

April 30, 2025

The Honorable Scott Fitzgerald
2444 Rayburn House Office Building
Washington, DC 20515

The Honorable Luis Correa
2082 Rayburn House Office Building
Washington, D.C. 20515

Re: Support for the Introduction of H.R. 2189

Dear Congressmen Fitzgerald and Correa:

My name is Earl Griffith, and I am writing you today to express my support for the introduction of H.R. 2189, the *Law Enforcement Innovate to De-Escalate Act of 2025*. I have also expressed my views in writing to Senator Hagerty and Senator Gallego, the sponsors of S. 1283 *Innovate to De-Escalate Modernization Act*, which is H.R. 2189's identical companion bill in the U.S. Senate.

My support for H.R. 2189 stems from my experience in the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF")'s Firearms and Ammunition Technology Division. I served in the Division in several capacities from September 2001 to November 2022, concluding with my service for a number of years as Division Chief. During my numerous years in the Division, I was tasked with reviewing thousands of classification requests submitted to ATF by members of the firearms industry, physically evaluating the submissions, and issuing classification determinations based on statutory text and implementing regulations which explained ATF's position on whether an object or article constituted a "firearm".

For context, a firearm is defined in relevant part under the Gun Control Act of 1968 ("GCA") as "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive." As you will note, this definition focuses solely on the type of force expelling the projectile (the action of an explosive) without any regard to whether the weapon is lethal or non-lethal. Through my firsthand experience applying this 1968 definition to articles submitted for classification, I observed that this definition is likely the most inclusive way to capture the various types of lethal weapons that Congress intended to regulate as firearms without capturing items such as BB guns, paintball guns, and other similar weapons. However, it is also clear that Congress in 1968 did not anticipate that one day less-than-lethal technology would use the action of an explosive to expel a less-than-lethal projectile.

Because the phrase "action of an explosive" is not defined in the GCA, ATF has historically considered any amount of explosive force that directly expels a projectile to satisfy this element of the firearm definition. A typical small arms primer, for example, contains the equivalent of a grain of wheat in explosive material and is typically only the first step in a chain reaction required

to actually expel a projectile. Although less-than-lethal technologies using primers in the propulsion process have been widely used by law enforcement and their public safety partners for several decades now, older models typically used the primer only to puncture a bulky inert gas canister. Accordingly, because the less-than-lethal projectile was being directly expelled by an inert gas released from a canister, it was not captured as a firearm.

Recently, in order to improve the effective range of a less-than-lethal projectile and create room in the device to allow it to expel additional independent projectiles, innovators in the less-than-lethal industry eliminated the bulky inert gas canister from the propulsion technology. This minor engineering change offers law enforcement additional opportunities to use a less-than-lethal technology instead of lethal force. However, as a result of this change, the modern less-than-lethal device is also now regulated as if it were a lethal firearm under the GCA.

The classification of an item as a “firearm” under the GCA causes all aspects of its manufacture, transfer, sale, and possession to become highly regulated under federal and state law. In 1968, Congress intended for this level of regulation to be applicable to lethal firearms in order to provide support to federal, state, and local law enforcement officials in their fight against crime and violence. However, this very same law is now hindering federal, state, and local law enforcement and their public safety partners from combating crime and violence in our communities with modern less-than-lethal projectile devices. In addition to regulatory considerations, I am also aware of how the classification of an item as a “firearm” under the GCA can create enhanced legal liability for law enforcement officers who use such an item when performing their official duties.

I previously wrote to sponsors in support of H.R. 3269 and S. 4255 in the 118th Congress which allowed for the research, manufacture, delivery, and use of modern less-than-lethal projectile devices for law enforcement officers and public safety partners. Previously, H.R. 3269 and S. 4255 defined a less-than-lethal projectile device to include a device with a bore or multiple bores not designed or intended to expel a projectile at a velocity exceeding 500 feet per second by any means. Additionally, the device had to be designed or intended to be used in a manner that is not likely to cause death or serious bodily injury.

Although I do not believe that unintended consequences would have arisen from how the term “less-than-lethal projectile device” was defined by the 118th Congress, I applaud the continued bipartisan efforts of the 119th Congress to hear and address the concerns of other stakeholders. As a function of the legislative deliberation process, I believe that the new multi-element test that has emerged in H.R. 2189 and S. 1283 will make it even easier for ATF to distinguish between a true less-than-lethal projectile device and a lethal firearm.

Under H.R. 2189 and S. 1283’s new multi-element test, a device can only be classified by ATF as a less-than-lethal projectile device if it passes all of the below criteria:

- ❖ The device is not designed or intended to expel, and may not be readily converted to accept and discharge, ammunition commonly used in handguns, rifles, or shotguns.
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- ❖ The device is not designed or intended to expel, and may not be readily converted to accept and discharge, any other projectile at a velocity exceeding 500 feet per second.
- ❖ The device is designed and intended to be used in a manner that is not likely to cause death or serious bodily injury.
- ❖ The device does not accept, and is not able to be readily modified to accept, an ammunition feeding device loaded through the inside of a pistol grip.
- ❖ The device does not accept, and is not able to be readily modified to accept, an ammunition feeding device commonly used in semiautomatic firearms.

While staying true to the 118th Congress's objective and subjective tests that garnered the support of a broad bipartisan coalition representing 28 states in the U.S. House and Senate, H.R. 2189 and S. 1283's multi-element test now more clearly defines the term "less-than-lethal projectile device". Additionally, H.R. 2189 and S. 1283 give ATF new statutory tools to use during the classification process to effectively screen out any device which could be readily converted into a lethal firearm. Based on my experience classifying firearms and knowledge of firearms technology, no ghost guns will be able to pass this new multi-element test.

I support the passage of H.R. 2189 and S. 1283 because they surgically clarify the GCA in the least intrusive way possible to allow for modern less-than-lethal projectile devices to be researched, manufactured, delivered, and used by law enforcement officers and public safety partners without disturbing the classification of items that Congress intended to regulate through the GCA. It is my view that H.R. 2189 and S. 1283 are must-pass pieces of legislation because they significantly improve law enforcement's access to the latest less-than-lethal technologies today while simultaneously incentivizing investment in research, development, and innovation for the less-than-lethal tools of tomorrow. Should you have any questions regarding my perspective on H.R. 2189, please do not hesitate to contact me at egriffithconsultants@gmail.com.

Sincerely,



Earl Griffith
