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March 9, 2015

The Honorable B. Todd Jones
Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, N.E.
Washington, DC 20226

Dear Director Jones:

We take issue with the "ATF Framework for Determining Whether Certain Projectiles are 'Primarily Intended for Sporting Purposes' Within the Meaning of 18 U.S.C. 921(a)(17)(C)," to which ATF sought comment on February 13, 2015.

Congress in 1986 passed the Law Enforcement Officers Protection Act (LEOPA). It did so to protect law enforcement officers from a particular category of bullets – those that could be fired from handguns and pierce police officers' body armor. Because rifle ammunition could also pass through police body armor, and some rifle ammunition could be fired from handguns, LEOPA protected common rifle ammunition by exempting from its scope projectiles "which the Attorney General finds [are] primarily intended to be used for sporting purposes."

The "Framework" does not follow LEOPA. Without any support, it purports to create an "objective" test never before applied for delineating which projectiles are "primarily intended to be used for sporting purposes." ATF will exempt a ".22 caliber projectile … if the projectile weighs 40 grains or less AND is loaded into a rimfire cartridge," and will exempt other forms of ammunition if they are "loaded into a cartridge for which the only handgun that is readily available in the ordinary channels of commercial trade is a single shot handgun." But even if a particular projectile satisfies these novel tests, ATF proposes to "retain[] the discretion to deny any application for a 'sporting purposes' exemption if substantial evidence exists that the ammunition is not primarily intended for such purposes."

ATF would determine what amounts to "substantial evidence" and whether the "ammunition is not primarily intended for [sporting] purposes." The statute was not enacted to give authority to ATF to do either. In 1986, the sponsors of the legislation were emphatic in stating that ammunition commonly used in rifles for target practice or hunting was not of the type of ammunition that the bill would ban. ATF seems to have decided to ban ammunition types that the law did not ban, then developed from whole cloth an "objective" test to supposedly provide it with the ability to ban the ammunition types it already had selected for prohibition.

Earlier, ATF recognized the proper scope of LEOPA. ATF has always granted an exemption to the M855 5.56 x 45mm cartridge from the LEOPA ban because it recognized that this

ammunition fell squarely within the "sporting purposes" test. It did so because factually, as well as legally under the legislative language, such cartridges were and are widely used by millions of law-abiding gun owners for "sporting purposes." These cartridges are prevalent for one of the most commonly possessed rifles, the AR-15. Congress did not, and did not intend to, ban this form of ammunition.

ATF's proposed restriction of the M855 cartridge is particularly serious in light of efforts to ban other forms of ammunition. The standards in the "Framework" would make use of ammunition containing materials other than lead more difficult. At the same time, various efforts to ban lead ammunition are proceeding apace. Second Amendment rights require not only access to firearms but to bullets. If law-abiding gun owners cannot obtain rifle ammunition, or face substantial difficulty in finding ammunition available and at reasonable prices because government entities are banning such ammunition, then the Second Amendment is at risk. An outright ban is an even more serious threat to the Second Amendment than the threat to the First Amendment's protection of free press created by a tax imposed only on voluminous purchases of paper and ink. *See Minneapolis Star Tribune Co. v. Commissioner,* 460 U.S. 575 (1983).

It is not clear where ATF believes it has obtained the authority to issue general standards interpreting the meaning of "sporting purposes" under LEOPA as opposed to exempting or not exempting particular cartridges. Nevertheless, no federal statute, including LEOPA, interferes with the ability of law-abiding citizens to obtain ammunition commonly used for such legitimate purposes as target shooting, hunting, and shooting competitions. Nor could any such statute do so consistent with the Second Amendment. The "Framework" should not be adopted, and ATF should not propose in the future to ban any widely used form of ammunition used by law-abiding citizens for lawful purposes.

Sincerely,

Chuck Grassley

John Cornyn

Orrin Hatch

Thad Cochran

Ted Cruz

Mitch McConnell

Michael B. Enzi

Deb Fischer

Jerry Moran

John Hoeven

Richard Shelby

Kelly A. Ayotte

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Susan M Collins