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STATEMENT OF

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on

**Oversight Hearing of the Bureau of Alcohol, Tobacco, Firearms and Explosives
(ATF)—Reforming Licensing and Enforcement Authorities**

Presented to

**The Subcommittee on Crime, Terrorism and Homeland Security
of the House Judiciary Committee**

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Good afternoon Mr. Chairman, I am Kristen Rand, legislative director for the Violence Policy Center (VPC). The Violence Policy Center is a non-profit think tank that works to reduce firearm-related death and injury through research, policy development, and advocacy. The VPC is pleased to have the opportunity to address issues related to Federal Firearms License holders (FFLs).

In 1992, the Violence Policy Center released a landmark study of federally licensed firearms dealers. *More Gun Dealers than Gas Stations* detailed the ease with which a Federal Firearms License could be obtained at the time. The basic three-year gun dealer's license could be had for \$30.00 and completion of a simple form. Applicants were barely scrutinized by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The result was more than 245,000 Type I gun dealers in America—far more than the 210,000 gas stations then operating in the United States. The system for issuing licenses was so lax that in 1990 ATF approved applications for two dogs, the *Washington Post* revealed.

But the sheer volume of licensees was only the tip of the iceberg. Unlike ordinary citizens, licensees are: able to buy and sell firearms in interstate commerce and receive firearms via common carrier; able to purchase firearms from wholesalers at discount and in unlimited quantities; and, are exempt from waiting periods, background checks, licensing, or registration requirements. In our 1992 study, the VPC documented how FFLs were abusing these privileges to funnel large numbers of guns into the illegal market. One of the most egregious abuses was a Virginia dealer who was supplying guns to criminals in the District of Columbia:

Donald Percival was an FFL who owned two pawn shops in Virginia: Ted's Coin, Guns, Pawnbrokers, and Ted's Coins, Guns, and Machineguns. In 1988 ATF became aware that Percival and his employees were selling firearms such as MAC-11 assault pistols, 9mm pistols, and inexpensive small-caliber handguns to underage DC residents, including drug dealers. Percival warned buyers that he was required to notify ATF of multiple purchases, something one drug dealer described as "information he needed in his business." The drug dealer said Percival had stated that all he required was a Virginia driver's

license or someone with a Virginia driver's license to act as the straw man and "you can come down and get a gun." When a Ted's salesman was asked how to get rid of the serial number on a gun, he replied, "You have to pour acid over the serial number to get it off." Percival also sold numerous guns in straw purchase sales to undercover ATF agents. In 1989, Percival was convicted by a jury of conspiracy and related felony federal firearms violations.

At the time, ATF identified straw purchasing¹ as the preferred method by which weapons were obtained by criminals in the District of Columbia.

This is just one of the myriad examples of dealers abusing the privileges of the license. One infamous example was David Taylor, a Bronx, New York, man who was ultimately indicted by authorities in 1987 in a plot to resell in New York City at least 1,000 handguns he ordered using his FFL and had shipped to his apartment via UPS. The Bronx District Attorney called the case "the most incredible violation of this city's gun laws that I or anyone else has ever heard of." Moreover, because there was no requirement at that time that FFLs comply with state and local licensing laws, Taylor was able to circumvent New York's tough gun laws, prompting the Bronx D.A. to label the federal law "disgraceful."

The Clinton Administration reacted to this "disgraceful" situation by taking a number of steps to crack down on license abuse. They began aggressively enforcing the statutory requirement that dealers be "engaged in the business" of selling firearms.² Although federal law had long contained the requirement that dealers meet a certain level of business activity in order to be eligible for a license, this provision had never been enforced. In addition, the thoroughness of the background check was improved with a new requirement that applicants submit fingerprints and photographs, and more applicants were inspected. These administrative changes

¹ A straw purchase is a transaction in which persons who can legally purchase guns acquire them for persons prohibited from gun possession by reason of a felony conviction or other disqualifier.

² See 18 U.S.C. § 921 (a)(21) and §923 ((d)(1)(E).

were augmented by new statutory requirements in 1994, including an increase in the fee for a three-year license from \$30.00 to \$200.00. Applicants were also required for the first time to certify that their business was not prohibited by state or local law and that the business would comply with all relevant state and local laws within 30 days of license approval.

In addition to these positive changes at the federal level, many localities—including Detroit and New York—began enforcing zoning and other local ordinances prohibiting dealers from operating from residential premises.

The result of these policy changes has been a gradual, yet drastic, reduction in the number of licensees. The Violence Policy Center recently released a study with the most recent numbers. Today there are 54,902 Type I FFLs. Only five states—Alaska, Idaho, Montana, Oregon, and Wyoming—still have more gun dealers than gas stations (a copy of the study, *An Analysis of the Decline in Gun Dealers: 1994 to 2005*, <http://www.vpc.org/studies/dealers.pdf>, has been submitted for inclusion in the record).

The Government Accountability Office (GOA) analyzed the reasons for the decline and found that the policy changes made during the 1990s resulted in fewer applications being submitted and fewer renewals of existing licenses. The GAO also found that the number of licenses that were abandoned or withdrawn far exceeded the number of licenses denied or revoked.³ In fact, ATF very seldom revokes a license. The VPC's 1992 study documented 15 years of license revocations, from 1975 through 1990. In 1990, nine licenses were revoked. In 1975, ATF revoked seven licenses. The high during the 15-year period was during the Reagan Administration in 1986 when a total of 27 licenses were revoked. The low revocation numbers continue today. In 2002, ATF revoked 30 licenses and the

³ GAO Report, *Federal Firearms Licensees: Various Factors Have Contributed to the Decline in the Number of Dealers*, (March 1996).

number of revocations increased to 54 in 2003.

The low revocation numbers may be partially the result of a process that provides every advantage to the licensee. Typically, after ATF finds violations, the dealer is warned and provided with the opportunity to remedy any violations long before revocation proceedings are initiated. Moreover, revocation is the agency's only option to punish recalcitrant dealers. The agency has no general authority to suspend a license or to assess civil penalties.

In addition, licensees are afforded generous appeal rights. Licensees have a statutory right to a hearing and may even request that a license revocation be stayed during the hearing process. Although some licensees have complained that the hearing officer is an ATF employee, this is entirely consistent with the Administrative Procedure Act (APA),⁴ the federal statute governing administrative adjudications.

A licensee who does not prevail at the agency hearing has the right to appeal the revocation decision to a United States district court and is entitled to *de novo* review of his claim.⁵ The *de novo* standard of review was added to the judicial review provision in 1986 by the National Rifle Association-backed Firearms Owners' Protection Act (FOPA), legislation designed primarily to loosen restrictions on federal firearms licensees. The FOPA also added language that entitles a licensee to submit evidence in court that was not considered at the agency level hearing.

⁴ 5 U.S.C. §556 (b) provides that the agency, one or more members of the body which comprises the agency, or one or more administrative law judges shall preside at the taking of evidence.

⁵ *De novo* review ensures that the claim will be considered anew, the same as if it had not been heard before and as if no decision previously had been rendered. *Ness v. Commissioner*, 954 F.2d 1495, 1497 (9th Cir. 1992). Such review is 'independent.' *Premier v. Fuentes*, 880 F.2d 1096, 1102 (9th Cir. 1989).

Another FOPA addition provides a huge advantage to a licensee who is the subject of criminal charges where the proceedings are terminated or the defendant is acquitted. This provision prohibits the Attorney General from revoking a license based “in whole or in part on the facts which form the basis of such criminal charges.”⁶ The Reagan Department of the Treasury opposed this change to the statute pointing out, “Because the burden of proof on the Government is less stringent in civil actions, a civil license denial or revocation proceeding should not depend on the outcome of the criminal case. No constitutional rights are violated by the civil proceeding when the applicant or licensee was previously acquitted of criminal charges.”⁷

There are several benefits to the significant decline in the number of FFLs. A smaller universe of dealers makes it easier for ATF to focus its inspections. ATF has also noted that fewer dealers makes it easier to complete firearm trace requests since it reduces the number of dealers who cannot be located because they have changed residences.

The decline in the number of licensed gun dealers coincided with a very significant drop in overall gun death in America. Gun-related deaths peaked in 1993 at 39,595. In 2003, the latest year for which complete figures are available, there were 30,136 gun-related deaths.

But the fact that FFLs are difficult to revoke and licensees’ rights are so well protected may help explain why straw purchases continue to contribute significantly to illegal gun trafficking, despite the decline in the number of licensed dealers. In its June 2000 report detailing 1,530 criminal gun trafficking investigations, ATF identified straw purchasing as “the most common channel in trafficking investigations”—with straw purchasing involved in almost half of all trafficking

⁶ 18 U.S.C. § 923(f)(4).

⁷ 132 Cong. Rec. H507 (1986) (statement of Rep. Hughes).

investigations. The report also found that because licensed dealers have access to large numbers of firearms, corrupt FFLs diverted the highest volume of guns into the illegal market. Moreover, where FFLs cooperated with straw purchasers and straw-purchasing rings, the average number of firearms trafficked per investigation was 114.8 compared to 32.8 in cases where there was no FFL involvement.

Recent straw purchasing prosecutions include the following:

- In 2006, seven people were indicted in Philadelphia for using straw purchases to obtain guns, including an AK-47 assault rifle, they used in robberies at banks and fast-food restaurants and to shoot at a police officer.⁸
- In 2005, two FFLs in Fairmont, West Virginia, were indicted for facilitating straw purchases at two pawn shops.⁹
- In 2004, two FFLs in Manassas, Virginia, were arrested for facilitating straw purchases of various types of guns over a two-year period. One of the dealers was recorded telling an informant that he knew that what he was doing was wrong.¹⁰
- In 2004, a woman pleaded guilty to purchasing two semiautomatic handguns—one of which was used in the slaying of a three-year-old child—for felons from Don's Guns in Indianapolis. The woman was arrested as part of a federal gun trafficking investigation that involved the straw purchase of at least 28 guns from Don's Guns.¹¹

⁸ Vernon Clark, "Seven charged in gun-buying, robbery spree: Weapons obtained illegally through "straw buyers," were used to rob banks, local and U.S. officials said," *The Philadelphia Inquirer*, February 9, 2006, p. B03.

⁹ *Associated Press*, "Five charged in illegal gun sales," March 2, 2005, State and Regional.

¹⁰ Josh White and Jerry Markon, "2 Manassas Gun Dealers Charged; Weapons Sold to Felons and for Use in Crimes, ATF Says," *Washington Post*, March 18, 2004, Prince William Extra, T02.

¹¹ Fred Kelly, "Woman admits buying 2 pistols on behalf of felons," *The Indianapolis Star*, March 11, 2004, p. 3B.

- In 2003, the owner of a Pennsylvania gun shop and his father were sentenced to prison terms for supplying guns to a straw purchaser.¹²

The steep decline in licensed gun dealers in America is one of the unsung victories in the effort to prevent firearm-related violence and protect public safety. The gun lobby is desperate to reverse this decline. They have, in fact, succeeded in inserting a provision in ATF's annual spending bills for fiscal years 2005 and 2006 that prohibits ATF from refusing to grant or renew a dealer's license for "lack of business activity." In order to continue in the right direction, ATF needs more resources to monitor dealers' operations and identify the "bad apple" dealers whose licenses should be revoked. The agency needs more flexibility to punish corrupt dealers, such as the authority to suspend licenses and assess civil penalties.

Let's not go back to the days when America had more gun dealers than gas stations.

¹² *Associated Press*, "News in brief from western Pennsylvania," March 22, 2003, State and Regional.