

SENATE JUDICIARY HEARING  
“VAWA Next Steps: Protecting Women from Gun Violence”

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We are all concerned about protection of victims of domestic violence and more generally public safety. While current law is not perfect, it has the great virtue of according with the long-standing traditions of American law by protecting the rights of all concerned, rights recognized by the Supreme Court as “deeply rooted in the Nation’s history and tradition” and “fundamental to *our* scheme of ordered liberty.”<sup>i</sup> The two bills under consideration, by contrast, ride rough shod over those key rights, over our Second Amendment right to keep and bear arms, our Fourth Amendment right against unreasonable search and seizure, and the all important right of Due Process. To put the problem these bills address, protection of women, in perspective, I will begin with a few statistics then address the way in which these bills impact the basic rights in question.

First, a fact we should celebrate rarely mentioned by those desiring more gun control, from 1992 to 2010 the homicide rate in this country has declined sharply, falling by nearly half.<sup>ii</sup> Looking at homicide by sex, while female victims were more likely than men to be killed by an intimate, the rate of family violence fell between 1993-2002 and throughout the period accounted for only one in ten violent victimizations and only 11% of reported and unreported violence between 1998 and 2002.<sup>iii</sup> In those years the most frequent type of family violence was simple

assault, while murder of a family member was less than half of 1%.<sup>iv</sup> For women in particular, after 1980 the proportion of female intimate homicide victims killed by guns decreased while the proportion killed by other weapons increased.<sup>v</sup> More generally how were these victims killed. Between 1980-2008 17.4% of female homicide victims were killed by guns, 45.3% by arson and 43.9% by poison.<sup>vi</sup>

Although trends are in the right direction, people are still being assaulted and some of them killed, so it is understandable that better procedures and laws are sought. But the way in which the bills in question plan to accomplish this would do violence to our system of individual rights, fairness, and due process.

The Klobuchar Bill and Lautenberg Amendment greatly expand the sorts of individuals who fall within its reach by adding the crime of stalking, a misdemeanor crime, and including a series of individuals who were or are non-co-habiting, those dating, formerly dating or known to the potential victim. The opening sentence of the fact sheet, "Women Under the Gun," from the Center for American Progress, demonstrates how broad the new standard would be, referring to sexual assault on college campuses and military violence by a partner.

In addition to netting large numbers of innocent individuals, the bill would also make the loss of the right to be armed retroactive. Thousands of individuals have made plea bargains. In federal court felony convictions 79% make a guilty plea.<sup>vii</sup> These individuals would not have known that part of the guilty plea would be to be deprived of the ability to own firearms forever.

The Blumenthal Bill goes several steps further in its attack on traditional rights. It would permit the seizure of firearms from anyone subject to a temporary

restraining order upon the filing such a complaint, and before the individual complained of had an opportunity to be heard. The police would be sent to search for, and forcibly seize any firearms found in his possession. This is a serious infringement of due process, an *Alice in Wonderland* world in which, like the Red Queen, the new rule is “Sentence first! Verdict afterwards.” After his property is taken, the defendant would have to prove himself innocent to get his property back. Although half of those who have been subject to temporary restraining orders are subsequently found not guilty, the bill tilts sharply in favor of the plaintiff. Since the drafters favor taking guns away from civilians, this works to accomplish that goal. Individuals who have committed violent offences are already prohibited from possessing firearms. The new names are to be added quickly to the NICS list but that would take some time.

Law-abiding people in this country have a right to keep firearms for their defence and other lawful purposes. Taking these guns without due process violates that fundamental right. Law-abiding people in this country are to be free from unreasonable search and seizure. Yet the bills would permit their homes to be ransacked for weapons on the mere allegation that they pose a danger to someone else. The taking of property, the violation of rights without due process on the mere assumption it will protect someone else is deeply offensive to our legal tradition. Justice Antonin Scalia, in *District of Columbia v. Heller* is emphatic : “the enshrinement of constitutional rights necessarily takes certain policy choices off the table.”<sup>viii</sup> The policy choices in these two bills must be taken off the table.

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<sup>i</sup> *McDonald v. City of Chicago*, 130 S. Ct. at 3036.

<sup>ii</sup> “Homicide Trends in the United States, 1980-2008,” Bureau of Justice Statistics, U.S. Department of Justice, November, 2011, p. 2.

<sup>iii</sup> “Family Violence Statistics,” Bureau of Justice Statistics, U.S. Department of Justice, June, 2005, p. 1.

<sup>iv</sup> “Family Violence Statistics,” p. 1.

<sup>v</sup> *Ibid.*, p. 20.

<sup>vi</sup> “Homicide Trends,” p. 10.

<sup>vii</sup> “Family Violence Statistics,” p. 2.

<sup>viii</sup> *District of Columbia v. Heller*, 128 S. Ct. at 2822.