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EDITORIAL

"GUN SHOW LOOPHOLE" BILLS: A STUDY OF LEGISLATIVE MISDIRECTION IN 2009

Philip Van Cleave

In the wake of the Virginia Tech massacre in 2007, which left thirty-two students and faculty dead at the hands of a student armed with two handguns, gun-control organizations saw an opportunity to press their legislative agenda items forward with vigor. A host of gun-control bills were introduced in the 2008 and, to a lesser extent, the 2009 General Assembly sessions.¹

· President, Virginia Citizens Defense League. B.S., 1975, Trinity University (San Antonio, Texas); M.S., 1978, Trinity University (San Antonio, Texas).

1. In 2006, there were five gun-control bills. See S.B. 7, Va. Gen. Assembly (Reg. Sess. 2006), § 18.2-308 (as introduced Jan. 11, 2006); S.B. 15, Va. Gen. Assembly (Reg. Sess. 2006), § 54.1-4200 (as introduced Jan. 11, 2006); H.B. 1447, Va. Gen. Assembly (Reg. Sess. 2006), §§ 54.1-4200, 54.1-4201.1 (as introduced Jan. 18, 2006); H.B. 1495, Va. Gen. Assembly (Reg. Sess. 2006), § 18.2-308.1 (as introduced Jan. 20, 2006); H.B. 1516, Va. Gen. Assembly (Reg. Sess. 2006), § 22.1-277.07 (as introduced Jan. 20, 2006). In 2007, there were eleven gun-control bills. See H.B. 1866, Va. Gen. Assembly (Reg. Sess. 2007), § 18.2-308.1 (as introduced Jan. 10, 2007); H.B. 2173, Va. Gen. Assembly (Reg. Sess. 2007), § 15.2-915 (as introduced Jan. 10, 2007); H.B. 2900, Va. Gen. Assembly (Reg. Sess. 2007), § 18.2-287.5 (as introduced Jan. 10, 2007); H.B. 2998, Va. Gen. Assembly (Reg. Sess. 2007), § 18.2-308.2:02 (as introduced Jan. 10, 2007); H.B. 3000, Va. Gen. Assembly (Reg. Sess. 2007), §§ 18.2-386, 18.2-308.1:6 (as introduced Jan. 10, 2007); H.B. 3013, Va. Gen. Assembly (Reg. Sess. 2007), § 18.2-308.1 (as introduced Jan. 10, 2007); S.B. 767, Va. Gen. Assembly (Reg. Sess. 2007), § 15.2-915 (as introduced Jan. 10, 2007); S.B. 827, Va. Gen. Assembly (Reg. Sess. 2007), § 54.1-4200 (as introduced Jan. 10, 2007); S.B. 1007, Va. Gen. Assembly (Reg. Sess. 2007), § 18.2-283.1 (as introduced Jan. 10, 2007); S.B. 1364, Va. Gen. Assembly (Reg. Sess. 2007), § 18.2-287.5 (as introduced Jan. 17, 2007); H.B. 3186, Va. Gen. Assembly (Reg. Sess. 2007), § 8.01-44.8 (as introduced Jan. 19, 2007). In 2008, there were sixteen gun-control bills. See H.B. 281, Va. Gen. Assembly (Reg. Sess. 2008), § 18.2-308.14 (as introduced Jan. 9, 2008); H.B. 588, Va. Gen. Assembly (Reg. Sess. 2008), § 18.2-308 (as introduced Jan. 9, 2008); H.B. 592, Va. Gen. Assembly (Reg. Sess. 2008), § 54.1-4200 (as introduced Jan. 9, 2008); H.B. 608, Va. Gen. Assembly (Reg. Sess. 2008), § 18.2-308.1:4 (as introduced Jan. 9, 2008); H.B. 697, Va. Gen. Assembly (Reg. Sess. 2008), § 15.2-915 (as introduced Jan. 9, 2008); H.B. 734, Va. Gen. Assembly (Reg. Sess. 2008), § 18.2-287.5 (as introduced Jan. 9, 2008); H.B. 745, Va. Gen. Assembly (Reg. Sess. 2008), § 54.1-4200 (as introduced Jan. 9, 2008); H.B. 746, Va. Gen. Assembly (Reg. Sess. 2008), § 18.2-287.5 (as introduced Jan. 9, 2008); H.B. 814, Va. Gen. Assembly (Reg. Sess. 2008), §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, 19.2-152.10, 20-103 (as introduced Jan. 9, 2008); H.B. 899, Va. Gen. Assembly (Reg. Sess. 2008), § 18.2-311.3 (as introduced Jan. 9, 2008); H.B. 1277, Va. Gen. Assembly (Reg. Sess. 2008), § 18.2-287.5 (as introduced Jan. 9, 2008); H.B. 1338, Va. Gen. Assembly (Reg. Sess. 2008), § 18.2-282 (as introduced Jan. 9, 2008); S.B. 32, Va. Gen. Assembly (Reg. Sess. 2008), §

For pro-gun groups, Virginia Tech's policy of not allowing any guns on campus was more proof that gun control only disarms good people. These groups argued that criminals, by definition, ignore the law and will simply get their guns through illicit methods, such as theft or "straw purchases," and use those guns to commit mayhem wherever they please.²

In the 2006 and 2007 General Assembly sessions, the pro-gun Virginia Citizens Defense League lobbied to include bills that allowed students, faculty, and staff at public colleges and universities, who had concealed handgun permits, to carry a concealed handgun on campus for self-defense.³ Both attempts were defeated in committee.⁴ Larry Hincker, spokesman for Virginia Tech, stated in 2006, one year before the massacre, "I'm sure the university community is appreciative of the General Assembly's actions because this will help parents, students, faculty[,] and visitors feel safe on our campus."⁵

The most divisive gun-control bills introduced in 2009, known as "gun show loophole" bills, required background checks for private sales at gun shows.⁶ Gun-control organizations joined forces with some of the Virginia Tech victims' family members to garner further support and sympathy for the "gun show loophole" bills.⁷ Gun-control organizations

15.2-915 (as introduced Jan. 9, 2008); S.B. 33, Va. Gen. Assembly (Reg. Sess. 2008), § 15.2-915 (as introduced Jan. 9, 2008); S.B. 109, Va. Gen. Assembly (Reg. Sess. 2008), § 54.1-4200 (as introduced Jan. 9, 2008); S.B. 300, Va. Gen. Assembly (Reg. Sess. 2008), § 15.2-915 (as introduced Jan. 9, 2008). In 2009, there were eleven gun-control bills. See H.B. 1910, Va. Gen. Assembly (Reg. Sess. 2009), § 15.2-915 (as introduced Jan. 14, 2009); H.B. 2004, Va. Gen. Assembly (Reg. Sess. 2009), § 18.2-308.6 (as introduced Jan. 14, 2009); H.B. 2227, Va. Gen. Assembly (Reg. Sess. 2009), § 18.2-308 (as introduced Jan. 14, 2009); H.B. 2318, Va. Gen. Assembly (Reg. Sess. 2009), § 54.1-4201.2 (as introduced Jan. 14, 2009); H.B. 2481, Va. Gen. Assembly (Reg. Sess. 2009), § 18.2-295 (as introduced Jan. 14, 2009); S.B. 832, Va. Gen. Assembly (Reg. Sess. 2009), § 15.2-915 (as introduced Jan. 14, 2009); S.B. 1053, Va. Gen. Assembly (Reg. Sess. 2009), § 15.2-915.5 (as introduced Jan. 14, 2009); S.B. 1166, Va. Gen. Assembly (Reg. Sess. 2009), § 18.2-308.2:2 (as introduced Jan. 14, 2009); S.B. 1254, Va. Gen. Assembly (Reg. Sess. 2009), § 18.2-308 (as introduced Jan. 14, 2009); S.B. 1257, Va. Gen. Assembly (Reg. Sess. 2009), § 54.1-4200 (as introduced Jan. 14, 2009); H.B. 2631, Va. Gen. Assembly (Reg. Sess. 2009), § 54.1-4201.1 (as introduced Jan. 23, 2009).

2. A straw purchase is where a person with a clean background purchases a gun and gives it to an otherwise disqualified criminal. See Josie Roberts, *Me & My AK-47*, PITT. TRIB., Mar. 29, 2005, http://www.pittsburghlive.com/x/pittsburghtrib/search/s_318331.html (last visited Apr. 7, 2009). Straw purchases are against the law and are a felony for both the criminal and the purchaser. See 18 U.S.C. § 922(a)(5) (2006).

3. See H.B. 2300, Va. Gen. Assembly (Reg. Sess. 2007), §§ 2.2-601.1, 23-9.2:2.1 (as introduced Jan. 10, 2007); H.B. 1572, Va. Gen. Assembly (Reg. Sess. 2006), § 23-9.2:3 (as introduced Jan. 20, 2006).

4. H.B. 2300, §§ 2.2-601.1, 23-9.2:2.1; H.B. 1572, § 23-9.2:3.

5. Greg Esposito, *Gun Bill Gets Shot Down by Panel*, ROANOKE TIMES (Va.), Jan. 31, 2006, at A1.

6. See H.B. 2318, § 54.1-4201.2; H.B. 2631, § 54.1-4201.1.

7. Mason Adams & Michael Sluss, *In Second Vote, Senate Defeats Bill to Close Gun Show Loophole*, ROANOKE TIMES (Va.), Feb. 5, 2009, at B1.

argued that the legislature must close the "gun show loophole" because the Virginia Tech killer could have bought a gun from a private seller at a gun show without a background check.⁸ Pro-gun organizations argued that no such loophole exists because a private seller, unlike a dealer, is not required to run a background check, regardless of whether the gun sale is consummated at a gun show or in private.⁹

Pro-gun organizations further pointed out that gun shows did not cause the Virginia Tech massacre because the Virginia Tech murderer bought his guns from a dealer and not a gun show.¹⁰ He successfully underwent not one, but two background checks.¹¹ He also waited a full thirty days between the purchase of the first handgun and the purchase of the second handgun,¹² as mandated by Virginia's One Handgun a Month law.¹³ He appeared to use that time between lawful purchases to practice dry runs of his assault on the school.¹⁴

Pro-gun organizations also claimed that requiring background checks for gun shows is the first step in requiring background checks for all private sales. Pro-gun organizations state that once all sales of guns, whether dealer sales or private sales, require background checks, the government will be able to determine exactly who owns guns and which guns they own. Registration could then lead to confiscation, as it has in California,¹⁵ Illinois,¹⁶ and New York City.¹⁷ Thus, the Virginia Citizens Defense League referred to gun show bills as "private gun-sale

8. Shanna Howers, *Don't We Have a Duty to Close Gun Loopholes?*, ROANOKE TIMES (Va.), Jan. 24, 2008, at B1.

9. See 18 U.S.C. § 922(b)(6)(A) (2006).

10. Michael Sluss, *Kaine Vows Action on Tech Panel Suggestions*, ROANOKE TIMES (Va.), Sept. 1, 2007, at B1.

11. *Id.*

12. Antonio Ciaccia, *Gunning for a Repeat*, SENTINEL (Ohio), Sept. 19, 2007, <http://www.osusentinel.com/media/storage/paper1151/news/2007/09/19/Commentary/Gunning.For.A.Repeat-2975742.shtml> (last visited Apr. 7, 2009).

13. VA. CODE ANN. § 18.2-308.2:2(P) (Repl. Vol. 2004). Virginia's One Handgun a Month law was passed in 1993. *Id.*

14. Associated Press, *Exit Chained Days Before Virginia Massacre: Cops*, DAILY NEWS (N.Y.), Aug. 1, 2007, http://www.nydailynews.com/news/us_world/2007/08/11/2007-08-11_exit_chained_days_before_virginia_massac-1.html (last visited Apr. 7, 2009).

15. Stephen Archer, *Gun Confiscation in California*, WORLDNETDAILY (Cal.), July 1, 1999, <http://www.worldnetdaily.com/index.php?fa=PAGE.view&pageID=3745> (last visited Apr. 7, 2009).

16. Ill. State Rifle Assoc., *Confiscation of Registered Guns Begins in Illinois*, FREE REPUBLIC (Ill.), Apr. 27, 2007, <http://www.freepublic.com/focus/f-news/1824560/posts> (last visited Apr. 7, 2009).

17. NAT'L RIFLE ASSOC. INST. FOR LEGISLATIVE ACTION, FIREARMS REGISTRATION: NEW YORK CITY'S LESSON (2000), <http://www.nraila.org/Issues/factsheets/read.aspx?ID=41> (last visited Apr. 7, 2009).

registration schemes.”¹⁸

Two of the three gun show bills in 2009 introduced in the Virginia House of Delegates were never heard in committee and thus were defeated.¹⁹ Even if they had been heard, it is highly unlikely that either bill would have passed out of committee. In 2008, several gun-show bills were heard in committee in the House, and all were soundly defeated.²⁰

The remaining gun-show bill introduced in 2009 was Senator Henry Marsh’s Senate Bill 1257.²¹ Senator Marsh introduced Senate Bill 1257’s predecessor, Senate Bill 109, in 2008.²² The Senate Courts of Justice Committee defeated Senate Bill 109 and sent it to the Virginia Crime Commission for study that summer.²³ The Virginia Crime Commission voted in early January 2009 not to recommend changes to the rules for private sales at gun shows.²⁴ Undeterred by the Commission’s recommendations, Senator Marsh introduced Senate Bill 1257, and the Senate Courts of Justice Committee heard the bill in late January 2009.²⁵

Several amendments and a substitute were offered to enable Senate Bill 1257’s passage out of committee. Senator John Edwards introduced a substitute bill making background checks for a private sale voluntary, but requiring a federally-licensed gun dealer to run the check. The Committee rejected the substitute bill.²⁶ Senator Creigh Deeds offered two amendments. One amendment exempted concealed handgun permit holders from background checks when purchasing a firearm from a private seller. The other amendment exempted private sales of firearms classified as antiques, curios, or relics. It also clarified that only private sales consummated on the premises leased by the gun show would require

18. Philip Van Cleave, *There is No Loophole*, USA TODAY, July 9, 2007, at A10.

19. H.B. 2318, Va. Gen. Assembly (Reg. Sess. 2009); H.B. 2631, Va. Gen. Assembly (Reg. Sess. 2009).

20. H.B. 592, Va. Gen. Assembly (Reg. Sess. 2008), § 54.1-4200 (as introduced Jan. 9, 2008); H.B. 745, Va. Gen. Assembly (Reg. Sess. 2008), § 54.1-4200 (as introduced Jan. 9, 2008).

21. S.B. 1257, Va. Gen. Assembly (Reg. Sess. 2009), § 54.1-4200 (as introduced Jan. 14, 2009).

22. S.B. 109, Va. Gen. Assembly (Reg. Sess. 2009), § 54.1-4200 (as introduced Jan. 9, 2008).

23. *Id.*

24. Dave Forster, *Virginia Panel Won’t Back Closing “Gun-Show Loophole”*, VIRGINIAN-PILOT, Jan. 14, 2009, at A11, available at <http://hamptonroads.com/2009/01/virginia-panel-wont-back-closing-gunshow-loophole>.

25. S.B. 1257, § 54.1-4200.

26. *Id.* (as substituted Jan. 29, 2009).

background checks. The committee accepted both amendments.²⁷ Senate Bill 1257, as amended, passed out of the Committee by an eight to seven vote.²⁸

When Senate Bill 1257 moved to the Senate floor, two floor substitutes were ready to be offered, but Senator Marsh pushed for the language that had passed committee. The bill was engrossed as requested.²⁹

Senate Bill 1257 was passed by for two days as Senator Marsh tried to garner enough votes to pass the bill. On the third day, the bill was defeated by a vote of eighteen to twenty-two.³⁰ In a parliamentary move, however, the Senate rescinded its vote on Senate Bill 1257, and the bill was passed by yet another day.³¹ On the fourth day since engrossment, Senate Bill 1257 was permanently defeated by a vote of nineteen to twenty-one, two votes shy of passing.³²

More energy was put into the fight for and against Senate Bill 1257 than any other gun bill during the session. Legislators were pummeled with phone calls and electronic mail. At the state level, the pro-gun Virginia Citizens Defense League crossed swords with the anti-gun Virginians for Public Safety. Even the national organizations were part of the fight—the National Rifle Association and Gun Owners of America tussled with the Brady Campaign and the Million Mom March.³³ The net result was that the gun-show bills got no further in 2009 than they had in previous years, where they were either killed in a House or Senate committee or died on the Senate floor.

Hence, the Virginia Tech massacre, which was not tied to a gun show in any way, has had no measurable effect on the success or failure of legislation to change the rules for private sales at gun shows.

27. *Id.* (as amended Jan. 29, 2009).

28. Legislative Information System, Bill Tracking: SB1257, <http://legl.state.va.us/cgi-bin/legp504.exe?ses=091&typ=bil&val=sub1257> (last visited Apr. 7, 2009).

29. S.B. 1257 (as engrossed Jan. 29, 2009).

30. Legislative Information System, Bill Tracking: SB1257, *supra* note 28.

31. *Id.*

32. *Id.*

33. Warren Fiske, *Despite Tech Shootings, Gun Show Rules Unlikely to be Altered*, VIRGINIAN-PILOT, Jan. 6, 2008, at A11.

