Senator Klobuchar. This bill would close a loophole that allows abusive boyfriends to buy and have guns, simply because they are not married to their victims. And it would also block people with stalking convictions from having guns. Dangerous boyfriends can be just as scary as dangerous husbands; they hit just as hard and they fire their weapons with the same deadly force. In fact, according to FBI data, more women are killed in America by their abusive boyfriends than by their abusive spouses.

This past March, just a couple hours from Racine County, Cheryl Gilbert was killed by her ex-boyfriend in a domestic dispute. The killer, a convicted felon, apparently shot Cheryl with her own gun. According to news reports, she had been seeking a restraining order at the time of the killing. But in cases like Cheryl's, a restraining order is not good enough. If you have never been married to your abuser, Federal law likely will not stop him from buying or purchasing a gun.

The second bill I am asking you to pass today would require criminal background checks for gun buyers who shop with unlicensed sellers. Current Federal law prohibits many abusers from buying guns, but only requires them to pass a background check if they shop with a dealer. This gaping hole in the law simply means that a convicted wife-beater can slip through the cracks and get a gun by finding a seller who does not own a gun store.

This is exactly what happened in our State, Dane County, Wisconsin. Tyrone Adair was a domestic abuser who had been convicted of battery not once but twice. He was legally prohibited from possessing a gun because of a restraining order. So instead of shopping at a gun dealer, he found an ad for a 9mm Glock in a local newspaper. He reached out to the seller. They agreed to meet at a hardware store. There was no background check, though the seller did ask this question, and I quote: "You are not going to go out and kill someone, are you?" Tyrone Adair used that gun on a horrific murdering spree. He killed both of his children—they were ages 1 and 2 at the time—and both of their mothers.

We see the terror that abusers create when they are armed. We see the impact on their wives, their girlfriends, and their children. We are major proponents of community policing in Racine County. We have a community of about 200,000 people. And if I and my officers are on the street, working closely with these very citizens that we are sworn to protect, I want to know that our laws are doing everything we can to keep guns out of abusive hands.

So I am here today to speak for victims of abuse and to speak for my deputies. I have made it a priority to talk to victims. I have

seen the escalation over the years—yelling, battery, and, unfortunately, homicide. When an abuser has a gun, the victims will tell me, “Sheriff, it is not a question of if he will use that weapon against me; it is a matter of when.”

I am asking you today to stand up against abuse by fixing our out-of-date laws and passing some clear, common-sense legislation. Thank you for your time.

[The prepared statement of Sheriff Schmaling appears as a submission for the record.]

Chairman WHITEHOUSE. Thank you very much, Sheriff Schmaling, and happy birthday to your son.

We will go ahead and hear from Judge McCaffery, and then we will see how the vote is going, and we may break after that to go get the two votes in. I want to wait until the very end of the vote because we have to catch the end of one vote and the beginning of another. So, Judge McCaffery.

Your microphone, please?

**STATEMENT OF HON. SEAMUS P. McCAFFERY, JUSTICE,
SUPREME COURT OF PENNSYLVANIA, HARRISBURG, PENN-
SYLVANIA**

Justice McCAFFERY. Good morning, and thank you for the opportunity to address the Members of the Committee about the pending legislation dealing with the growing epidemic of domestic violence and, in particular, the Klobuchar and Blumenthal bills.

It appears to me that the above bills look to strengthen current Federal domestic violence laws to bring them more in line with the current laws that many States have dealing with crimes of violence toward women and same-sex partners, a clearly laudable goal. Effectively strengthening such laws would seem to be an even more laudable goal.

I have spent most of my adult life in law enforcement. Those years include 20 years as a Philadelphia police officer and a detective, 10 years as a trial judge, 4 years in the appellate courts, and now I am a Justice of the Supreme Court of Pennsylvania.

I have dealt with domestic violence at literally every level of our system. Sadly, I can say with the certainty born of experience that our law enforcement community finds itself in a reactive not a proactive posture and operates as a reactive defense force. By that I mean that more often than not, Senators, our law enforcement community shows up after the fact.

I was one of those. I would show up after the fact. I saw the blood. I went to court. And so much of the time I saw crime in the streets and people getting victimized in the streets of our cities, getting victimized in our courtrooms. And that was one of the—that was the impetus for me to go to law school and become a jurist, because I really felt that people needed somebody there who had experienced what goes on in our streets.

Senator, I absolutely agree that we should have dating partners included within the scope of the protection of the proposed Klobuchar bill—we have such inclusion in Pennsylvania. Okay? It is important. As the sheriff said, dating partners can shoot, they can beat up people just like anybody else.

But, you know, as Dr. Malcolm points out, I went from being a cop where I cared about the victims, to being a jurist where I care about the accused. We have to keep focused on the fact that we have two parties here: We have the accused and we have the accuser, the victim. And my goal has always been to have a level playing field.

You know, one of the things that I always thought was so needed, so necessary, so wanting was law enforcement's ability to be there before the abuser got to the victim. When I was a cop in my day, we did not have that opportunity. It was not there. But let me tell you something, we can enact all the laws we want. The bad guys on the streets—and I was out there where the rubber meets the road, both as a cop, as I said, and as the judge who created the first ever domestic violence court program in Pennsylvania because I felt it was so important.

The frustration was as follows: Victims are terrified. Senators, when they get to court, oftentimes they have memory loss. They are scared, they are intimidated. They do not have the support network. In Philadelphia, we are lucky we do. Philadelphia is one of the more progressive cities around. But just as an example, only 35 percent of our preliminary PFAs become permanent—35 percent. Why? People are not showing up. They are afraid.

Of the PFAs, of the temporary ones, 25 percent include an order barring possession of a firearm. Only 25 percent. What is going on here?

Well, again the frustration comes in that we have to protect our victims. How do we do that? Once upon a time, unless you had a crystal ball, you could not. But today, Senators, we have the technology to give law enforcement the capabilities. And by that, what do I mean? Right now, probation and parole officers across this country have GPS that is available to them so they can track people under their supervision.

Let us just say for discussion purposes right now—and keep in mind domestic violence is not just about firearms. The overall majority of domestic violence cases that I saw both on the street and in the courts involved fists, knives, and blunt objects. It is a real, major epidemic in this country. We have legislation out there that curtails more and more people's ability to have a gun, but yet domestic violence is still out there.

People who want to get a gun or want to stab you, they are going to do it. They are going to make it happen, despite whatever laws you put on the books. To me, what I think is important is being proactive. And by that I mean right now, through technology, we can give law enforcement officers GPS-assisted support. So the actual patrol officer in the neighborhood, moments away from the victim, can know if a stalker, who is now wearing a GPS device on his ankle, on his wrist, is now approaching within a certain proximity of the victim. It comes up on the victim's smartphone that somebody has now crossed the threshold, whether it is a mile or a block. The same officer in the neighborhood is notified. The officer then responds. The officer gets there, and then the violence can be prevented.

It is about prevention to me, because if we do not have prevention, once again, what are we going to do? Show up after the fact?

Pick up the pieces? Transport the body to the morgue? That is not what we want.

Personally, I cannot believe that we do not have bipartisan legislation. Who on Earth can stand up and say that they are really not opposed to domestic violence? Every one of us has a mother, some have wives, some have daughters, some have granddaughters. None of us want to see anything like this happening out there. Anything. But we need to step up to the plate.

You know, legislation is great, and this is a beautiful place here. It really is. First time here. But at the end of the day, tonight, somewhere in North Philly in a row home, some woman is going to be battered, okay? And that same woman has probably been battered for years. And she looks at her three, four, five children, and she cannot escape. She cannot escape. And if we take it down to court, what do we get? Now they hug and kiss. The emotions are down. Somebody talks to the victim and the case disappears. We have a frustrated prosecutor and an even more frustrated court.

So my point is we need to do things that are really going to make things happen. You want to send a message out there? You put that bracelet on that abuser. You come within a mile of that victim, and not only will you be locked up, but it will be strict, it will be swift, and it will be really, really bad for you. You want to talk about deterrence? It can happen.

So, you know, again, my point to you all is there are ways that we can address domestic violence well beyond violence dealing with guns. Some of our States with some of the strictest gun laws still have a growing epidemic in domestic violence.

With that being said, my position is, quite honestly, I think that—I really strongly support the concept of bringing in the dating partners. You know, it is important for law enforcement. Again, our State has it. I cannot speak for others, obviously, and that being said, I will just forgo my last 2 minutes.

[The prepared statement of Justice McCaffery appears as a submission for the record.]

Chairman WHITEHOUSE. Thank you, Judge McCaffery.

I think we should probably take a run for the vote, and so if, Mr. Daniel, you would be patient with us, we will be recessed for probably 10 to 15 minutes to get over to the floor and back. As soon as I am back, we will come back into session.

[Whereupon, at 11:07 a.m., the Committee was recessed.]

[Whereupon, at 11:29 a.m., the Committee reconvened.]

Chairman WHITEHOUSE. No rush. We can take a moment to get quietly back into our places. Thank you for your patience, and let me now turn to Mr. Daniel, with our appreciation and our apologies for the interruption. Please proceed with your testimony.

STATEMENT OF ELVIN DANIEL, McHENRY, ILLINOIS

Mr. DANIEL. Thank you, sir. Good morning.

Chairman WHITEHOUSE. Good morning.

Mr. DANIEL. Thank you, Chairman Whitehouse, Chairman Leahy, Senator Grassley—

Chairman WHITEHOUSE. Is your microphone on, Mr. Daniel?

Mr. DANIEL. And I was reminded to turn it on before I started. Thank you, Chairman Whitehouse, Chairman Leahy, Senator

Grassley, and the Members of the Judiciary Committee, for holding this important hearing.

My name is Elvin Daniel. I am a Republican. I am an avid hunter, a gun owner, and I enjoy using my guns for target practice with my family and friends. I am a strong supporter of the Second Amendment and an NRA member. I also believe in common-sense, sensible gun laws.

I am here today to speak for my sister, Zina. I speak for Zina and my entire family because Zina is not here to speak for herself.

Zina loved life. All she wanted to do was to be a good mother to her two daughters. She loved Disney World, Rick Springfield, and helping other people. As a matter of fact, her last moments, she was begging her estranged husband, "Please, leave these people alone."

She was a beautiful person, full of goodness, and some good will come out of her death.

On October 21, 2012, I received a phone call that no one should ever have to receive. I was told that my sister had been shot and killed by her estranged husband. We later learned that Radcliffe had bought the gun through Armslist.com, an irresponsible Internet site that does not require background checks. It has been nearly 2 years since Zina was murdered, and it is heartbreaking to know that our weak gun laws continue to allow dangerous abusers to buy guns without a background check.

Zina was married for 13 years and eventually left her husband because he abused her, physically and mentally. He continued to terrorize Zina, slashing her tires while she was at work, and threatening her physically. Zina went to court and obtained a protective order. She told the judge, "Your Honor, I do not want to die. I just do not want to die."

Under Federal law, this protective order prohibited Radcliffe from buying a gun. If he had tried to buy a gun from a licensed dealer, he would have been denied. He knew that. So he chose to go through an unlicensed dealer to buy his gun.

He went on Armslist.com and posted an ad saying, "Serious buyer looking to buy a gun ASAP." Within hours, he found an unlicensed seller, and they met at a McDonald's parking lot and exchanged \$500 cash for the gun that he used the next morning.

This was all after the protective order was issued against him and entered in the NICS system. The next day Radcliffe stormed into the Azana Spa where Zina worked, shot seven people, murdered my sister, Zina, and two of her co-workers, injuring four others before he took his own life. I am convinced that he deliberately bought the gun from an unlicensed dealer because he knew he could not pass a background check. Had there been a background check done, chances are my sister Zina would still be here with us.

Now, I am helping to care for my two nieces who lost their mother and who will have to grow up without her. I look at my parents, and especially my father, who lost his baby daughter.

I am here today for Zina and for the stories like Zina's that happen every day because of the serious gaps in our gun laws that continue to put women's lives in danger.

I believe that there are two steps that Congress could and should take to save women's lives: require background checks for all gun

sales, and keep guns out of the hands of abusive dating partners and stalkers.

I am grateful for the opportunity to share my sister's story with you today. She was a loving mom, a terrific sister. For nearly 2 years now, my family has lived a nightmare. Every happy family milestone is now covered with sadness. Mother's Day is now a day to survive rather than celebrate, because we know that Zina is not here to watch over her girls. She will not be here to take pictures of her youngest daughter dressed up for prom or to congratulate her daughters on their wedding day and dance with them. Those moments will be happy and sad at the same time.

I am committed to honoring Zina's memory by working to reduce the number of women who are killed by preventable and senseless guns.

You have the power to pass the laws that we need to keep our sisters and mothers and daughters safe, and so I am here today to ask you to remember Zina when you think about taking on this issue.

Thank you for your time and the opportunity to let me speak today. I would be happy to answer any questions. Thank you.

[The prepared statement of Mr. Daniel appears as a submission for the record.]

Chairman WHITEHOUSE. Thank you, Mr. Daniel. You have very well and very powerfully represented your sister today in this hearing room.

As the Chairman, I am going to be here until the end, so I will reserve my questions and allow my colleagues to proceed ahead of me, and I will recognize first my friend, the distinguished Senator from Minnesota, Amy Klobuchar.

Senator KLOBUCHAR. Well, thank you very much, Mr. Chairman. And thank you to all the witnesses, and particularly Mr. Daniel, thank you so much. And I wear your sister's bracelet that you gave me today with pride, and she will not be forgotten.

Mr. DANIEL. Thank you.

Senator KLOBUCHAR. And I think one of the things that is most powerful about your testimony is the fact that you are a hunter, a gun owner, a member of the NRA. And could you talk a little bit about how you reconcile that, which I think has been a real issue for some of our colleagues in trying to understand how we can reconcile, those of us that support hunting, with the fact that we are simply looking at some common-sense rules here, for instance, making sure that we include dating partners when we look at the domestic violence rules, making sure we have good background checks in place, and looking at making sure that people who are convicted of stalking are also included in these prohibitions? Do you want to talk about how you reconcile that in your mind?

Mr. DANIEL. You know, it is totally different. I mean, doing a background check has nothing to do with infringing on my Second Amendment. Me—as a gun owner, I want to make sure that I keep the guns out of the hands of the wrong people. I do not want criminals or abusers to get their hands on guns. And I think every gun owner should feel the same way as I do.

I go through background checks every time I buy a gun, and actually I feel that everybody should go through a background check

without a doubt. It takes 5 minutes, fill out a form, and in my case in Illinois, wait 3 days. And usually I get the gun, and I do not get to shoot it for 2 or 3 weeks until I gather my family or whoever, the friends that are shooting.

So to me, common sense says that we should have background checks on all gun sales.

Senator KLOBUCHAR. Thank you very much.

Sheriff, thank you for your testimony from my neighboring State of Wisconsin. My mom was born in Wisconsin. And I think you also are from a State that understands how important hunting is, and you identified yourself as a conservative Republican as well. And do you want to talk about how you have been able to reconcile that hunting—incredibly important hunting culture in your State with your support for my bill and the stalking and extending the domestic prohibitions to dating partners?

Sheriff SCHMALING. Absolutely. Thank you, Senator. It is true, I am a conservative Republican, and I have said this rather openly in my community. I have nothing to fear and we should have nothing to fear of law-abiding citizens who choose to arm themselves. As a sheriff, a constitutional officer, I have sworn to protect the Wisconsin Constitution as well as the United States Constitution. So coming from a family of hunters, myself being one of them, and a gun owner, I understand the importance of preserving our Second Amendment.

But the key words here are “law-abiding citizens,” and a law enforcement officer, that alert is even especially heightened because we are the ones on the front line, the boots on the ground, if you will, responding to these very dangerous calls. And if you look at the statistics provided by the FBI, 150 law enforcement officers have lost their lives responding to these types of calls.

Senator KLOBUCHAR. Exactly. Do you want to talk a little bit about what you have seen just as law enforcement and the cases that you used as an example of the woman being found and put into a freezing garage in the snow and who clearly would have died without your intervention and your good detective work? Could you talk a little bit about how this sort of dating arrangements and the stalking and those kinds of things have evolved in your time as law enforcement? I am particularly looking at how stalking works. I think some people think, oh, if you are just sending a bunch of emails, that is not scary to people. And also how over time it is not just married people, there are people that date that can also be victims.

Sheriff SCHMALING. Thank you. I certainly can answer that. What I have seen, at least in our community of Racine County, and speaking with my fellow sheriffs of the State, we have seen an uprise naturally in individuals who cohabitate together, boyfriends and girlfriends, as opposed to being married, and the domestic violence, as I mentioned in my testimony, is just as vicious and just as dangerous, whether they are married or not.

When we look at with respect to stalking and looking at some statistics, from 2005 to 2013 the State of Wisconsin suffered 29 domestic violence homicides; of those 29, all of them precipitated by history of stalking behavior.

Senator KLOBUCHAR. Very good. And for your law enforcement officers, I think when most people think about law enforcement officers out there doing their jobs, I do not actually think—if you asked them, well, what do you think some of the most dangerous calls they get, they would probably say robbery, they would probably maybe think about drunk driving, all those kinds of things. I am not sure they would say a domestic violence call would endanger an officer's life. Do you want to elaborate on that and why that is a fact?

Sheriff SCHMALING. Absolutely. As we mentioned about the FBI statistics of 150 law enforcement officers losing their lives, that is a well-known fact, and all the police academies, the way we treat and train our law enforcement officials today, undoubtedly domestic violence, domestic disturbance calls are the most dangerous. We are entering the homes of individuals. We are intervening in their conversations. We are hearing intimate details. Tensions, emotions run high during those situations, and oftentimes when a gun is involved, it turns to be deadly consequences or violence is naturally always present.

Senator KLOBUCHAR. It is like my story of Office Schneider and just showing up, as your officers do every day when they get—when the department gets called, they cannot question it. They just show up at the door.

Sheriff SCHMALING. It is unfortunate, and there are naturally many, many stories, but I have literally been on calls where the offender, the abuser, has told the dispatcher that he will shoot law enforcement as they arrive at these calls. We just had one 2 weeks ago where the offender indicated he planned to shoot every law enforcement officer that arrived at his home. So they are very, very dangerous calls.

Senator KLOBUCHAR. Very good.

Justice McCaffery, thank you for being here today, and thank you for your thoughtful words, and I do appreciate that need to enforce the laws we have on the books in my old job and do everything you can to do that, which we valiantly did. But I also appreciate you understanding that the laws have to be as up-to-date as the people that are breaking them.

Justice MCCAFFERY. Absolutely.

Senator KLOBUCHAR. And I think what the sheriff was pointing out, which you understand, is that there are a lot of these dating partners now that get involved in these—basically in violence or domestic abuse in the same way that people that were married did. And so I appreciate your willingness to look at that piece of our bill.

Justice MCCAFFERY. Absolutely.

Senator KLOBUCHAR. Thank you very much.

Dr. Campbell, I just wanted to talk a little bit about the link—you have done a lot of research here—the link between the stalking and the violence against women. Could you talk about that and what your research has shown?

Ms. CAMPBELL. Yes. In our national case control study that compared women who have been killed with other abused women in those same cities, we found that the vast majority of the women who were killed had been stalked beforehand. Even when there

was no prior physical violence, the majority had been stalked. So we found that of the ones that were abused and then there was a murder afterwards, it was 87 percent of them were stalked. And the ones that were not abused, it was 58 percent.

So, clearly, stalking was part of those pictures, as was the gun ownership. And that combination of domestic violence, stalking, and guns is extremely dangerous. And as you say, people think that stalking means, you know, harassing kinds of texting and that only. And when stalking laws are violated, it is when someone has been texted 40 times a day, and with threatening texts and clearly unwanted texts. And most often the stalking, though, especially with the homicidal cases, was actually following her, was doing things like slashing tires that was mentioned in one of the cases, destroying property, was not just the verbal harassment, not just the emails and the texts.

Senator KLOBUCHAR. Because one of the criticisms was that, you know, in modern days now, people do not always call. They oftentimes text things or send emails. One of the criticisms was, well, that is not that scary if they do that by text. But you do see a lot of that in stalking behavior in the modern age.

Ms. CAMPBELL. Absolutely, and it is threatening texts, it is threatening emails, not—

Senator KLOBUCHAR. To make that qualification of what is stalking.

Ms. CAMPBELL. Absolutely, for stalking, threatening and unwanted texts and emails, and continual.

Senator KLOBUCHAR. Okay. Well, I think my time is up. I may come back in a second round, but thank you very much.

Chairman WHITEHOUSE. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman. Thank you again for holding this hearing. And thank you to all of our expert panel.

I want to mention that I am very pleased to be working with my partner from Connecticut, Senator Chris Murphy, who has been a real leader in this area, and I know he joins me in thanking the Jackson family for being here today.

Let me ask, Dr. Campbell, based on your research, do women take the decision lightly to seek a temporary restraining order?

Ms. CAMPBELL. Absolutely not, and neither do judges in granting them. I talk with many judges, and women very carefully consider their options, and many women go for temporary protective orders and do not get them. Judges are very careful in listening to what evidence is available around the temporary restraining orders, so they are neither sought nor granted lightly.

Senator BLUMENTHAL. And I believe Judge McCaffery testified that temporary restraining orders often are not made permanent because women are afraid to appear for the hearing. Is that confirmed by your research?

Ms. CAMPBELL. Absolutely. That is what we find. And oftentimes they are afraid because they have been threatened with a weapon or threatened with a gun. That is the most scary thing for women in terms of, you know, reinforcing that fear and making it that they are less able to actually seek that long-term protective order.

We also find that women are afraid that the hearing that goes with the long-term protective order, that is the time that he will know where she is, and that can be an increased danger unless we take some protective actions around that. And if she knew that he was not allowed to have a gun, then she could be less afraid of that access to her at the hearing.

Senator BLUMENTHAL. As you may know, in Lori Jackson's case, there was a temporary restraining order, which was going to be made permanent literally the day after she was gunned down by her estranged husband. If that restraining order had resulted in those guns being taken from her estranged husband, I believe that she might well be alive today.

Ms. CAMPBELL. I agree with you, and we just had a case in Maryland with a similar kind of an incident. And, fortunately now in Maryland, we just passed a bill where we can deny possession of guns to persons who have had a temporary restraining order against them. But it is not true in all States, and so it is an issue for many women.

Senator BLUMENTHAL. In Lori Jackson's case, her estranged husband actually traveled to another State where guns might have been obtained. Wouldn't it make sense to have a uniform national rule that takes guns away from men or women who are under temporary as well as permanent restraining orders?

Ms. CAMPBELL. I believe so.

Senator BLUMENTHAL. And, Sheriff, let me ask you, based on your expertise, whether you agree that a uniform national standard would make sense. I know you are a local law enforcement official, but wouldn't your job be made more effective if there were such a standard?

Sheriff SCHMALING. Absolutely. I think we need to look at why victims seek these protection orders. They do so because they have a reasonable fear for their safety. They are not taken lightly. I think I have heard that term. Again, I can only speak for my community, but the victims that I have spoken to seek these very important pieces of paper, these documents, these protective orders because they fear for their safety. Irrespective if they live in Racine County or Danbury, Connecticut, that fear is real.

Senator BLUMENTHAL. Can you tell me again, Dr. Campbell, or any of the other folks who are on the panel, whether the danger to a potential victim increases after she or he indicates she is leaving, she wants a divorce, the relationship is over? Does the danger increase? Is it higher then?

Ms. CAMPBELL. Yes, it definitely is, according to our study and other research. It definitely increases the risk of a homicide, especially in the immediate 3 months and full first year after she leaves an abusive relationship. So it does heighten the danger, which says to us that that is a time period when we need to be particularly vigilant as communities, that we need to—in order to prevent those homicides. And the onus of responsibility should not be on her. We need to bring the full bear of the law and implement those laws around the country.

Senator BLUMENTHAL. This panel has been extraordinarily valuable in reinforcing and evidencing, providing objective facts and research in support of what we know from our experience and from

the tragic stories that are before us in this audience, Lori Jackson's family among them, and I want to thank all of you for being here today. It has given us impetus and momentum in this effort to solve this problem, which we will do. Thank you very much.

Thank you, Mr. Chairman.

Chairman WHITEHOUSE. I turn now to our distinguished Ranking Member, Senator Grassley.

Senator GRASSLEY. Mr. Chairman, before the clock starts, I would like to apologize particularly to Mr. Daniel for missing his testimony and say that we are sorry for the loss that you talked about.

Also to apologize to everybody here because this is an apology I have done for the third time in the last half-hour, first of all, to a news conference with Senator Gillibrand and then to a group of people that I worked with very closely on foster care. It is kind of a rude way to treat all you folks that come here when we have to have two votes and then two intervening things, but I appreciate hopefully your understanding that.

My first question is going to be to Professor Malcolm. A Kentucky law took effect this month that allows people who receive an emergency protective order and pass a background check to obtain a provisional concealed carry permit in 1 day. I view this as a law that enables victims to protect themselves even when the police are not around and when their abuser's information would not show up in a background check.

So my question: Professor Malcolm, do you support the ability of people who obtain emergency protective orders to quickly obtain a provisional concealed carry permit?

Ms. MALCOLM. Yes, I do. I think that is the perfect way to really help women who feel endangered. We have heard a lot of stories today about people who had temporary restraining orders or permanent restraining orders and, nonetheless, were harmed by the person who was to be restrained.

You mentioned a list of States that have not submitted their records for this background check that so many people are depending on, so it makes it much easier for someone who should not get a gun to get it.

I think the ultimate protection has to be the individual, and no police department can protect everyone all the time. To allow women to have a firearm just as a deterrent or ultimately to absolutely protect themselves I think is essential. I think it is a great idea.

Senator GRASSLEY. Justice McCaffery, you have been a police officer and trial judge who issued many temporary restraining orders. Sometimes you ordered that the person subject to the order to surrender his gun. Sometimes you did not so order. Based on your experiences, what practical problems do you think would arise if the bills before the Committee addressing domestic violence and guns were to be enacted into law.

Justice MCCAFFERY. Well, Senator, first off, let me say that we have these types of laws on the books in our State. So much of it comes down to enforcement, and let me just give you an idea.

Dr. Campbell pointed out how sometimes it can be somewhat tough for a victim to get a PFA. Understand something, and this

is something that I hope our former prosecutor, Senator, understands. The jurist is there to make sure that there is a level playing field. The jurist must make sure that whatever the allegations are, they are factual, they are for real, they are not made up, and they are not gaming the system.

We have Federal orders that constrain the number of prisoners we can put in our county jails. We have State laws now coming down with, again, additional prohibitions. Where are we going to put these people? What we keep hearing is we have to downplay—or downgrade, I should say, some of the laws so that we do not put people in State custody, because why? Our second largest budget item in Pennsylvania is our prisons.

My point is the more laws we have, the more people we are going to convict, the more people are going to be sent to jail. Where are we going to put them? We keep getting told that we do not have the space.

One of the reasons why I started so many diversion programs in Pennsylvania was to intervene early on, divert them out of the system, keep them out of the jails, and give them the type of treatment they need so as to cut down on that need to put people in jail.

Understand something, Senator. One of the things we have to worry about on the bench are people that game the system. And what do I mean by that? Right now in Philadelphia County, you have approximately 10,000 to 12,000 custody cases waiting to be adjudicated. That means if you file today, your custody case may not be up until April 2015. Think about that.

Now, some of the people who know how to game the system will pick up the phone and call 911, and they basically say, “I am being abused,” “I am being beaten,” or, “I am being threatened by a firearm.” What happens? Those cases are immediately jumped right to the beginning of the list. It is the job of the judge to make sure that these people are not gaming that system, because, otherwise, we have an accused who really is not doing what they are being accused of. And that is the role of the jurist.

Senator GRASSLEY. This will have to be my last question. I appreciate, Sheriff Schmaling, your testimony today “to require criminal background checks and checks by unlicensed dealers” as well as block dating violence abusers and stalkers who own guns. I note, however, that only last year in an interview with the Journal Times, you said, “I am opposed to any regulation that would require a farmer in Waterford, for example, to somehow conduct and/or pay for a background check on a neighboring farmer to whom he wanted to sell a firearm.” Continuing the quote, “Rather than trying to strip away our constitutional rights, I believe law makers need to define private sales and retail sales. More regulation will increase straw purchases. If a criminal is bent on doing evil, he or she will simply find a weapon on the streets or solicit a third party to make the weapon purchase.”

In the same interview, you opposed as ineffective limiting magazines in capacities of ten bullets or more, and in an accompanying—and I completely agree with you, Sheriff, when you said in that interview, “We must not allow the actions of a few cowards

who are bent on evil to promote any laws that infringe upon constitutional liberties of responsible and law-abiding citizens.”

So my question is: Why do you now say that you are in favor of the universal background checks and believe that they would stop criminals from obtaining guns?

Sheriff SCHMALING. Well, very simply put, and you said it best, as I have, “law-abiding citizens.” “Law-abiding citizens.” I have always said—and I have said this before this Committee—that I have nothing to fear of law-abiding citizens who wish to arm themselves. I preserve the Constitution, especially the Second Amendment. When we have individuals who are bent on evil, bent on breaking the laws, bent on abusing women, they should be prevented from purchasing firearms.

Senator GRASSLEY. Okay. Thank you very much. Thanks to all of you.

Chairman WHITEHOUSE. Thank you very much.

Let me ask Dr. Campbell first, as Senator Grassley just indicated, if somebody is bent on murder, there are all sorts of weapons that can be used to kill another human being. Why is it that guns in particular create the added risk of violence that you have chronicled in your work?

Ms. CAMPBELL. Well, for one thing, the destruction of a gunshot to the human body is far greater than any of those other weapons. Yes, you can kill with other weapons, but it takes far more stab wounds, more carefully placed, et cetera.

Chairman WHITEHOUSE. So they are much more lethal.

Ms. CAMPBELL. Much more lethal. And, second, I have examined thousands of homicide records in the police department. In many of those cases, it is clear that there may have been a domestic violence incident, maybe someone would have gotten hurt, but no one would have died if there was not a gun accessible, way too handy, already there, oftentimes not a gun that anybody went out and bought the day before—although that does happen, too—but a gun that has been in that home that the perpetrator of domestic violence has owned for years. And it was easy to get at, it was all too available in a moment of extreme anger, and, therefore, someone died where they would not have otherwise.

So those are the two things that I see.

Chairman WHITEHOUSE. Sheriff Schmaling, you talked about the environment of tension and high emotion in a domestic violence scene. If it is dangerous even to a trained, armed law enforcement officer, what does that say about that environment for the victim?

Sheriff SCHMALING. Naturally, I think we have talked about the sheer violence in domestic violence calls and the numbers are real. The law enforcement officers that are murdered each year responding to these types of calls, they are inherently dangerous. And you are correct, we are armed, and we are trained to handle situations. But we are knowingly stepping into situation where when a firearm is present, the increase in likelihood of someone losing their life is that much greater.

Chairman WHITEHOUSE. And how would you respond to Dr. Malcolm suggesting that adding yet another firearm into the equation by arming the victim would make this a safer situation for either the victim or your officers?

Sheriff SCHMALING. Suggesting that the victims should arm themselves?

Chairman WHITEHOUSE. Yes.

Sheriff SCHMALING. Well, you know, I shared with you a story just a couple hours from Racine County where a victim's gun was removed from her by the abuser and she was murdered with her own weapon. My experience—let me just give you a little bit of history on Racine County. My jail houses about 876 prisoners. Each year we book in 10,000 citizens on average. Ten thousand. Of those 10,000, about 10 to 12 percent of those are domestic violence-related arrests. Every one of those arrests leave behind victims, typically women, typically children. Every one of those calls, we speak to those victims, naturally. We get their statements. I was a detective for 10 years. I have interviewed countless victims of domestic violence. Never once have I heard a victim tell me, "Where is the nearest gun shop? Let me arm myself because I need to do this." They look toward the system, they look to law enforcement to do our job and to keep them safe.

Chairman WHITEHOUSE. Dr. Malcolm, you are a professor of constitutional law, are you not?

Ms. MALCOLM. Yes.

Chairman WHITEHOUSE. Let me ask you two questions of constitutional law. The first is: Does making sure that people who are lawfully required to have background checks actually get a background check offend any constitutional principle that you can define?

Ms. MALCOLM. No. But I think that the questions on background checks can be very intrusive, and the Canadian—

Chairman WHITEHOUSE. I am just asking, to the extent that they are lawful, as they are, then having it be enforced clearly that is no constitutional problem there.

Ms. MALCOLM. Right.

Chairman WHITEHOUSE. The second question is: Where existing domestic violence laws otherwise restrict gun possession by a stalker or an abuser, does the difference between a cohabiting victim and a non-cohabiting victim raise any constitutional issues?

Ms. MALCOLM. No.

Chairman WHITEHOUSE. Okay.

Ms. MALCOLM. Can I add something?

Chairman WHITEHOUSE. Well, my time is up, and so let me turn to Senator Durbin.

[Laughter.]

Senator DURBIN. Mr. Daniel, I am sorry that I was not here to hear your testimony, but I have read it carefully, and I thank you again for being here to tell the tragic story of your sister.

And from what I have gleaned from your testimony, the key element here was that her former husband had access to a gun over the Internet, where he was not subject to any kind of background check. Had he been subject to one, he might have been caught and stopped from purchasing the weapon.

Mr. DANIEL. Had he gone to a Federal licensed dealer, he would have definitely been denied access because his record was entered already as an abuser.

Senator DURBIN. You probably said this for the record, but it bears repeating if you have not. As a person who owns guns, a member of the NRA, as you said, conservative by nature, are you worried, offended, or do you have any concerns over a requirement in the law that would close the gun show loophole and would, in fact, require that we inquire of all purchasers, whether they are, in fact, prohibited from purchase because of a conviction of a felony or because of a state of mental instability?

Mr. DANIEL. None whatsoever, Senator. I believe most of gun owners would agree with me that there should be a background check done on all gun sales regardless.

Senator DURBIN. Mr. Daniel, I am from downstate Illinois. Owning guns is part of growing up and part of most families, and they would agree with you.

Mr. DANIEL. Most of my friends are hunters, NRA members, and we often speak of this, and I have not had a person yet say, "No. Why do you want to do this?" Just to me it is common sense that as a gun owner I certainly do not want guns to fall into the hands of criminals or abusers, because it makes the rest of us look bad.

Senator DURBIN. Professor Malcolm, do you believe that victims of domestic abuse are safer if their abusers are permitted to carry guns while they are the subject of temporary restraining orders? You have to turn your microphone on.

Ms. MALCOLM. Sorry. I think that to know that that person actually is an abuser, he is entitled—and I am assuming it is a he. He is entitled to have a hearing first before his gun or any other weapon is taken away.

Senator DURBIN. Doesn't the issuance of a temporary restraining order suggest in most cases a hearing?

Ms. MALCOLM. It does, but not in these bills. They are able to accuse the person, their guns or weapons are taken away, and then they have the hearing.

Senator DURBIN. But in these bills, we are talking about convicted stalkers, convicted domestic violence perpetrators, and those who are subject in the Blumenthal bill to a temporary restraining order. In each of those cases, aren't we talking about a court hearing before the determination?

Ms. MALCOLM. We have been in the past. I think that this law would change it so that in order to protect the woman, there is this opportunity to make the allegation that guns get taken away and then they have the hearing.

Senator DURBIN. There is no question that there can be ex parte hearings because in some instances, the person who is the subject of the order will not appear. That is a reality. I have been through that many years ago when I practiced law. So are we in a situation now where a woman terrorized by a boyfriend or former spouse is at his mercy as long as he refuses to come to court by your analysis?

Ms. MALCOLM. No. I think once you agree to hold the hearing, if he does not show up, then at least you have given him the opportunity to be heard, so I think that that provides a fair chance for evidence to come out on both sides. That is a concern.

Senator DURBIN. And once the temporary restraining order is issued to protect the woman—we are using the case of a woman

here—to protect the woman from the stalker, the abuser, the person who is perpetrating domestic violence, once that is issued, do you still quarrel with the notion that we should at that point take the gun away from that person?

Ms. MALCOLM. No. I think that once there has been a fair hearing and evidence has been presented, then if this person does seem to be really posing a threat, I think that that is fair.

Senator DURBIN. I would like to ask, Dr. Campbell, what you think about this argument, the course of hearings and such, while we are dealing with perhaps a woman who has been terrorized or has evidence of abuse to present to the court.

Ms. CAMPBELL. In order to obtain a temporary order of protection, or an emergency order they are sometimes called in some States, there is a hearing. A judge has to issue that temporary order. The permanent or long-term orders are—there is a fuller hearing, and that is when perpetrators have the opportunity to appear.

Senator DURBIN. I have been through this. Anyone who has had a domestic practice has gotten a phone call, you know, “I am scared of this guy.” It does not happen often, thank goodness. It was not in my practice. But it does happen. The first instinct of a lawyer, the first instinct of most persons, protect the person who is being threatened. Argue it out in court later on, but first protect the person who is being threatened, the children who are being threatened. I think that is the premise of this whole discussion.

Ms. CAMPBELL. Right, and a judge does have to issue that. A judge, like we have heard here, who is concerned with a level playing field in issuing that order, wants to hear evidence before that temporary order is issued.

Senator DURBIN. Mr. Chairman, I want to thank you for this hearing and Senator Klobuchar for sponsoring this important bill, which I certainly support in its entirety. It is sad to comment in this day and age that this is one of the few hearings on the subject and that it has been over a year since we have seriously debated this matter on the floor of the United States Senate. While gun violence perpetrated by contractors, facilitated by straw purchasers, sadly the result of a system which does not protect victims like mothers, women, and children, continues.

Thank you for calling our attention to it today. I hope it will inspire us to do something.

Chairman WHITEHOUSE. You, Senator Durbin, have been a leading advocate in the Senate in this area for a very long time, and your home State of Illinois was extraordinarily ably represented on the panel by Mr. Daniel. So Illinois shines today in this hearing room.

I will turn now to Senator Klobuchar. We are going to have a second round of questioning, and then we have to break up before 1 o'clock.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

Dr. Malcolm, I know you wanted to follow up on something that Senator Whitehouse was focusing on when his time ran out. I wanted to get at this issue, and maybe this is what it is about. I am supportive and a cosponsor of Senator Blumenthal's bill. I think

it is a good idea on the temporary restraining orders and very important.

But let us just put that aside for right now and talk about permanent restraining orders that are in the law, the Federal law right now. If you get a permanent restraining order, then you cannot get a gun. Do you support that?

Ms. MALCOLM. Yes, I do.

Senator KLOBUCHAR. Okay. Great. And then if you would extend that to dating partners—see, this is what I want to get at, this issue that Justice McCaffery and the sheriff have identified here, which is what my bill does. A big part of my bill was extending that definition of people who get the restraining orders or get a conviction to be victims who are dating partners. Do you support that piece of it?

Ms. MALCOLM. I think after there is a full hearing so that all the evidence—

Senator KLOBUCHAR. But there would be, by its nature there is a full hearing when you get a permanent restraining order.

Ms. MALCOLM. I think that that is fair. I do not think it should be retroactive to everybody who has ever been convicted in the past or accepted a guilty plea. But I think that after a full hearing, then that is reasonable.

Senator KLOBUCHAR. The other thing I was thinking about, and I think the numbers you gave on the reduction of crime rates—and I wanted to get Dr. Campbell's view of that because I know that some of the work we have done here with violence against women and the work that Justice McCaffery has done when he was in law enforcement and doing more—we have a domestic violence court in Minnesota. Certainly the sheriff talked about what they have been doing in Wisconsin under his leadership—has made a difference, and we have seen some reduction in those rates, and I wondered if, Dr. Campbell, you would comment on that, and comment particularly on domestic violence and what we are still seeing, however, in terms of the numbers.

Ms. CAMPBELL. We are extremely pleased and I think we should all be very proud that the domestic violence homicides have gone down. But, clearly, from the data, they have gone down in part, in great part because of the gun restrictions that were put on known domestic violence offenders, and that has been upheld by the Supreme Court.

That is clear that that is where those reductions have come from, and yes, we need to do more to reduce the domestic violence homicides by other means, to be proactive, to be preventive. But we can continue to reduce the domestic violence homicides with guns if we continue to expand the legislation that allows us to restrict possession.

Senator KLOBUCHAR. To me, this looks at just refining the law as we see when things change and you have a lot of people that date that still get involved in domestic violence. And, also, when I hear these—because I know as a former prosecutor, you would always want to get out there with, hey, we reduced crime, great, we have done this and this. But, in fact, when you are victim of crime, as Mr. Daniel knows, those states do not mean anything to you,

when it is your sister who is killed, or when it is your child who is killed.

And so the way I look at this is it is a way to build on some of the work that has been done in the domestic violence field and to understand that we see a changing situation with the population. And laws cannot be static. We have to be as sophisticated as the people that are breaking them, and that is what this is really about. And I just wondered if you could maybe share a comment on that.

Sheriff SCHMALING. Well, when you look at—first of all, let me ask you, what is your question with respect—

Senator KLOBUCHAR. The question is about how the situations have changed with dating partners, the need to update, and then I think, second, in part because of the Internet, which has some great things but also has meant there is just more and more stalking and there is more and more ways for people to track people down, whereas maybe in the past they could just kind of hide and get a new address or a new phone number, why we would need to have a bill like this pass.

Sheriff SCHMALING. Certainly. And I can tell you from what I have seen—and I have testified about this earlier—we are seeing more dating partner situations as opposed to spouses involved in domestic violence cases. And we have heard the stats, that more women are killed by their abusive boyfriends than their abusive spouses—abusive husbands, rather.

That said—and we talk about stalking and how that relates, and I have shared the stats that we have had here in Wisconsin, from 2015 to 2013, 29 domestic violence homicides, and all of those were precipitated by history of stalking behavior. That stalking behavior, technology is great, I will be the first one to admit it. I am glued to that smartphone these days.

Senator KLOBUCHAR. I appreciate that you have not done it while I was talking. Pretty good.

[Laughter.]

Sheriff SCHMALING. So, yes, we are glued to these devices today, and they can be used to facilitate criminal behavior as well. We see more and more of that. I just do not know how we would go about regulating that sort of behavior when it comes to technology.

Senator KLOBUCHAR. What I was meaning is this stalking, the reason we have this stalking bill in there is that we have seen—I think there was some recent estimate of 12,000 convicted stalkers in 20 States right now who could get a gun. So we have seen some—because of this new technology, there are just new ways to find people who wish that maybe they could not find.

Sheriff SCHMALING. It certainly has made it much easier.

Senator KLOBUCHAR. Right. All right. Thank you very much.

Chairman WHITEHOUSE. Senator Blumenthal.

Senator BLUMENTHAL. Thank you. Thank you very much.

Let me ask, Justice McCaffery, you said earlier that judges have to provide a level playing field when an abuse victim requests a TRO, temporary restraining order. Do you believe that judges do provide that level playing field? Or do they hand out TROs casually and willy nilly?

Justice MCCAFFERY. All jurists that I am aware of, Senator, take this very seriously, especially when it comes to victims. We in Philadelphia, and for that matter in Pennsylvania, have been on the leading edge, the cutting edge of protecting women that have gone through these types of traumatizing events. And, again, as I said earlier, to us it is far, far more than just handguns, long guns. To us it is all domestic violence. And, yes, judges do take it seriously.

We have a police department now where we call it Directive 90 that makes sure that our police officers fill out a specific form, not only fill out but follow up on all domestic abuse allegations. And the bottom line is it is one of our most—other than child abuse, special victims abuse, it is one of our most important criminal investigations.

So, yes, the answer, the short answer is they take it very seriously.

Senator BLUMENTHAL. Dr. Malcolm, do you dispute that—

Ms. MALCOLM. Whether they take it seriously or not? No, I do not dispute—

Senator BLUMENTHAL. Well, let me—they take it seriously and they require a showing of facts indicating dangerousness and threat.

Ms. MALCOLM. I am sure that that is what they do now. It is just that you need two people. You need the person who is being accused to be able to present their facts and not just one person who comes in and is frightened or pretending to be frightened, or whatever, or just trying to get to the head of the list, as we heard earlier.

Senator BLUMENTHAL. Well, you have heard the testimony about when you say “pretending to be frightened,” how much—

Ms. MALCOLM. Well, using that—

Senator BLUMENTHAL [continuing]. How much courage it takes, how much strength and resoluteness it takes for a woman even to seek a temporary restraining order, not to mention divulge—

Ms. MALCOLM. I think that that is true but—

Senator BLUMENTHAL [continuing]. Very private and sometimes embarrassing facts to a complete stranger.

Ms. MALCOLM. But we also heard from the judge that there are people who game the system. I mean, I know it must take a tremendous amount of courage, and that is why I think women should be able to protect themselves. They cannot really, even with restraining orders, depend on the police to protect them.

There was an important case in the District of Columbia in 1981 with three roommates, women roommates—

Senator BLUMENTHAL. Why would a woman game the system to protect herself from a dire and dangerous physical—

Ms. MALCOLM. Well, we heard from the judge just this morning that there were all of these long lists of custody cases, and if she says that she is worried about an abuser, it gets her to the top of the list. That is something I would not have known had he not made that comment from his experience.

Senator BLUMENTHAL. And aren't there proceedings without the other side represented, ex parte proceedings, in many other circumstances where equally important decisions are made, such as

searching houses, surveilling telephones, putting liens on property, both civil and——

Ms. MALCOLM. I think if that is the case, then we do not need to add another one to it. I do not think that people's homes should be searched for weapons on the mere allegation of some other person who they have had no opportunity to refute, and——

Senator BLUMENTHAL. Well, we are not talking about——

Ms. MALCOLM. It is dangerous——

Senator BLUMENTHAL [continuing]. A search for weapons——

Ms. MALCOLM. For the police to go in there without this person even having notice that this has happened. I think that it does not provide the opportunity for evidence from both parties, and I think that is necessary. I realize it is very difficult for women, frightening, to make allegations, and many never do because they are so frightened, and there is a whole support network to help these people. But I think that all that being said, from the evidence that I have seen, half of the accused persons after the hearing are found not to be guilty. So I think that they need an opportunity to be heard.

Senator BLUMENTHAL. And at some point there is an opportunity to be heard, correct?

Ms. MALCOLM. There is right now, yes.

Senator BLUMENTHAL. And if there is a temporary restraining order and if the proposal I have made became law, there would be an opportunity to be here——

Ms. MALCOLM. When?

Senator BLUMENTHAL [continuing]. Within 2 weeks.

Ms. MALCOLM. Within 2 weeks, so immediately the guns get taken away or any other evidence——

Senator BLUMENTHAL. But not a search——

Ms. MALCOLM. And in 2 weeks or 3 weeks——

Senator BLUMENTHAL [continuing]. Of the house, right?

Ms. MALCOLM. Later, you know, you are guilty until you prove yourself innocent in that position, that your property gets taken away immediately, your home gets invaded, police are sent, with all the danger that that implies, especially if this person has no notion this is even happening, and later on he gets a chance to say something. I do not find that due process.

Senator BLUMENTHAL. So you are against—you are opposed to any kind of temporary restraining order?

Ms. MALCOLM. I am not if there is a hearing at the time for the temporary restraining order, only if the hearing is 2 weeks, 3 weeks, some other time later.

Senator BLUMENTHAL. What if the assailant, the abuser, is unavailable?

Ms. MALCOLM. Well, if you provide the opportunity for that person to come to the hearing, you notify that person that there is this hearing and they do not show up, then that is their fault. But at least you are providing the opportunity for the judge to——

Senator BLUMENTHAL. And how much notice——

Ms. MALCOLM. Hear both sides?

Senator BLUMENTHAL. How much notice and time would you give that person?

Ms. MALCOLM. I do not know. I mean, that is——

Senator BLUMENTHAL. These are practice realities of trying to protect people, Dr. Malcolm, when—

Ms. MALCOLM. I will tell you a practical reality, too. The police—

Senator BLUMENTHAL [continuing]. An abuser—when an abuser—

Ms. MALCOLM. Cannot be everywhere all the time.

Senator BLUMENTHAL [continuing]. When an abuser represents a threat and a judge has to protect a person, man or woman—

Ms. MALCOLM. There are other ways—

Senator BLUMENTHAL [continuing]. From an assailant who has a gun and has indicated that he wants to harm her—

Ms. MALCOLM. You are not—

Senator BLUMENTHAL [continuing]. Then—I do not know whether you have ever been in that responsibility or been in a law enforcement responsibility, but these are more than theoretical or abstract ideas. They are practical, threatening realities.

Ms. MALCOLM. They are, but you do not know for sure what the story is unless both people, as our Constitution demands, have an opportunity to be heard. That is called due process of law, that a person has an opportunity before something is done against him and not 2 weeks, 3 weeks, several months later.

Senator BLUMENTHAL. I would just suggest—

Chairman WHITEHOUSE. So just to be clear, you do not think that the police should be allowed to execute a lawful search warrant for a firearm?

Ms. MALCOLM. I think that they can be allowed to, but they need to have—for a temporary restraining order, there ought to be a hearing before that happens.

Chairman WHITEHOUSE. For a search warrant, there is not a hearing. So if your rule applies to a temporary restraining order, the same rule would apply to a search warrant, which means, to quote, I think, what you said earlier, police should not be allowed to go into someone's house looking for a firearm, which is exactly what they do when they execute a search warrant. You really—

Ms. MALCOLM. But they have to have—

Chairman WHITEHOUSE [continuing]. Do not think that should be done?

Ms. MALCOLM. But they have to have evidence—

Chairman WHITEHOUSE. So they go to the TRO—

Ms. MALCOLM. They cannot just willy nilly go into somebody's house and the police, when they often go in, more violence takes place.

Chairman WHITEHOUSE. Do you think there is a higher evidentiary standard for a search warrant than there is for a temporary restraining order?

Ms. MALCOLM. I think that for a temporary restraining order under these conditions where you have one person coming in and making allegations that you need to have the other person heard before their property is taken away.

Chairman WHITEHOUSE. Isn't that what happens in a search warrant, too? A complainant comes in to the police, makes an allegation, the police take that before a judge. If the evidence is credible, they execute the search warrant. That happens every day in

law enforcement. Are you really suggesting that police should not be authorized to do that?

Ms. MALCOLM. I am not suggesting that the police should not be authorized after getting a search warrant, but I think—

Chairman WHITEHOUSE. But just not after getting a temporary restraining order.

Ms. MALCOLM. A temporary restraining order to protect somebody where only that one person has been heard by the judge—

Chairman WHITEHOUSE. That is exactly the circumstance in a search warrant. So if that is your logic, it also must apply to search warrants, and that puts you in the position of saying that search warrants should not be executed by the police. I really do not think that makes a lot of sense.

Ms. MALCOLM. I do not think it makes a lot of sense to invade someone's house and take their property without their having had a chance to be heard about it.

Chairman WHITEHOUSE. Which is precisely what a search warrant does. So obviously you do not think search warrants are appropriate, and if that is your position, then that is your position. Everybody is entitled to have a position.

Ms. MALCOLM. I think that the way that the law now works—you are changing the way that the law now works in these cases. The way the law now works, there is an opportunity for people to be heard, and you have asked me whether—what if they do not show up? Well, then, that is their problem. But at least there is an opportunity to be heard before they are put under a temporary restraining order, and I think that is the issue here.

I also—if I can just make one other comment, I also think that with temporary restraining orders, with permanent restraining orders, all these issue, the potential victim has to depend on the police being able to be there in time, and I think that that is a real concern. This case that I was going to mention, *Warren v. District of Columbia*, where there were women who were abused and called and the police never came, and they sued the police, the judge said, "It is a fundamental principle of American law, government and its agents are under no general duty to provide public services such as police protection to any individual citizen."

So I think in that case, since people cannot really depend on the police and the police cannot be everywhere, they need to be able to be armed to protect themselves.

Chairman WHITEHOUSE. Mr. Schmaling, any last words with respect to that?

Sheriff SCHMALING. Yes, I agree. We cannot be everywhere as law enforcement. I am sure the judge could comment on that in his days of boots-on-the-ground policing. We certainly cannot be everywhere. But we do count on our citizens to call us, and we do encourage them to exercise good due diligence. And I certainly do not—I certainly would never tell someone they should not arm themselves if they are a law-abiding citizen and exercise their Second Amendment. There is nothing wrong with that.

The issue we have is those who should not have weapons, those who are convicted domestic violence abusers, those who are stalkers, those who represent a public safety threat to not only the vic-

tims but to law enforcement. That is what this is about. It is common-sense legislation.

Chairman WHITEHOUSE. Perfect words to close on. I will express my—

Senator BLUMENTHAL. If I may just add one quick note.

Chairman WHITEHOUSE. Sure.

Senator BLUMENTHAL. And I will supplement it for the record, but the notion that action by the Government in law enforcement requires both sides to be heard before there can be a wiretap or surveillance or a search warrant, search and seizure, put aside domestic violence, would not only undercut but cripple the protection of innocent citizens. As the Chairman well knows from his experience in the intelligence area, surveillance is done when one side, unrepresented perhaps not only weeks, months, and for longer periods of time, when there is sufficient threat. And our constitutional system depends on a balance of the exigencies of threats to individual safety or our national security as against those constitutional rights that may be temporarily infringed upon to—

Chairman WHITEHOUSE. As Attorney General, I actually had to go in and get some of those warrants myself. That is one of the restrictions the Rhode Island law puts on that exercise of power, that the Attorney General shall appear in person before the presiding Judge of the Superior Court. So we are well familiar with that, we three prosecutors.

So the hearing will remain open for an additional week if anybody wishes to add—I should say the record of the hearing will remain open for an additional week.

[Laughter.]

Senator BLUMENTHAL. Anybody wanted to remain—

Chairman WHITEHOUSE. But I have to say how very, very grateful I am to Senator Klobuchar and to Senator Blumenthal for their leadership in this area, how extraordinarily grateful I am to the witnesses for being here, particularly for those who brought personal stories that have had such dramatic effect in their lives. And to those of you who are in the audience, thank you for your advocacy. And for those of you who have suffered losses in this area, we are with you. We will not forget. And we appreciate very much what you are doing.

The hearing is adjourned.

[Whereupon, at 12:33 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“VAWA Next Steps: Protecting Women from Gun Violence”

Wednesday, July 30, 2014
Dirksen Senate Office Building, Room 106
10:00 a.m.

Dr. Jacquelyn Campbell
Professor and Anna D. Wolf Chair
Department of Community-Public Health, Johns Hopkins University School of Nursing
Baltimore, MD

Dr. Joyce Lee Malcolm
Patrick Henry Professor of Constitutional Law and the Second Amendment
George Mason University School of Law
Arlington, VA

Christopher Schmaling
Sheriff
Racine County
Racine, WI

Hon. Seamus McCaffery
Justice
Supreme Court of Pennsylvania
Harrisburg, PA

Elvin Daniel
McHenry, IL

Testimony before US Senate July 30, 2014

Jacquelyn Campbell, PhD, RN, FAAN, Anna D. Wolf Chair and Professor

Johns Hopkins University School of Nursing

Senators, I am grateful for the opportunity to testify in these important hearings today. I will present data from my own research on domestic violence homicide of women, as well as from other important research and national databases on the subject.

The United States has higher a homicide rate of women than all other westernized countries and among the highest rate in the world. This disparity is particularly pronounced for homicides of women committed with guns, in which the country's rate exceeds by 11 times the average rate in other comparable countries (Hemenway, Shinoda-Tagawa & Miller, 2002; Stockl et al, 2013).

Much of this fatal violence against women is committed by intimate partners. Although neither entirely complete and nor without coding errors, the FBI's Supplemental Homicide Reports are the most complete national database of homicide with information on the relationship of the perpetrator to the victim. In the most recent data available (2011), at least 45% of the murders of women were committed by a current husband or boyfriend or ex husband. If we only examine the homicides where the perpetrator relationship to the victim was identified, more than half (54.2%) of the homicides of women are committed by a husband, boyfriend of former husband (Violence Policy Center 2013). There were 10 times as many women killed by a current husband or boyfriend or ex-husband (926) as by a male stranger (92).

The majority of this violence is perpetrated with firearms. In the Violence Policy Center analysis of the 2011 murders of women, there were 1,707 females murdered by males in single victim/single offender incidents in 2011. Of those incidents of homicides in which the weapon could be determined (1,551), more of these homicides were committed with firearms (51 percent) than with any other weapon.

Women are also killed by partner or ex-partners when they are pregnant. In an important study of maternal mortality in the state of Maryland from 1993-2008, Dr. Diana Cheng and Dr. Isabelle Horon examined medical records of women who died during the pregnancy and the first postpartum year. Homicides (n=110) were the leading cause of death, and firearms were the most common (61.8%) method of death. A current or former intimate partner was the perpetrator in 54.5% (n= 60) of the homicide deaths and nearly two-thirds of intimate partner homicide victims in their study were killed with guns. In a national study of pregnancy associated homicide, firearms again accounted for the majority of homicides (56.6%) (Chang et al, 2005).

Research my peers and I have conducted provides further insights into how firearm access and domestic abuse elevate the risk of homicide for American women, and explain why existing federal laws restrict certain convicted domestic abusers from buying or possessing guns.

Survey research of battered women indicates that when a firearm is present, a majority of abusers will use the gun to threaten or injure the victim. In a study Susan Sorenson and Douglas Weibe conducted with over 400 women in domestic violence shelters across California, two-thirds of abused women who reported a firearm in their home said their intimate partner used a gun against them, with 71.4% threatening to shoot/kill her and 5.1% actually shooting at her.

Among the most rigorous research available on factors that influence a woman's likelihood of homicide is the national, 12-city case-control study of intimate partner homicide (husband, boyfriend, ex-husband, ex-boyfriend) conducted by myself and colleagues. In the study we compared a group of abused women who were murdered by their partner or ex-partner to another group of abused women who were not. Controlling for other factors, we found that gun access/ownership increased the risk of homicide over and above prior domestic violence by 5.4 times. Gun access was the strongest risk factor for an abused woman to be killed by her partner or ex-partner. Among perpetrators who committed suicide after killing their abused wife, girlfriend or former wife or girlfriend, gun access was an even stronger risk factor. In those cases, access to a firearm increased the chances of the homicide-suicide by an adjusted odds ratio of 13.

Neither of these studies found evidence that women frequently use firearms to defend themselves against abuse or that access to a firearm reduces the risk of homicide for a woman. In the survey conducted by Sorenson and Wieber, fewer than 1 in 20 abused women that had access to a gun reported having ever used it in self-defense against their abuser (4.5% of the total). And our research showed that for the relatively few women in the study who owned a gun, firearm possession had no statistically significant effect on her risk of being killed by an intimate partner; it neither increased nor decreased her risk.

In leaving out abusive dating partners, current federal firearm prohibitions ignore the perpetrators of a large and growing share of intimate partner homicides. US Department of Justice data shows that the share of domestic violence homicides committed by dating partners has been rising for three decades, and boyfriends now commit more homicides than do spouses. And this data is likely an underestimate because it does not account for homicides committed by ex-boyfriends, which are seldom accurately coded in the Supplemental Homicide Reports. Our national case control data study of 12 cities found approximately 19% of intimate partner homicides are committed by an ex-boyfriend (Campbell, Webster, McFarlane et al, 2003). Estimating from that proportion, approximately 300-500 female intimate partner homicides each year should be added to the approximately 1000 already counted in the Supplemental Homicide Reports. S. 1290, the Protecting Domestic Violence and Stalking Victims Act, would expand our national domestic violence laws to include both former and current dating partners who together represented 48% of the male domestic violence homicide perpetrators in our study, and is therefore an extremely important way to keep women safe and save lives.

There is also evidence that state laws to strengthen firearm prohibitions against domestic abusers reduce intimate partner homicide. In two separate studies — one of 46 of the largest cities in the US (Zeoli and Webster, 2010) and one of at the state level (Vigdor and Mercy, 2006) — researchers found that state statutes restricting those under domestic violence restraining orders from accessing firearms are associated with reductions in intimate partner homicides, driven by a reduction in those committed with firearms. Vigdor and Mercy's study found that state laws prohibiting firearm possession by people under domestic violence restraining orders (along with entering state domestic violence restraining orders into the federal database) reduced intimate partner homicide of women by firearms by 12-13%, decreasing overall intimate partner homicide by 10%.

In conclusion, women who suffer abuse are among the most important for society to protect. Congress has an opportunity to do so by strengthening the laws to keep domestic abusers from getting guns. And ample scientific evidence shows that in doing so you will save lives.

I thank you very much for this opportunity to testify about this important legislation that can help save women's lives.

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SENATE JUDICIARY HEARING
"VAWA Next Steps: Protecting Women from Gun Violence"

Joyce Lee Malcolm
Patrick Henry Chair of Constitutional Law
and the Second Amendment
George Mason University School of Law

We are all concerned about protection of victims of domestic violence and more generally public safety. While current law is not perfect, it has the great virtue of according with the long-standing traditions of American law by protecting the rights of all concerned, rights recognized by the Supreme Court as "deeply rooted in the Nation's history and tradition" and "fundamental to *our* scheme of ordered liberty."ⁱ The two bills under consideration, by contrast, ride rough shod over those key rights, over our Second Amendment right to keep and bear arms, our Fourth Amendment right against unreasonable search and seizure, and the all important right of Due Process. To put the problem these bills address, protection of women, in perspective, I will begin with a few statistics then address the way in which these bills impact the basic rights in question.

First, a fact we should celebrate rarely mentioned by those desiring more gun control, from 1992 to 2010 the homicide rate in this country has declined sharply, falling by nearly half.ⁱⁱ Looking at homicide by sex, while female victims were more likely than men to be killed by an intimate, the rate of family violence fell between 1993-2002 and throughout the period accounted for only one in ten violent victimizations and only 11% of reported and unreported violence between 1998 and 2002.ⁱⁱⁱ In those years the most frequent type of family violence was simple

assault, while murder of a family member was less than half of 1%.^{iv} For women in particular, after 1980 the proportion of female intimate homicide victims killed by guns decreased while the proportion killed by other weapons increased.^v More generally how were these victims killed. Between 1980-2008 17.4% of female homicide victims were killed by guns, 45.3% by arson and 43.9% by poison.^{vi}

Although trends are in the right direction, people are still being assaulted and some of them killed, so it is understandable that better procedures and laws are sought. But the way in which the bills in question plan to accomplish this would do violence to our system of individual rights, fairness, and due process.

The Klobuchar Bill and Lautenberg Amendment greatly expand the sorts of individuals who fall within its reach by adding the crime of stalking, a misdemeanor crime, and including a series of individuals who were or are non-co-habiting, those dating, formerly dating or known to the potential victim. The opening sentence of the fact sheet, "Women Under the Gun," from the Center for American Progress, demonstrates how broad the new standard would be, referring to sexual assault on college campuses and military violence by a partner.

In addition to netting large numbers of innocent individuals, the bill would also make the loss of the right to be armed retroactive. Thousands of individuals have made plea bargains. In federal court felony convictions 79% make a guilty plea.^{vii} These individuals would not have known that part of the guilty plea would be to be deprived of the ability to own firearms forever.

The Blumenthal Bill goes several steps further in its attack on traditional rights. It would permit the seizure of firearms from anyone subject to a temporary

restraining order upon the filing such a complaint, and before the individual complained of had an opportunity to be heard. The police would be sent to search for, and forcibly seize any firearms found in his possession. This is a serious infringement of due process, an *Alice in Wonderland* world in which, like the Red Queen, the new rule is "Sentence first! Verdict afterwards." After his property is taken, the defendant would have to prove himself innocent to get his property back. Although half of those who have been subject to temporary restraining orders are subsequently found not guilty, the bill tilts sharply in favor of the plaintiff. Since the drafters favor taking guns away from civilians, this works to accomplish that goal. Individuals who have committed violent offences are already prohibited from possessing firearms. The new names are to be added quickly to the NICS list but that would take some time.

Law-abiding people in this country have a right to keep firearms for their defence and other lawful purposes. Taking these guns without due process violates that fundamental right. Law-abiding people in this country are to be free from unreasonable search and seizure. Yet the bills would permit their homes to be ransacked for weapons on the mere allegation that they pose a danger to someone else. The taking of property, the violation of rights without due process on the mere assumption it will protect someone else is deeply offensive to our legal tradition. Justice Antonin Scalia, in *District of Columbia v. Heller* is emphatic : "the enshrinement of constitutional rights necessarily takes certain policy choices off the table."^{viii} The policy choices in these two bills must be taken off the table.

ⁱ *McDonald v. City of Chicago*, 130 S. Ct. at 3036.

ⁱⁱ "Homicide Trends in the United States, 1980-2008," Bureau of Justice Statistics, U.S. Department of Justice, November, 2011, p. 2.

ⁱⁱⁱ "Family Violence Statistics," Bureau of Justice Statistics, U.S. Department of Justice, June, 2005, p. 1.

^{iv} "Family Violence Statistics," p. 1.

^v *Ibid.*, p. 20.

^{vi} "Homicide Trends," p. 10.

^{vii} "Family Violence Statistics," p. 2.

^{viii} *District of Columbia v. Heller*, 128 S. Ct. at 2822.

Written Testimony of Sheriff Christopher Schmaling
Before the
Committee on the Judiciary, United States Senate
Hearing on VAWA Next Steps: Protections Women from Gun Violence
July 30, 2014

Chairman Whitehouse, Senator Grassley, Senator Leahy, members of the Committee, thank you for hosting this hearing today, and thank you for the opportunity to testify. My name is Christopher Schmaling. I am the sheriff of Racine County, Wisconsin and have been a law enforcement officer for 19 years. I am a conservative Republican, and I'm here today to ask you to pass two laws that will protect our sisters, our mothers, and our daughters by keeping guns out of the hands of domestic abusers. The first bill is the Protecting Domestic Violence and Stalking Victims Act of 2013, which will block abusive boyfriends and convicted stalkers from possessing guns. The second is a bill that would require criminal background checks for gun sales by unlicensed sellers.

More than half of the women murdered each year are killed by intimate partners or family members. That's 48 women killed by husbands and boyfriends each and every month.¹ We know that people with a history of committing domestic violence are more likely to become killers—and we know the role that firearms play: When a gun is present in a domestic violence incident, the chances that a woman will be killed increase by 500 percent.²

These numbers are tragic. As the top law enforcement officer in Racine County and over my two decades on the force, I've seen far too many of these tragic incidents firsthand.

I want to tell you about one such domestic violence incident, a tragedy that changed my career. In 2004, Teri Jendusa-Nicolai was violently abused and left for dead by her ex-husband. Teri had endured three years of a violently abusive marriage before divorcing him, and had then taken out multiple restraining orders against him over several years. That horrible day in 2004, he threatened her with a .38 caliber handgun, beat her with a baseball bat, bound and gagged her, and left her in a storage unit to die. My partner and I were the lead investigators on the case, and through some good breaks and some great luck, we rescued Teri before she died. As a result of the ordeal, Teri had a miscarriage and had to have her toes surgically removed.

Teri is one of the most wonderful people I've ever known, and has been a tremendous advocate for victims of abuse in the decade since she was nearly killed at gunpoint. We've become very close since then, and my eyes have been opened to the reality of domestic violence and gun violence. I've also become close with Elvin Daniel, who is sitting here beside me today, and have been moved by his sister Zina's story.

¹ Everytown for Gun Safety analysis of FBI Supplementary Homicide Reports, 2008-2012.

² JC Campbell et al, "Risk factors for femicide in abusive relationships: results from a multisite case control study," *American Journal of Public Health*, July 2003.

I'm proud to say we are the first county in the state of Wisconsin to have a full-time domestic violence specialist. We work closely with victims to figure out how best to protect them. We've made this very intimate and very deadly area a top priority for our department. So much of the crime we face in Racine County is intimate partner abuse, and any cop will tell you that domestic violence calls are the most dangerous calls. The last thing a victim needs, and the last thing my officers need, is for these dangerous abusers to be armed with illegal guns. We respond to domestic violence incidents differently than other calls, because these are "heightened risk" calls—we send more officers, we go ahead and assume that guns will be involved, because they are so often involved. Abusers routinely threaten to shoot my deputies and I upon arrival at domestic violence calls. In fact, according to FBI data, over 150 law enforcement officers have been killed in action while responding to domestic disturbances.³

I'm proud to have worked on a great domestic violence bill in Wisconsin in 2014 known as "The Safe Act," a bill that ensures guns are kept out of the hands of domestic abusers. This bill was passed by a bipartisan majority and signed by our Republican governor Scott Walker. This year alone, similar bills were passed with bipartisan support in New Hampshire, Minnesota, Vermont, and Washington. And in Louisiana, where another Republican governor—Bobby Jindal—signed the bill into law.

The first bill I'm asking you to pass today is the Protecting Domestic Violence and Stalking Victims Act of 2013, S. 1290, introduced by Senator Klobuchar. This bill would close a loophole that allows abusive dating partners to buy and have guns—simply because they are not married to their victims. And it would also block people with stalking convictions from having guns. Why is this bill so important? I can tell you firsthand that domestic violence is horrific, *whether or not* the abuser and victim are married. When we send our police into danger to respond to domestic violence calls, we send the same folks regardless of the couple's marital status. Dangerous boyfriends can be just as scary as dangerous husbands; they hit just as hard and they fire their guns with the same deadly force. In fact, according to FBI data, *more* women are killed in America by their abusive boyfriends than by their abusive husbands.

This past March, just a couple hours from Racine County, Cheryl Gilberg was killed by her ex-boyfriend in a domestic dispute. The killer apparently shot Cheryl with her own gun, after a struggle. According to news reports, she had been seeking a restraining order at the time of the killing. But in cases like Cheryl's, a restraining order isn't good enough. If you've never been married to your abuser, federal law likely will not stop him from buying a gun.

If Congress passes this bill, federal law will be catching up with the states. Among the 22 states that prohibit gun possession by domestic abusers subject to restraining orders, 19 of those states already include abusive dating partners. And 42 of our states have recognized that dating partner abuse is a form of domestic abuse by allowing victims to take out domestic violence restraining orders against their boyfriends.⁴

The second bill I'm asking you to pass today would require criminal background checks for gun buyers who shop with unlicensed sellers. Current federal law prohibits many abusers from buying guns,

³ Everytown for Gun Safety analysis of FBI data, 1980-2012.

⁴ Break The Cycle, available at: <http://www.breakthecycle.org/state-law-report-cards>

but only requires them to pass a background check if they buy a gun from a licensed dealer. This is a gaping hole in the law: It means a convicted wife-beater can slip through the cracks and get a gun simply by finding a seller who does not have his own gun store.

This is exactly what happened in Dane County: Tyrone Adair was a domestic abuser who had been convicted of battery twice, and was legally prohibited from owning a gun because of a restraining order. So instead of going to a gun store—where he would have had to pass a background check—he found an ad for a 9mm Glock in a local paper, and met the seller at a hardware store. There was no background check, though the seller did ask, and I quote, “You’re not going to go out and kill someone, are you?” Tyrone Adair used that gun on a horrific murder spree, killing his two daughters—ages 1 and 2—and killing their two mothers.⁵

Background checks work. Sixteen states and DC already require background checks for all handgun sales, and about 40 percent fewer women are shot to death by their husbands and boyfriends in those states.⁶ And background checks save law enforcement lives as well: about 40 percent fewer cops are killed with handguns in those states, as well.⁷

These are the cops that risk their lives when they respond to domestic violence calls, rushing in to the middle of very dangerous and very intimate situations. We see the terror that abusers can create when they are armed. We see the impact on their wives and girlfriends, and on their children. We’re major proponents of community policing in Racine County, and if I have my officers on the street, working closely with our residents, I want to know that our laws are doing everything they can to keep guns out of abusive hands.

So I’m here to speak for victims of abuse and to speak for my cops. I’ve made it a priority to talk to victims. I’ve seen the escalation over the years, from yelling, to battery, to homicide. When an abuser has a gun, the victims say to me, “Sheriff, is not a question of *if* he’ll use the gun to abuse me; it’s a question of *when*.” And I recognize the value of preventing even one gun from winding up in the hands of an abuser: one gun may translate into one more lives saved. So today, I’m asking you to pass S.1290, which will apply the same rules to all abusers, regardless of whether they are married to their victims or not—and will prohibit convicted stalkers from having guns. And I’m asking you to require criminal background checks for gun sales by unlicensed sellers, and ensure that abusers don’t get a free pass when they buy guns from them—often strangers they meet online, at gun shows, or through classified ads. The bipartisan bill introduced last year by Senators Joe Manchin and Pat Toomey would do just that, and it has already received the support of 55 senators.

I’m asking you today to stand up against abuse by fixing our out-of-date laws and passing this common-sense legislation. Thank you for your time and I look forward to answering your questions.

⁵ New York Daily News, Tyrone Adair, Man wanted in 4 Wisconsin slayings found dead, December 7, 2009.

⁶ Everytown for Gun Safety analysis of FBI Supplementary Homicide Reports and Florida Department of Law Enforcement, 2010, available at: <http://every.tw/1mwoqsA>

⁷ Everytown for Gun Safety analysis of FBI Data, 2001-2011, available at: <http://every.tw/1mwoqsA>

Justice Seamus McCaffery Testimony

Good morning, and thank you for the opportunity to address the members of this committee about the pending legislation dealing with the growing epidemic of domestic violence, and in particular, the Klobuchar (S.1290) and Blumenthal (S.2483) Bills.

It appears to me that the above Bills look to strengthen current federal domestic violence laws to bring them more in line with the current laws that many states have dealing with crimes of violence toward women/same-sex partners, a clearly laudable goal. Effectively strengthening such laws would seem to be an even more laudable goal.

I have spent most of my adult life in law enforcement. Those years include twenty as a Philadelphia police officer/detective, ten years as a trial judge in Philadelphia, four years as a statewide Superior Court (appellate) judge, and I am now serving my seventh year as a Justice of the Supreme Court of Pennsylvania.

I have dealt with domestic violence at literally every level of our system. Sadly, I can say with the certainty born of experience that our law enforcement community finds itself in a "reactive," not "proactive" posture, and operates as a reactive defense force. By that I mean that more often than not, law enforcement's involvement occurs "after the fact," i.e., after the violence has already occurred.

I fully support any efforts aimed toward helping to prevent/curtail domestic violence, including, for instance, your proposal to include "dating partners" as individuals subject to federal laws designed to prevent domestic violence. However, while there is no doubt that legislation of this kind is always well-intentioned, sometimes it can have unfortunate consequences that are neither foreseen nor anticipated.

During my evolution and journey from the role of police officer to appellate jurist, I have encountered many instances where society's collective effort to improve a given situation results in unintended harm. For example, for years, Pennsylvania had a 1.2 Blood Alcohol Content ("BAC") requirement in DUI cases. As a result of political pressure, that number was lowered and then lowered again to the current 0.8 BAC. Clearly, the aim of the legislation lowering the BAC was to help reduce the number of intoxicated drivers on our roads, an inarguably laudable goal that was achieved. Predictably, there was an increase in arrests. In Pennsylvania, when one is convicted of DUI, there is a mandatory suspension of driving privileges. Because our Commonwealth is primarily rural, with limited mass transit, many individuals with suspended licenses could not get to work, became unable to provide for their families or pay court-ordered child support, and ended up in yet another court for failure to pay. This is not to say that the BAC should be raised; it is just to provide an example of unintended consequences that can be quite unfortunate.

I understand that an individual's ability to obtain firearms is, and should be, of great concern in the context of domestic violence. However, I do not believe that additional legislation making it illegal for more categories of individuals to "possess" a firearm would necessarily contribute to increased deterrence for those individuals who will simply continue to do what they already do: obtain a firearm "off the street".

I do not believe that prohibiting "ownership and/or possession" of a firearm is the way to find an effective solution to the problem of domestic violence. As mentioned, individuals who possess "unlawful" firearms are unlikely to be deterred by these expanded laws. In my experience, when a firearm is used in a domestic violence crime, because it is often lethal, it garners the most press coverage. But I believe, based on what I have observed as a police officer and as a jurist at the trial and appellate levels, that assaults committed with knives, blunt objects, fists, etc., are far more common than those committed with guns. I further believe that there is a much more effective way to address assaults on women and same-sex partners, and to do so in a way without legislation that could have unanticipated, unintended, and negative consequences.

My suggestion to deal with the epidemic of domestic violence is to help law enforcement become more "proactive". Nothing is more frustrating for a police officer than to arrive at the scene of a crime where the perpetrator is known but cannot be found in the proximate vicinity of the victim. As I know from personal experience, police are on the front lines of the effort to combat domestic violence. Philadelphia has redesigned its police procedures to proactively confront domestic violence by requiring responding police officers to complete a detailed "Domestic Violence Report" after every domestic incident to which police are called. The police work with community organizations like Women Against Abuse to provide follow-up services for domestic violence victims, and the police also do their own follow-up investigations with the victims. All of these procedures are designed to reduce domestic violence assaults and homicides.

Further, if there is a protection from abuse order in place, and if the officer can be made aware both of the existence of the outstanding PFA and the fact that the individual is in close proximity, then the officer has a chance to make a real difference. Today, the technology exists for our probation and parole community to be able to monitor the exact location of individuals under their supervision by using GPS guidance systems connected to court-ordered "ankle bracelets". It is my belief that creating legislation, with adequate funding, that would require abusers to wear a GPS-capable device, monitored by local law enforcement and connected to the smart phone of the victim, who would receive a notification that the individual in question was within a specified range, would go much farther to decrease the number of assaults on women or same-sex partners than would yet more gun-prohibiting legislation that is so regularly ignored by those who would do their victims harm.

In my opinion, for real and effective deterrence, a GPS device, worn by an abuser and monitored by both police and the victim complainant, would help immensely.

Give law enforcement the tools and the ability to **prevent** a crime of domestic violence. Let law enforcement monitor the abusers and let the abusers know they are being monitored and the consequences of violating the orders against them.

Rather than making it ever easier to arrest/convict individuals and thus create a society where far too many individuals with convictions will find themselves incarcerated and be unable to get jobs, I believe the government should be thinking outside the box. When it comes to crime, technology can go a long way to help law enforcement become a "proactive" force instead of a "reactive" force. When it comes to domestic violence, an ounce of prevention, such as GPS-capable monitors would provide, will literally be worth more than hundreds of pounds of pages of legislation that simply continue to narrow the categories of individuals who may legitimately possess firearms. As has been shown over and over again, such legislation is routinely ignored by those truly looking to do harm to women and same-sex partners.

Thank you all for your diligent efforts to tackle this epidemic of domestic violence in our great nation.

Written Testimony of Elvin Daniel
Before the Committee on the Judiciary, United States Senate
Hearing on VAWA Next Steps: Protecting Women from Gun Violence
July 30, 2014

Thank you, Chairman Whitehouse, Chairman Leahy, Senator Grassley and the members of the Judiciary Committee, for holding this important hearing, and for the opportunity to speak with you this morning.

My name is Elvin Daniel. I am a salesman for Blackhawk Industrial, a large distributor of industrial supplies and equipment. I am a proud Republican and Constitutional Conservative. I'm a hunter. I own multiple guns and I enjoy shooting them with my family and friends. I am a strong supporter of the Second Amendment and a member of the NRA. And I also believe in sensible gun laws. I know that common-sense gun laws that protect public safety go hand in hand with the Second Amendment.

I am here today to speak for my sister, Zina, because she is not here to speak for herself. Zina loved life. All she wanted was to be a good mother to her two girls. She loved Disney World, Rick Springfield, and helping other people. She was a beautiful person and so full of goodness.

On October 21, 2012, I received a phone call that no one should ever have to receive, telling me that Zina had been shot and killed by her estranged and abusive husband. We later learned that the shooter had bought the gun through Armslist.com, an irresponsible Internet site that does not require background checks. It has been nearly two years since Zina was murdered and it is heartbreaking to know that our weak gun laws continue to allow dangerous abusers to buy guns without background checks.

Zina was married for 13 years to the shooter. She eventually left him because he abused her, physically and mentally. However, he continued to terrorize Zina, slashing her tires while she was at work, and threatening her physically. Zina went to court and obtained a domestic violence restraining order, telling the judge that his threats “terrorize[d] her every waking moment” and that she “[didn’t] want to die.”

Under federal law, this domestic violence restraining order prohibited the shooter from buying or owning a gun. If he had tried to buy a gun from a licensed gun dealer, he would have been required to take a background check. He would have failed that background check, and the gun store wouldn’t have sold him a gun.

But he didn’t go to a gun store. Instead, he logged onto Armslist and posted an ad saying he wanted to buy a gun. Within hours, he found an unlicensed seller with a .40-caliber FNH handgun for sale. Just two days after the restraining order was issued against him and entered into the National Instant Criminal Background Check system, the shooter met the unlicensed seller in a McDonald’s parking lot. He handed over \$500 and walked away with that handgun – the gun you see here, photographed by police in the spa where they recovered it after he murdered my sister. To this day, I am convinced that the shooter deliberately bought the gun from an unlicensed seller because he knew he couldn’t pass a background check—and that if he hadn’t been able to buy this gun, Zina would still be alive.

The next day, the shooter stormed into the spa where Zina worked in Brookfield, Wisconsin. He shot and killed Zina, murdered two other women, and injured four others before killing himself.

I have to live the rest of my life knowing that a simple background check might have stopped that gun sale and saved my sister’s life.

Now, I am helping to care for my two nieces, who lost their mother and who will have to grow up without her.

I'm here today for Zina. But I'm also here because stories like Zina's happen every day because of the serious gaps in our gun laws that continue to put women's lives at risk. I believe that we can find a way to protect women from gun violence and still protect the Second Amendment rights of law abiding gun owners.

How Can We Keep Women Safer in this Country?

I would like to share with you a little bit more about what I've learned about domestic violence and our gun laws. I believe that there are two steps that Congress should take to save women's lives:

1. Require background checks for all gun sales; and
2. Keep guns out of the hands of abusive dating partners and stalkers.

Guns, Violence against Women, and Federal Law

America's weak gun laws failed Zina, like they fail too many other American women every year. On average, 48 women are shot to death every month by a current or former husband or boyfriend.¹ Like Zina, more than half of women murdered with guns were killed by intimate partners or family members.²

There are two major gaps in federal law that allow dangerous abusers to obtain guns. First, in most states, abusers like Zina's estranged husband can avoid a background check by buying guns from unlicensed sellers. This includes most gun sales on popular websites like Armslist. So even though Zina had a restraining order that made her estranged husband a prohibited purchaser, he was easily able to buy a gun by going online to Armslist and finding an unlicensed seller.

Background Checks

Gun owners like me are used to background checks — we do a background check every time we buy a gun at a store or from a dealer. They're easy, they're quick, and they prevent guns from being sold to criminals. In fact, I bought a gun last year and passed a background check – it only took me a few minutes and was so easy. I don't understand how anyone can say background checks interfere with Second Amendment rights.

Many of my friends are gun owners and through our conversations, I know that they have no problem with background checks because they know that background checks save lives. And here is how we know that they save lives: Sixteen states go beyond federal law, and require background checks for all handgun sales. In those states, someone like Zina's estranged husband can't avoid a check by finding an unlicensed seller online. In those 16 states, 38 percent fewer women are shot to death by intimate partners.³

In the states that don't require background checks, people who are legally prohibited from having guns can get around background checks by buying from unlicensed sellers they meet online or at gun shows. Increasingly, these prohibited people are turning to the Internet and sites like Armslist to buy guns without background checks. For example, one investigation of Armslist by Mayors Against Illegal Guns found that every year tens of thousands of criminals and abusers like my sister's killer are buying guns online and that Armslist alone facilitates an estimated 25,000 gun sales every year to individuals who are prohibited from gun ownership.⁴ The study also found that one in 30 prospective gun buyers on Armslist had criminal histories that made it illegal for them to buy a gun, and one in five prohibited purchasers seeking to buy a gun had a domestic violence conviction. These numbers reveal that criminals and other

dangerous people with prohibiting records are flocking to the Internet and websites like Armslist to avoid background checks.

Last Spring, a majority of Senators voted to extend background checks to all online gun sales, as well as other commercial gun sales made at gun shows or through classified ads. The proposal was a bipartisan, common-sense measure that would have saved lives in communities across the country. Unfortunately, it didn't pass.

Because of the failure to pass this common-sense measure, criminals and dangerous abusers like my sister's killer are still able to buy illegal guns from unlicensed sellers with no strings attached. I urge the Senate to pass this critical public safety measure.

Stalkers and Dating Partners

Another gap in our gun laws is that federal law does nothing to keep guns out of the hands of abusive dating partners or convicted stalkers. Even if an abuser is convicted of a misdemeanor for stalking his victim or for assaulting his girlfriend, he could pass a background check and legally buy a gun from a licensed dealer.

"The Protecting Domestic Violence and Stalking Victims Act of 2013," S.1290, introduced by Senator Amy Klobuchar last year, would close these gaps in the law and protect women's lives. It would ensure that the federal laws that block abusers from having guns cover dating situations and people convicted of all stalking crimes. This makes sense to me – especially because more women in the U.S. are killed by dating partners than by spouses.

Passing this bill would strengthen our federal gun laws and protect women from deadly violence. I urge the members of this committee to promptly report it out of committee for consideration by the full Senate.

* * *

I want to repeat something that I said earlier, because I think it's important. I've owned guns all my life and I strongly believe that the Second Amendment gives me—and every other law abiding gun owner—the right to own and use guns. And I also know that prohibiting dangerous people from buying guns is just common-sense and does not infringe on my Second Amendment rights as a law abiding gun owner.

Like too many other Americans, my family knows first-hand the devastating impact of allowing dangerous people easy access to guns. I am grateful for the opportunity to speak for my sister and tell her story. She was an amazing person, a loving mom and a terrific sister.

For nearly two years now, my family has lived a nightmare, and it is one that will never end. Every happy family milestone is now covered with sadness. Mother's Day is now a day to survive rather than a day to celebrate, because we know that Zina isn't here to watch her girls grow up. She won't be there to take pictures of her youngest daughter dressed up to go to the prom, or to congratulate her when she graduates from high school, or to dance with her girls at their weddings. Those moments will be happy and sad all at the same time for my family.

I am committed to honoring Zina's memory by working as hard as I can to reduce the number of women whose lives are cut short by preventable and senseless acts of gun violence.

Too often, the debate over gun laws and domestic violence are impersonal and stuck in politics. This is not a Republican issue or a Democrat issue. This is an issue of basic common-sense that if ignored will continue to have deadly consequences. Since the background checks bill failed last year, 1,320 women have been shot to death by intimate partners.⁵ You have the power to pass the laws that we need to keep our mothers, daughters, sisters, and girlfriends safe, and so I am here today to ask you to remember Zina when you think about whether you will take action on this issue.

Thank you for your time and for the opportunity to speak with you today. I would be happy to answer any questions that you might have.

¹ U.S. Dep't of Justice, Federal Bureau of Investigation, Supplementary Homicide Reports, 2011.

² U.S. Dep't of Justice, Federal Bureau of Investigation, Supplemental Homicide Report, 2011. According to FBI data, there were 1,221 gun murders in which a woman was the lead victim. Of these, 649 were killed by an intimate partner or immediate family member — 53% of the total. This data likely undercounts the phenomenon because in many other cases law enforcement cannot confirm whether a shooter and victim were intimately involved.

³ Mayors Against illegal Guns, Felon Seeks Firearm: No Strings Attached 7 (Sept. 2013).

⁴ See generally Mayors Against illegal Guns, Felon Seeks Firearm: No Strings Attached (Sept. 2013).

⁵ FBI Supplementary Homicide Reports indicate that, on average, 578 women are shot to death by intimate partners in the U.S. each year. At this rate, 1,320 American women were shot to death by intimate partners between April 16, 2012 and July 30, 2014.

**Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing on “VAWA Next Steps: Protecting Women From Gun Violence”
July 30, 2014**

Today the Senate Judiciary Committee returns to a question that we started this Congress with: What can we do to further reduce the scourge of violence against women in this country? I was proud that the President signed into law the Leahy-Crapo Violence Against Women Reauthorization Act in June of last year. That law took important new steps to support all victims of domestic and sexual violence, regardless of their immigration status, their sexual orientation, or their membership in an Indian tribe. After only a year, the law has already made our communities safer. It has improved protections for women, whether in their home, on a college campus, or at their job.

But we know that ending violence against women is not an easy problem to solve, and there is, of course, more to do. Last May I discussed the disturbing relationship between domestic violence and gun violence with former Congresswoman Gabrielle Giffords – a powerful advocate for common sense reforms. I was happy to accommodate her request for the Judiciary Committee to hold this important hearing. Violence against women comes in all forms, and there is a clear and deadly connection between domestic violence and gun violence.

In my home state of Vermont – a peaceful state that enjoys a very low crime rate overall - we are tragically all too aware of that connection. In Vermont, a majority of all homicides involve intimate partner or family violence. This amounts to one of the highest intimate partner homicide rates in the country. And according to FBI data from 2000-2012, 56 percent of women shot to death in Vermont were killed by intimate partners. Of those women, 50 percent were shot to death by dating partners. This is simply unacceptable.

Today we will hear from those who are working hard to reduce this devastating violence and I look forward to hearing their testimony on what we can do. We know that some common sense steps can make it more difficult for abusers to access guns and those steps can save lives.

Today, convicted domestic abusers can too easily skirt criminal background checks to illegally purchase firearms. For example, they can obtain firearms through intermediaries known as straw purchasers. Other abusers are able to lawfully purchase firearms because they were convicted of stalking or crimes involving dating violence, which are not covered by existing law. Abusers exploit these loopholes, too often with deadly results.

For decades I have worked side by side with survivors of domestic and sexual violence and the professionals who support them every day. I have heard many heartbreaking stories of the horrors of domestic violence – most recently on Monday while I visited the Women Helping Battered Women facility in Burlington, Vermont. The bravery and sheer resiliency of survivors is inspiring. They are among the most courageous people I have ever met.

It is long past time for the Senate to muster its own courage. Last year I challenged my fellow Senators to come forward, to work together and build consensus around solutions to gun

violence. Some did. I hope that those who did not will listen today. Protecting women from gun violence should not be a partisan issue. We should all agree that keeping firearms out of the hands of domestic abusers will save lives, and for that reason alone it is worth pursuing.

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U.S. Senator Dianne Feinstein
Senate Committee on the Judiciary
Hearing on “VAWA Next Steps: Protecting Women from Gun Violence”
July 30, 2014

I am pleased that the Judiciary Committee is holding this hearing today to explore how we can better protect women from gun violence. The statistics are startling:

- A woman in the United States is 11 times more likely to be killed with a gun than in other first-world countries.
- 45% of women killed with guns are killed by an intimate partner; another 8% are killed by a family member.
- 54% of women who are killed by an intimate partner are killed with a gun.

A significant factor contributing to gun violence against women is our weak gun laws. Federal law prohibits a person from possessing a gun if he has committed a felony or if he has committed a misdemeanor crime of domestic violence against a spouse, live-in girlfriend, or woman with whom he has had a child. However, federal law places no restriction on firearm possession by a person who has committed a misdemeanor crime of domestic violence against a **dating partner** or who has been convicted of a misdemeanor crime of **stalking**. Yet, as of 2008, more women were killed by dating partners than by spouses.

These loopholes in federal law must be addressed. I am pleased that Senator Klobuchar has introduced a bill to prohibit firearm possession by individuals who have committed a misdemeanor crime of domestic violence against a dating partner or who have been convicted of a misdemeanor crime of stalking. We should come together as a Congress and pass Senator Klobuchar’s bill.

A second loophole in federal law allows a person who is subject to a **temporary** restraining order to possess a firearm. The days immediately following the issuance of a temporary restraining order are often the most dangerous for the women protected by the order. However, federal law does not prevent the person subject to such a temporary order from purchasing or continuing to possess a gun.

Senator Blumenthal has introduced a bill to close this loophole. We should pass his bill.

A third loophole in federal law allows a person to avoid a background check if he purchases his gun at a gun show or online. Thus, if you have been convicted of a crime of domestic violence against your spouse or are subject to a long-term restraining order — as Zina Daniel's estranged husband was — you can easily buy a gun even though you are legally prohibited from possessing one. We must close these loopholes in our background check system.

If we need evidence of the impact that stronger federal gun laws would have on reducing violence against women, we need look no farther than California. Since the early 1990s, California has enacted a series of laws to keep guns out of the hands of domestic abusers. For example, California prohibits firearm possession by an individual who is subject to a temporary restraining order or who has committed a violent misdemeanor — including misdemeanor stalking — within the past 10 years. With limited exceptions, California requires background checks on all gun sales, including sales by private individuals. Thus, a domestic abuser or stalker cannot avoid a background check by buying the gun from a private party.

The results speak for themselves. In 1993, there were 329 domestic violence homicides in California. In 2011, there were 147 such homicides. That's a 55% decline. The number of domestic violence calls to law enforcement where a firearm is present has also decreased, from 2,951 in 1993 to 804 in 2012, a 73% decrease.

I hope that this hearing demonstrates clearly the devastating impact that gun violence has on women. Victims of gun violence are not faceless — they are our mothers and daughters; they are our sisters and grandmothers; they are our aunts and nieces.

I urge my colleagues from both sides of the aisle to come together and strengthen our gun laws to protect our loved ones and other women in our lives from the scourge of gun violence.

Opening Statement of Senator Sheldon Whitehouse (D-R.I.),
Judiciary Committee Hearing on
“VAWA Next Steps: Protecting Women from Gun Violence.”
July 30, 2014

As Prepared For Delivery

On June 18, 1999, Carmen Cruz was watching television with her eight year-old son, Travis, when her ex-boyfriend, Frederick Escobar, broke into her apartment and calmly walked toward her, carrying a pillow. When he was just a few feet away from Ms. Cruz, Mr. Escobar pulled a gun from the pillow, pointed it at her, and pulled the trigger. Travis watched as his mother collapsed, felled by a bullet shot by his own father.

Ms. Cruz spent hours in surgery while doctors removed the bullet from her abdomen. She was hospitalized for three weeks and wore a colostomy bag for almost two years following the shooting. Today, Ms. Cruz is a passionate advocate in Rhode Island’s domestic violence community, but her scars serve as a constant reminder that, as a survivor, she is one of the lucky ones.

American women are eleven times more likely to be killed with guns than women in any other industrialized country.

Put another way, women in the United States account for eighty-four percent of all female firearm victims in the developed world. Of all the women murdered in this country, more than half are killed by family members or intimate partners.

In fact, when a gun is present in a domestic violence situation, it increases the risk of homicide for women by five hundred percent.

Protecting women from gun violence by domestic abusers should not be, and has not been, a partisan issue. In the late 1990s, Congress passed important laws prohibiting the possession or purchase of firearms by individuals convicted of misdemeanor domestic violence or subject to domestic violence protective orders. These laws, which were part of the Violence against Women Act and an amendment authored by the late-Senator Frank Lautenberg, complemented the prohibitions on convicted felons and passed Congress with broad bipartisan support.

These laws have saved lives—in states with rigorous background check laws, thirty-eight percent fewer women are shot to death by intimate partners—but they’re not enough.

Current law prohibits domestic abusers from possessing guns only if they are—or were – married to the victim, if they have lived with the victim, or if they have a child in common with the victim. Dating partners who have been convicted of domestic violence offenses are not covered, even though the most recent data shows that more domestic abuse is committed by dating partners than spouses. Closing the dating partner loophole would save lives, plain and simple.

There are other steps we can take as well. These include requiring universal background checks

and helping states collect and share the data necessary to ensure that those who *should* be prohibited under existing law are *in fact* prohibited when they try to purchase firearms. Along these lines, I am willing to work with anyone who wants to strengthen the National Instant Criminal Background Check System, or "NICS," to ensure that it operates as Congress intended it to.

Nobody on this Committee has been working as hard as Senators Blumenthal and Klobuchar to shine a light on the role of guns in domestic violence and to address the loopholes that allow abusers to use guns to kill, injure, and threaten their victims. I know we will hear more about your initiatives, and I want to thank you both at the outset for your commitment and efforts.

I would also like to thank Chairman Leahy for his leadership in reauthorizing the Violence Against Women Act last year, and for his longstanding recognition of the role of guns in domestic violence.

Finally, it bears mentioning that this is not a hearing about the Second Amendment or the right of law-abiding Americans to own firearms. Nobody on this Committee wants to deprive individuals—women or men—from legally owning guns, and none of the solutions we're here to discuss involve doing that. What we are here to consider is how guns in domestic violence situations threaten American women, and how best to ensure that those who should not possess guns do not possess them.

I understand that there are a number of domestic violence survivors and advocates here with us today. I would be honored to recognize them if they wouldn't mind standing up. I also would like to submit the statements of Christy Salters Martin, Bonnie Campbell, Laura Ponce, Katie Ray Jones, and Everytown for Gun Safety into the record. Thank you all for being here, and for your courage.

I would like to welcome all our witnesses and thank them for their participation in this hearing. I look forward to your testimony.

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Questions for the Record from Senator Blumenthal

“VAWA Next Steps: Protecting Women from Gun Violence”

QUESTIONS FOR DR. JACKIE CAMPBELL

a. In your opinion, is an abuse victim particularly at risk after they first leave their abuser?

b. What leads you to that conclusion?

At the hearing, another witness testified that one key reason women are not able to have temporary restraining orders converted into full protective orders is that they often fail to appear at the adversarial hearing that is needed before a temporary order can be converted into a full protective order. You and others have noted that victims who have been subject to domestic abuse by an abuser who has access to a firearm are frequently threatened using that gun.

a. In your opinion, does the presence of a gun in the home of an abuse victim make that victim less likely to be willing to face their abuser in court at a hearing on a permanent protective order?

b. In your opinion, are abuse victims less likely to leave an abuser if they fear that their abuser has access to a gun?

Questions for the Record from Senator Blumenthal

“VAWA Next Steps: Protecting Women from Gun Violence”

QUESTIONS FOR SHERIFF CHRISTOPHER SCHMALING

You and your officers see domestic violence situations frequently, and you have a sense of the conditions that give rise to domestic violence orders.

- a. In your opinion, is the presence of a temporary restraining order an indicator that the subject of that order is likely to be dangerous?**
- b. What kinds of conditions cause women to seek these orders?**

As you know, Congress has made it illegal for certain categories of people to purchase or possess guns. Two of the groups who cannot have guns are individuals who have been convicted of domestic violence and individuals subject to a temporary restraining order. However, it is one thing for the law to say that somebody subject to a restraining order cannot have a gun; it is an entirely different thing to actually ensure that a dangerous individual does not have access to guns.

- a. In your experience, are abusers always careful to follow the law and to turn in any guns that they cannot legally possess as the result of a protective order or criminal conviction?**

- b. Do law enforcement officers need to act to take firearms away from individuals who have been determined to be dangerous and who cannot legally possess firearms?**
- c. Would it be helpful to have additional federal resources to help law enforcement take guns away from dangerous individuals who cannot legally possess firearms?**

The Honorable Jeff Flake
Written Questions
Dr. Joyce Lee Malcom, George Mason University School of Law
Hearing: VAWA Next Steps: Protecting Women from Gun Violence
August 6, 2014

1. As of December 31, 2013, only 36 states had submitted *any* domestic violence misdemeanor conviction records to the NICS Index, and of those, 21 states had submitted 20 or fewer records. Eight have submitted only 1 record. An even smaller number of states have submitted records regarding permanent restraining orders: 31 states have not submitted any domestic violence restraining order records to the NICS Index, and of the 19 that have, 9 states have submitted 10 or fewer. My home state of Arizona has only submitted 2 records of convictions for domestic violence and no domestic violence restraining order records. Our background check system is only as good as the records it contains and states are failing to include disqualifying records under current law.
 - a. Would you agree that we need to do more to make sure those disqualifying records are included in the NICS Index to ensure that those who are currently prohibited from purchasing firearms are prevented from doing so?
 - b. If Congress expands the types of records that are disqualifying and increases the burden on an already overwhelmed system without fixing it first, is that going to make women safer?
2. Both bills mentioned at the hearing expand the definition of intimate partner to include a dating partner or former dating partner and the existence of the relationship determines whether a particular state offense is a qualifying offense that prohibits someone from possessing or buying a firearm.
 - a. If this legislation was enacted, is it your understanding the definitions would apply retroactively?
 - b. Can you expand on the Due Process concerns with applying the definitions retroactively that you mentioned in your testimony?
 - c. In the past, when new categories of prohibited persons were added and applied retroactively, concerns were raised about the practical challenges of implementing the law. In 2002, GAO issued a report noting the difficulty of an automated system trying to determine whether a prior record contained the necessary elements to now be disqualifying. The report noted that additional manual research may be necessary to determine whether the offense constitutes a federal firearm prohibitor. Is it your understanding that a NICS background check examiner would have to make the determination of whether the relationship between the parties qualified as a dating or former dating relationship and the misdemeanor assault or battery charge now qualifies as a prohibitor or remains a nondisqualifying misdemeanor?
 - i. On what basis will the reviewer make that determination?
 - ii. Do you see any Due Process concerns with dating partner determinations being made this way since, if such a relationship is found, it will prevent an individual from exercising a fundamental right?

2. As I read the legislation, it does not provide a definition of stalking and instead relies on a particular state's definition of stalking. Do you agree there is no definition in the bill?
 - a. Some states have a high bar for conduct to be considered stalking, while other states have a relatively low bar. This varying array of state laws on the misdemeanor crime of stalking would cause this bill to have a varying effect in different states, resulting in one person potentially losing their Second Amendment right, while another person, who committed a similar act, would not. Do you see any constitutional concerns with such a result?
 - b. Would this new prohibitor of stalking also apply retroactively and do you have concerns if it does?

Questions for the Record from Senator Charles E. Grassley

U.S. Senate Committee on the Judiciary

Hearing on “VAWA Next Steps: Protecting Women from Gun Violence”

July 30, 2014

QUESTIONS FOR PROF. MALCOLM:

1. Dr. Malcolm, you’ve studied violent crime in Britain, both before and after the country adopted strict gun control. Based on your research, did the adoption of gun control reduce rates of domestic violence in Britain?
2. Would you say that female homicide resulting from domestic violence is a “uniquely American” problem?
3. How does the fact that someone subject to a TRO, under this proposed legislation, would, upon granting of the TRO by a judge in an ex-parte proceeding, be prohibited from owning a firearm trigger practical enforcement concerns?
4. During the hearing, the process by which search warrants are issued during an ex-parte proceeding, was said to be similar to the manner in which temporary restraining orders are issued. What differences exist between a prosecutor seeking a search warrant under the constitutional requirement of probable cause and a private person obtaining a TRO under the evidentiary standard by which such an order is issued? Are there other constitutional differences between the Fourth Amendment’s standard for issuance of a search warrant and the Fifth Amendment’s prohibition on deprivation of liberty of property without due process that would bear on depriving someone of firearms? Would a process that retroactively deprived someone of property based on a prior conviction differ from the issuance of a search warrant? Are there any other differences between the granting of a search warrant and the granting of a TRO?

Questions for the Record from Senator Charles E. Grassley

U.S. Senate Committee on the Judiciary

Hearing on “VAWA Next Steps: Protecting Women from Gun Violence”

July 30, 2014

QUESTION FOR JUSTICE McCAFFERY:

1. When a judge issues a protective order in Pennsylvania (and in other states, if you know), does the judge already have, in the absence of federal law, the authority to place restrictions or conditions on the possession of firearms?
2. During the hearing, the process by which search warrants are issued during an ex-parte proceeding, was said to be similar to the manner in which temporary restraining orders are issued. What differences exist between a prosecutor seeking a search warrant under the constitutional requirement of probable cause and a private person obtaining a TRO under the evidentiary standard by which such an order is issued? Are there other constitutional differences between the Fourth Amendment’s standard for issuance of a search warrant and the Fifth Amendment’s prohibition on deprivation of liberty of property without due process that would bear on depriving someone of firearms? Would a process that retroactively deprived someone of property based on a prior conviction differ from the issuance of a search warrant? Are there any other differences between the granting of a search warrant and the granting of a TRO?

Questions for the Record from Senator Charles E. Grassley

U.S. Senate Committee on the Judiciary

Hearing on “VAWA Next Steps: Protecting Women from Gun Violence”

July 30, 2014

QUESTIONS FOR SHERIFF SCHMALING:

1. What can the police do to ensure that once a person subject to a protective order has been disarmed, he or she does not violate that order or go on to obtain other weapons, including by illegal means?
2. Based on your experience as a law enforcement officer, would you agree that people who are prohibited by law from owning firearms still find ways to obtain them illegally?

Questions for the Record from Senator Charles E. Grassley

U.S. Senate Committee on the Judiciary

Hearing on "VAWA Next Steps: Protecting Women from Gun Violence"

July 30, 2014

QUESTIONS FOR PROF. MALCOLM:

1. Dr. Malcolm, you've studied violent crime in Britain, both before and after the country adopted strict gun control. Based on your research, did the adoption of gun control reduce rates of domestic violence in Britain?

As the British tightened and then prohibited private ownership of firearms and their use for self-defense the rate of violent crime and of armed crime, which had been very low for many years, increased dramatically. The Firearms Act of 1997 prohibited civilian ownership of handguns and confiscated all the handguns registered to civilians in the country. Within ten years of this massive disarmament violent crime with handguns had doubled. The country now has a gun problem. For the first time in their history many British policemen are carrying firearms. Home invasions in Britain are far higher than in the United States and more than half occur when people are at home compared to 13% here. Studies of burglars in America reveal that intruders are more afraid of armed homeowners than of the police.

2. Would you say that female homicide resulting from domestic violence is a "uniquely American" problem?

Female homicide resulting from domestic violence is certainly not a "uniquely American" problem. Sadly it is a problem in every country.

3. How does the fact that someone subject to a TRO, under this proposed legislation, would, upon granting of the TRO by a judge in an ex-parte proceeding, be prohibited from owning a firearm trigger practical enforcement concerns?

The party subject to the TRO would not have notice that it had been issued before the police arrived to search his home and confiscate his firearms. This sudden invasion of his home and the search for, and seizure of, legally owned weapons by armed law officers is likely to produce a dangerous situation for both the subject and the officers.

4. During the hearing, the process by which search warrants are issued during an ex-parte proceeding, was said to be similar to the manner in which temporary restraining orders are issued. What differences exist between a prosecutor seeking a search warrant under the constitutional requirement of probable cause and a private person obtaining a TRO under the evidentiary standard by which such an order is issued? Are there other constitutional differences between the Fourth Amendment's standard for issuance of a search warrant and the Fifth Amendment's prohibition on

deprivation of liberty of property without due process that would bear on depriving someone of firearms? Would a process that retroactively deprived someone of property based on a prior conviction differ from the issuance of a search warrant? Are there any other differences between the granting of a search warrant and the granting of a TRO?

During an ex parte hearing to obtain a search warrant probable cause has to be presented. In the hearing for a temporary restraining order the mere allegation that the complainant is anxious, or feels threatened is sufficient. Often no evidence at all of any threat or danger needs to be presented. In states such as California all the complainant needs to do is fill out a standard form. This TRO complaint is sometimes part of a standard divorce proceeding and judges regard it as a "rubber-stamp" exercise.

Ownership of a firearm, as the US Supreme Court has affirmed in *District of Columbia v. Heller* and *McDonald v. City of Chicago*, is a core constitutional right with a fundamental liberty interest. To deprive someone of that right based on a mere allegation with no show of evidence required, without prior notice to the respondent, at a hearing to which he has no right to present evidence or confront his accuser, is a serious violation of his Second Amendment rights, as well as the Fifth Amendment protection by depriving him of liberty and property without Due Process of Law.

A procedure that deprived someone of legally owned property based on a prior conviction, and further deprives that individual of a core constitutional right for life is an unfair taking violating the individual's Due Process right. This is all the more egregious since in many, if not most cases, both TRO's and restraining orders themselves are issued based on little or no evidence that the respondent poses any danger.

The Honorable Jeff Flake

Written Questions

**Dr. Joyce Lee Malcom, George Mason University School of Law
Hearing: VAWA Next Steps: Protecting Women from Gun Violence**

August 6, 2014

1. As of December 31, 2013, only 36 states had submitted *any* domestic violence misdemeanor conviction records to the NICS Index, and of those, 21 states had submitted 20 or fewer records. Eight have submitted only 1 record. An even smaller number of states have submitted records regarding permanent restraining orders: 31 states have not submitted any domestic violence restraining order records to the NICS Index, and of the 19 that have, 9 states have submitted 10 or fewer. My home

state of Arizona has only submitted 2 records of convictions for domestic violence and no domestic violence restraining order records. Our background check system is only as good as the records it contains and states are failing to include disqualifying records under current law.

- a. Would you agree that we need to do more to make sure those disqualifying records are included in the NICS Index to ensure that those who are currently prohibited from purchasing firearms are prevented from doing so?

I would certainly agree that since the NICS is depended upon to permit purchase of a firearm, states need to fulfill their obligation to submit the records of domestic violence convictions for use in the index. Clearly too many states are failing to meet this key obligation.

- b. If Congress expands the types of records that are disqualifying and increases the burden on an already overwhelmed system without fixing it first, is that going to make women safer?

The two bills under consideration, by greatly expanding the categories of individuals prohibited from possessing or purchasing a firearm make it even more difficult for states, already finding it difficult to report, to keep track of current and past convictions and report to the NICS those newly disqualified from purchasing firearms.

2. Both bills mentioned at the hearing expand the definition of intimate partner to include a dating partner or former dating partner and the existence of the relationship determines whether a particular state offense is a qualifying offense that prohibits someone from possessing or buying a firearm.

- a. If this legislation was enacted, is it your understanding the definitions would apply retroactively?

Yes. If the legislation were enacted the expanded definitions would apply retroactively. Anyone who had been convicted of stalking in the past would be prohibited from being able to purchase a gun, ever. Moreover the definition of stalking is frequently vague, subjective and expanding.

- b. Can you expand on the Due Process concerns with applying the definitions retroactively that you mentioned in your testimony?

Many individuals with previous convictions for stalking or those having had restraining orders in the past would be unaware that their Second Amendment rights were to be forfeit at some point in the future. A great many people who accepted plea bargains would not have known they would lose a core right forever. Worse, many states have a very perfunctory process for restraining orders with the complainant given the benefit of the doubt, even in instances where there has been no threat of harassment or violence. The Second Amendment is a core right deserving of strict scrutiny and ought not to be removed on such a flimsy basis.

- c. In the past, when new categories of prohibited persons were added and applied retroactively, concerns were raised about the practical challenges of implementing the law. In 2002, GAO issued a report noting the difficulty of an automated system trying to determine whether a prior record contained the necessary elements to now be disqualifying. The report noted that additional manual research may be necessary to determine whether the offense constitutes a federal firearm prohibitor. Is it your understanding that a NICS background check examiner would have to make the determination of whether the relationship between the parties qualified as a dating or former dating relationship and the misdemeanor assault or battery charge now qualifies as a prohibitor or remains a nondisqualifying misdemeanor?

With categories of individuals expanded in these restraining orders to include dating partners and past dating partners, the task of determining whether the prior record constitutes an offense prohibiting gun ownership would be far more onerous and complex. That task is already a laborious one and this expansion will make it worse.

- i. On what basis will the reviewer make that determination?

It is not at all clear on what basis the reviewer will make that determination. Definitions of stalking and relationships vary widely from state to state and from time to time.

- ii. Do you see any Due Process concerns with dating partner determinations being made this way since, if such a relationship is found, it will prevent an individual from exercising a fundamental right?

The idea that a government reviewer will decide, perhaps years later and with variable evidence or no evidence at all, whether a dating relationship was in place, and that determination will prevent an individual from exercising a core constitutional right is a gross violation of Due Process. No appeal is envisioned. Since the initial conviction may have been under unfair circumstances to begin with, and varies from state to state, the entire process is arbitrary.

2. As I read the legislation, it does not provide a definition of stalking and instead relies on a particular state's definition of stalking. Do you agree there is no definition in the bill?
- a. Some states have a high bar for conduct to be considered stalking, while other states have a relatively low bar. This varying array of state laws on the misdemeanor crime of stalking would cause this bill to have a varying effect in different states, resulting in one person potentially losing their Second Amendment right, while another person, who committed a similar act, would not. Do you see any constitutional concerns with such a result?

I agree there is no definition of stalking in the bill. That is a serious problem since the definition of stalking varies from state to state. I also find the varying definitions that would cause an individual in one state to be prohibited from exercising his Second Amendment

rights forever while someone convicted of the same offense in a second state would not, to be arbitrary and unjust. Constitutional rights must not to be taken away in such a capricious manner.

- b. Would this new prohibitor of stalking also apply retroactively and do you have concerns if it does?

As I understand it the new prohibitor of stalking would apply retroactively. The bill includes anyone convicted of that crime, past or future. Again this is harmful for several reasons including the variable procedures and definitions from state to state, the frequent absence of Due Process, and the great difficulty of actually adding these individuals to the NICS list.

Questions for the Record from Senator Charles E. Grassley**U.S. Senate Committee on the Judiciary****Hearing on "VAWA Next Steps: Protecting Women from Gun Violence"**

July 30, 2014

QUESTION FOR JUSTICE McCAFFERY:

1. When a judge issues a protective order in Pennsylvania (and in other states, if you know), does the judge already have, in the absence of federal law, the authority to place restrictions or conditions on the possession of firearms?

A judge in Pennsylvania does have the authority under Pennsylvania law to issue restrictions on a person who is the subject of a Protection From Abuse ("PFA") order prohibiting that person from owning or possessing a firearm. To obtain a temporary PFA, there must be an allegation that the gun was used or threatened to be used against the complainant when the initial petition is filed for a temporary order. For a permanent PFA, the judge can, after a hearing, determine that it is appropriate for the defendant to not possess any guns and for the defendant to turn in any guns possessed to the sheriff.

2. During the hearing, the process by which search warrants are issued during an ex-parte proceeding, was said to be similar to the manner in which temporary restraining orders are issued. What differences exist between a prosecutor seeking a search warrant under the constitutional requirement of probable cause and a private person obtaining a TRO under the evidentiary standard by which such an order is issued? Are there other constitutional differences between the Fourth Amendment's standard for issuance of a search warrant and the Fifth Amendment's prohibition on deprivation of liberty of property without due process that would bear on depriving someone of firearms? Would a process that retroactively deprived someone of property based on a prior conviction differ from the issuance of a search warrant? Are there any other differences between the granting of a search warrant and the granting of a TRO?

When a search warrant is issued, the police officer must swear in an affidavit that the officer has certain information that the officer states justifies probable cause for the search warrant. For an individual seeking a temporary PFA, which is what I believe Sen. Grassley refers to when he refers to an ex-parte TRO, the individual attests to certain information (*i.e.*, the defendant beat me up, threatened to kill me or other information indicating a threat of violence or actual violence against the complainant), and signs an affidavit swearing that the information is true and correct just as a police officer does when seeking a search warrant. If a judge believes that the allegation shows that there was a threat of or actual physical violence that endangers the person, then the ex-parte order is issued. The "standard" is merely the allegation that the person

swears to in his/her petition and anything else the judge ascertains when the judge questions the plaintiff at the temporary PFA proceeding. The standard is similar to that when a search warrant is issued, which is assuming that the information contained in the search warrant is correct, does it provide the police with the basis/ authority to search, subject to a later review by a judge during a motion to suppress hearing. Likewise when a temporary PFA is being sought, the judge grants it assuming that the information is true, subject to a later hearing where the defendant can challenge the PFA prior to a permanent PFA being granted.

As to the issue of depriving someone of their property, such as a firearm, without due process, I think the key is the temporary nature of the deprivation versus longer-term or permanent deprivation. When someone's property is taken pursuant to a search warrant, it is only temporary, subject to judicial review either in a motion to suppress and criminal trial, and/or a defendant can file a return of property motion to request judicial review of the property seized by the government, including guns. Likewise, when a temporary PFA is granted, including any order relating to the seizure of guns, this order is subject to a full, follow-up hearing before a judge, who must determine whether to make the temporary order permanent, and if so, under what conditions, including any part of the permanent order dealing with gun possession.

Finally, as to the question about depriving someone of property based on a prior conviction, the Violation of the Uniform Firearms Act, Pennsylvania Statute 6105 states that if someone has been convicted of certain crimes, is the subject of a PFA order that prohibits gun possession, or has a prior commitment to a mental health facility, the person is ineligible to own or possess a firearm. No Pennsylvania court has ever found this statute to be unconstitutional because there is a rational basis related to the prohibition in question, to wit, that of certain categories of people being ineligible to possess guns.

coalition to
STOPGUNVIOLENCE
imagine a future free from gun violence

TESTIMONY OF JOSHUA HORWITZ
 EXECUTIVE DIRECTOR, COALITION TO STOP GUN VIOLENCE
 SENATE JUDICIARY COMMITTEE
 "VAWA NEXT STEPS: PROTECTING WOMEN FROM GUN VIOLENCE"
 JULY 30, 2014

Mr. Chairman and Members of the Committee,

My name is Josh Horwitz, and I am the Executive Director of the Coalition to Stop Gun Violence (CSGV). I appreciate this opportunity to provide written testimony on behalf of my organization, a coalition of more than 47 national organizations dedicated to reducing gun death and injury in the United States. We seek to secure freedom from gun violence through research, strategic engagement, and effective policy advocacy.

As this Committee considers measures to protect women from gun-related domestic violence, I would like to offer testimony on the importance of: 1) Barring those under *temporary* restraining orders from purchasing and/or possessing firearms, and; 2) Adding persons convicted of misdemeanor stalking to the federal list of prohibited firearm purchasers.

My testimony in this area is informed by my membership in the Consortium for Risk-Based Firearm Policy, a group of researchers, practitioners and advocates for gun violence prevention that have considered the evidence for risk-based firearm prohibitions and issued recommendations to state and federal lawmakers through a pair of reports that were published in December 2013.

Firearm ownership/purchases by individuals subject to temporary domestic violence restraining orders.

Existing research shows that there is an elevated risk of intimate partner homicide when an abuser has access to a firearm.¹⁻³ The majority of victims of intimate partner homicide are killed with a gun.^{4,5}

Authorities are frequently aware of abusive relationships in their communities. One study found that approximately half of women killed by their intimate partners had contact with the criminal justice system in the 12-month period preceding their murders.^{6,7} Research demonstrates that policy interventions in this area are effective. According to one study, cities in states with laws that prohibit the subjects of domestic violence restraining orders from purchasing and/or possessing firearms had 25% fewer firearm-related intimate partner



homicides.⁸ This research also found that these policies save lives, because when “would-be killers” do not have access to guns, they do not replace them with other weapons.^{9, 10}

Temporary ex-parte orders are the first step in the domestic violence restraining order process. These emergency orders are issued in the absence of the respondent and signify an immediate danger. Initiating separation in an abusive relationship can be both a difficult and hazardous course of action for a victim of domestic violence.^{11, 12} The evidence demonstrates that temporary ex-parte restraining orders are associated with an increased risk of violence^{13, 14} and a number of states acknowledge that risk by prohibiting the subjects of such orders from purchasing and/or possessing firearms.¹⁵

Judicial review is necessary and the current domestic violence laws ensure that a full hearing (with the respondent present) occurs within a short and defined period of time. As a result, a temporary ex-parte protection order can be quickly dismissed if a judge determines it is not warranted.

At the present time, federal law prohibits firearm purchase and/or possession by those subject to *final* restraining orders or by those convicted of a misdemeanor crime of domestic violence.¹⁶ These prohibitions are supported by ample evidence.¹⁷⁻²¹ Unfortunately, however, current federal law does not prohibit firearm purchase or possession by individuals subject to *temporary* restraining orders.

In the interest of protecting women at the time of greatest risk for intimate partner homicide, the Coalition to Stop Gun Violence recommends that individuals subject to temporary domestic violence restraining orders be prohibited from purchasing and/or possessing firearms for the duration of these orders.

Firearm ownership/purchases by individuals convicted of misdemeanor stalking offenses.

Federal law currently prohibits purchase and/or possession of a firearm by those who are subject to a restraining order for stalking.²² However, it is equally important to disarm individuals who have been convicted of stalking offenses.

The figures on this topic are alarming. A 2010 national survey found that approximately 16% of women had been stalked in their lifetime, resulting in more than 19 million female stalking victims across the country.²³ Women are more likely to be victims than men; one in six women compared to one in 19 men have been stalked during their lifetime.²⁴

Recidivism is a factor in stalking offenses. One study found that 77% of stalkers committed new offenses within 8.8 years.²⁵ Over half were charged with new stalking-related offenses and 33% for violent offenses.²⁶ Reinforcing the fact that stalking is an indicator of violent behavior, another study found that stalking is an important risk factor for intimate partner homicide as 76% of homicide victims and 85% of attempted homicide victims were stalked by their abusers prior to the incident.²⁷ Furthermore, roughly half of the women killed by their intimate

partners reported domestic violence/stalking to the police.²⁸

Because of this overwhelming evidence the Coalition to Stop Gun Violence encourages this committee to support changes to federal law to prohibit those convicted of misdemeanor stalking from owning and/or purchasing firearms.

¹ Bailey, J. E., Kellermann, A. L., Somes, G. W., Banton, J. G., Rivara, F. P., & Rushforth, N. P. (1997). Risk factors for violent death of women in the home. *Archives of Internal Medicine*, 157(7), 777-782.

² Kellermann, A. L., Rivara, F. P., Rushforth, N. B., Banton, J. G., Reay, D. T., Francisco, J. T., ... & Somes, G. (1993). Gun ownership as a risk factor for homicide in the home. *New England Journal of Medicine*, 329(15), 1084-1091.

³ Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., ... & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American journal of public health*, 93(7), 1089-1097.

⁴ Foz, J.A., and M.W. Zawitz. 2009. Homicide trends in the United States: Bureau of Justice Statistics.

<http://bjs.ojp.usdoj.gov/content/homicide/homtrnd.cfm>

⁵ Moracco, K. E., Runyan, C. W., & Butts, J. D. (1998). Femicide in North Carolina, 1991-1993 A Statewide Study of Patterns and Precursors. *Homicide Studies*, 2(4), 422-446.

⁶ Moracco, K. E., Runyan, C. W., & Butts, J. D. (1998). Femicide in North Carolina, 1991-1993 A Statewide Study of Patterns and Precursors. *Homicide Studies*, 2(4), 422-446.

⁷ McFarlane, J. M., Campbell, J. C., Wilt, S., Sachs, C. J., Ulrich, Y., & Xu, X. (1999). Stalking and intimate partner femicide. *Homicide Studies*, 3(4), 300-316.

⁸ Zeoli, A. M., & Webster, D. W. (2010). Effects of domestic violence policies, alcohol taxes and police staffing levels on intimate partner homicide in large US cities. *Injury prevention*, 16(2), 90-95.

⁹ Zeoli, A. M., & Webster, D. W. (2010). Effects of domestic violence policies, alcohol taxes and police staffing levels on intimate partner homicide in large US cities. *Injury prevention*, 16(2), 90-95.

¹⁰ Zeoli, A. M., & Frattaroli, S. (2013). Evidence for Optimism: Policies to Limit Batterers' Access to Guns. *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*, 53-63.

¹¹ Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., ... & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American journal of public health*, 93(7), 1089-1097

¹² Vittes, K. A., Sorenson, S.B. (2008). Restraining orders among victims of intimate partner Homicide. *Injury Prevention*, 14(3), 191-195

¹³ Campbell, J. C., Glass, N., Sharps, P. W., Laughon, K., & Bloom, T. (2007). Intimate partner homicide review and implications of research and policy. *Trauma, Violence, & Abuse*, 8(3), 246-269.

¹⁴ Wilson, M., & Daly, M. (1993). Spousal homicide risk and estrangement. *Violence and victims*, 8(1), 2-16.

¹⁵ Frattaroli, S., & Vernick, J. S. (2006). Separating Batterers and Guns A Review and Analysis of Gun Removal Laws in 50 States. *Evaluation Review*, 30(3), 296-312.

¹⁶ 27 Code of Federal Regulations § 478.11 Meaning of Terms

¹⁷ Zeoli, A. M., & Frattaroli, S. (2013). Evidence for Optimism: Policies to Limit Batterers' Access to Guns. *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*, 53-63.

¹⁸ Sorenson, S. B., & Wiebe, D. J. (2004). Weapons in the lives of battered women. *American Journal of Public Health*, 94(8), 1412-1417.

¹⁹ Vittes, K. A., & Sorenson, S. B. (2006). Are temporary restraining orders more likely to be issued when applications mention firearms?. *Evaluation review*, 30(3), 266-282.

²⁰ Vittes, K. A., & Sorenson, S. B. (2008). Keeping Guns Out of the Hands of Abusers: Handgun Purchases and Restraining Orders. *American Journal of Public Health*, 98(5), 828-831.

²¹ Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., ... & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American journal of public health*, 93(7), 1089-1097.

²² 18 U.S.C. § 922(g)(8).

²³ Centers for Disease Control and Prevention. (2010). The National Intimate Partner and Sexual Violence Survey (NISVS): Detailed State Tables. *Table 7.3*. Retrieved July 29, 2014, from http://www.cdc.gov/violenceprevention/nisvs/state_tables_73.html

²⁴ Michele C. Black et al., "The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report," (Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2011)

²⁵ Eke, A. W., Hilton, N. Z., Meloy, J. R., Mohandie, K., Williams, J. (2011). Predictors of Recidivism by Stalkers: A Nine-year Follow-up of Police Contacts. *Behavioral Sciences and the Law*, 29(2), 271-283

²⁶ Eke, A. W., Hilton, N. Z., Meloy, J. R., Mohandie, K., Williams, J. (2011). Predictors of Recidivism by Stalkers: A Nine-year Follow-up of Police Contacts. *Behavioral Sciences and the Law*, 29(2), 271-283

²⁷ McFarlane, J. M., Campbell, J. C., Wilt, S., Sachs, C. J., Ulrich, Y., Xu, X. (1999). Stalking and Intimate Partner Femicide. *Homicide Studies*, 3(4), 300-316

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Testimony for the Record by Bonnie Campbell
Submitted to the
Committee on the Judiciary, United States Senate
Hearing on VAWA Next Steps: Protecting Women from Gun Violence
July 30, 2014

Senator Whitehouse, Chairman Leahy, Ranking Member Grassley, Judiciary Committee Members, Senators:

Thank you for the opportunity to provide input for this landmark hearing. My name is Bonnie Campbell. I was the inaugural director of the United States Department of Justice's Office on Violence Against Women, established in 1995 through the Violence Against Women Act ("VAWA"). Before that, I was the Attorney General of Iowa, where, as the state's top law enforcement official, I helped to strengthen our domestic violence laws, to increase funding for victim shelters, and to write an anti-stalking statute that would become a national model.

Today I'm asking you to do two things. First, please support Senate Bill 1290, The Protecting Domestic Violence and Stalking Victims Act, which will close loopholes in federal law that allow abusive dating partners and convicted stalkers to purchase and possess guns. Second, Congress should require background checks for gun sales by unlicensed sellers, so that abusers who are legally barred from having guns can't end-run the law and buy guns anyway.

VAWA has been critical for tackling domestic violence in this country—both punishing the perpetrators of these all-too-common crimes and providing resources for victims of abuse. I was extremely pleased that Congress reauthorized VAWA last year, with the votes of 78 Senators and 286 Members of the House. But widespread—and lethal—violence against women persists: Until we address our weak gun laws, we will not be able to protect American women from the gun violence that make this the most dangerous country for firearm homicide in the developed world. American women are 11 times more likely to be murdered with a gun than women in other developed countries.¹ And more than half of the American women shot to death each year are killed by their intimate partners or family members.²

Domestic violence and gun violence are intimately connected—and our weak gun laws are the culprit.

One in three American women will experience abuse in her lifetime³—and women in households with a history of abuse are nearly *15 times* more likely to be murdered by an intimate partner or

¹ Hemenway D, Shinoda-Tagawa T, Miller M. Firearm availability and female homicide victimization rates among 25 populous high-income countries. *J Am Med Womens Assoc.* 2002; 57(2):100-4.

² U.S Department of Justice, FBI, Supplementary Homicide Reports, 2011

³ CDC National Intimate Partner and Sexual Violence Survey, 2010, available at: <http://1.usa.gov/1jed2Xe>

family member.⁴ Indeed, when guns are present in domestic abuse situations, women are 5 times more likely to be murdered.⁵

And yet we know that strong laws can make a real difference. Since the National Instant Criminal Background Check System began operating 15 years ago, more than 300,000 gun sales have been denied to domestic abusers.⁶ Our laws work, but they're still far too weak—and they're still giving abusers easy access to guns.

When Congress first passed VAWA, it wisely prohibited people from having guns while they are subject to domestic violence restraining orders. But the definition of domestic violence in the federal gun prohibitor does not match the definition of domestic violence in VAWA. VAWA protects victims against all intimate partner violence, regardless of marital status. But the restraining order prohibitor includes only abusive spouses and abusers who have cohabitated or share a child with their victims. This means that if a woman goes to court and gets a restraining order against her abusive boyfriend, he will still be able to buy guns—simply because the couple is not married. Similarly, when Congress passed a law prohibiting partners convicted of domestic abuse, the law again relied on the narrow definition—meaning that an ex-boyfriend may not be prohibited even after he is convicted of serious physical abuse.

This is a dangerous gap in the law. And its impact has only grown more dire in the years since VAWA was enacted: The number of women murdered by dating partners has increased regularly over that period, and, as of 2012, more women are killed by boyfriends than husbands.⁷

The Protecting Domestic Violence and Stalking Victims Act would address this serious problem, defining domestic violence under the federal gun prohibitors to include the same dating relationships covered in VAWA—and bringing our federal gun laws in line with the reality of domestic abuse.

S.1290 would also prohibit convicted stalkers from buying or possessing guns. Not only is this plain common-sense, but we also know that a history of stalking does predict subsequent violent behavior: Among female victims of attempted murder, nearly 90 percent were stalked by their attackers in the previous year.⁸ In fact, more than *one in ten* women will be stalked in her lifetime.⁹

⁴ JE Bailey et al, "Risk factors for violent death of women in the home", *Archives of Internal Medicine*, 1997.

⁵ JC Campbell et al, "Risk factors for femicide in abusive relationships: results from a multisite case control study," *American Journal of Public Health*, July 2003.

⁶ Between the inception of the NICS system in 1998 and April 30, 2014, 154,584 gun sales were federally denied due to misdemeanor crime of domestic violence convictions or restraining or protection orders for domestic violence. U.S. Department of Justice, FBI, NICS Denials: Reasons Why the NICS Section Denies, Nov. 1, 1998 – Apr. 30, 2014, at <http://1.usa.gov/1k9zURj>. Between 1998 and 2010, state and local agencies issued a total of 945,915 denials, and it is estimated they have issued 225,000 denials in the three years since data was last released. U.S. Department of Justice, Bureau of Justice Statistics, Feb. 2013, Background Checks for Firearms Transfers, 2010–Statistical Tables, Feb. 2013, at <http://1.usa.gov/Z8vYsa>. For agencies that reported reasons for these denials, 13.2% were denials for domestic violence reasons — which would represent another 155,000 domestic violence denials. Thus, the background check system has likely issued more than 300,000 denials for domestic violence reasons.

⁷ Everytown for Gun Safety analysis of FBI Supplementary Homicide Reports, 2012.

⁸ JM McFarlane et al, "Stalking and intimate partner femicide," *Homicide Studies*, Nov. 1999.

⁹ CDC National Intimate Partner and Sexual Violence Survey, 2010, available at: <http://1.usa.gov/1jed2Xc>

Protecting women from abusive dating partners and from stalkers should be a bipartisan effort, and S.1290 should pass Congress by the same large majorities as VAWA did. Make no mistake, this bill is the unfinished business of VAWA. The connection between protecting women and keeping guns out of abusive hands is clear. And while we wait to take action, 48 women are killed with guns each month by their intimate partners.¹⁰ We need to take this important step to keep our mothers, daughters, and sisters safe.

I'm also asking you to renew the fight for background checks on all gun sales—the most important step we can take to keep guns out of dangerous hands. For fifty years we have prohibited dangerous people from having guns. For twenty years we have had a background checks system that allows us to enforce those prohibitions at the point of sale. But our work to prohibit criminals, spousal abusers, and the seriously mentally ill, and our work to create an background checks system with integrity, is undermined by the loophole that allows prohibited people to buy guns from unlicensed sellers without a background check. A spousal abuser can be convicted of rape and sexual assault, and can be subject to an active restraining order, but federal law still enables him to buy a gun from an unlicensed seller—online markets like Armslist.com make this easy—with no background check, and no questions asked. I urge you to require background checks for sales by unlicensed sellers, perhaps by revisiting the legislation introduced last year by bipartisan cosponsors Pat Toomey and Joe Manchin.

Thank you for having this important hearing. Please stand up and vote for S.1290 and for background checks, legislation that carries on the work to stop domestic abuse in America.

¹⁰ U.S. Department of Justice, FBI, Supplementary Homicide Reports, 2008-2012

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Senator Sheldon Whitehouse
Hart Senate Office Bldg. Room 530
Washington, DC 20510

August 5, 2014

Dear Senator Whitehouse:

Please accept this letter as part of the record of the hearing held by the Senate Committee on the Judiciary on July 30, 2014 entitled, "VAWA Next Steps: Protecting Women from Gun Violence."

Summary

We are writing to clarify the record regarding statements that were made during the July 30th hearing that referenced our June 2014 report, "Women Under the Gun: How Gun Violence Affects Women and 4 Policy Solutions to Better Protect Them."¹ During the hearing, Ranking Member Grassley correctly indicated that research conducted by the Center for American Progress found that most states are not submitting complete records of individuals prohibited from gun possession under 18 U.S.C. §922(g)(8) and (g)(9) to the Federal Bureau of Investigation (FBI) for inclusion in the National Instant Criminal Background Check (NICS) Index. However, in referencing and quoting from this portion of our report, we are concerned that Ranking Member Grassley may have presented an incomplete picture of the extent to which states are failing in their responsibility to provide and access records of prohibited abusers during gun background checks. While few states are submitting complete records directly to the NICS Index, more states are pre-screening and flagging these records as gun-prohibiting in other FBI databases that are queried during background checks. Additionally, background checks across all states involve attempted case-by-case reviews of potentially disqualifying domestic violence records. It would be incorrect to draw an inference from Ranking Member Grassley's statements during the hearing, as some observers may have, that a state's failure to provide any domestic violence records to the NICS Index means that no domestic violence records from that state are searched during a background check of a gun buyer from that state. In fact, such records are searched. However, as our report recommends, pre-screening and pre-validating records is the best practice to ensure that these records are immediately available during a firearms background check. The failure of many states to pre-validate abuser records by providing them to the NICS Index and/or flagging them in another FBI criminal records database does lead to delayed background checks and, in some cases, to gun sales proceeding when individuals are, in fact, prohibited from gun possession under federal law because of domestic violence.

Background on the NICS Index, the Interstate Identification Index, and the National Crime Information Center

When an individual seeks to buy a firearm from a licensed dealer, the dealer submits the person's name and other limited identifying information to NICS for a background check to determine if the individual is qualified under state and federal law to buy a gun. The agency running the check – FBI for most states or state law enforcement in so-called “point-of-contact” states – then queries NICS, which primarily involves searches of three databases that contain criminal justice information and are used for a number of purposes in addition to firearm background checks: the Interstate Identification Index (III), the National Crime Information Center (NCIC), and the NICS Index.² Each of these databases contains different types of records relevant to gun sale background checks: III includes records pertaining to criminal convictions; NCIC includes records relating to fugitives and individuals subject to restraining orders; and the NICS Index contains records submitted by states regarding any of the categories of prohibited purchasers.³ The FBI also queries databases of Immigration and Customs Enforcement for records pertaining to noncitizens who attempt to purchase firearms.⁴

Why Reviews of Domestic Abuser Records Are More Challenging

Unlike other categories of prohibited purchasers, such as convicted felons or fugitives, it can be difficult to quickly ascertain whether an individual's criminal history renders him or her ineligible to purchase a firearm because of a conviction for a misdemeanor crime of domestic violence or the issuance of a domestic violence restraining order unless the record has been submitted directly to the NICS Index or pre-screened and flagged as prohibiting in III or NCIC. For potentially disqualifying domestic violence records that are not in the NICS Index or flagged, there are a number of reasons that the case-by-case review is slower and less complete than reviews of other categories of prohibited persons. First, records of misdemeanor domestic violence convictions and restraining orders that are in III and NCIC are often incomplete and require additional investigation to determine if they render the individual prohibited from gun possession.⁵ For example, III may have a record of the individual being arrested for misdemeanor assault but not have information about whether that arrest resulted in a conviction. In such cases, the FBI (or state law enforcement in point-of-contact states) must contact the local court system or police agency to determine how the arrest was resolved, an investigation that can easily take longer than the three days the FBI is permitted by law to complete the check before the sale must proceed.⁶

Second, the federal definition of misdemeanor crime of domestic violence does not always easily align with state law crimes. For example, III may show that an individual was convicted of misdemeanor assault but does not indicate the relationship between the defendant and the victim or whether the requisite use of force required under federal law was an element of the state crime.⁷ When that occurs, the FBI or state law enforcement must again contact local court and police officials to piece together the details of the conviction – a process that is even more time-consuming than just determining the basic disposition of a case.⁸

Third, even simply identifying whether a misdemeanor conviction is prohibiting because it involves domestic violence can pose a challenge, as many of these convictions do not present as such initially. In a number of states, these are merely assault or battery convictions, and the FBI must again do further research with local agencies to determine if it qualifies as a prohibiting conviction under federal law.⁹ This process is made even more difficult because many states do not have easily accessible electronic records regarding misdemeanor convictions.¹⁰

The Benefits of Pre-Screening and Pre-Validating Domestic Abuser Records

One solution to this problem is for states to proactively identify the individuals prohibited from gun ownership due to a domestic violence misdemeanor conviction or restraining order through a process that law enforcement experts refer to as “pre-validation.” Instead of urgent case-by-case examinations, where the FBI or state law enforcement try to figure out whether a particular record is qualifying at the time of a sale, pre-validation would mean that state law enforcement had reviewed all the potentially disqualifying records, identified those that are prohibiting under federal law and pre-validate them as such, and submit all those records to the FBI. Doing so would ensure that information regarding these individuals is immediately accessible to NICS operators during a background check and eliminate the need for any additional investigation into whether the individual’s criminal history renders him or her ineligible to purchase a firearm.

One way for states to engage in this pre-validation process is to flag disqualifying records in NCIC and III. Each of these indexes currently has a flag that allows states to identify records of individuals who are barred from gun ownership—restraining orders in NCIC and misdemeanor convictions in III. Using these flags allows the NICS operators to immediately ascertain that the individual is prohibited from gun possession and eliminates any ambiguity as to whether the individual has a disqualifying conviction or restraining order. While these flags are a preferred method of indicating that an individual is barred from gun possession because of his or her criminal history, according to a January 2014 report by the Bureau of Justice Statistics, only 22 states currently employ a flag to indicate that an individual is ineligible to purchase firearms.¹¹

In addition to using these flags, when states pre-validate disqualifying records, they also have the option of submitting these records directly to the NICS Index. While the NICS Index is generally used to collect prohibiting records that are not otherwise available in the other indexes, it can also be used for records pertaining to any of the federal prohibitors. Submitting these pre-validated records to the NICS Index should not replace flagging these records in NCIC and III but instead should act as an additional safeguard to ensure that clear records of who is prohibited from firearm possession because of a domestic violence conviction or restraining order are immediately available during a background check.

The NICS Index is currently set up to accept these records, and, in fact, there are a substantial number of these records already in the index: As of June 30, 2014, there were more than 108,000 records of individuals convicted of domestic violence misdemeanors and more than 27,000

records of those subject to a domestic violence restraining order.¹² Few states, however, have adopted this approach; most either rely on III and NCIC to flag prohibited domestic abusers or are not flagging abusers at all. According to data obtained by the Center for American Progress through a Freedom of Information Act request to the FBI, as of December 31, 2013, only 36 states have submitted any domestic violence misdemeanor conviction records to the NICS Index, and of these, 21 states have submitted 20 or fewer of these records. But a few states have begun to submit these records to the FBI for inclusion in the NICS Index in large numbers—conducting exactly the “pre-validating” batch review that the FBI recommended in a 2012 report.¹³ In fact, fully 79 percent of all the state domestic violence conviction records submitted to the NICS Index come from just three states: Connecticut, New Hampshire, and New Mexico.

Progress has been made in recent years to improve electronic access to state conviction records, which has likely reduced some of the problems with identifying prohibited domestic abusers during a NICS background check. A number of states have received significant grant funding through the National Criminal History Improvement Program to improve the quality, timeliness, and accessibility of criminal history records as a general matter,¹⁴ as well as funding through the NICS Improvement Act of 2007 specifically intended to improve record submission to NICS.¹⁵ But despite these efforts, as of the end 2012, less than half of the states employed a flag to indicate that an individual’s criminal history renders him or her ineligible to buy a gun.¹⁶ All states should consider following practices like those of Connecticut, New Hampshire, and New Mexico—reviewing all potentially disqualifying domestic violence records upfront, pre-validating those records, flagging those records in III and NCIC, and submitting these records directly to the FBI for inclusion in the NICS Index.¹⁷

Thank you for the opportunity to clarify this issue for the record.

Very truly yours,

Arkadi Gerney
Senior Fellow

Chelsea Parsons
Director, Crime and Firearms Policy

¹ Our full report can be found at <http://cdn.americanprogress.org/wp-content/uploads/2014/06/GunsDomesticViolencereport.pdf>.

² U.S. Government Accountability Office, "Gun Control: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks," GAO-12-684, Report to Congressional Requesters, United States Congress, July 2012, available at <http://www.gao.gov/assets/600/592452.pdf>.

³ *Ibid.*

⁴ Federal Bureau of Investigation, "National Instant Criminal Background Check System (NICS) Operations 2012," available at <http://www.fbi.gov/about-us/cjis/nics/reports/2012-operations-report> (last accessed May 2014).

⁵ General Accounting Office, "Gun Control: Opportunities to Close Loopholes in the National Instant Criminal Background Check System, July 2002," p. 20-23, GAO-02-720, Report to the Ranking Member, Committee on the Judiciary, House of Representatives, available at <http://www.gao.gov/assets/240/235091.pdf>.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012* (U.S. Department of Justice, 2014), table 7, available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

¹² Federal Bureau of Investigation, "Active Records in NICS Index as of June 30, 2014," available at <http://www.fbi.gov/about-us/cjis/nics/reports/nics-index-070314.pdf> (last accessed July 2014).

¹³ Federal Bureau of Investigation, "National Instant Criminal Background Check System (NICS) Operations 2012."

¹⁴ Bureau of Justice Statistics, "National Criminal History Improvement Program," available at <http://www.bjs.gov/index.cfm?ty=tp&tid=47> (last accessed May 2014).

¹⁵ Bureau of Justice Statistics, "The NICS Improvement Amendments Act of 2007," available at <http://www.bjs.gov/index.cfm?ty=tp&tid=49> (last accessed May 2014).

¹⁶ Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012*, table 7.

¹⁷ One caveat to this recommendation is that states that conduct their own NICS background checks—known as "Point of Contact" states—may have better practices already in place for quickly identifying prohibiting records for domestic abusers when they seek to buy guns. In these states, because a state law-enforcement agency is conducting the check they often have better access to local conviction and restraining order data.

Testimony for the Record by Christy Salters Martin

Submitted to the

Committee on the Judiciary, United States Senate

Hearing on VAWA Next Steps: Protecting Women from Gun Violence

July 30, 2014

Senator Whitehouse, Chairman Leahy, Ranking Member Grassley, Judiciary Committee Members, Senators:

Thank you for considering this important issue and letting me share my own near-death experience with domestic violence.

My name is Christy Salters Martin. I am a concealed carry permit holder and a gun owner. I spent many years in the ring as a successful professional boxer. But on November 23, 2010, I literally fought for my life when my husband of 19 years tried to murder me.

Jim always told me that if I ever left him, he would kill me. He threatened my life for more than 20 years. When I finally got up the courage to tell him we were through, he did his best to make good on his promise, stabbing me four times with a 9-inch long blade and then shooting me with my own 9mm handgun. The bullet came within four inches of my heart.

Jim left me for dead on the bedroom floor, but I managed to make it outside and flag down a passing car to take me to the hospital. Somehow, I survived.

But thousands of American women are not so lucky. A woman has a 1 in 3 chance of experiencing abuse during her lifetime,¹ and guns make it much worse: when an abuser has access to a gun, it's five times more likely that the woman will be murdered.² In fact, over half of all women murdered in this country are killed by an intimate partner or family member.³

That's why I'm writing to ask you to support the Domestic Violence and Stalking Victims Act of 2013, S.1290, introduced by Senator Amy Klobuchar. This important legislation would fix two holes in the law protecting abused women from gun violence.

Right now, federal law recognizes that guns and abuse are a deadly combination and says that if you are convicted of a crime of domestic violence or have a domestic violence restraining order

¹ CDC National Intimate Partner and Sexual Violence Survey, 2010, available at: <http://1.usa.gov/1jed2Xe>

² JC Campbell et al. "Risk factors for femicide in abusive relationships: results from a multisite case control study," *American Journal of Public Health*, July 2003.

³ FBI. Supplementary Homicide Reports, 2011

taken out against you, you're not allowed to buy or own a gun.⁴ This law works to keep guns out of the hands of dangerous abusers, and it turns out that one out of six people stopped from buying guns from a licensed dealer is a confirmed domestic abuser.⁵

But the law has serious loopholes. First, it only applies to a person who abuses his intimate partner if they were married, have lived together, or had a child together. But in today's world, more people are killed by a dating partner than by a spouse.⁶ S.1290 would change the definition of intimate partner to include dating partners. Second, current federal law does nothing to stop many convicted stalkers from buying or owning guns. Considering that almost 9 out of 10 victims of attempted murder were stalked by their attacker within a year of the crime,⁷ it's critically important to keep guns out of the hands of stalkers. S.1290 would do so by adding stalking to the list of prohibiting crimes.

Some say that removing guns from an abusive home prevents a woman from using the best tool she has to defend herself. Well, I'm an experienced gun owner, with a concealed carry permit. I'm also a professionally trained fighter. But even I wasn't able to stop my abuser from using my gun against me, and my experience is all too common. Abused women are almost ten times as likely to be threatened with a gun as they are to use it to defend themselves.⁸

I am still a gun owner and a proud supporter of the Second Amendment. But respect for the rights of law-abiding citizens does not mean we cannot prevent dangerous abusers from getting their hands on deadly weapons. Women will continue to face an epidemic of gun violence until Congress steps up and strengthens these laws. I'm asking you to take action and vote for S.1290 so that fewer women in abusive relationships will experience what I went through, or even worse.

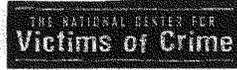
⁴ 18 U.S.C. § 922(g)(8),(9).

⁵ FBI, NICS Operations Reports, 1998-2013.

⁶ U.S. Department of Justice, Homicide Trends in the United States 1980-2008, available online at: <http://1.usa.gov/1uARYtW>.

⁷ Source: JM McFarlane et al. "Stalking and intimate partner femicide," *Homicide Studies*, Nov. 1999.

⁸ SB Sorenson and Wiehe. "Weapons in the lives of battered women," *American Journal of Public Health*, 2004.



Comments submitted to the
Committee on the Judiciary, United States Senate

For its hearing on
VAWA Next Steps: Protecting Women from Gun Violence

July 30, 2014

Thank you Senator Whitehouse, Chairman Leahy, Ranking Member Grassley, and members of the Judiciary Committee for the opportunity to provide input for this historic hearing on this important topic.

In 2000, the National Center for Victims of Crime, in partnership with the U.S. Department of Justice Office on Violence Against Women, established the National Stalking Resource Center (SRC). Over the last 14 years, we have provided training and technical assistance to over 100,000 multidisciplinary professionals nationwide, including law enforcement, prosecutors, victim service providers, and other allied professionals. Our mission is to enhance the ability of professionals, organizations, and systems to effectively respond to stalking, and we are working towards a criminal justice system that improves victim safety and well-being and holds offenders accountable.

Since the first stalking law was enacted in 1990, our nation has made great strides in improving our response to stalking, including the passage of the Violence Against Women Act,¹ the establishment of January as National Stalking Awareness Month in 2004,² and the first White House roundtable on stalking in 2012.³ In addition to the Federal stalking statute, stalking is a crime in every state, U.S. territory, and the District of Columbia. While this progress is commendable, it is far from complete: in many states stalking victims do not have access to protection orders and in a majority of states criminals convicted of stalking offenses can still legally—and easily—buy and use firearms.

Federal law, too, fails to fully protect victims. It allows convicted stalkers to legally buy and possess firearms that they all too frequently use to harass, threaten, and even kill those they target. Although federal law prohibits gun ownership by some persons convicted of misdemeanor crimes of domestic violence,⁴ it does not contain a parallel provision for stalking misdemeanors. In other words, someone who is convicted or pleads guilty to a stalking misdemeanor can walk out of the courthouse, go to a gun store, and pass a background check despite the conviction.

This represents a major threat to public safety because stalking of women is a predictor of further violence toward women. A study in ten major American cities found that in 85 percent of attempted murders of women, the perpetrator had stalked the intended victim in the year before the attempted murder. The same study shows that 76 percent of women killed by their intimate

partners had been stalked in the prior year.⁵ Altogether, fully 1 in 4 women and 1 in 13 men have experienced stalking at some point in their lifetime in the United States.⁶

Given the major risks that stalkers pose to victims when they have easy access to deadly weapons, a federal law prohibiting convicted stalkers from using firearms is long overdue and is crucial to keeping all victims safe.

To that end, we strongly urge the passage of S.1290, The Protecting Domestic Violence and Stalking Victims Act, sponsored by Senator Amy Klobuchar. S.1290 would close loopholes in federal law that exempt certain convicted stalkers from the federal gun prohibitions.

An additional provision in S.1290 would prohibit abusive dating partners from owning or possessing firearms. Nationwide, in 2012, more women were killed by their boyfriends than by their spouses, culminating a decades-long trend.⁷ Despite this, federal law currently allows abusive partners convicted of misdemeanors for abusing their girlfriends or boyfriends to buy guns legally—simply because they never married or lived with their partners. The risks posed by an abusive partner do not depend on whether a couple has ever lived together or married; neither should the abusers treatment under the law.

These loopholes are not hypothetical: they are real gaps in our laws that are costing women, children, and men their lives. To protect victims of stalking and dating violence, we urge you to close the loopholes in the federal gun laws and pass S.1290.

¹ The White House, Factsheet: The Violence Against Women Act. Available at: <http://1.usa.gov/1qz51vN>.

² National Stalking Awareness Month, Welcome (2014). Available at: <http://bit.ly/1kkXT00>

³ White House Council on Women and Girls, Raising Awareness about Stalking (Jan 30, 2012) Available at: <http://1.usa.gov/1qbaKVO>

⁴ 18 U.S.C. §§ 922(d)(9), (g)(9).

⁵ Judith MacFarlane, Jacquelyn Campbell et al., Stalking and Intimate Partner Femicide, 3 Homicide Studies No. 4, 300-16 (Nov. 1999).

⁶ National Stalking Resource Center, Stalking Fact Sheet (2012). Available at: <http://bit.ly/1ff9Be8>

⁷ Everytown for Gun Safety analysis of FBI Supplementary Homicide Reports, 2008-2012.



Testimony for the Record by

Everytown for Gun Safety

Before the

Committee on the Judiciary, United States Senate

Hearing on VAWA Next Steps: Protecting Women from Gun Violence

July 30, 2014

Senator Whitehouse, Chairman Leahy, Ranking Member Grassley, Members of the Committee:

Thank you for holding this important hearing on "Protecting Women from Gun Violence." In the United States, violence against women is inextricably linked to our weak gun laws which allow guns to pass into the hands of domestic abusers. To protect women from gun violence, we must strengthen our laws to ensure that domestic abusers do not have access to guns.

The data are clear: The majority of women killed with guns each year are murdered by intimate partners.¹ People with a history of domestic violence pose an elevated risk of killing an intimate partner, and when a firearm is present in a domestic violence situation it increases the woman's risk of being murdered by more than 500 percent.² This is why women in the United States are 11 times more likely to be killed with guns than their peers in other comparable countries [see Figure 1]³ — and why 48 American women are shot to death by their intimate partners each month.⁴ As long as abusers continue to access guns through loopholes in our laws, hundreds of American women will needlessly die each year.

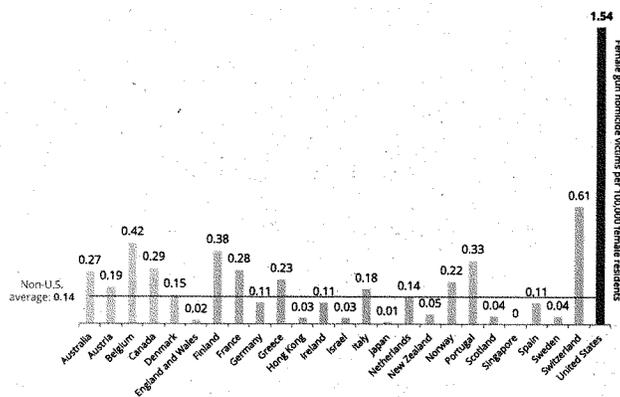
¹ Everytown for Gun Safety analysis of FBI Supplementary Homicide Reports, 2008-2012.

² JC Campbell et al, "Risk factors for femicide in abusive relationships: results from a multisite case control study," *American Journal of Public Health*, July 2003.

³ Hemenway D, Shinoda-Tagawa T, Miller M. Firearm availability and female homicide victimization rates among 25 populous high-income countries. *J Am Med Womens Assoc.* 2002; 57(2):100-4.

⁴ Everytown for Gun Safety analysis of FBI Supplementary Homicide Reports, 2008-2012.

Figure 1: Comparing female gun homicide rates across high-income countries



Source: Hemenway D, Shinoda-Tagawa T, Miller M. Firearm availability and female homicide victimization rates among 25 populous high-income countries. *J Am Med Womens Assoc.* 2002; 57(2):100-4.

As the largest gun violence prevention organization in the country, Everytown for Gun Safety represents 1200 current and former mayors, along with a broad coalition of moms, law enforcement, gun violence survivors, and 2 million everyday Americans. We are Republicans, Democrats, and Independents. We develop and promote evidence-based laws and policies that will reduce gun violence and save lives, and we mobilize our members to advocate for common-sense public safety measures in their communities. In 2014 alone, we worked with legislators and domestic violence prevention advocates to pass laws in six states — Louisiana, Minnesota, New Hampshire, Vermont, Washington, and Wisconsin — that will protect victims of abuse by keeping guns out of abusers' hands. These bills were signed into law by Democratic and Republican governors alike. And we will continue to work on both sides of the aisle to help pass common-sense laws that will save women's lives.

Original research conducted by our organization provides further evidence that the domestic violence crisis in this country is a gun violence crisis. Our analysis of every mass shooting that occurred in the U.S. in the last six years showed that more than half of the perpetrators targeted an intimate partner or family member.⁵ And our analysis of guns transferred online by unlicensed sellers found that 1 in 30 prospective gun buyers had a criminal history that prohibited them from buying guns — of whom 1 in 5 had a domestic violence conviction.⁶ These numbers are stark, and we urge Congress to pass legislation soon to close loopholes in our laws and protect women from further harm.

First, we urge Congress to pass S. 1290, the Protecting Domestic Violence and Stalking Victims Act. The bill would save lives by closing the loopholes that allow abusive dating partners and convicted stalkers to buy and possess guns.

- Federal law already prohibits spousal abusers from having guns if they are convicted of domestic violence or subject to a restraining order, but it generally does not prohibit unmarried abusers. For three decades the share of intimate partner homicides committed by dating partners has been increasing,⁷ and nationwide in 2012, more women were killed by their boyfriends than by their spouses.⁸ But federal law currently allows abusive boyfriends convicted of assault to buy guns legally — simply because they were

⁵ Everytown for Gun Safety, July 2014, "Analysis of Recent Mass Shootings," available at: <http://everytown.org/1z2DRDB>

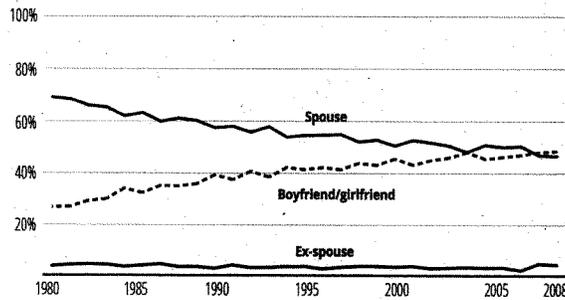
⁶ Mayors Against Illegal Guns, September 2013, "Felon Seeks Firearm, No Strings Attached," available at: <http://everytown.org/1p12c77>

⁷ U.S. Department of Justice, November 2011, "Homicide Trends in the United States 1980-2008," available at: <http://1.usa.gov/1uARyYw>

⁸ Everytown for Gun Safety analysis of FBI Supplementary Homicide Reports, 2008-2012.

never married to their victims. S.1290 would fix this loophole, updating federal gun law to encompass the same dating partners already protected under the Violence Against Women Act. Senator Blumenthal's bill, the Lori Jackson Domestic Violence Survivor Protection Act (S. 2483), would also make this critical fix.

Figure 2: Murders of intimate partners by relationship type



U.S. Department of Justice, Homicide Trends in the United States 1980-2008, available online at: <http://1.usa.gov/1uR1Y1W>. Percentages are based on the 65% of homicides for which victim/offender relationship was known.

- Federal law already prohibits convicted stalkers from having guns if their crimes are felonies, but it does not prohibit other stalking offenders with misdemeanor convictions. A study in 10 major American cities found that in nearly 90 percent of attempted murders of women, the perpetrator had stalked his intended victim in the year before the attempted murder.⁹ S. 1290 would prohibit all convicted stalkers from possessing guns, ensuring that guns do not fall into these dangerous hands.

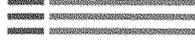
Fixing our laws to include these two categories of dangerous people who should be prohibited from having guns will save lives. Indeed, a history of domestic violence is highly predictive of intimate partner homicide: Women living in abusive households are nearly 15 times more likely to be murdered by an intimate partner or a family member.¹⁰

Second, Congress can protect women by requiring background checks for gun sales by unlicensed sellers, and ensuring that abusers cannot evade their prohibition and obtain guns. The existing background check system works well: 300,000 sales to prohibited abusers have been stopped since the National Instant Criminal Background Check System started operating in 1998.¹¹ But because federal law allows unlicensed sellers to transfer guns without a background check, it is easy for abusers to evade the system and avoid detection. For example, they can simply visit websites like Armslist.com — where more than 80,000 gun ads are hosted on any given day, the vast majority posted by unlicensed sellers — and find a gun locally that they can buy without a background check. This loophole ensures that whether or not an abuser's prohibiting conviction or restraining order is in the background check system, he can arm himself with no questions asked.

⁹ JM McFarlane et al, "Stalking and intimate partner femicide," *Homicide Studies*, Nov. 1999.

¹⁰ JE Bailey et al, "Risk factors for violent death of women in the home", *Archives of Internal Medicine*, 1997.

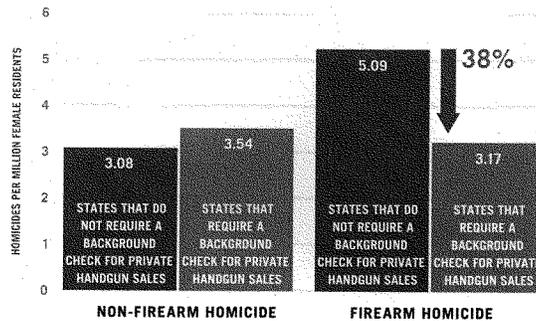
¹¹ Between the inception of the NICS system in 1998 and April 30, 2014, 154,584 gun sales were federally denied due to misdemeanor crime of domestic violence convictions or restraining or protection orders for domestic violence. (U.S. Department of Justice, FBI, NICS Denials: Reasons Why the NICS Section Denies, Nov. 1, 1998 – Apr. 30, 2014, at <http://1.usa.gov/1k9u3URj>). Between 1998 and 2010, state and local agencies issued a total of 945,915 denials, and it is estimated they have issued 225,000 denials in the three years since data was last released. (U.S. Department of Justice, Bureau of Justice Statistics, Feb. 2013, Background Checks for Firearms Transfers, 2010–Statistical Tables, Feb. 2013, at <http://1.usa.gov/2ZbV1sa>). For agencies that reported reasons for these denials, 13.2% were denials for domestic violence reasons — which would represent another 155,000 domestic violence denials. Thus, the background check system has likely issued more than 300,000 denials for domestic violence reasons.



A groundbreaking investigation by Mayors Against Illegal Guns documented these sales in depth, showing that at least 1 in 30 people looking to buy guns on Armslist has a prohibiting criminal record.¹² One such person was Radcliffe Houghton — the domestic abuser who murdered his estranged wife Zina Daniel and two of her co-workers in Brookfield, Wisconsin in October 2012. As Zina's brother Elvin will testify before the Senate Judiciary Committee today, Zina had taken out a restraining order against her husband, which prohibited Houghton from buying a gun. So he couldn't shop at a gun store — because he would have failed a background check — but he was able to post an ad on Armslist seeking a gun "ASAP." Just two days after the restraining order was in place, Houghton met an unlicensed gun seller in a McDonald's parking lot and bought the handgun he would use the next day to murder Zina and two other women.

Strong laws can prevent these murders. Sixteen states and the District of Columbia now require background checks for all handgun sales. And where these laws are in place, 38 percent fewer women are killed by their intimate partners [see Figure 3].¹³ Congress should require background checks for sales by unlicensed sellers — by passing the bipartisan legislation introduced in the Senate by Senators Joe Manchin (D-WV) and Pat Toomey (R-PA) (S.Amdt.715 to S.649) and in the House by Congressmen Peter King (R-NY) and Mike Thompson (D-CA) (H.R. 1565). That legislation would simply require buyers to pass the same background checks they already pass when shopping with licensed dealers. The process is fast and straightforward, and gun owners already do it every time they buy from a licensed dealer. Fully 98.4% of Americans live within 10 miles of a gun dealer.¹⁴

Figure 3: Comparing intimate partner homicide rates of women in states that with and without background check laws



These two measures are the most important steps Congress can take to protect women from fatal abuse. This is violence that affects all of our mothers, sisters, and daughters. Indeed, one in three women will face domestic abuse in her lifetime.¹⁵ It's time to ensure that abusers are prohibited from having guns and to ensure that the prohibition is enforced with a background check every time an abuser goes looking for a murder weapon.

¹² Mayors Against Illegal Guns, September 2013, "Felon Seeks Firearm, No Strings Attached," available at: <http://everytown.org/1n12e77>.
¹³ Everytown analysis of FBI Supplementary Homicide Reports and Florida Department of Law Enforcement, 2010. Excludes New York due to incomplete data.
¹⁴ Everytown for Gun Safety, "How Many Gun Dealers Are There in Your State?" available at: <http://everytown.org/article/how-many-gun-dealers-are-there-in-your-state/>.
¹⁵ CDC National Intimate Partner and Sexual Violence Survey, 2010, available at: <http://1.usa.gov/1jed2Xe>



**NATIONAL NETWORK
TO END DOMESTIC
VIOLENCE**

**1400 16TH STREET NW
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WASHINGTON, DC 20036**

**www.nnedv.org
phone: 202.543.5566
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**Testimony for the Record of the National Network to End Domestic Violence
for the July 30, 2014 Senate Judiciary Committee Hearing on
VAWA Next Steps: Protecting Women from Gun Violence**

Senator Whitehouse, Chairman Leahy, Ranking Member Grassley and members of the Senate Judiciary Committee, the National Network to End Domestic Violence (NNEDV), along with its 56 State and Territorial Domestic Violence and Dual Domestic Violence and Sexual Assault Coalitions, their 2300 programs and the millions of women, children and men they serve, thank you for convening this first ever Senate Judiciary Committee hearing on the tragic, yet solvable, connection between women's homicides and dangerous abusers' and stalkers' possession of firearms.

NNEDV made this hearing our highest priority for the Senate Judiciary Committee this session because the statistics show that the nexus between women's homicides and firearm abuse is startling. Annually, an average 3,551 women in the U.S. are homicide victims. More than half are killed with a firearm. More than three times as many women are murdered with guns used by current or former husbands' and boyfriends', than by any combination of strangers' guns, knives or other weapons. Fifty-seven (57%) of recent mass murders in the U.S. involved domestic violence. Homicides are among the leading causes of death for U.S. women of dating age. More women are killed by dating partners than married partners. There is a high correlation between stalking and women's homicides. And critically, abusers are at their deadliest when they recognize a victim's efforts to end an abusive relationship.

The statistics are appalling. The stories behind the statistics are horrifying. In Semmes, Alabama, Erica Lankford and Steven Lankford were killed by their brother in law during his stalking of Ms. Lankford's sister. The same year in Phoenix, Arizona, Carol Sanders, her 14 year-old daughter, Audrey, and Ms. Sanders' brother, Tom Fitzpatrick were murdered by Ms. Sanders' abusive husband who was able to retain multiple firearms despite Ms. Sanders' protection order against him. In Sacramento, California, Tamisha Evette, after obtaining a temporary restraining order, was fatally shot by her ex-boyfriend who had stalked her from Los Angeles to Sacramento. In Oxford, Connecticut, Lori Jackson was murdered and her mother severely injured when Lori's estranged husband shot them just one day before the temporary restraining order against him became permanent. After months of being stalked by her ex-husband and his family, Christine Belford and her friend Laura Mulford were murdered, and two police officers shot, in a Delaware court house. Kristine Cass had been stalked by her ex-boyfriend for weeks before he killed her and her 13-year-old daughter, Saundra in a residential neighborhood of Honolulu, Hawaii. In Jesup, Iowa, 22-year-old Lindsay Marie Nichols was stalked and then fatally shot by her ex-boyfriend, a 45-year-old radiologist. Just one day after obtaining a protection order against him, Melissa Nickel, of Freeport, Illinois, was fatally shot by her ex-boyfriend. In Antrim Township, Minnesota, 25-year Ashley Ann Sullivan and her stepfather Chester Michael Gronewold, were shot and killed by Ms. Sullivan's ex-boyfriend after twice being arrested for acts of domestic violence (including violation of a no contact order) and just three days after having been released from jail. In Lakeview, New York, Jackie Wisniewski, after ending a relationship with her ex-boyfriend was stalked and then murdered in a stairwell at the Erie County Medical Center. In South Carolina, Lancaster teen, Sierra Landry, was fatally shot by her ex-boyfriend. Ashleigh Lindsey, a 20-year-old Texoma, Texas woman, was fatally shot by her ex-boyfriend. In Utah, Shantelle Reid was fatally shot by her boyfriend. In Vermont, Rhonda Gray, was shot and killed by her

husband who was prohibited from having firearms. S. 1290, S. 2483 and S. 2676 could have helped save these victims' lives.

For these reasons we urge every member the Senate Judiciary to support the Protecting Domestic Violence and Stalking Victims Act of 2013 (S. 1290), the Domestic Violence Gun Homicide Prevention Act of 2014 (S. 2676) and the Lori Jackson Domestic Violence Survivor Protection Act (S. 2483). As the following stories illustrate, passage of these three legislative initiatives can play a significant role in reducing the homicides of abuse and stalking victims and their families.



Paulette Sullivan Moore
Vice President of Public Policy
National Network to End Domestic Violence



AMERICAN ACADEMY OF NURSING
transforming health policy and practice through nursing knowledge

July 30, 2014

The Honorable Amy Klobuchar
U.S. Senator
302 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Klobuchar:

The American Academy of Nursing is pleased to extend our support for **S. 1290, *Protecting Domestic Violence and Stalking Victims Act*** and urge its adoption by Congress and signature into law.

Half of women murdered in the United States are killed by an intimate partner¹ and women in the United States are 11 times more likely to be murdered by an intimate partner than are women in other high income countries.^{2,3} Research by nursing leaders has shown that access to a firearm increases a battered women's odds of being killed by her abuser by more than 5 times.⁴ Among cases where the perpetrator killed himself after committing the intimate partner homicide, access to a gun increased the odds of homicide-suicide by 13-fold.

Evidence supports that restricting access to firearms reduces the risk of homicide. Two separate studies have demonstrated that when state laws restrict access to firearms by those under domestic violence restraining orders, the number of homicides by gun and overall homicide rates are reduced.^{5,6}

Despite these alarming facts, Federal laws do not currently restrict abusive partners and those convicted of stalking from possessing firearms. S. 1290, the Protecting Domestic Violence and Stalking Victims Act, closes loopholes that allow abusers and stalkers to possess and purchase firearms and addresses a significant public health problem: intimate partner murder.

Thank you for your leadership. Please do not hesitate to contact the American Academy of Nursing should you have questions or if our organization can be of any assistance; CEO Cheryl Sullivan may be contacted at Cheryl_Sullivan@AANnet.org.

¹Violence Policy Center. When Men Murder Women: An Analysis of 2011 Homicide Data - Females Murdered by Males in Single Victim/Single Offender. www.vpc.org

²Hemenway D, Shinoda-Tagawa T, Miller M. Firearm availability and female homicide victimization rates

³Stöckl, H., Devries, K., Rotstein, A. Abrahams, N., Campbell, J., Watts, C. Garcia-Moreno, C. (2013). The global prevalence of intimate partner homicide. *The Lancet*. Published online June 20, 2013 [http://dx.doi.org/10.1016/S0140-6736\(13\)61030-2](http://dx.doi.org/10.1016/S0140-6736(13)61030-2)³Lemaire J. (2005). The effect of firearm deaths on life expectancy and insurance premiums in the United States. *LDI Issue Brief*. 11(2):1-4.

⁴ Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S., Manganello, J., Xiao, X., Schollenberger, J., Frye, V.,

& Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multi-site case control study. *American Journal of Public Health, 93*(7), 1089-1097.

⁵Vigdor ER, Mercy JA. Do laws restricting access to firearms by domestic violence offenders prevent intimate partner homicide? *Evaluation Review 2006; 30*:313-46.

⁶Zeoli, A. & Webster, D. Effects of domestic violence policies, alcohol taxes and police staffing levels on intimate partner homicide in large US cities. *Injury Prevention 2010;16*:90-95.
doi:10.1136/ip.2009.024620.

Sincerely,

A handwritten signature in black ink, appearing to read "Diana J. Mason". The signature is fluid and cursive, with the first name "Diana" being the most prominent part.

Diana J. Mason, PhD, RN, FAAN
President, American Academy of Nursing



July 31, 2014

The Honorable Pat Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: National Physicians Alliance Supports Federal Legislation to Protect Women

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the National Physicians Alliance, an organization representing physicians across medical specialties, I am writing to express strong support for two pieces of legislation designed to protect victims of domestic violence by restricting their abusers' access to firearms:

- S. 1290 - The Protecting Domestic Violence and Stalking Victims Act, introduced by Senator Klobuchar
- S. 2483 - The Lori Jackson Domestic Violence Survivor Protection Act, introduced by Senator Blumenthal

Thank you for holding yesterday's hearing to address this important issue. As physicians, we see the impact of domestic violence on our patients and their families. We treat the wounds and bruises and work to help victims heal, but when firearms are part of the picture there is all too often little we can do but help families and communities grieve. Protecting victims of domestic violence and stalking from gun violence by their intimate partners—*regardless of their marital status*—and restricting their abusers' access to firearms are critically necessary steps, as are requiring provision of all records of prohibited abusers to the National Instant Criminal Background Check System (NICS) and a background check on all gun sales.

Both of these pieces of legislation include commonsense measures that will protect victims and strengthen families and communities. We urge you to support their swift passage.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Scott".

Jim Scott, MD
NPA President



STATES UNITED
TO PREVENT GUN VIOLENCE

Board of Directors:

Margot Bennett
Colleen Daley
Eric George
Barbara Hohlt
Toby Hoover
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Fund
Delaware Coalition Against Gun
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Violence
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New Yorkers Against Gun Violence Ed
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North Carolinians Against Gun Violence
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Ohio Coalition Against Gun Violence
Oklahoma Gun Sense
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Ceasefire Pennsylvania
Rhode Island Coalition Against
Gun Violence
Texas Gun Sense
Gun Violence Prevention Center of
Utah
Virginia Center for Public Safety
Washington Ceasefire
Wisconsin Anti-Violence Effort
Ed Fund

Testimony for the Record by States United to Prevent Gun Violence

Committee on the Judiciary, United States Senate

Hearing on VAWA Next Steps: Protecting Women from Gun Violence

July 30, 2014

Senator Whitehouse, Chairman Leahy, Ranking Member Grassley,
Members of the Committee:

Thank you for holding a hearing on "Protecting Women from Gun Violence." Our weak gun laws make it much too easy for domestic abusers to access firearms. We must do more to keep guns out of the hands of stalkers and domestic abusers.

Unfortunately, States United to Prevent Gun Violence and our 28 state affiliates are much too familiar with the tragedies that result from domestic abuse and guns. Four of our states, Arizona, Delaware, New Mexico and Oklahoma, were listed in the ten states with the highest rates of females murdered by males in Violence Policy Center's September 2013 report *When Men Murder Women: An Analysis of 2011 Homicide Data*. In many of our states, including Utah, Georgia, Maine, North Carolina, Colorado, Minnesota, Pennsylvania, Texas and Virginia, more than half the domestic violence homicides are committed with firearms. Recent tragedies in Virginia and Maine remind us that guns are sometimes used to wipe out an entire family. In Culpeper, Virginia a 35-year-old man shot to death his wife and his three children, ages 4, 6 and 13, before turning the gun on himself. And in Saco, Maine a man shot and killed his wife and three children, ages 4, 7 and 12, before taking his own life.

States United to Prevent Gun Violence strongly supports S. 1290, the Protecting Domestic Violence and Stalking Victims Act. The prohibition on gun and ammunition possession by a person convicted of a misdemeanor crime of stalking is an important step in keeping our families safe.

We urge you to do all you can to make our homes and our communities free from gun violence. Thank you.

P.O. Box 1359, New York, NY 10003
www.supgv.org 631-275-8986

Testimony for the Record by Laura Ponce

Submitted to the

Committee on the Judiciary, United States Senate

Hearing on VAWA Next Steps: Protecting Women from Gun Violence

July 30, 2014

Thank you to Chairman Leahy, Chairman Whitehouse, Senator Grassley, and the members of the Judiciary Committee, for holding this important hearing, and for the opportunity to submit this testimony.

My name is Laura Ponce, and I submit this testimony to honor my daughter, Laura Aceves, who was gunned down by her abusive boyfriend last year.

Laura died when she was just 21 years old, at the hands of a man who terrorized her more than a year before she died. I submit these comments to inform the members of the committee of the serious risks that face women like Laura when their abusers have easy access to guns. And I urge the Committee to make sure that dangerous abusers like Laura's killer cannot continue to use guns to threaten and kill women.

Laura met the man who killed her, Victor Acuna-Sanchez, at a friend's birthday party in our hometown, Berryville, Arkansas. They were just teenagers: Laura was 19, and Victor was only 17. They started dating soon after they met.

Before long, it became clear to Laura that getting involved with Victor was a terrible mistake. He was deeply controlling and violent, and he made her every moment a nightmare. He beat her on a weekly basis — beating her with a baseball bat, dragging her behind a car, repeatedly giving her black eyes, and choking her until she passed out. He also constantly threatened Laura and controlled everything she did: he repeatedly told her he would kill her if she ever left him, he destroyed her belongings, and he tried to stop her from leaving by burning her passport, social security card and birth certificate.

Obviously, Laura wanted the abuse to stop, and she didn't want to be in the relationship. But he would not let her leave, and every time she tried, he would beat her, destroy her stuff, and threaten her with more abuse if she tried to leave.

Less than a year before she died, Laura applied for a restraining order against Victor, telling the court that he terrorized her and wouldn't leave her alone. A few months after that, when Laura again tried to force him out of her life, he assaulted her and the police arrested him for domestic battery. But he was out of jail on bail within a couple of days, and he went to her apartment and attacked her. She told police about the attack, and even though it took a month for police to act, they finally arrested him and put him in jail. About three months before Laura's death, a judge set bail at \$15,000.

Unfortunately, about a month after that, his lawyer made a motion to let him out on bail, and it was granted. The court ordered him not to have any contact with Laura.

But on New Years Eve last year, Victor stormed into Laura's apartment and shot and killed her. Police found her dying on the floor of her apartment with a gunshot to the head. Her four-month-old son was lying by her side, covered in Laura's blood.

I am not a politician and I am not a policy expert. I am not filing these comments to give the members of this Committee a bunch of statistics. I'm writing these comments to share Laura's story, because there are so many thousands of women across the country who suffer the same kind of abuse that Laura did, and who are at risk of dying like Laura did, because our gun laws let their abusers buy and own guns.

I'm filing these comments so that the members of this Committee know that the problems of guns and violence against women are not abstract, theoretical numbers. These problems affect real people, and all too often they end real lives. I want the Committee to know Laura's story so you know the real flesh and blood people who your actions affect.

I want you to know Laura's story — and I want you to think of Laura, and what happened to her — when you are called upon to vote on laws that would keep guns away from dangerous abusers. I want you to think about Laura's story because I believe if you do then you will vote to keep women safe.

I understand that there are loopholes in our federal gun laws, that the gun prohibitions only apply to couples who are married, but generally not to unmarried dating partners and not to people who are convicted of stalking crimes. I also understand that Senator Klobuchar has introduced a bill, S.1290, that would save women's lives by updating the law to cover abusive dating partners and convicted stalkers. I urge you to pass S.1290 immediately.

I understand that it is too easy for domestic abusers to get guns in this country because even if they are prohibited from owning guns they can bypass the background check system and buy a gun from an unlicensed seller with no questions asked. I urge you to pass legislation that will require background checks on gun sales by unlicensed sellers.

I believe that all of the members of this Committee — and all your colleagues in Congress — are here in Washington because you want to do the right thing and you want to make our country stronger. You can make our country stronger by strengthening the laws that keep guns away from the most dangerous members of society, and by protecting the most vulnerable Americans — women like my daughter Laura.

I urge you to do so.

Thank you.