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GOVT-210-001

7 December 2020

The Assault Weapons Ban: A Policy of the Past

I. Introduction

Dayton, Ohio. Parkland, Florida. Las Vegas, Nevada. El Paso, Texas. While all are extremely different cities, one thing has united the cities and their respective communities in recent years: mass shootings have occurred in these places, claiming the lives of innocent Americans and drawing intense media attention. Whether it is a synagogue, a public high school, or a grocery store, mass shootings in the past few years are up and show no sign of decreasing anytime soon. Before evaluating through the lens of a policy issue, one must recognize the sheer and unique emotional weight that follows any conversation of changing gun laws, because it is an issue that affects people's lives in a multitude of ways. The added constitutional complexities and national identity tied to gun rights complicate the issue even further, especially when trying to pass a policy that will appease the hundreds of interest groups and communities invested in gun control and gun rights. The assault rifle ban specifically is an issue familiar to many Americans, especially those who can remember living under the law during the '90s and early 2000s.

While the issue of gun violence was not a prominent one in the 2020 election because of other issues such as Covid-19 and the economy, the same can not be said for the years prior. A flurry of mass shootings arguably starting in 2012 with the Sandy Hook Elementary School shooting propelled gun control into the national conversation. Unfortunately, the cycle of gun

control as a national issue has been unstable and is often brought up again whenever another mass shooting occurs. Following a mass shooting, intense media attention, and protests across the country demanding change, there is increased pressure for politicians to act. While some progress has been made on gun control, there has been little to no significant policy achievements when it comes to gun control, with one of the largest goals of gun-control advocates being a ban on assault rifles and high-capacity magazines.

Despite a lack of relevance in the 2020 election cycle, the issue is still at the forefront of many Americans' minds, particularly given the circumstances of this year. Even though much of the year has been under stay-at-home orders and social distancing, as of November 2020, 578 mass shootings have occurred (Jackson). While mass shootings have been steadily increasing over the past ten years, 2020 experienced a skyrocket in numbers. Interestingly enough, the increase of mass shootings has parallel the rapid increase in gun purchases, particularly among first-time gun owners. Whether because of fears rooting from the pandemic, strife and protest occurring in the streets, or a response to overall increases in crime and a lack of trust in police, gun purchases reached "1.3 million handguns and 700,000 rifles and shotguns sold by August 2020. This was an increase of 60% over average US sales, with August gun sales being the fifth highest month on record" (Jackson). A rise of mass shootings in juxtaposition to a rapid race to purchase and stockpile guns offers an interesting foundation to discuss the assault rifle ban, and whether or not it is still a viable policy option.

II. Legislative & Political History of the Assault Rifle Ban

The United States previously had an assault rifle ban from 1994-2004, a policy proposed by the Clinton Administration formally called the Federal Assault Weapon Ban under the 1994 crime bill (Keneally). Following widespread support of the policy from the American public and

even support from former Republican presidents such as Ronald Reagan and Gerald Ford, the bill was passed (Keneally). While the policy expired in 2004 and the Bush administration did not attempt to revive it, in 2013 President Obama demanded Congress pass an assault rifle ban following the Sandy Hook shooting. Still, the Republican-held House did not respond to his demands, and no assault rifle ban was passed. However, Obama pushing it at this point in his administration proves again that unfortunately, the political relevance of an assault rifle ban is often contingent on whether or not mass shootings have occurred attracting national, and sometimes only temporary, attention.

Despite a general public consensus on the need for gun control, in terms of political and legislative accomplishments, the list is slim. Much credit for this can be granted to one group: the National Rifle Association. Boasting over 5 million members and outspending almost every other American interest-group, the NRA has a tightlock over (prominently) Republican politicians, meaning that anytime the Republicans hold control of government, gun control is unlikely to pass (Sit). Unlike gun control activists and organizations, the NRA has established itself as the dominant and unitary leader of the gun rights movement, allowing it to centralize power and money to defeating gun control (Sit). The reason why so many politicians are afraid to cross the NRA is clear: they will run a primary candidate against you and mobilize their supporters to vote elected officials out of office, seen in the case of Representative David Jolly of Florida, who supported gun control measures after the 2016 Orlando shooting (Sit.) The NRA pulled their support from Jolly, and Jolly ended up losing his race (Sit). The NRA unlike any other modern political organization has flexed its power and clout effectively in ending gun control measures and protecting an industry from well-deserved backlash, and the political consequences have been astounding.

III. Policy Impact

While there is mixed evidence about an overall impact on crime, there is data to suggest an assault rifle ban leads to a statistical decrease in mass shootings. At first, most studies concluded that the ban was ineffective and the decrease in mass shootings could be connected to the overall drop in crime occurring nationally (Donohue & Boulouta.) However, clear data now exists showing the effectiveness of the assault rifle ban. Between 1994 and 2004, the period the ban was intact, there was a 25% drop in gun massacres and 40% drop in gun fatalities in America (Donohue & Boulouta). Since 2004 and the end of the ban, there has been a 347% increase of fatalities in gun massacres, while other violent crime statistically decreased (Donohue & Boulouta). As more lethal and capable guns are produced and injected into the market, fatalities are rising, and the effectiveness of the ban is seen through the simple fact that “at least 234 of the 271 people who died in gun massacres since 2014 were killed by weapons prohibited under the federal assault weapons ban” (Donohue & Boulouta). If the assault rifle ban were still the law, then these lives would not have been lost, and this is a reality policymakers must grapple with and course-correct moving forwards. Most alarmingly however is the trajectory of future mass shootings, because “if we continue at the post-2014 pace, by 2024 we will have had more than 10 times as many gun massacre deaths in that 10-year period as we had during the decade of the federal assault weapons ban” (Donohue & Boulouta).

Still, the effectiveness of the assault weapons ban is far from conclusive, with different sets of data creating confusion and questions about just how effective the ban actually was. Additionally, there are clear loopholes and intricacies to the issue of mass shootings and gun control that decrease the legitimacy of the ban. First, the issue of handguns is apparent. While purchases of assault rifles are increasing steadily, so are handguns, which represent the share of

far more deaths and incidents than mass shootings. While mass shootings attract media attention often because of just how many lives are lost, the cumulative effect of the lives lost from handgun incidents end up outweighing assault rifles (Smart). Drawing upon FBI data from 2017, if assault rifles were banned now, “assuming that no substitution in favor of other types of firearms would occur, the elimination of all rifle homicides would have decreased the number of firearm-related murders by 3.7 percent” (Smart). Considering the arguments many gun control activists make in favor of the ban, arguing that it would significantly decrease gun violence, this data is extremely problematic. Because a majority of gun violence incidents are not from an assault rifle, banning them from the market would not lead to a substantial decrease in gun violence, and would arguably just lead those who want to commit these acts to purchase a different weapon. Still, one could again argue that the sheer capacity of an assault rifle and the amount of people it can kill in a matter of seconds is grounds enough for it to be banned. This exposes another problem with the gun control debate: often the most emotional arguments are weighed first, and because assault rifles are the weapon of choice in the tragic mass shootings that draw media and public attention, banning assault rifles may be the first choice despite not being the most rational or effective option.

There are also a number of trends that occurred during the assault rifle ban period worth revisiting as policy makers consider issuing another ban. Legal loopholes were manipulated by the vague text of the ban, and the same is happening in states across the country that have attempted to ban assault weapons. The problem is that “gunmakers and owners can modify guns in ways that keep the weapons legal but nearly indistinguishable from illegal assault weapons” (White). California specifically outlawed detachable magazines that can be added to a rifle to make it reload quicker, but has not outlawed other rifles that have attached or fixed magazines

with the virtual same effect as the detachable magazine (White). Additionally, gunmakers adapted to California's law by manufacturing a quick 'magazine release' and have consistently been able to adapt to the law, sometimes offering products that are even more capable and powerful than the original products banned (White). The same has been true on a federal level. After the 2018 Las Vegas shooting, "the Justice Department banned bump stocks, which the shooter used to fire more than 1,100 rounds in 11 minutes. But a recent trigger adaption, called a binary trigger, increases firing speed much like a bump stock and is legal in many states" (White). Essentially, anytime a government agency has banned guns or a type of gun accessory, the weapons industry is able to adapt and offer a legal version of the product through a loophole. Additionally, some argue that banning assault rifles publicly only leads to private production and illegal activity on the unregulated black market, possibly worsening the problem and leading to less accountability of ensuring guns do not end up in the wrong hands. Because of the multitude of legal loopholes and possibility for black market options to emerge, the issue of the assault rifle ban as a solution becomes more complicated.

In terms of who would be affected by an assault rifle ban, there are numerous groups that. The clearest and largest group is gun-owners and hunters. While the 1994 ban only affected new gun owners and did not affect those who had already purchased an assault weapon, a ban would effectively stop anyone from buying a new assault weapon. The closest estimate of assault weapons in the United States ranges from 15 to 20 million, a number not considering the surge of gun purchases in 2020 (Yablom). While an assault rifle ban may have some sort of buyback program to attempt and take rifles from current owners, the success of that policy is unlikely. Australia offers an interesting comparison, because in 1996 the country "launched a mandatory gun buyback of 650,000 military-style weapons. While gun ownership per capita in the country

declined by more than 20 percent, today Australians own more guns than they did before the buyback” (Kingsbury). Given the United States’ unique constitutional and ideological connection to guns, the likelihood of higher success in a gun buyback compared to a nation like Australia is low. The other groups affected would of course include the gun industry, but given the industry’s clear success in adapting to past gun laws, the impact would not be substantial.

IV. Policy Reforms

In a perfect world, the United States federal government would be able to pass a law outlawing all assault rifles and demanding the 15-20 million in circulation currently be given up or bought by the government. However, that world appears to be a utopian one. The federal government should look to states that have already passed bipartisan gun control measures that can save thousands of lives, more than an assault rifle ban would be able to do because of the general low share of shootings committed by assault rifles. In the same poll exposing bipartisan support for an assault rifle ban, there was even higher support for universal background checks, with 90% of both Republicans and Democrats supporting the policy (Shepard). While far from the ban, universal background checks offer a way to eliminate those who have committed crimes in the past, those with mental illnesses, and more who should not own a gun.

Aside from universal background checks, there are common-sense measures that, despite the NRA’s opposition to, are slowly garnering bipartisan support. The federal government can look to states such as Massachusetts to model their policy. While in states like New Hampshire it’s almost easier to get a gun than a driver’s license, the opposite is true in Massachusetts, where you must obtain a gun permit at a police department, “which requires paperwork, an interview, a background check, and, even if you pass all of that, the police chief has some discretion to deny the license anyway” (Lopez). Finally, you are able to purchase a gun in a store, but not before

passing a 2nd background check done by the store, and then you are registered in the states gun owner database (Lopez). You cannot give your gun to anyone, even a family member, without registering the gun in their name, or you risk facing legal and financial punishment (Lopez). Yes, this system takes a long time, but Massachusetts “consistently reports the lowest gun death rates in the US. Based on Centers for Disease Control and Prevention data, Massachusetts had 3.6 gun deaths per 100,000 people in 2016” (Lopez). A national licensing system could connect state databases and ensure that guns only end up in the hands of legal owners who have passed background checks. It also avoids the problem that we currently face, with no real idea of how many guns are circulating in the United States, risking illegal arm sales and black market sale of guns. This system, combined with policies such as safe-storage mandates and red-flag laws that allows family members and friends a legal path to taking away someone’s gun who may be a risk, will not remove assault rifles or end all mass shootings, but it can substantially curb suicides, domestic violence, and shootings (Kingsbury).

V. Current Trends

In 2019, Senator Dianne Feinstein of California introduced the Assault Weapons Ban of 2019, but the bill garnered little traction and was not passed (Keneally). While several states including California, Hawaii, and New York have banned assault weapons, there is still little prospect of a federal ban occurring (Keneally). The issue was circulated during the early 2020 Democratic presidential primaries, with politicians such as Beto O’Rourke floating the idea of a ban on assault weapons and possible federal buy back system, but President-elect Biden has yet to endorse the policy. While the Democrats hold the House and now the presidency, the fact that the Republicans control the Senate signals that an assault rifle ban will not happen anytime in the next two years. Even if the Democrats held the Senate, a divided caucus with more moderate

senators would likely not agree to an assault weapons ban, especially given the recent surge in gun purchases. Frankly, the political momentum does not currently exist for an assault weapons ban to occur, and it will be up to governors and state legislatures to make the move on a local level.

However, given public opinion on the issue, it would be too simplistic to rule out the possibility of an assault rifles ban materializing. Despite Republican and even some Democrat's reluctance to take bold action on gun control, American citizens are increasingly in favor of gun control, revealing again the divide between politicians and their constituents. A poll of Americans in 2019 revealed that "nearly 70 percent of all voters would back such a ban. Support for an assault-weapons ban was higher, at 86 percent, among Democrats, [...] 55 percent of GOP voters were comfortable with banning assault weapons, and 54 percent said they would support stricter gun laws more generally" (Shepard). The indicator of public opinion is an important one: issues such as marijuana legalization or gay marriage have come about often not because of politicians courage to take on the issue, but because an overwhelming and quick shift in public opinion leads to policy change or legal victories. Still, assault weapons are legal in 43 states and high capacity magazines legal in 41, showing again that public opinion does not necessarily lead to policy change (Donohue & Boulouta). There does, however, appear to be bipartisan consensus for moderate policy fixes as mentioned in Section IV, Policy Reforms.

VI. Conclusion

The assault rifle ban, a policy the United States has previously lived under, is being circulated and has been hailed as a policy gun control advocates demand to make meaningful change and curve the epidemic of mass shootings. However, moving forwards, it may be in the best interest of these activists and organizations to leave the policy in the past. Given just how

many assault rifles are already in the United States, a blanket ban on them would not likely decrease the impact they have on society. At best, a gun buyback program could be initiated, but because of constitutional issues, it likely could not be mandatory. In fact, calls for an assault rifle ban may actually be inhibiting the success of other gun control measures. A national licensing system, universal background checks, red-flag laws and more are plausible solutions that enjoy widespread support from the American public. Channelling energy into passing these initiatives is a more adept and realistic approach to gun violence, and I do believe that if Americans stand behind these policies united, they will one day become law, while the assault rifle ban appears to be a policy of the past and not the future.

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