

A Ban on Private Gun Sales Will Be Unenforceable Unless Congress Also Adopts Registration, Or Makes Gun Possession Presumptively Illegal

Background: ATF finds that the guns it is asked to trace were initially sold, on the average, 11 years ago.

Assume a law is passed in 2013 requiring that all private sales go thru licensed dealers.

For the first 11 years, until 2024 or so, the average prosecution will fall apart because the firearm will have been sold and in circulation before the law went into effect, and thus a lawful private sale cannot be ruled out. But let's make it simple, and set this hypothetical in 2025.

In 2025, John Gunowner is found with a firearm, and tracing shows it was made after the law became effective. But tracing only tracks a firearm to its first sale by a dealer. In this case, it shows that Jim Victim bought the firearm in 2014. Luckily, Victim can be located, and he reports the gun was stolen from him five years ago.

The prosecution still doesn't have a case against John Gunowner. The thief might have sold the firearm to a licensed dealer, who lawfully sold it to Gunowner. How can that be ruled out?

Someone would have to check the records of every licensed dealer in Houston, over the last five years, to ensure that no dealer bought the firearm and sold it to John Gunowner. In fact, it might be necessary to check the records of every licensed dealer in Texas, since Gunowner could have purchased anywhere in the State.

This would be an impossible burden for a simple gun possession investigation (it would be an impossible burden for almost any investigation).

There are only two legal solutions to this problem.

(1) Congress could require dealers to report all sales to a central authority. In fact, it would have to require them to report all past sales, too. Now it is possible to run Gunowner's name and see if *any* dealer transferred the gun to him. This also, of course, creates universal gun registration. Or...

(2) Congress could enact a law providing that (a) It is a crime to possess a firearm, period, but (b) it is a defense if you can prove you bought it from a licensed dealer, or already owned it when this law went into effect. This of course makes gun ownership presumptively illegal. Any person possessing a firearm is subject to arrest and prosecution – at trial he can try to prove he bought it from a dealer or had it before the law went into effect.