California Gun Laws: A Model For The Rest Of The Nation?

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The highly publicized mass shootings that have taken place over the past three years have brought about the issue of gun control at the federal level as well as the state level. In 2011, Gabrielle Gifford, former congresswoman, was a victim of a shooting in Tucson, Arizona. A year later on July 20, 2012, James Holmes opened fire on a group of people inside a movie theater in Aurora, Colorado, killing twelve and injuring fifty. Five months later, December 20, 2012, Adam Lanza went to Sandy Hook Elementary School in Connecticut and killed twenty children and seven adults. The shootings at Sandy Hook Elementary School took the entire nation by surprise due to the sheer brutality and the loss of innocent lives. These events pushed gun control to the forefront of politician’s agendas. President Obama responded by signing twenty three executive orders to address gun violence in the United States.

California politicians believed the shootings that happened in Connecticut, Colorado and Arizona could happen in their state as well, so they made it their mission to combat gun violence with legislation. California has led the charge against gun violence by having the most comprehensive gun laws in the United States. California has implemented background checks on all firearm purchase, a ten day waiting period, firearm registration, assault weapons ban as well as a certified list of safe handguns. There were seventeen different gun control measures that were introduced in the 2012-2013 legislative session, with ten that were signed into law. Gun control measures that have been passed over the last 25 years were intended to help keep firearms out of the hands of criminals, reduce violent crimes such as homicide, suicide, assaults, and unintended fatalities as well as prevent accidents. Certain California legislative measures regarding gun control are not accomplishing their goals of reducing violent crime and saving lives, rather they are placing an undue burden on the citizens and their Second Amendment rights.

When a difficult problem arises in society, there are certain steps legislators can take to address
the issue. The first step is problem identification. The second step is to find the cause of the problem, then find various to correct the issue. The last step is to find alternative solutions and then implement the best plan. To understand if gun control is working in California, this paper will first look at violent crimes perpetrated by criminals through the use of firearms. After thorough examination of the problem, the paper will then analyze the causes of violent crimes and then analyze current federal legislation and California legislation that creates a framework for how firearms are regulated today. With an understanding the problem California faces with violent crime and the solutions that are in place; this paper will then examine how the Second Amendment plays a role in shaping the gun control debate, through various court cases. Policy proposals will then be given after thorough analysis of acquired research materials.

VIOLENT CRIME

Violent crime has occurred since the dawn of time. The manner in which violent crime is committed has evolved as technology has evolved. Criminals are using firearms to commit violent crimes such as assault, murder, mass shootings and robbery. To understand if California gun laws are effective, it is necessary to analyze violent crimes.

Firearms are used throughout the state for hunting, competition as well as recreational purposes, however sometimes they are used to force, intimidate and threaten an individual to do something against their will. Many times criminals will use a gun in a robbery, to exact revenge or to assault an individual. Other times firearms, usually handguns, are used in the taking of one’s own life. It is important to understand what the issues are when creating policies to ensure they are effective. The ultimate goal of gun control is to reduce violent crime; therefore it is necessary to analyze violent crime in California to better understand how to implement effective policies.
Firearms are used in more homicides than any other weapon. There are too many innocent lives that are being lost at the expense of gun violence. In 2010, the Uniform Crime Report reported that there were 8,775 firearm related homicides in the United States. In California, there were 1,257 firearm related homicides, which estimates 3.4 out of 100,000 people will be homicide victims.\(^1\) Texas, which is an extremely gun friendly state has similar rate of homicide in 2010, 913 firearm relate homicides; 3.63 out of 100,000 people will be homicide victims.\(^2\) Texas does not have a waiting period in place for purchases of firearms and they allow their citizens to purchase any firearm, as long as it has not been excluded by the National Firearms Act. Texas does not require background checks and the state does not limit how many guns an individual can buy at any given time, which California does.\(^3\) Texas has a comparable homicide rate to California, yet California has more laws regulating the firearms industry.

Handguns are used in more than half of all homicides in California. In 2012, there were 1,879 murders and of those 899 involved a handgun.\(^4\) Handguns are a problem in California as well as the nation because these firearms are easily concealed. Gang related violent crime is part of the high homicide rate. Some jurisdictions in California have reported that 90% of crime can be attributed to gangs.\(^5\) High powered military weapons are finding their way into the hands of gang members, which poses a threat to police officers, innocent bystanders as well as rival gang members. With the threat of gun violence, individuals have the right to protect themselves, their family as well as their property.

Many people in California carry a concealed firearm on them to protect themselves from an assault or robbery. Others have a shotgun or rifle they keep in their house in order to protect family or property. Homicides can be justifiable depending on the situation. States have self defense laws that fall into three categories: stand your ground, castle doctrine or duty to retreat. California has a stand your ground law, which means an individual does not need to retreat from the threat, but has a right to protect his/herself under reasonable circumstances. An individual has reasonable circumstances in California
when they believe they are in “imminent danger of being killed, injured, or touched unlawfully,” when they need to use force to prevent the threat from happening and they do not use more force than necessary.

The number of homicides recorded in California also includes those that were justifiable. The Federal Bureau of Investigations categorizes justifiable homicide in two categories, the first justifiable homicide by a private citizen and by law enforcement. In 2005, California reported 110 justifiable homicides by a police officer and 27 justifiable homicides by a private citizen. In California, in 2011, there were 125 justifiable homicides by a firearm; 101 were committed by a police officer and 35 were committed by a private citizen.

Unintended fatalities, especially in children, by a firearm have been a major talking point for advocates of gun control. There is a widely held belief that thousands of innocent children die every year due to an accidental discharge of a firearm, however this is not true. In 2010, there were 134 deaths of children between the ages of 0 to 18 years of age in the entire United States. The Center for Disease Control reported that there were no accidental deaths caused by firearms in California in 2010. Unintended fatalities account for an extremely small fraction of deaths in California, as well as the United States. Interviews and documentaries sometimes misinform the public about statistics, which causes concern that is not justified.

In a 20/20 documentary, Diane Sawyer reported in Young Guns, that “every hour a child is rushed to the emergency room because of gun shots.” Robert Sage, the Director of Division of Child Advocacy stated that this issue is a “national public health problem.” The co-host, David Muir stated that in 2009 there were “7,391 children rushed to the hospital every year because of those gun injuries, so often accidents in the home; 453 of those children die at the hospital.” What the documentary failed
to tell the viewer is that the number of children rushed to the hospital are not just accident related, but include “suicide attempts, assaults, and undetermined [causes] as to whether the injury was accidentally or purposely inflicted.” This number also included injury from BB guns as well as air-soft guns. There were 415 children under 14 years of age that were hospitalized due to accidental discharge of a firearm, which is much lower than what was portrayed in the 20/20 documentary. There were 6,201 adolescents (ages 15-19) hospitalized due to assault, suicide, accident, as well as unknown. This age group accounted for 84% of firearm hospitalization. Not all of these children died either, they were just hospitalized. In 2009, the Center for Disease Control reported 96 unintentional deaths in children and adolescents from age 0-18. This documentary made generalized claims regarding accidental deaths of children, trying to make it look like this problem was much larger than it really was. California does not have a problem with children dying from accidental gunshot wounds.

The number of children that have been shot by a loaded firearm in the home has actually been trending downward, since 1999. The CDC reported in 1999 there were 189 accidental firearm related deaths of children (age 0-18) in the country, and in 2010 there were 114 accidental firearm deaths in the country. In California in 1999 there were 47 unintentional deaths (all ages) that were reported, and there were 24 unintentional deaths in 2010. In 2005, Congress passed Protection of Lawful Commerce in Arms Act to help reduce the amount of accidental shootings. All manufacturers, importers or dealers are required to provide a lock for the firearm. Accidental deaths account for a small fraction of firearm deaths in California. Laws requiring gun locks and safes in homes where small children are present are extremely important because they help to keep accidental deaths to a minimum. Firearms that are left unattended in a home can pose a threat to young children. If a loaded gun is stored, without a lock, where a young child might have access, the child might mistake it for a toy and accidentally discharge the firearm, potentially causing injury to themselves or someone nearby. Responsible gun
owners should never leave a loaded firearm in a place where young children have access; however having a lock adds an extra protection.

Many individuals rely on news programs such as 20/20 to give them the reliable information. The media is one way people stay informed about issues in the community and the nation. If the media is misinforming its viewers, it can create a problem that does not exist, which can cause panic and demand action from the government. Unintended fatalities should not be a large concern for the public, nor legislators. The laws that currently exist about having a gun lock or a gun safe in the home are completely logical, justified and necessary to keep these unintended fatalities to a minimum.

Mass shooting is another category of violent crimes that occur and tear families and communities apart. Mass shootings are highly publicized and attract media attention due to the random and gruesome nature of the event. Since 1983, public mass shootings “have claimed 547 lives and led to an additional 476 injured victims.” While it may seem that there are many mass shootings, the only account for a very small fraction of firearm related violence. California has experienced numerous mass shootings. One of the worst shooting that has ever happened in California’s history was on July 18, 1984, a shooting at McDonald’s in San Ysidro. James Huberty carried an Uzi, a shotgun and a handgun, all obtained legally, into the restaurant and began to fire, killing 21 people and injuring 40. Huberty had called a mental health facility prior to his shooting rampage, however they did not get back to him, as it was not an emergency. Prior to the shooting, Huberty said to his wife, that he was going to be “hunting humans.” Huberty’s wife, Edna stated that he had a violent streak and outbursts were normal. This shooting rocked the entire country, as it was the worst shooting in America during that time. Politicians used this tragic event to tighten restriction on gun laws, however five years later another tragic mass shooting occurred.
On January 16, 1989, Patrick Purdy went to Cleveland Elementary School in Stockton, armed with an AK-47. Purdy opened fire on the children in the school year, killing 5 children and wounding 29 other children and one teacher. After his assault was done he committed suicide with a pistol. Purdy had a criminal record, yet he was still able to legally purchase firearms. Purdy knew that he was not supposed to purchase a firearm, however the man who sold the firearm to him, had no way of knowing. Background checks were not put into effect until 1993. In a Report to the Attorney General John Van de Kamp, it stated that Purdy was “prohibited from possessing firearms, and was committed to a mental health facility because he was dangerous to himself and others.” The report also states that a month before the shootings, he purchased a 75 round drum magazine and a 30 round magazine for his AK-47. A few days later, Purdy purchased a 9mm Taurus pistol; however he had to wait to pick it up due to a 15 day waiting period law in California. Purdy had decided that he was going to end his life, and he had begun to plan a month in advance about how he was going to do it.

Purdy and Huberty were troubled and they both used assault weapons. Both of these events shocked the nation, demanding a change in gun laws. California was the first state to act, and took measures into their own hands. The availability of assault weapons to individuals who posed a threat to themselves and to society was seen as a problem that needed to be dealt with. This tragic event brought about the Roberti-Roos Assault Weapons Control Act in California, as well as the Violent Crime Control and Law Enforcement Act. These laws banned certain styles of semiautomatic rifles, handguns and shotguns available for purchase in the state of California, which will be examined more thoroughly later in the paper.

These shootings in Stockton and San Ysidro occurred because background checks were not required at that time. Background checks were implemented in 1993 after the passage of the Brady Act by Congress. If background checks were required when Purdy and Huberty were purchasing firearms,
they would have been denied due to their mental health reports as well as prior criminal history. The shootings that have happened since background checks have been implemented are due to a missing of information in background checks such as mental health or criminal convictions.

Many people that commit these atrocious acts have mental health issues that have not been addressed properly. Those who have serious mental health issues can commit suicide, which is starting to become a serious concern. Societal factors contribute to attitudes of suicide. Many people believe that suicide in inevitable instead of preventable.26 There is a stigma that surrounds suicide which makes it difficult for our society to talk about it and be aware of the growing problem.

Suicide is a serious health issue that is responsible for tens of thousands of deaths in the United States alone. In 2010, there were 3,919 suicides in California, of those 1,492 suicides were firearm related. In California, suicide was “ranked tenth among the leading cause of death.”27 These statistics show that suicide affects more people in California than homicide, however not many people are aware of this. Many people believe that gun violence stems from homicides, however suicide has been found to account for more deaths. “Between the years 2000 and 2010, firearm-related suicides significantly outnumbered homicides for all age groups, annually accounting for 61 percent of the more than 335,600 people who died from firearm related violence in the United States.”28

California has been ranked as the state that has the best gun laws by the Brady Campaign.29 With that said, California has one of the highest suicide rate in the country30 as well as the strictest gun laws in the entire nation. To purchase a handgun in California a person must be over the age of 21, they must take a firearms safety test, go through a waiting period of 10 days, sign a waiver stating you will store your handgun safely in a gun safe, and have a background check conducted. The background check that is conducted is supposed to verify that the individual is not a prohibited person, a convicted felon or
individual with a severe mental illness, however these records are not kept up to date. The records would only indicate a person had a mental illness if they were checked into a mental facility or deemed by the courts unsafe to themselves or the people around them. People that have never been diagnosed with a mental illness will not be prohibited by a background check, so they can slip through the cracks.

Restricting the means of someone trying to commit suicide such as locking up guns or properly storing prescription drugs, is important when trying to stop someone from committing suicide. Limiting access of lethal means to commit suicide also known as means restriction reduces suicide by specific methods as well as reduces suicides overall. California requires a 10 day waiting period when an individual purchases any type of firearm. People that have suicidal thoughts may not be deterred by a waiting period. Suicidal thoughts can range from one hour to weeks or even months, so waiting periods may work some of the time but not every time. There are a few studies that have found that some individuals purchase a gun with the sole intent to commit suicide. Even if restricting firearms works, there are other ways to commit suicide, suffocation or poisoning. The government can try and make it tougher for people to purchase a firearm to commit suicide; however they there are addressing the action of suicide, and not the problem, mental health issues.

There are other states that have minimal gun control laws, and have roughly the same suicide rate as California. Florida and Texas are both considered to be a gun friendly state. Florida has a three day waiting period when purchasing handguns, however individuals who have a concealed carry permit or those who are trading in their handgun are exempt from the waiting period. There is no waiting period in Florida when purchasing a rifle. Texas does not have a waiting period; an individual can go into a gun store make a purchase and walk out with the gun the very same day. In 2010, Texas had 1,702 firearm related suicides while Florida had 1,454 firearm related suicides. California has implemented means restriction through background checks and waiting periods, yet California still has an extremely high
rate of suicide, compared to states that do not have extensive means restrictions for guns. If California’s laws are working, then suicide rates should be much lower than Texas and Florida.

The American Journal of Public Health found that there is an increased risk of suicide when a firearm is accessible in the home or after a recent purchase. This study then concluded the health risks, accidental discharge or suicide, outweigh the benefit of owning a firearm. There are other possibilities that contribute to suicide besides owning a firearm such as “mental and physical health problems, financial strain, veteran status, and relationship problems.” If a firearm is in the home and accessible to individuals that have these issues in their life, it would create an increased risk for suicide, but to say that having a firearm accessible in the home leads to increased risk of suicide is absurd. While gun possession is associated with violence, it is unclear whether that is a causal relationship. People who are in their right state of mind are not going to commit suicide just because a firearm is in the home. Suicide is not something that should be taken lightly and “additional data about context of suicides are required to develop and evaluate interventions that are designed to reduce the burden of firearm-related suicides.” The issue of suicide is not something that can be legislated, however it can be prevented. Strict regulations are currently in place to help prevent individuals who are mentally unstable obtain guns, however it is not effective. Legislators may need to start looking at the cause of suicides rather than the means.

TYPES OF GUNS USED IN VIOLENT CRIME

Most of the violent crimes that are committed in the United States as well as in California are committed with a handgun. In California, there were 1257 firearm related homicides. Of those, 953 homicides were carried out by using a handgun and only 59 deaths were caused because of a rifle. Almost 75% of all homicides were carried out by the use of a handgun. California has some of the
strictest laws regarding purchasing a handgun, yet handguns are the number one firearm used in murders. Rifles account for a small fraction of the homicides in California, yet Senators like Dianne Feinstein are trying to make assault rifles harder to obtain because they pose a significant threat to the wellbeing of the population, but based on the statistics just mentioned, this cannot be true. A special report was published by the U.S. Department of Justice to study firearm violence from 1993-2011. This report showed that handguns account for most of the violence committed. In 1994 there were 13,510 handgun homicides, which accounted for 82.7% of all firearm related homicides as compared to 2,830 homicides by either a rifle or a shotgun.

CAUSE OF GUN VIOLENCE

There are a variety of factors that contribute to gun violence as a whole. There are certain societal factors in society that will indicate higher rates of firearm violence, such as high environmental or social stress, income inequalities, poor mental health and high levels of unemployment. The way a community is made up can also affect firearm violence. Communities that have a high turnover of tenants, social isolation, drug markets, and unemployment are factors that contribute to firearm violence. Situational factors also play a significant role in determining firearm violence. Individuals who are involved in gang membership, drink excessively, use or deal drugs are all factors that contribute to firearm violence. Individuals who are involved with these types of activities are at a higher risk of being a victim of gun violence or a perpetrator of gun violence. Many times, gun violence is found in areas with “high levels of poverty, drug trafficking and substance abuse.” The presence of drugs or alcohol increases the risk of firearm violence. Moreover, criminals often engage in violence as a means to acquire money, goods, or other rewards. At an individual level, there are various factors that contribute to firearm violence. Individuals with “low educational attainment, substance use, and prior history of aggression and abuse are considered risk factors for violence (for both perpetrators and
To understand how to prevent violent crime, it is important to know how firearms get into the hands of criminals. Many of the laws in California have been created to stop firearms from getting into the hands of criminals, yet guns are still being used in violent crime. Many times criminals steal guns, they have a straw purchaser, or they can get them on the black market. Stolen firearms pose a large threat to citizens and law enforcement. Stolen guns are usually used in violent crimes, and are traded around illegally on an unregulated market to individuals that are prohibited from having a firearm.

It is difficult to trace firearms that have been used in crime because the serial number has been scratched off, making it untraceable. Firearms are stolen from houses, vehicles as well as licensed gun stores. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has been tasked with the job of tracking stolen firearms, and they cannot do their job effectively due to the fact that law enforcement is not required to report stolen firearms, it is voluntary. The statistics reported to the ATF are not reliable, but only show a small fraction of the real issue. Some states do not require their citizens to report stolen or lost firearms; so many stolen firearms go unreported to authorities. California does not require citizens to report stolen firearms, but some jurisdictions in California have established ordinances requiring mandatory reporting of stolen firearms like Sacramento, California. Federally Licensed Firearms Dealers are required to notify the local authorities as well as the ATF within 48 hours of the theft, which leads to more accurate records of missing firearms.

The National Crime Information Center (NCIC) was created in 1967 to help law enforcement officers track down fugitives, locate missing persons, identify terrorist, as well as locate stolen property. Almost all law enforcement agencies have access to NCIC; however some agencies do not enter thefts into this database, which makes it less reliable. This database is an excellent resource for law enforcement officers to use to help log stolen firearms, but for it to be effective law enforcement
agencies need to consistently use it. In 2012, the NCIC reported there were 190,342 firearms that were stolen or missing. The Bureau of Justice Statistics reported 1.4 million firearms stolen between 2005 and 2010 which averages out to roughly 232,400 firearms stolen a year, which shows that not all stolen firearms are entered into NCIC. Of the reported thefts in NCIC, 16,667 firearms were stolen from a FFL, which accounts for 9% of the total firearms reported missing in NCIC. In California there were 636 firearms that were reported stolen or missing from a licensed dealer to the ATF in 2012. California was ranked fourth highest in the United States in regards to the most number of firearms stolen from a private citizen, 10,639. Stolen firearms create an unregulated market for firearms, which make tracing crime guns much harder for law enforcement.

Another way for criminals to obtain illegal firearms is through a straw purchaser. A straw purchaser is a person

“With a clean background who purchases firearms specifically on behalf of a person prohibited from purchasing a firearm because he or she is a convicted felon, domestic violence misdemeanants, juvenile, mentally ill individual or other federally or state-defined prohibited person.”

The form an individual fills out deliberately lies on the question 11A and states they are the real purchaser. The form has a warning that states, “If you are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.” The ATF has enacted a program “Don’t Lie For the Other Guy” to warn straw purchaser that it is illegal and you can punishable by a $250,000 fine and up to 10 years in prison.

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**LEGISLATION AT THE NATIONAL LEVEL**

To understand why California has certain firearm laws in place, it is necessary to look at specific firearm laws that were passed by the federal government, which states must comply with. Federal law
serves as the minimum guideline for firearm regulation; however states are allowed to implement stricter laws if they choose. There were four major acts that Congress passed that has given the nation a framework for regulating to manufacturing, importation and sales of firearms.

In 1934, President Roosevelt signed the National Firearms Act (NFA) which required individuals who obtained NFA firearms (short barreled rifles and shotguns, machine guns, silencers) to pay a $200 tax on the purchase and register them with the Secretary of the Treasury. The firearms that were listed were found to be in connection with many violent crimes during the Prohibition Era, including the St. Valentine’s Day Massacre, where seven people were gunned down by machine guns. Congress tried to discourage the purchase of these weapons with a $200 tax and a registry of the firearm, which only the wealthy could afford. Machine guns and automatic firearms can be purchased today, however individuals must pay the $200 tax and register the firearm with the Secretary of the Treasury. These firearms are strictly regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives and require extensive paperwork, fingerprinting and time to obtain. This law was the first sweeping measure that restricted people from buying whatever type of firearm they chose.

The second major act that was passed was the Gun Control Act of 1968. This act was passed after the assassination of well known individuals in the United States such as, President John Kennedy, Malcolm X and Martin Luther King Jr. This act required an individual who was involved with manufacturing, importing or selling firearms to be federally licensed. This act also required licensed dealers to keep a detailed record of all firearm sales, established a minimum age requirement to purchase a firearm, created categories of prohibited individuals from purchasing firearms, generally prohibits interstate sale of handguns, required serial numbers for all imported and exported firearms and establishes penalties for “use of a firearm in the perpetration of a Federal drug trafficking offense or crime of violence.”55
The third act passed by Congress was the Brady Handgun Violence Prevention Act was passed in 1993 and named after James Brady, Reagan’s press secretary, who was shot during an attempted assassination of President Reagan by John Hinckley. John Hinckley obtained a revolver by providing fake identification and a fake address. This act required background checks on individuals who wanted to purchase a handgun as well as a five day waiting period. From 1993 to 1998, there were 12.7 million background checks conducted and 312,000 denials. In 1997, the Supreme Court stated that mandatory background checks were unconstitutional, citing the 10th Amendment. In 1998, a new version of the law was passed, which required instant background checks, to be performed, which covered all types of firearms in place of the waiting period. Background checks could look for prohibited individuals such as felons, domestic abusers or those with severe mental illness.

The most recent federal legislation that passed was the Violent Crime Control and Law Enforcement Act also known as Federal Assault Weapons Ban (AWB) passed by Congress in 1994. This act banned the manufacture, import or sale of certain semiautomatic weapons and newly manufactured high capacity magazines. A magazine that holds over 10 rounds of ammunition is considered a high capacity magazine. The AWB “is directed at semiautomatic firearms having features that appear useful in military and criminal applications but unnecessary in shooting sports or self-defense.” The legislation listed out 19 types of semiautomatic firearms that were banned and provided a feature test for every other model of firearm. Semi-automatic rifles, pistols and shotguns had to pass a certain feature test so they would not be classified as assault weapons. The term “assault weapon” is a vague political term that has been used to classify semi-automatic rifles, pistols and shotguns into one broad category. For a rifle to be considered an assault weapon, it had to have the following:

1. a detachable magazine and has at least 2 of— (i) a folding or telescoping stock;
2. (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
(iii) a bayonet mount; (iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and (v) a grenade launcher.”58

If a rifle has a fixed magazine, then it can have all the accessories listed above, however, if a rifle has a detachable magazine and a pistol grip as well as a telescopic stock, then it would be considered an assault weapon. Pistols also had a similar feature test to classify whether or not it was an assault weapon. “Assault weapons were used in only a small fraction of gun crimes prior to the ban: about 2% according to most studies and no more than 8%.”59 Assault pistols are used in crime more often than assault rifles. If the main goal of this piece of legislation was to make our streets safer, then this legislation should have focused on assault pistols instead of assault rifles and shotguns.

This was a law went into effect on September 13, 1994 and was lifted on September 13, 2004 due to the sunset clause. This ban has not been reinstated; however some legislators have been pushing for the reinstatement of this ban. This piece of legislation was modeled after California’s Roberti-Roos Assault Weapons Control Act of 1989, which is still in effect today.

**LEGISLATION IN CALIFORNIA**

The states have been charged with the power to create and establish laws regarding the use, acquisition and ownership of guns. While the federal government has passed sweeping legislation regarding gun control, which the states must comply with, some states, such as California pass more restrictive gun laws. California has the most stringent gun laws in the entire nation. The Brady Campaign has ranked California number one for the strongest gun laws,60 but many critics believe these strict laws are actually an undue burden on citizens Second Amendment rights.

Obtaining a firearm is not a simple matter of walking into a store, paying for a gun and then walking out with a purchase. There are various rules that the dealer must comply with as well as the
purchaser. There are three ways an individual can purchase a firearm in California, purchasing a firearm from a licensed dealer, a gun show or from a private party. To purchase a gun from a licensed dealer, an individual must be at least 18, needs to fill out an application for sale, provide a valid California Drivers License or Identification Card, and provide their right thumb print. The purchaser must also provide a second proof of residency, aside from the Drivers License or Identification Card. Once all the documents are sent off to the Department of Justice, the purchaser must wait for 10 days to pick up their firearm. An individual may purchase as many long guns (shotguns or rifles) as they wish at. The background check, proof of residency, right thumb print and identification card are required to make sure the buyer is who they claim to be, to ensure the buyer is going to be the owner of the firearm and to make sure they are not prohibited from owning a firearm.

To purchase a handgun, an individual must do everything previously mentioned as well as provide a handgun safety card (HSC) and be at least 21 years of age. If an individual does not possess an HSC, they must pass a test “that includes but is not limited to laws applicable to the ownership, use, handling, and carrying of firearms, particularly handguns”. This card is good for five years, and after five years, the individual must retake the test and pay the fee. Individuals in California can only purchase 12 handguns in a year, 1 handgun every 30 days. This legislation was enacted to try to “stop one gun purchaser from buying several firearms and transferring a firearm to another person who does not have the legal ability to buy a gun him/herself” which is sometimes called straw purchasing.

The Brady Act, referenced earlier, was federal legislation enacted in 1999 that required background checks on individuals trying to obtain firearms. Background checks have been proven effective at preventing prohibited individuals such as felons, domestic abusers and those with serious mental illness from obtaining firearms. Since the Brady Act was enacted until 2004, there were 61,632,000 background checks conducted with 1,228,000 denials throughout the United States.
most common reason for denied requests was due to felony charges and the second most common reason was due to domestic violence charges. The California Department of Justice is required to keep a record of how many Dealer Record of Sale (DROS) applications are submitted to purchase either a handgun or a long gun. In 1999, there were 513,418 applications that were processed to purchase a firearm and 4,779 denials. In 2012, there were 817,738 applications that were processed, with 7,524 denials. Californians had 2,209,735 background checks conducted for firearm transfers with 22,047 rejections between the years 1999 to 2004. During those five years, 22,047 individuals were prohibited from possessing guns. Background checks aim to keep firearms out of criminal’s hands, which it has proven to be effective. There are certain limitations with background checks; they only work if the information is current and up to date.

Background checks are run through three different databases, the Interstate Identification Index, National Crime Information Center (NCIC) data, and the NICS Index. These three databases check for criminal history, arrest warrants, domestic violence and serious mental illness. Unfortunately, the databases are not kept current and up to date. Courts and mental health facilities are not reporting people who are prohibited from possessing firearms, which can make background checks less reliable.

Gun shows have been blamed for firearms falling into the wrong hands; however California has strict laws that regulate gun shows. In California, all purchases at a gun show must be conducted by a Federal Firearm License (FFL) and the individual must comply with all the laws, including background check and the 10 day waiting period. Private citizens are allowed to be vendors at gun shows; however the sales must be conducted through a licensed dealer. The producer of the gun show is required to keep names of vendors and their employees, as well as copies of identification cards and must make those records available to local law enforcement. Purchasing a firearm at a gun show is the same as purchasing a gun at a store. California has made it extremely difficult for prohibited individuals to
obtain a firearm at a gun show.

California allows private parties to sell and trade guns with each other, often called private party sales, but they must do the transaction with a licensed dealer. Selling a gun to a private party without going through the proper channels is considered a felony. The dealer is required to do a background check on the buyer and if the buyer is prohibited from owning a firearm the licensed dealer must immediately give the firearm back to the seller, as long as they too are not in a prohibited class. If the seller is in a prohibited class, the dealer must deliver the firearm to the Sheriff’s Department or local agency. Even though California has tried to regulate firearm sales through requiring firearm transfers to go through a licensed dealer, firearms trafficking, “intentional diversion of firearms from the legal to the illegal market” can occur.

California has banned certain types of firearms from being sold within the state due to involvement in mass shootings like the Cleveland School shooting in Stockton, California. Roberti-Roos Assault Weapons Control Act of 1989 was the first assault weapon ban in the history of California. This legislation limited Californians in what they could and could not legally purchase in regards to firearms. There are three different categories of an assault weapon. The first category is defined by the Roberti-Roos Assault Weapons Control Act and lists makes and models, like the Beretta AR-70 and prohibits the sale in California. An Uzi, AK-47, Armalite AR-180 and others are all listed as Category I assault weapons. Category II assault weapons expanded the list to included AK and AR-15 style rifles and banned them by name. The problem with banning specific names or brands of firearms is that there is a way around the law. Lower receivers can be made to look exactly like an AR-15. Many people found a way around this assault weapons ban by creating other AR-15 and AK-47 style rifles and just renaming them. Naming off all the various names was proving to be impossible, so legislators made Category III, a features test. Rifles that are considered assault weapons include,
“a semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following: (A) A pistol grip that protrudes conspicuously beneath the action of the weapon, (B) A thumbhole stock, (C) A folding or telescoping stock, (D) A grenade launcher or flare launcher, (E) A flash suppressor, (F) A forward pistol grip, (2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds. (3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.”

Many rifles have interchangeable accessories to customize the gun to fit individual needs which can include, but is not limited to a folding stock, pistol grip as well as barrel shroud or accessory rail. Some of these characteristics such as pistol grips, folding stocks, thumbhole stocks, and forward pistol grip do not make the rifle more lethal. These features on the gun are there for ergonomics, not for killing people in short amounts of time. Features that include grenade launchers and flare launchers are not necessary for civilians to have, due to the deadly nature of grenades.

Pistols also can fall under the classification of an assault weapon due to certain characteristics. These semiautomatic pistol characteristics include,

“the capacity to accept a detachable magazine and any one of the following: (A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer,(B) A second handgrip, (C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel, (D) The capacity to accept a detachable magazine at some location outside of the pistol grip.(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.”

This law attempts to curb violent crime by limiting handguns that can be easily concealed and used in crimes. The majority of violent crime that is committed is done with a handgun. It makes sense that legislators would try to control pistols because of their association with violent crime.

California is one of the few states that have a Roster of Handguns Certified for Sale. On January 1, 2001 California once again nicked away at gun owners rights by restricting what types of handguns
they were allowed to purchase. A law, authored by former Senator Richard Polanco, who served the
greater Northern Los Angeles community, sought to “determine whether [a] pistol, revolver, or other
firearm capable of being concealed upon the person meets or exceeds specified standards defining
unsafe handguns.”\textsuperscript{80} This law also charges manufactures, “an annual fee not exceeding the costs of
preparing, publishing, and maintaining the roster and the costs of research and development, report
analysis, firearms storage, and other program infrastructure costs necessary to implement the bill.”\textsuperscript{81}
There is a firing requirement as well as a drop test that these revolvers and pistols must go through to be
certified, which is conducted by a laboratory certified by the California Department of Justice.

For a handgun to be certified for sale in California, the manufacturers must provide “three
handguns of the make and model for which certification is sought”\textsuperscript{82} that have not been altered in any
fashion, that would be sold to the general public. There are many variations of the same models, which
include barrel length, caliber, color as well as metal finish. This means that for each caliber, there are
many, but the most common calibers for handguns are .380 ACP, 9mm, 40 S&W, 45 ACP, 44 ACP and
357 Magnum, the manufacturer must submit three guns of each variation or model number. That means
for all those calibers, the manufacturer must submit 18 handguns to be tested. If Sig Sauer submits a
P226 in 9mm OD Green finish, only that specific model is certified for sale. The same gun, but in black,
would not be certified for sale in California because it was a different color. The variation of colors, grip
styles or finish of the gun will not affect the function or the safety of the firearm. This law limits the
types of guns Californians are allowed to possess.

Handguns must have a safety device, which can be manually operated that also complies with the
standards of the ATF. The firing test requires the guns to shoot 600 rounds, with the first 20 rounds
firing without a malfunction that is not caused by the magazine or ammunition, and the full 600 rounds
must not have more than 6 malfunctions, aside from magazine and ammunition malfunction.\textsuperscript{83} A
malfunction is considered a “failure to properly feed, fire, or eject a round, or failure of a pistol to accept or reject a manufacturer-approved magazine, or failure of a pistol's slide to remain open after a manufacturer-approved magazine has been expended”84. The drop test for handguns and revolvers are the same. They are dropped from a height of 3.3 feet off the ground, as if a hand would drop a gun, simulating 6 various directions. A primed case will be inserted into the chamber, and if the primer has been struck after each drop, leaving an indentation, the gun will not pass the drop test. For a revolver to be considered safe, they must have a safety device that would cause the hammer to retract the firing pin so that it does not rest on the primer or the cartridge. The revolver must also pass the firing test and drop test explained previously. These tests show is that the firearm will not accidentally discharge when dropped or blow up when fired. All firearms manufactures do extensive research and development to ensure that their firearms are safe for the general public to use.

There are expiration dates for how long the handguns are eligible to be on the handgun roster. It is the responsibility of the manufacturer to pay an annual fee in order to keep the handgun on the roster85, if they do not pay the fee; the handgun immediately gets dropped from the roster and is deemed unsafe. The only way to keep a gun on the safe list is for the manufacture to pay a fee each year. The annual fee is not making these guns any safer, but taking advantage of the firearms manufacturers. The purpose behind this bill, as quoted from the author, was to:

“require that weapons fire when they are supposed to and that they not fire when dropped. The drop test is based on U.S. Department of Justice quality standards for law enforcement weapons and the misfire test is a slightly more lenient standard than currently used by law enforcement agencies. The tests are fair and reasonable for weapons sold to members of the public for self-protection. If a weapon is not reliable for self-defense, it has no business being sold in California”86.

Gun manufacturers should not be required to pay an annual fee. A gun should not be deemed safe or unsafe based on if the state was paid a fee.
In California, there is a whole selection of firearms that are designated specifically for law enforcement officers (LEO’s) which the general public are prohibited from purchasing, because they either have not been submitted for testing in California due to the fact they have already been tested by the FTB and the manufacturers do not want to pay additional money for duplicate testing, or California has found those specific guns to be unsafe. The mission of the Firearms Technology Branch (FTB) of the ATF is to serve as the “technical authority relating to firearms and their classification under Federal laws, to respond to law enforcement agencies requests to test, evaluate, and provide expert testimony on firearms and ammunition, and to provide technical services to the firearms industry…” If law enforcement firearms are getting tested by the U.S. Department of Justice (ATF/ FTB) then they should automatically be allowed for sale on the public market. Those guns have already been tested by the ATF and are certified for law enforcement, so they should also be certified for sale to the public.

There has been an added clause to the Safe Handgun roster, which now encompasses microstamping. A firearm that does not have the microstamping technology will be deemed unsafe and cannot be sold to the general public. On October 17, 2007, former California governor, Arnold Schwarzenegger, passed a bill requiring all firearms to have microstamping capabilities beginning January 1, 2014. Microstamping is a “process that micro-laser engraves a unique alpha-numeric code on the tip of the gun’s firing pin” and imprints the code onto the cartridge primer. The purpose of this law is to “make it possible to link bullets and shell casings recovered at crime scenes to the firearm that fired them” which would help police trace a suspect to the crime. Unfortunately, firearms manufacturers Smith & Wesson and Sturm Ruger & Co. are unwilling to comply with this new law. In a press release by Smith & Wesson, they stated, “a number of studies have indicated that microstamping is unreliable, serves no safety purpose, is cost prohibitive and, most importantly, is not proven to aid in preventing or solving crimes.” The patent holder, Mr. Todd Lizotte was involved in
the research and testing of his patent, and even he agrees that there is more research that still needs to be conducted. There are “…legitimate questions…related to both the technical aspects, production costs, and database management associated with microstamping that should be addressed before wide scale implementation is legislatively mandated.”91 Since there are still many questions that have not been answered regarding this new technology, Smith & Wesson, and Ruger Sturm & Co. both have let their firearms fall off the California Certified Handgun Roster, leaving Californian’s with limited options for purchasing handguns. Since the microstamping law has taken effect, there have been roughly 127 handguns that have fallen off the approved roster since December 31, 2013- February 28, 2014 and the list is going to continue to grow expiration dates come and go for various other manufacturers.92 The National Shooting Sports Foundation and the Sporting Arms and Manufacturers Institute have filed a joint lawsuit against the state of California challenging the law because manufactures cannot produce the etchings on the cartridges “legibly, reliably, repeatedly, consistently and effectively…”93 This legislation should have not been enacted due to the unreliability of the technology.

The Armed Prohibited Person System (APPS) was another controversial piece of legislation. In 2001, APPS was established to confiscate weapons from convicted felons, individuals who have a record of domestic violence and individuals who have been deemed mentally ill by a court or been committed to a mental institution.94 In 2013, the California state legislature passed a bill that would take the surplus of money, $24 million, from the DROS (Dealer Record of Sale) fund and transfer it to the Department of Justice to fund the program. The APPS database cross references five other databases Consolidated Firearms Information System (CFIS), Automated Firearms System (AFS), Firearms Eligibility Applicant File (FEAF), Armed and Prohibited Persons System (APPS), Mental Health Firearms Prohibition System and traces purchases of firearms by individuals, who are now prohibited from owning them. The Bureau of Firearms has estimated that there are 20,000 individuals who own
40,000 illegal firearms and the number grows by 15-20 individuals every day.\textsuperscript{95} In 2012, DOJ agents confiscated “2,033 firearms, 117,000 rounds of ammunition, and 11,072 illegal high capacity magazines.”\textsuperscript{96} This program is an excellent way to get firearms out of the hands of individuals who should not have them. Those who are mentally unstable and seen as a threat to themselves and society should not be allowed to have firearms because they might act on their emotion rather than their reason. Felons are another category of people who have relinquished their right to own a firearm because of the crimes they have committed, which have placed other people’s lives in danger.

California State Auditor has found a few issues with the program. The Department of Justice (DOJ) tries “to identify armed prohibited persons by matching its records of firearm owners against reports about individuals with mental illness that it receives from superior courts and mental health facilities”\textsuperscript{97} but, the Department of Justice has not notified the courts, nor the mental health facilities regarding the reports required. There were 34 California courts that were not aware of the reporting requirements, as well as 22 mental health facilities that were not reporting to the DOJ.\textsuperscript{98} Between the years 2010-2012 there were at least 2,300 cases that should have been reported that were not.\textsuperscript{99} There were three courts that were regularly reporting to the DOJ, however, they were not fully compliant. The Los Angeles Court failed to report individuals who “were mentally incompetent to stand trial or that an individual is a danger to others.”\textsuperscript{100} The San Bernardino Court failed to report individuals who were “deemed mentally incompetent to stand trial” and the Santa Clara Court failed to report individuals who were “committed to a mental health facility for an extended period.”\textsuperscript{101} The lack or reporting from the courts as well as mental health officials will hinder this program, but these problems are fixable. If the courts and mental health facilities work together with the Department of Justice, this program can be effective.

Proper reporting from courts and mental health facilities is crucial in preventing violent crimes.
The shootings that happened in Stockton and San Ysidro show just how important it is to identify individuals who have a mental health issue as well as a background of criminal history. If this program was in place during the 1980’s it is very possible that the mass shootings could have been prevented. With an understanding of the basic problem, we can look for the cause of the problem.

SECOND AMENDMENT RIGHTS

In 1791, The Founding Fathers of the United States understood that it was important for individuals to have the right to bear arms, hence the Second Amendment. The Second Amendment states, “A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.” This is where all the debates stem from. Some advocates believe that the Second Amendment is for the militia, while other advocates believe this right is reserved for individuals. The Supreme Court has had to define the Second Amendment in various cases.

DISTRICT OF COLUMBIA VS. HELLER

The year 2008 was a year that many gun enthusiasts will not forget, when the Supreme Court set a precedent for all other cases involving an individual's right to bear arms. The court decided that the amendment protected the right of an individual rather than the right an individual who was serving in the militia. The Supreme Court ruled in District of Columbia vs. Heller that the “Second Amendment guarantees an individual right to possess a firearm in the home for self-defense.”102 The court struck down the handgun ban in Washington D.C. as well as the law that required individuals to keep their firearms unloaded, disassembled and locked up. While the Second Amendment gives rights to the rights to the individual, the Court wanted to make it very clear that the Second Amendment is not unlimited. There are certain laws that the court found to be lawful such as: prohibiting felons and the mentally ill from possessing firearms, require gun free zones at schools and government buildings as well as
imposing regulations on the sales of firearms. Washington D.C. was not a state or local government, but a federal enclave, and the question remained regarding how the Second Amendment affect state and local governments. The Supreme Court answered this question in the case of *McDonald vs. Chicago*.

**MCDONALD VS. CHICAGO**

Chicago had placed a ban on handguns in 1982. The city would not certify the sale of handguns made after 1982, which effectively banned handguns. Some residents filed a suit against Chicago, claiming that the state was violating the Second, and Fourteenth Amendment. These plaintiffs asked the court to overturn the ruling in the *Slaughter-House Cases*, which “severely undermined constitutional restrictions on state governments.” Citizens were at the mercy of their state government because this case gave little protection against state laws that violated an individual’s constitutional right. The city’s defense cited that *Heller* “had explicitly refrained from saying whether the 2nd Amendment applied to the states.” The court answered the question whether the Second Amendment applies to state and local governments, which the court held that it did. State governments were required to allow individuals to possess a firearm in their home for self defense. The court affirmed there are numerous gun laws currently in place that are considered constitutional, such as the laws mentioned in the case of *District of Columbia vs. Heller*.

**CONCEALED CARRY**

The Supreme Court upheld the decision in two different cases that the Second Amendment applies to individuals who want to possess a firearm for self protection. One of the growing reasons for owning a gun is for self defense. In the United States, there are 40 states that “shall issue” licenses for people to carry their guns concealed. This means that if an individual wants to carry a weapon concealed on their person, they just need to apply for a license as long as they meet state criteria. Some research
has shown that concealed carry laws are better for the community as a whole, and help to decrease murder and other violent crimes. “Based on 25 years of correlated statistics from all of the more than 3,000 American counties, Lott and Mustard concluded that adoption of these statutes have deterred criminals from confrontation crimes and caused murder and violent crime to fall faster in states that adopt this policy than in states that did not.” 106 California is a “shall issue” state, which means an individual must apply for a license to carry a concealed weapon, however granting the permit is left up to the discretion of local authorities. For an individual to obtain a concealed carry weapon license (CCW) they must show that they are of good moral character, they have a good cause for needing a concealed weapon and have completed the necessary training that the local authorities deem necessary107. Individuals in California are required to go through training to show that they are proficient with their firearm and they must provide “good cause” which is a reason necessary for carrying a concealed firearm. There are also various fees associated with getting a CCW, $100 for local agency fees, roughly $70-$125 in fees to the Department of Justice for fingerprinting and a background check as well as the cost of the training108. In California, there were approximately 37,000 permits that had been issued as of December 31, 2001.109 Many states acknowledge California's right to carry, however, California does not honor other states concealed carry licenses.

There currently is a case in the Ninth Circuit of Appeals in Peruta vs. San Diego that believes individuals in California have the right, under the Second Amendment, to carry a firearm in public for self-defense. Current law in California requires an individual who is applying for a Concealed Carry Weapon (CCW) to take a course in firearm training, get a background check, be of good moral character and provide a “good cause” statement. The plaintiffs challenged the constitutionality of the law which requires a “good cause” statement. San Diego County interpreted this law to mean a person is faced with specific threats, which would be their good cause to own a CCW. Fortunately, the court found this to be
unconstitutional for a few reasons.

The first reason is that the government cannot ban all modes of carry, they must allow people to carry openly, or concealed. In California, it is illegal to carry openly in public, so to deny people who apply for a CCW would cause all modes to be banned, which is unconstitutional under the Supreme Court’s decision in *Heller*. The second reason for the ruling is because the state cannot make laws or enforce laws that destroy the Second Amendment. Kopel of the Washington Post said, “if the law destroys the right, rather than merely restricts it, the law is categorically unconstitutional.”\(^ {110}\) The court reviewed the cases of *Heller* and *McDonald* as well as the long standing history of the legality regarding the right to bear arms. The court came to the conclusion that the right to carry a gun in public for self-defense is constitutional. The ruling did not get rid of the law regarding the licensing or training to obtaining a CCW, just stated that the part of the law which required individuals to provide a “good cause” statement is unconstitutional.

Due to this ruling in the Ninth Circuit of appeals, a divide has formed between the Second through Fourth Court of Appeals vs. the Seventh and Ninth Circuit Courts due to the interpretation of the Second Amendment. The Second through Fourth Courts believe that the purpose of the Second Amendment is for the militia, while the Seventh and Ninth Circuit Courts rely on the case of *Heller*, which interpreted the Second Amendment for personal self-defense.

**ANALYSIS**

Gun control is a controversial issue because of numerous issues that play into the debate such as an individuals rights protected by the Second Amendment balanced with laws trying to control guns in order to reduce violent crime. California has taken a step in the right direction to try and prevent firearm violence through legislation, but some of the legislation is very misguided. Of all the evidence that has
been presented, it is clear that gun control is effective in some areas, and very ineffective in others, which puts undue burden on Californians and their Second Amendment right.

Certain laws that have been enacted are not doing their job of reducing violent crimes. Waiting periods are not extremely effective at deterring individuals from committing suicide or acting on violent impulses. The 10 day waiting period, also known as a “cooling off” is not effective. Someone who has suicidal thoughts may not be deterred by a 10 day waiting period because their thoughts last for 14 days. Patrick Purdy was not deterred by a 15 day waiting period. Waiting periods are an infringement on current firearm owners Second Amendment rights. Individuals who have a concealed carry permit are allowed to carry a loaded firearm on themselves, but when purchasing a new gun they are required to wait 10 days. The waiting period for a CCW holder has no purpose. They already are certified to carry a gun, so it would be logical to assume they are allowed to purchase a firearm. The same argument can be used for individuals who already own firearms. If an individual already owns firearms, the waiting period is just delaying their purchase for 10 days. It is not going to stop them from committing suicide or making a rash action, because they already have access to a firearm. The case of Silvester v. Harris was brought to the court in December 2013 and is challenging the constitutionality of California’s 10 day waiting period.

The Safe Handgun Roster is one such law that was created to ensure safe handguns for California residents, yet it has seriously limited the individuals on what types of handguns they may possess. The cost of certifying a handgun, each make and model, for purchase is rather expensive and manufacturers must pay $200 fee each year to keep it on the safe list. A gun should not be deemed unsafe because the manufacturer did not pay a fee. If the firearm passes the test, it should be considered safe from that day forward, unless extreme mechanical changes have been made. This list is simply a way for California to raise their revenue, not ensure firearm safety. The fact that one handgun is green and the other is black
does not change the safeness of the gun. Other states that do not have a Handgun Safety Roster, like Florida and Texas have comparable homicide and suicide rates as California as shown stated earlier and those states do not restrict handguns. The only thing this law roster does is prevent firearms from accidentally discharging. As was stated earlier, California does not have a problem with accidental deaths. Manufactures that produce firearms do rigorous testing on new models of firearms and are constantly finding ways to make their firearms safer.

The new law regarding microstamping has reduced the selection of handguns significantly. While the technology is available, it has not been properly tested and there are serious questions about how it should be implemented to help law enforcement officers match a gun cartridge to a possible suspect. There have been over 120 handguns that have fallen off the roster due to this law. In theory this law sounds great, but it does not make sense to implement it when there are still questions as to the reliability of the technology and how to implement the technology to help law enforcement officers find possible suspects. Handguns that once were deemed as safe are now unsafe because they lack the technology. The fact that these handguns lack microstamping does not make them any less safe than they were 2 years ago. Even if all the new models have microstamping, there will be hundreds of thousands of firearms that will not have the technology because they were manufactured prior to 2013.

The Roberti-Roos Assault Weapons Control Act of 1989 was a law that was well intentioned; but it was the product of groupthink. The aftermath of the shootings in Stockton, California left the state in complete and utter shock. Legislators created the Assault Weapons Control Act to outlaw the tool that committed the atrocious acts, rather than look beneath the surface of the problem at mental health and criminals obtaining firearms. To minimize conflict, legislators reached the decision to ban assault weapons rather than look at alternative solutions, such as background checks or turn to outside sources for additional input on the cause. It was a rushed law, an emotional knee jerk reaction to outlaw assault
weapons due to a tragic shooting in Stockton, California. Sporadic events like mass shootings are nearly impossible to prevent. These types of events are going to happen and there is little the government can do about it, except to look for warning signs an individual might show or provide services for those who suffer from mental instability. Assault rifles are rarely ever used to commit violent crime, however assault pistols are. The real issue lies with handguns and violent crime.

Not all of California’s gun control is misguided. There are certain pieces of legislation that are helpful such as locks for firearms, background checks and APPS. Locks for handguns as well as rifles are just part of smart and responsible gun ownership. Responsible gun owners know that guns should never be in a place where young children can access them. Young children are curious and can get into places they do not belong, which is why having a lock on a gun provides an extra layer of security. Even if the child obtains the gun, they will not hurt themselves because the lock will prevent the firearm from discharging. Thieves will also have a much harder time using a firearm that is locked than unlocked. It is possible that they can cut the lock or take the lock off, the added work may deter the criminal from stealing the firearm.

Background checks are required whenever purchasing a handgun, which is extremely smart. An individual who has been convicted of a felony or is a known domestic abuser have tendencies to commit violent crimes. As long as the records are kept up to date, background checks will ensure that those types of people cannot purchase a firearm. People who know they are not supposed to own a firearm still try to purchase them due to the 22,047 denials between the year 1999-2004. California has tried to combat the other side of the problem by confiscating firearms from individuals who are no longer allowed to possess firearms. The APPS program is a great way to confiscate firearms from individuals who have lost that right. There are two problems with this program: the lack of reporting from the courts and mental health facilities and the potential for law enforcement officers to confiscate firearms from
Gun violence will never be eliminated, but there are appropriate laws that can be enacted or revised to help reduce violent crimes. Some of the laws that California has implemented are good policies, such as requiring background checks, and mandatory reporting of individuals who have been convicted of a felony or found mentally unstable. As mentioned earlier, background checks in California during 1999-2004 denied 22,047 individuals due to their background checks. Shooters such as Purdey and Huberty had mental health issues. If background checks were conducted when these men purchased a firearm, they would have been denied and unable to purchase a firearm.

Waiting periods have been acknowledged as a minor burden to the Second Amendment by California Attorney General Kamala Harris, but she still wants to enforce the law. The court stated that there is no proof that the waiting period is effective at reducing gun violence or keeping firearms out of the hands of unqualified individuals. I recommend that this law be amended. First time purchaser of firearms should go through a waiting period of three days to ensure they are not purchasing the firearm with the intent of self-harm or to hurt anyone else. Waiting periods should be lifted on those who hold a valid CCW or can show proof that they already own firearms. After an individual makes a first purchase, they should be given a card that shows the waiting period can be waived.

Some criminals obtain their firearms by stealing them, however it is very difficult to get an accurate estimate of how many guns are stolen every year because it is not mandated that people report their firearms stolen. In 2013, California tried to pass a law that requires people to report stolen firearms within seven days, however Governor Brown vetoed the bill stating because he did not think that the reporting would “improve identification of gun traffickers or help law enforcement disarm people
prohibited from owning guns." Mandatory reporting of stolen firearms should be a required policy in the state of California. Tracking stolen firearms may help researchers understand how criminals obtain their firearms. If criminals obtain guns from stealing them, it is necessary to know that in order to combat firearm theft. Local law enforcement agencies should be required to input thefts into the NCIC and report firearm thefts to the ATF for reliable statistical data in order to properly combat the issue.

Law enforcement agencies should be targeting hot spot areas that have a lot of firearm violence. There was a lack of studies and statistical evidence regarding gang violence and how often gangs are involved with homicides or assaults with a firearm, however California should keep a detailed record of these incidents to get a better understanding of where the crimes are happening.

The Handgun Safety Roster was created to make handguns safer, yet these guns have been tested in laboratories by the manufacturer to ensure that they are safe for the general public. This roster needs to be eliminated because it is not helping to reduce violent crime, but creating more red tape for gun manufacturers to get through as well as limiting individuals Second Amendment rights in California. Other states allow residents the ability to purchase all types of handguns, which California residence should be allowed as well. There is no proof that shows that the roster reduces gun violence and therefore should be eliminated.

Firearms that are on the Handgun Safety Roster are now required to have microstamping technology, which still has not been thoroughly tested, however has been legally required in all handguns in California. There have been roughly 127 guns that have fallen off the roster as of December 31, 2013 and more will continue to fall off making handguns that were once considered safe, unsafe. The law should be repealed until more research has been conducted, proving the reliability of the technology as well as possible implementation strategies for law enforcement and manufactures.
Handguns are used in more assaults, suicides, and homicides than rifles. The Roberti-Roos Assault Weapons Ban listed out several assault rifles, pistols as well as shotguns that were banned in California. The research shows that rifles are used in a small amount of violent crimes in California. A ban on assault rifles is not helping reduce violent crime. Registration all firearms began on January 1, 2014. Prior to 2014, handguns were the only firearm registered with the California, but now the government will know what types of guns individuals have and how many they have. Since long guns are rarely used in crime, it is not necessary to keep a database with names of owners. The only guns that should be registered by the government are handguns, due to their involvement in violent crimes. California should regulate assault pistols, but not assault rifles. Semiautomatic rifles that have detachable magazines should not be outlawed because they have too many features that are seen as dangerous. People just need to be educated about those features and the purpose they serve.

Education about firearms, safety and gun violence should be required by all new purchasers. Firearms can be extremely dangerous if a person does not know how to properly load, clean and store a firearm. Everyone who purchases a firearm should be required to go through a class that demonstrates how to handle, clean, shoot and store a firearm safely. Once the individual has passed the class, they will be issued a card that shows they understand firearm safety and would indicate they are a firearm owner, which would waive the waiting period.

Citizens in California should be allowed to carry a concealed weapon as long as they meet the criteria set by the county. California should be a “shall issue” state instead of a “may issue” because open carry is considered illegal. No one should be denied the right to protect himself, unless they have given up that right by being convicted of a felony or are deemed mentally unstable. A private citizen should not have to provide a “good cause” statement to local authorities in order to obtain a permit. The only cause an individual needs is for that of self protection. All counties statewide should adopt the
“shall issue” policy as long as the applicant is of good moral character and has been through the proper training.

For a problem to get resolved, it is important to identify the problem, identify the cause of the problem and then find options that will best resolve the problem. California has a problem with firearm violence. The root cause of violent crimes such as mass shootings, homicide and assaults are still hotly debated and until society can understand what is causing people to commit these heinous acts, a proper and permanent solution cannot be given. It is not wise to enact laws that are broad and overreaching because then it puts undue burden on the Second Amendment. Politicians need to require studies to be commissioned to get a better understanding on why violent crime is committed and possible suggestions to target the cause. A better understanding of the cause will lead to effective policy implementation.
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