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March 13, 2013

OFFICE OF THE DIRECTOR
STATE AND LOCAL AFFAIRS DIVISION

The Honorable Nancy Skinner
Legislative Office Building
1020 N. Street
Sacramento, California 95814

RE: Opposition to Assembly Bill 48

Dear Assembly Member Nancy Skinner:

On behalf of the National Rifle Association, I am respectfully expressing our opposition to Assembly Bill 48.

AB 48 would require all transfers of ammunition to be completed through a licensed firearms dealer (FFL), it would require mandatory reporting of all ammunition sales to the California Department of Justice (DOJ) and many sales to local law enforcement, and it would prohibit the sale of devices “capable of converting an ammunition feeding device into a large-capacity magazine.”

In doing so, AB 48 would impose unprecedented, drastic restrictions on the transfer of ammunition and ban constitutionally-protected firearms components, and it would have devastating impacts on lawful ammunition vendors and shooting ranges.

Restriction of Ammunition Transfers to Licensed Firearms Dealers

Currently, California law allows ammunition to be transferred and shared between private individuals. If enacted, AB 48 would make it illegal for ammunition to be transferred between family members, hunters, cartridge collectors, boy scouts and their leaders, firearm safety instructors and their students, museum staff members, actors and prop providers and lastly between most forensic firearm examiners (government and private). Under this legislation, a gun owner who shares ammunition with a friend at the shooting range, and a parent who hands his son or daughter ammunition while teaching how to properly and safely use a firearm, would instantly become criminals.

Moreover, many businesses currently engaged in the lawful retail sale of ammunition are *not* licensed firearm retailers. Sporting goods stores, general stores, and shooting ranges all sell ammunition on a widespread basis throughout the state. The sale of ammunition is a critical source of income and crucial to continued operations for many of these businesses. Under AB 48, however, these businesses would be prohibited from selling ammunition unless they become licensed California *firearms dealers*. But under California law, only Federal Firearms Licensees (FFLS) are eligible to obtain a CA dealer’s license. To obtain a dealer FFL, one must actually be *engaged in the retail sale of firearms*. (18 USC 922(a)(1).) As a result, these businesses would now be barred from selling ammunition. And all shooting ranges that do not sell firearms would be prohibited from providing ammunition to their customers. This would effectively put many ranges out of business. A closure of these businesses and a decrease in sales revenue would be a loss of tax revenue not only for the state, but for cities and counties as well.

In so drastically prohibiting the transfer of ammunition and in limiting the operational abilities of licensed shooting ranges, AB 48 raises serious constitutional concerns and invites immediate litigation. The courts have made clear that the right to keep and bear arms necessarily extends its protections to ammunition. “The right to keep arms necessarily involves the right to provide ammunition for them.” *Andrews v. State*, 50 Tenn. 165, 178 (1871); see also *Bateman v. Perdue*, No. 5:10-265, 2012 WL 3068580, at *4 (E.D. N.C. Mar. 29, 2012). And the Second Amendment provides protections to ammunition that are “coextensive” with protections for firearms. *Herrington v. United States*, 6 A.3d 1237, 1243 (D.C. Cir. 2010).

Although the Legislature has some leeway to enact conditions and qualifications on the sale of firearms and ammunition, *Heller*, 554 U.S. 635, 678, AB 48 is not a mere regulation on the retail sale of ammunition. Rather, it completely bars lawful, licensed ammunition retailers from selling any ammunition unless the retailer is *also* a licensed firearm dealer. AB 48 further violates the Second Amendment by making it virtually impossible for many businesses to operate where the transfer of ammunition is a routine business practice. And it is plainly unconstitutional to criminalize predicate acts necessary to enjoyment of the fundamental right to arms, such as learning how to properly load and operate a firearm under the guidance of an instructor or family member. Finally, the courts have expressly stated that shooting ranges are protected under the Second Amendment. (*Ezell v. City of Chicago*, 651 F.3d 684) By effectively barring these businesses from providing ammunition to their customers, AB 48 further runs afoul of the Second Amendment.

Ammunition Sales Reporting Requirements

Requiring the reporting of all ammunition transfers to the DOJ via a licensed firearms dealer will unnecessarily bury an already understaffed Bureau of Firearms. The DOJ will be required to hire additional staff to input all of the new ammunition purchaser data, staff that the DOJ currently does not have the revenue to support, as evidenced by its attempt via Senate Bill 140 to unlawfully raid the Dealer Record of Sale (DROS) Account, and use those monies paid into the account for background checks to fund the DOJ’s Armed and Prohibited Persons program. The DOJ’s improper attempts to use funds paid for background checks for firearm purchases have already resulted in a federal lawsuit, *Bauer v. Harris*, which is currently pending before the 9th Circuit’s Eastern District. AB 48 will impose yet another cost-prohibitive database without funding, and will result in further litigation if improper sources are sought to fund the attempted registration of what amounts to hundreds of thousands of ammunition purchases each year.

Moreover, AB 48’s sales registration requirements duplicate and conflict with Senate Bill 53 (De Leon), which seeks to require registration and thumbprinting of all ammunition purchases in the state. In vetoing Senator De Leon’s most recent ammunition sales registration bill in 2011, Governor Brown instructed that another ammunition registration bill should not be enacted prior to resolution of *Parker v. California*, which enjoined the Senator’s attempts to register handgun ammunition sales. That case is *still pending* before the Fifth District of the California Court of Appeals.

Further, the reporting of ammunition sales has already been tried, and failed, at the federal level. Throughout the 1980s, Congress considered repeal of a federal ammunition regulation package that required, among other things, reporting of ammunition sales. In 1986, the director of the federal Bureau of Alcohol, Tobacco and Firearms supported eliminating the reporting requirement, stating: “The Bureau and the [Treasury] Department have recognized that current recordkeeping requirements for ammunition have no substantial law enforcement value.” As a result, the Firearms Owners Protection Act of 1986 repealed the ammunition restrictions with little opposition to the removal of that provision.

AB 48’s attempt to require the reporting of ammunition purchases in excess of a set (but as of yet undetermined) number of rounds is equally flawed and will do nothing to combat gun violence. Perpetrators of gun violence typically fire only small quantities of ammunition in the commission of a crime. In his book, *Targeting Guns*, leading criminologist Gary Kleck recounts numerous studies showing that armed assaults usually involve either no shots or only a few shots fired, noting that “[e]ven in a sample of gun attacks on armed

police officers, where the incidents are more likely to be mutual combat gunfights with many shots fired, the suspects fired an average of only 3.7 times.”

Those criminals who might seek to “stockpile” ammunition will always find a way to do so. Criminals will simply make several smaller purchases over time to circumvent the requirement. This proposed law will thus impact only law-abiding gun owners, placing them on an unwarranted government “watch list” of sorts, and subjecting them to improper investigations simply for making common, lawful retail purchases of ammunition. There is nothing extraordinary about a single purchase of 500 or more rounds of ammunition. Law-abiding sportsmen and target shooters regularly purchase ammunition in bulk to save money, and they may keep rounds on their shelves for years. And one can easily expend 500 rounds during a day or weekend at the shooting range. It is also common for a firearms instructor or target shooting event organizer to purchase large quantities of ammunition for distribution to class or event participants. This requirement will also harm California businesses, placing a serious burden on ammunition retailers to register every ammunition sale over a set number of rounds at the local level. Registration of ammunition sales at the local level will, in turn, create an unnecessary backlog of paperwork for local police departments and waste valuable law enforcement resources and taxpayer dollars.

Prohibitions on Ammunition Feeding Devices

Finally, AB 48’s attempt to criminalize the manufacture and sale of devices “capable of converting an ammunition feeding device into large-capacity magazine” conflicts with the due process provisions of the United States and California constitutions. These provisions require laws to have “a reasonable degree of certainty in legislation, *especially in the criminal law*.... To pass constitutional muster, a law must “define the offense with sufficient definiteness that ordinary people can understand what conduct is prohibited. (*Kolender v. Lawson*, 461 U.S. 352, 357 (1983).) (emphasis added.) AB 48 is fatally vague, as it is entirely unclear what “devices” would be rendered unlawful contraband by AB 48. To the extent the bill might ban common magazine parts kits, however, AB 48 squarely conflicts with the Second Amendment.

The courts have already confirmed laws that restrict the lawful sale or possession of ammunition, magazines and even non-essential components of firearms, are to be judged under the “common use” test set forth in *Heller v. District of Columbia*. 554 U.S. at 624-25. (Whether constitutional protections extend to various arms turns on their usage for lawful purposes. Arms “typically possessed by law-abiding citizens for lawful purposes” or those “in common use” are protected.) In *United States v. McCartney*, 357 F. App’x 73, 76 (9th Cir. 2009) the Ninth Circuit applied a “common use” analysis to firearms accessories that are not a necessary component of a firearm – i.e. silencers. Accordingly, any provision of AB 48 that would prohibit common magazine parts kits that are “typically possessed for lawful purposes” violates the Second Amendment.

Ultimately, this legislation will do little to deter criminals intent on committing violent crimes and will unconstitutionally restrict the ability of law-abiding Californians to purchase, transfer and use ammunition in unprecedented fashion. Passage of this flawed legislation will result in additional undue expenses for the state, it will continue to drive legitimate business owners out of California, and it will undoubtedly result in further litigation against the state if passed.

For the foregoing reasons, I respectfully urge you to oppose AB 48.

Sincerely,



Charles H. Cunningham
Director of State and Local Affairs