

NLWJC- Kagan

Counsel - Box 006 - Folder 012

Dingell firearms issue

THE WHITE HOUSE

WASHINGTON

April 11, 1996

MEMORANDUM FOR TIM KEATING

FROM: ELENA KAGAN *EK*

SUBJECT: ATF REGULATION

You may recall that about six months ago, we objected (at Congresssman Dingell's urging) to an ATF interpretation of the Crime Act that would have prevented the importation of large capacity ammunition feeding devices manufactured on or before the date of enactment.

As the attached memo from Treasury's General Counsel indicates, ATF now proposes a rule reversing its prior position and allowing importation of such devices. The new rule, however, does require importers to provide evidence of the date of manufacture with the import application.

This new rule looks to me like a fair interpretation of the statute. You should let me know if you have any comments or objections.

**Implementation of Violent Crime Control and Law Enforcement
Act of 1994-Importation of Ammunition Feeding Devices
With a Capacity of More Than 10 Rounds**

Objective

ATF proposes new temporary regulations governing the importation of large capacity ammunition feeding devices (devices). The objective is to reverse ATF's previous interpretation of the Violent Crime Control and Law Enforcement Act of 1994 (the Act) that these devices may not be imported, with certain narrow exceptions, e.g., for Government agencies. The new regulations will take the position that devices manufactured on or before the date of enactment (September 13, 1994) may be imported for commercial distribution. However, to enforce the requirement that restricted devices be marked by importers, the regulations will require importers to provide evidence of the date of manufacture with the import application.

Background

The Act prohibits the transfer and possession of large capacity ammunition feeding devices. 18 U.S.C. § 922(w). The term "large capacity ammunition feeding device" is defined as a magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. 18 U.S.C. § 921(a)(31). Exceptions from the prohibition are provided for devices lawfully possessed on or before the date of enactment, devices manufactured for or possessed by governmental entities, and devices manufactured for testing and experimentation.

New Regulations

After analyzing the comments, ATF has re-examined the statute and determined that those devices manufactured on or before September 13, 1994, are not subject to the restrictions of the law and may be imported for unrestricted commercial sale. To effectuate the marking requirement, the regulations will require importers to provide certain evidence with their import applications. The applications must state that the devices are being imported for Government agencies or qualified law enforcement officers or be submitted with reasonable evidence that the devices were manufactured on or before September 13, 1994. Examples of acceptable evidence provided in the regulations include (1) permanent markings on the magazines or physical characteristics indicating the date of manufacture; and (2) certification from the importer concerning the date of manufacture of the magazines, supported by documentary evidence, such as commercial records. The regulations will require that ATF process applications to import magazines expeditiously.

Fax from Neil Wilson

by Alks Alks

DPC
on 7/19
the

Josh Cuda
↓

- Bruce Feed -
get shift thru.

Brad Buckles - ATF

Temp/proposed rule

lge capac feeding devices

magazines manu'd prior to enactment

New rule - more curis w/ Dimpell

New - mtrs when manu'd

Working w/ Dimpell + his staff.

Timekeeping

John Schwidt -

Don't believe statute applies retroactively.

Very strongly - can't be defended.
Broad absolute terms.

Indefensible position.
Deadline date - fairly soon.

514-9800

waiting for more
internal report.
day or two.

July 31 - deadline for
response.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

13 JUL 1995

UNDER SECRETARY

MEMORANDUM FOR JAMES CASTELLO
DEPUTY WHITE HOUSE COUNSEL

FROM: RONALD K. NOBLE *RKN*
UNDER SECRETARY
(ENFORCEMENT)

SUBJECT: Large Capacity Magazines

Last year's Violent Crime Act included a ban on assault weapons and the large magazines generally used in these weapons. The use of large magazines was the principal feature that contributed to the "firepower" of assault weapons. In order to avoid the problems attendant to banning the possession of items that were already in circulation, the large magazine ban included a "grandfather" clause that exempted from the ban magazines already possessed on or before enactment.

Going into conference, House and Senate passed bills included the Administration's definition of large magazines. Large magazines were simply defined as magazines that could hold more than 10 rounds of ammunition. At conference, a last minute change was made to the definition of large magazines. It added the phrase "manufactured after the date of enactment" after the physical description of large magazines. As it stands now there is ambiguity as to what the law was intended to exempt. On the one hand, the law still contains a specific "grandfather" provision that purports only to exempt those magazines lawfully possessed in the United States on or before enactment. On the other hand, the last minute change to the definition section, if read literally, exempts all magazines in existence anywhere in the world before enactment.

ATF has been disapproving import permits for large magazines, recognizing only those magazines possessed in the U.S. on or before enactment as exempt from the ban. Allowing continued importation of pre-Act magazines threatens to reduce the law to a nullity. There is virtually an unlimited supply of pre-Act magazines in the world. Large magazines for rifles like the AK-47 are likely in the millions. This is not to suggest that every large

magazine eligible for importation would actually be imported. However, importers could continue to meet U.S. demand for large magazines for the foreseeable future.

It may be possible to limit the impact of importations by imposing strict evidentiary standards on those proposing to import these items. However, it is impossible to predict how effective these standards would be in controlling imports.

We are currently in litigation over the importation of 215,000 large magazines. Permits to import over 100,000 other magazines have been disapproved. Many more importers appear to be awaiting the outcome of the litigation. We are working with the Justice Department in an attempt to formulate a defense. Everyone recognizes, however, that the definition represents a serious legal obstacle to a complete ban on the continued introduction of large magazines into U.S. commerce.

cc: Pat Griffin
Office of Legislative Affairs

1) Texas Rangers - any reason to think they had anything to add?
Any impeachment material?

Tape - D lawyer: Turning point

2) Media strategy

GI might be doing all this w/ top media guys - use of day
Need pres leadership going into this thing.

3) Widows - Treasury -
There?

4) Cop groups - Write saying need prof law ent panel
overarching issues - eg use of gas
Need cop liaison here

5) Former counsels to Pres. - what sort of privilege

3:00 - Justice - witnesses

4:00 - Treasury - witnesses

Josh Long - press attorney

Civil Division - stray view that ATF is wrong.

⇒ urging to drop

last heard a few weeks ago

Get back to me re what's happening.

THE WHITE HOUSE
WASHINGTON

Clips
Mass
Voice-mail
Parking

Civil Division # [+ OCC]

↳ concurred



improper interpretation

4 or 5 weeks ago.

CALL

~~R. Schiltz - then W. B. ...~~

~~Phone call after 11:00
for ...~~

~~Amex
1-800-528-4800~~

~~Kristin ... LUNCH~~

~~MAROTE~~

THE WHITE HOUSE
WASHINGTON

Schittin

Still actively engaged w/ ATF on
subject -
yet to make final decision.

addual written submissions
ATF's hurther thoughts.

- Assoc Atty Gen'l -

Aware of political concerns.
Need to maintain some distance.

Time Table? Don't know.
Move w/in the next week or so.

Deal cut -
whether ATF finished

THE WHITE HOUSE
WASHINGTON

Not quite sure how the
precise deal worked -
but ...

If inclination to file believes,
need to clarify 1st whether
This is sharply contrary

John Schmidt
514-9500

THE WHITE HOUSE

WASHINGTON

COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: 7/11/95

TOTAL PAGES (INCLUDING COVER PAGE): 10

TO: Counsel's Office

ATTN: Elena Kagan

FACSIMILE NUMBER: 6-1647

TELEPHONE NUMBER: 6-7901

FROM: James Castello at (202) 456-6611

COMMENTS: _____

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JUL-12-1995 16:32 FROM ATF CHIEF COUNSEL MASS RV TO

96222802

P.03

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FAX COVER SHEET

DATE: July 10, 1995

TO: Neal Wolf

FAX NUMBER: (202)622-2882

FROM: Brad Buckles

NUMBER OF PAGES TO FOLLOW: 8

COMMENTS: Large Magazines

Here is a copy of our paper on statutory construction in connection with the large magazine issue.

**IMPORTATION STATUS OF LARGE CAPACITY
AMMUNITION FEEDING DEVICES**

Background

As part of the Violent Crime Control and Law Enforcement Act of 1994 ("Crime Control Act" or "Act"), Congress amended the Gun Control Act of 1968 ("GCA") by prohibiting the transfer or possession of large capacity ammunition feeding devices. 18 U.S.C. § 922(w)(1). The term "large capacity ammunition feeding device" is defined, in pertinent part, to mean:

[A] magazine, belt drum, feed strip, or similar device manufactured after the date of the enactment of the [Act] that has the capacity of, or that can be readily restored or converted to accept more than 10 rounds of ammunition.

18 U.S.C. § 921(a)(31) (emphasis added).

A "grandfather clause" provides that the prohibition shall not apply to the possession or transfer of large capacity ammunition feeding devices lawfully possessed on or before the date of enactment (September 13, 1994). 18 U.S.C. § 922(w)(2). Exemptions are also provided for, *inter alia*, the manufacture for, transfer to, or possession by governmental entities and law enforcement officers employed by such entities. 18 U.S.C. § 922(w)(3)(A).¹ Similar restrictions and exceptions have been prescribed by the Act with respect to the manufacture, transfer, and possession of certain semiautomatic assault weapons. However, the definition of semiautomatic assault weapons in 18 U.S.C. § 921(a)(30) does not incorporate the phrase "manufactured after the date of enactment," as is the case with the definition of large capacity ammunition feeding devices.

Since the effective date of the Act, ATF has taken the position that it will not approve applications to import large capacity ammunition feeding devices (regardless of their date of manufacture), unless the importer can provide evidence that the devices were lawfully possessed in the United States on September 13, 1994, or that they are being

¹ In addition, 18 U.S.C. § 923(i) provides that [large capacity ammunition feeding devices manufactured after the date of enactment of the Act] shall be identified by a serial number showing that the device was manufactured or imported after the effective date, and such other identification as the Secretary may prescribe by regulation.

?
redundant

reads out the
definitional
This is not a
LAW!

redundant!

imported for sale to a governmental entity or a law enforcement officer employed by such an entity.² This position was initially set forth in an open letter to magazine manufacturers dated September 13, 1994. (Attachment 1.) Although the Act does not specifically prohibit the importation of large capacity ammunition feeding devices (or semiautomatic assault weapons for that matter), ATF would not approve the importation of such weapons or devices for private purposes after September 13, 1994, since they do not fall within the grandfather exception and since approval would put the importer in violation of the law. This interpretation is consistent with ATF's interpretation of 18 U.S.C. § 922(c), which imposed a similar ban on machineguns manufactured after May 19, 1986. See 27 C.F.R. § 179.105(c).³

How?

*because not possessed in US.
NB - even if importer can show an earlier date of manufacture!*

² The "grandfather clause" with respect to assault weapons expressly states that the assault weapon prohibition shall not apply to the possession or transfer of weapons lawfully possessed under Federal law on the date of enactment. 18 U.S.C. § 922(v)(2). As noted above, the grandfather clause for large capacity ammunition feeding devices exempts devices "possessed" before the date of enactment. 18 U.S.C. § 922(w)(2). However, since the GCA regulates interstate or foreign commerce in firearms, or other activities within the United States affecting commerce, and does not have extraterritorial effect, the term "possession" as used in the grandfather clause clearly pertains only to devices possessed in the United States before September 13, 1995. This is clarified in the temporary regulations implementing the Act that were published in the Federal Register on April 6, 1995 (60 Fed. Reg. 17446). See 27 C.F.R. § 178.40a(b)(1).

not express in GCA

³ We must point out that the temporary regulations implementing the Act inadvertently give conflicting signals concerning ATF's position with respect to the importation of large capacity ammunition feeding devices. On the one hand, the regulations make it clear that all large capacity ammunition feeding devices imported after September 13, 1994 (regardless of their date of manufacture) must be identified with, among other things, a serial number, the name of the manufacturer and country of origin, and shall be marked "RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY." See

Seems right but not a standard

(continued...)



- 3 -

In interpreting the scope of the prohibition with respect to the importation of large capacity ammunition feeding devices (or "large magazines"), ATF considered the legislative scheme and congressional intent of the Act. However, ATF has received inquiries from various members of Congress questioning ATF's position with respect to large capacity ammunition feeding devices manufactured in foreign countries before September 13, 1994. (Attachment 2.) ATF's interpretation is also being challenged by an importer in the lawsuit Landies et al. v. Magaw, Civil Action No. 95-0476 LFO (D.D.C. March 10, 1995).⁴

Specifically, the members of Congress and the importer in the Landies case assert that, by virtue of the definition of "large capacity ammunition feeding devices" contained in section 921(a)(31), any large magazine may be imported into the United States for sale without restriction as long as it was manufactured before September 13, 1994. This interpretation of the definition section effectively renders the ban on large magazines meaningless. *Why? No, it doesn't.*

also state that "no large capacity ammunition feeding device manufactured after September 13, 1994, shall be imported or brought into the United States unless the Director has authorized the importation of such device, following verification from the importer that, inter alia, the device will be marked as required and that the device is being imported for sale to a governmental entity or law enforcement officers. See 27 C.F.R. § 178.119(a) and (b). This oversight will be corrected in the final regulations.

⁴ On September 13, 1994, ATF sent a letter to the Commissioner, U.S. Customs Service, advising of the prohibition on large capacity ammunition feeding devices and requesting that Customs not release devices that arrive in the United States after September 13, 1994, unless they fall within one of the exceptions provided by the law. (Attachment 3.) Although plaintiff Landies held an approved ATF Form 6 dated July 15, 1994, to import weapons and magazines, the magazines did not arrive in the United States until on or about November 1, 1994, and were thus denied entry by Customs.

JUL-10-1995 15:34 FROM ATF CHIEF COUNSEL MASS AV TO

96222882 P.04

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Argument for the Position that the Statute Authorizes the
Importation of Large Capacity Magazines Manufactured Before
September 13, 1994 for Private Purposes.

Plain language, says.

Reading 18 U.S.C. § 921(a) (31) literally, the argument will be made that the definition of large capacity ammunition feeding devices does not distinguish between magazines manufactured in the United States and magazines manufactured abroad, and that section 922(w) (1) thus prohibits the importation of only those devices manufactured in foreign countries after September 13, 1994. Consequently, proponents will argue that the definition section is Congress' declaration of what is intended to be encompassed by the prohibition on the possession and transfer of "large capacity ammunition feeding device," and is binding.⁵

Although a literal reading of section 921(a) (31) renders the grandfather clause in section 922(w) (2) superfluous (there is no need to grandfather the possession of an article not yet manufactured), proponents will argue that the ambiguity should be resolved in favor of the specific definition section. Significantly, the phrase "manufactured after the date of enactment of the [Act]," was incorporated into the definition of large capacity ammunition feeding devices by the conference report and could, thus, be viewed as Congress' final statement of its intent. See *Danby v. Schweiker*, 671 F.2d 507, 510 (D.C. Cir. 1981) ("[b]ecause the conference report represents the final statement of terms agreed to by both houses, next to the statute itself it is the most persuasive evidence of congressional intent").⁶ Proponents will also argue that

⁵ Proponents will point out, by way of analogy, that the definition of a "firearm" for purposes of the GCA excludes antique firearms. 18 U.S.C. § 921(a) (3). An "antique firearm" is defined as including any firearm "manufactured in or before 1898." 18 U.S.C. § 921(a) (16) (a). This same definition applies whether the firearm is of domestic or foreign manufacture.

⁶ The only comment we could find in the legislative history explaining the definition of large capacity ammunition feeding devices, as amended during conference, was a statement by Senator Metzenbaum during consideration of the conference report. Senator Metzenbaum's statement (continued...)

the grandfather clause, rather than being superfluous, serves to make it crystal clear that persons may continue to possess existing large magazines and that the prohibition applies only with respect to large magazines manufactured after the effective date of the Act.

Finally, proponents for the unrestricted importation of large magazines manufactured before September 13, 1994 will also argue that, even if there is an ambiguity, the rule of lenity applies when construing a criminal statute. See United States v. Thompson/Center Arms Co., 112 S. Ct. 2102, 2110 (1992); Crandon v. United States, 494 U.S. 152, 168 (1990) (applying lenity in interpreting a criminal statute in a civil context).

Argument for the Position that the Statute Does Not Authorize the Importation of Any Large Capacity Magazines for Private Purposes After September 13, 1994.

The plain meaning of a statute is generally conclusive, except in the "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters." United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242 (1989) (citation omitted). Although criminal statutes generally are construed strictly, "if an absolutely literal reading of a statutory provision is irreconcilably at war with the clear congressional purpose, a less literal construction must be

Sounds pretty reasonable.

§ (...continued)
could be read to support the continued importation of large magazines:

Those changes were intended merely to make explicit that the ban on large-capacity magazines . . . applies prospectively only, to magazines manufactured after the effective date of the law.

See 140 Cong. Rec. S12402 (daily ed., Aug. 24, 1994) (remarks of Senator Metzenbaum) (emphasis added).

Senator Metzenbaum noted at the same time, however, that "although a few technical changes were made to the assault weapons ban in the new conference report, none of the changes affects the substance or in any way undermines the legislation." Id.

considered." United States v. Campos-Serrano, 404 U.S. 293, 298 (1971).⁷

In determining the meaning of a statute, courts not only look to the particular statutory language but to the design of the statute as a whole and to its object and policy. Crandon, 110 S. Ct. at 1001. "A proper interpretation of a section [of a statute] cannot . . . ignore the larger context in which the entire statute was debated." Associated General Contractors v. California State Council of Carpenters, 459 U.S. 519, 530 (1983); Tataranowicz v. Sullivan, 959 F.2d 268, 276 (D.C. Cir. 1992), cert. denied, 113 S. Ct. 983 (1993). Further, courts are reluctant to interpret a statutory provision "so as to render superfluous other provisions in the same enactment." Kraytas v. Commissioner of Internal Revenue, 111 S. Ct. 2631, 2638 (1991). If possible, statutes should be construed in such a fashion that every word has some operative effect." United States v. Nordic Village, Inc., 112 S. Ct. 1011, 1015 (1992). See also Beisler v. Commissioner of Internal Revenue, 814 F.2d 1304, 1307 (9th Cir. 1987) (courts should "avoid an interpretation of a statute that renders any part of it superfluous and does not give effect to all of the words used by Congress").

except for the definition!

In interpreting the scope of the prohibition on large capacity ammunition feeding devices, ATF considered the legislative scheme of which it is a part. The legislation was intended to be, and is, a freeze on the availability of assault weapons and large capacity magazines in the future. See H.R. Rep. No. 489, 103rd Cong. 2d Sess. 12. The legislative history of the Act indicates that Congress was concerned by the fact that large magazines and similar devices which hold more than 10 rounds of ammunition "enable criminals to fire off 20 or 30 rounds in a matter of seconds." 139 Cong. Rec. 83767 (daily ed. Mar. 25, 1993) (remarks of Senator Matzenbaum introducing S. 653). It was clearly anticipated that the Act would serve to ban not only the manufacture but also the "importation of these weapons of war which will cut off the production, and thus, the supply of these deadly weapons to criminals . . . criminals with rapid-firing capabilities and large capacity

⁷ But see Crandon v. United States, 494 U.S. at 160 ("Because construction of a criminal statute must be guided by the need for fair warning, it is rare that legislative history or statutory policies will support a construction of a statute broader than clearly warranted by the text").

07/10/95 20:18 202 622 2882

GENERAL COUNSEL

009/010

JUL-10-1995 16:36 FROM ATF CHIEF COUNSEL MASS AV TO

95222682

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ammunition clips can potentially kill as many human beings as they have bullets." 140 Cong. Rec. H3111 (daily ed. May 5, 1994) (remarks of Congressman Stokes commenting on H.R. 4296). Further, in commenting favorably on the amendment in the conference report to the definition of the term large capacity ammunition feeding device, Senator Metzenbaum emphasized that "none of the changes affects the substance or in any way undermines the legislation." 140 Cong. Rec. S12402.

ATF's position that it will not approve applications to import large magazines unless the importer can provide evidence that the devices were lawfully possessed in the United States on September 13, 1994, or that they are being imported for sale to a governmental entity or a law enforcement officer employed by such an entity, takes all parts of the statute into account, including the grandfather clause. If the definition of large capacity ammunition feeding devices in section 21(a)(31) is read to exclude the entire world supply of magazines in existence on September 13, 1994, then the ban on large magazines in section 922(w)(1) is rendered meaningless. Only United States manufacturers would be harmed by the law because they are prohibited from producing new magazines to meet public demand. Importers, on the other hand, would be left with a virtually unlimited supply of large magazines that they could import to meet this demand. Ironically, the types of magazines likely to be most plentiful in the world would be the magazines for the very semiautomatic assault weapons banned elsewhere in the statute. Large magazines for military style rifles like the AK-47 and the AR-15 have been manufactured for decades, and the numbers in existence on the effective date of the ban would likely reach the tens of millions. Even for common foreign design semiautomatic

*why?
That can't import
manly manufactured.*

¹ As stated in Edward Clinton Ezell, The AK 47 Story, 186 (Stackpole Books 1986):

[T]here are no known numbers of Kalashnikov-type weapons produced to date by the Chinese. With a regular army of more than three million people and reserve forces numbering between five and seven million, it probably would not be unreasonable to project a production total somewhere between ten and twenty million.

(continued...)

pistols such as the Glock, Beretta, Sig Sauer, the world supply of pre-effective date magazines would be able to meet the United States demand for years to come. We are not suggesting every large magazine eligible for importation would be imported, only that the literal interpretation of the definition would mean that the availability of these items world-wide would mean that importers could continue to meet United States demand for the foreseeable future. Rather than freezing the number of large magazines in the United States, opening up the importation could allow that number to expand basically uncontrolled.⁹

Finally, the concern that persons be given fair warning concerning what conduct is prohibited by a criminal statute is tempered here by the fact that articles on the U.S. Munitions Import List (including magazines) cannot be imported into the United States except pursuant to a permit issued by ATF. See 27 C.F.R. § 47.41. Thus, the likelihood of inadvertent violation by an importer is negligible.

*answer to
Lenny's
objection*

⁹(...continued)

It is thus not unreasonable to project that the number of available large magazines for the AK-47 alone as of September 13, 1994, would likewise reach or exceed the tens of millions.

⁹To draw an analogy, as the proponents attempt to do, between large magazines and antique firearms does not take into account the obvious differences between the two items. Clearly, the exemption of antique firearms from Federal firearms controls was based on the fact that antique firearms, due to their age, value, and physical characteristics, are not likely to be used as weapons and pose no threat to public safety. Conversely, the ban on large magazines was imposed due to express congressional concern that magazines with a capacity of more than 10 rounds pose a danger to public safety. The distinction between large magazines manufactured on or before September 13, 1994, and those manufactured after that date, is not based on a congressional determination that the former category is less dangerous than the latter. Rather, the distinction was intended to make the ban on large magazines possessed within the United States a prospective one, so that innocent purchasers would not have to abandon their property.

*How allow transfer of existing materials.
How too.*

46279

18 § 921

CRIMES

Part 1

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committed within the jurisdiction of the United States; and

(C) is intended—

- (i) to intimidate or coerce a civilian population;
- (ii) to influence the policy of a government by intimidation or coercion; or
- (iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

(24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term "school zone" means—

- (A) in, or on the grounds of, a public, parochial or private school; or
- (B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term "school" means a school which provides elementary or secondary education, as determined under State law.

(27) The term "motor vehicle" has the meaning given such term in section 10102 of title 49, United States Code.

(28) The term "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term "handgun" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

(30) The term "semiautomatic assault weapon" means—

(A) any of the firearms, or copies or duplicates of the firearms in any caliber, known as—

- (i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);
- (ii) Action Arms Israeli Military Industries UZI and Galil;
- (iii) Beretta Ar70 (SC-70);
- (iv) Colt AR-15;
- (v) Fabrique National FN/FAL, FN/LAR, and FNC;

- (vi) SWD M-10, M-11, M-11/9, and M-12;
- (vii) Steyr AUG;
- (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and

(ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;
(B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of—

- (i) a folding or telescoping stock;
- (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;

(C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of—

- (i) an ammunition magazine that attaches to the pistol outside of the pistol grip;
- (ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward hand-grip, or silencer;
- (iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;
- (iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and
- (v) a semiautomatic version of an automatic firearm; and

(D) a semiautomatic shotgun that has at least 2 of—

- (i) a folding or telescoping stock;
- (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
- (iii) a fixed magazine capacity in excess of 5 rounds; and
- (iv) an ability to accept a detachable magazine.

(31) The term "large capacity ammunition feeding device"—

(A) means a magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994 that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; but

(B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(b) For the the Armed Fe State in which (Added Pub.L. Stat. 226, and 22, 1968, 82 St 88 Stat. 2217; 1 448; Pub.L. 9; Pub.L. 99-406, 101-647, Title Nov. 29, 1990. § 102(a)(2), Ne Title XI, § 8 1 XXXIII, § 330 2014, 2020, 214

Repr Pub.L. Sept. 13, the ame sections 103-322. of subse effective

References Firearms Act 5845(b) of Tit The date of and Law Ent (a)(21), is the Stat. 1796, w Effective I Subtitle A. 103-322 provi and sections provisions se amendments "(1) shall t Act (Sept. 13 "(2) are re after that da Effective of Pub.L. 10 by this secti and sections provisions se title) shall aj 90-day perit this Act (No Effective Pub.L. 99-4 this Act (am (k), and 929 notes under enactment o (amending action 923(923(a)(2)(A) day of the

Is that this statute?

18 § 922

CRIMES

Part 1

Ch. 41

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under Federal law on the date of the enactment of this subsection.

(3) Paragraph (1) shall not apply to—

(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

(B) any firearm that—

(i) is manually operated by bolt, pump, lever, or slide action;

(ii) has been rendered permanently inoperable; or

(iii) is an antique firearm;

(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine.

The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this subsection is in effect.

(4) Paragraph (1) shall not apply to—

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by

Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.

(w)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on or before the date of the enactment of this subsection.

(3) This subsection shall not apply to—

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of any large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.

(4) If a person charged with violating paragraph (1) asserts that paragraph (1) does not apply to such person because of paragraph (2) or (3), the Government shall have the burden of proof to show that such paragraph (1) applies to such person. The lack of a

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If something manu'd before the date is not a LCAPD at all, what could § 12 mean?

OR are they somehow asserting this is

not really asserting this; instead, as with this it not a LCAPD

How is it you is a LCAPD but is lawfully possessed on or before the date of enactment?

a LCAPD, by the stat del, but it is lawfully possessed. why? how does this arg so?

FIREARMS

18 § 922

No date →
presumption is
earlier than
enactment.
Govt consent
must be given

Sh?

serial number as described in section 923(i) of title 18, United States Code, shall be a presumption that the large capacity ammunition feeding device is not subject to the prohibition of possession in paragraph (1).

(XXI) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

- (A) a handgun; or
- (B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

- (A) a handgun; or
- (B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

APPENDIX A

Centerfire Rifles—Autoloaders

- Browning BAR Mark II Safari Semi-Auto Rifle
- Browning BAR Mark II Safari Magnum Rifle
- Browning High-Power Rifle
- Heckler & Koch Model 300 Rifle
- Iver Johnson M-1 Carbine
- Iver Johnson 50th Anniversary M-1 Carbine
- Marlin Model 9 Camp Carbine
- Marlin Model 45 Carbine
- Remington Nylon 66 Auto-Loading Rifle
- Remington Model 7400 Auto Rifle
- Remington Model 7400 Rifle
- Remington Model 7400 Special Purpose Auto Rifle
- Ruger Mini-14 Autoloading Rifle (w/o folding stock)

Complete Annotation Materials, see Title 18 U.S.C.A.

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Neil Wilson - Deputy Gen'l Counsel Treasury

1. Definitional section - Read literally (which is the best way to read), This section makes clear that the ban applies only to devices manufactured after enactment. Only way to do what ATF is doing is to ignore this section.
OK, suppose it doesn't exist. Then a clear case?
2. Grandfather clause - What does it mean to be lawfully possessed at time of enactment? Does that mean the device must be in the US + be lawful under federal (and state?) law? It has to, if ATF is to win. But the difference between v(2) and v(1) weakens this argument.
3. NB that (i) ^{says} ~~requires~~ that a serial # must be put on any device manufactured after date of enactment (reg implic - not then here). So serial # never used to ID these. But note the language "is imported" in the same section.

On other hand -

1. Superfluous argument. If the definitional section is the real, why would the grandfather clause be needed?
(Just to make double sure?)
2. Render stat purpose meaningless. Worldwide supply can satisfy US demand however! Still, can't import newly manufactured. This does have meaning, even if it's not as strong as some might like.

} transfer of existing prop OR
not newly manuf'd prop.

but why is
this phrase
rec. given the
STAT def??

THE WHITE HOUSE
WASHINGTON

1. If manufactured before, this is not a LCDFD at all, by virtue of the statutory definition.

Put this to one side...

~~with manufactured~~ poss. or transfer of
2. Ban on LCDFD doesn't apply to any LCDFD lawfully possessed at time of enactment.

Q: Was this LCDFD lawfully possessed at this time?

Govt has burden of proof to show it was used.

Absence of serial # - is a presumption that LCDFD was lawfully possessed.

3. Why should such an absence create such a presumption?

Because manufacturers must put #s on LCDFDs manufactured after date

THE WHITE HOUSE

WASHINGTON

of enactment. If no rival #,
this suggests that no one needed
to put a rival # on - because
the ~~first~~ (CAF) was man'u'd
bet. The date of enactment.

FORUCE REED

Deal w/ Dinyell - trying to pick up gun democrats
Leam.

grandfather provision

Probably ambiguous.

Didn't give a great deal of thought
to implications of grandfather provision,
or what Dinyell was demanding generally

- Ron might remember -
better / more complete than
anyone else.

Ron Noble?

Justice - Grace Mestali

514-4606

Yes - because the prohibition
doesn't apply to such
clips (see def. section)

Key q: Can clips manufactured prior to the
date of enactment be imported?

ATF position - Not does not apply

"~~the~~ grandfather provision ^{to} imports." (see not lawfully possessed etc)
"And prohibition does apply (irrespective of the definitional section).

More latitude for imports?

Under other laws?

executive order?

224-3232 - Main

514-3694 ☐ Roxborough

~~514-2250~~

Litman

616-2250

514-2000

244-5673

Podesta

Issues -
Procedures -
Are as follows -
w/ "element" -
Pending directly

→ OCC - stuff coming out → Detachable piece - generating own wk.
DPC - " " " → of text that's mine.
w/ly start wkgs
calling genl encls
each wk
[1/5/2008]

Ron Klain -

Deal was manufacture - only clips of the nature were banned.
imputation just didn't come up.

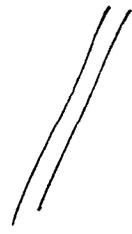
27 foreign clips

27 no express distinct re foreign.

express discussion

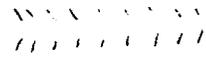
Shut out of clips out there

(tho no recog. that supply was worldwide)



A criticism - imposs to enforce pre-existing clips never knew which was which.

gt provision - aware of redundancy - make abund. clr that it you own, you can sell.



importers can't know - has no way, even assuming gd faith, to trust no practicable way to enforce

Arg for ATF -

Enforcement argument.

Can't do overseas enforcement -

Honor system

Lack of enforceability of serial # overseas in meaningful way

So has imputation - can't get at actual manufacture.

Compromise -

Assume - anything that comes in lat x date (say 1985)

is OK because manufactured earlier assumed to be

Point at some point - all coming in in post-enactment.

(and hence not OK)

THIS IS WHAT

more in line w/ statute - at very least do

b) importer must prove pre enactment (presump of post) // a) OR perhaps use a presumpt - so either as must prove post enactment (presump for pre-enactment) OR

Walker Dellinger / 814-2051

Dave Johns → 814-3744

That's what actually
would allow him
Dingell's interpretation
→

Neil Wilson -
Called to say
Dingell had called Rubin -
Griffith — came to you;
↓

N

effectively use a presumption to determine
whether something is manufactured ~~after~~^{after}
(+ hence subject to the ban)
We can't tell; we'll presume
it's manufactured but unless you can
prove it's manufactured after