

April 17, 2024

The Honorable Scott Fitzgerald
1507 Longworth House Office Building
Washington, DC 20515

Dear Congressman Fitzgerald:

My name is Earl Griffith and I am writing to express my support to you, as an original co-sponsor of the bill, for the passage of H.R. 3269, the *Law Enforcement Innovate to De-Escalate Act*. I have also expressed my views in writing in March of this year to the sponsor of the bill, Congressman Greg Stanton of Arizona.

My position on this bill is informed by my experience in the Bureau of Alcohol, Tobacco, Firearms & Explosives (“ATF”)’s Firearms and Ammunition Technology Division, a division in which I served in several roles from September 2001 to November 2022, concluding with my service for a number of years as Division Chief. In my various roles in the Division, I was tasked with, among other responsibilities, reviewing classifications requests submitted to ATF by members of the firearms industry, physically evaluating the submissions, and issuing classification determinations which explained ATF’s position on whether an object or article constituted a “firearm”.

One key definition that I relied upon to conduct my analysis was the Gun Control Act of 1968 (“GCA”)’s definition of a firearm which, in relevant part, states that a firearm is “(A) 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; and (B) the frame or receiver of any such weapon.”

Another key definition that informed my classification determinations is the National Firearms Act of 1934 (“NFA”)’s definition of a firearm which establishes six categories of weapons which Congress determined were worthy of registration, taxation for making and transferring, and additional recordkeeping requirements. While the NFA regulates items such as machineguns, destructive devices, silencers, and short-barreled shotguns and rifles, it also contains a catch-all category known as “any other weapon” which captures “any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire.” Only “a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition” is explicitly exempted from this definition.

Through my firsthand experience applying the GCA and the NFA, I observed that while the above statutory language does a good job of capturing the types of weapons that Congress intended to regulate as firearms, they also capture and unnecessarily regulate modern less-than-lethal projectile devices which use a standard primer to propel a less-than-lethal projectile. I support the passage of H.R. 3269 because I believe that it surgically clarifies our nation's firearms laws to allow for modern less-than-lethal projectile devices to be researched, manufactured, and delivered to our law enforcement officers without disturbing the regulation of items that Congress intended to regulate through the GCA and NFA.

From my perspective, H.R. 3269 does not create a loophole in our nation's firearms laws because the test for whether an item should be classified as an exempted "less-than-lethal projectile device" employs both an objective and a subjective factors, both of which must be met to ATF's satisfaction. Based on my experience and knowledge of firearms technology, the objective feet-per-second ("fps") velocity limit already excludes all commercially available firearms known to me from being classified as a less-than-lethal projectile device. The slowest centrefire and rimfire ammunition commercially made group at or around 700 fps—far greater than the 500 fps limit set by the bill.

Secondly, the subjective factor, whether the device is designed or intended to be used in a manner that is not likely to cause death or serious bodily injury, gives ATF the requisite flexibility to classify a device as a firearm if warranted, even if the device fires a projectile at a low velocity. Existing statutory text and implementing regulations recently promulgated by ATF also act as additional safeguards to prevent individuals from exploiting this proposed statutory exemption as a means to sell a weapon parts kit to the public without proper licensing with ATF and following the proper federal transfer and background check requirements.

Finally, ATF has existing authority to revisit any classification determination if the manufacturer or a third-party decides to modify or remanufacture a less than lethal projectile device into a lethal configuration. This authority is instrumental in ATF's ability to faithfully execute its mission of protecting communities from violent criminals, criminal organizations, and the illegal use and trafficking of firearms. In the case of conducted energy weapon devices, it is highly impractical - if not impossible - to try to modify, convert, or remanufacture such devices to function and use traditional firearms parts or ammunition. However, if a third party attempted such an undertaking, or manufactured a lethal conducted energy weapon projectile, ATF can quickly reclassify the product as modified. It is also important to note that the criminal misuse of such a modified lethal projectile could also still be criminally prosecuted. In sum, there are already many failsafe mechanisms in place that prevent the gaming of the classification systems.

Accordingly, H.R. 3269 sets a very reasonable line of demarcation between items needing regulation under the GCA and NFA, and items that do not. More importantly, this bill allows less lethal technology development and innovation to proceed without being burdened by a complex and burdensome regulatory scheme that was not intended to govern less lethal innovations. Should you have any questions regarding my perspective on H.R. 3269, please do not hesitate to contact me at egriffithconsultants@gmail.com.

Sincerely,

Earl Griffith

Earl Griffith
