

NEWSOM'S INITIATIVE IS NONSENSE

By C.D Michel

Gubernatorial candidates often promote initiatives as a way to boost their name recognition and get an early edge over campaign opponents. As the *Sacramento Bee* recognized immediately, that's the real motive behind Lt. Gov. Gavin Newsom's manipulatively misnamed "Safety for All Act; "pandering to the prejudices of Democratic activists Newsom needs for his gubernatorial bid" and "peddling symbolic fluff."

Newsom launched his initiative / gubernatorial campaign with a carefully orchestrated press conference flanked by anti-gun activists and the leading lawyers for the gun-ban lobby. His proposal would, among other things:

- Establish a state licensing scheme of all ammunition sellers and drastically limit where ammunition could be sold;
- Prohibit the sale or transfers of ammunition to anyone who is not registered with the state as an eligible ammunition purchaser;
- Prohibit private sales of any ammunition, even between hunting buddies or siblings;
- Ban possession of and confiscate hundreds of thousands of lawfully possessed magazines that come standard with most firearms in almost every state;
- Turn law-abiding citizens into criminals if they fail to report lost or

stolen firearms to police after they "should have known" a firearm was missing;

- Force already overworked judges, prosecutors, and public defenders to take on the added burden of using the courts and probation officers to confiscate guns.

Newsom has used the San Bernardino terrorist attacks to justify his initiative, outlandishly claiming that another law would disarm terrorists. But he has jumped the intellectual shark. As people are realizing that another law will not make their family safe, they are voting with their wallets. In California, gun sales have tripled in recent years. **Californians now buy 3,000 guns a day.**

Newsom's proposal is dense, and that alone is a good reason to oppose it. No voter will read the voluminous law, let alone understand what it actually does. And that's by design. The gun ban lobby's PR professionals train advocates to "push concept, not content," and the lawyers for the gun ban lobby who wrote Newsom's initiative nonsense carefully chose topics with superficial conceptual appeal. So Newsom's political sales pitch avoids the problematic details. Instead he simply proclaims that the proposals are "common sense," and appeals to the emotions of the segment of the public that doesn't understand how burdensome, ineffective, and count-

er-productive California's gun laws already are, how poorly the government currently uses those gun laws, and how many harmless good people get snared by these bad laws.

Scientists warn that "common sense" is what tells us the earth is flat. The lawyers for the many police and prosecutor associations that have lined up to oppose Newsom's initiative actually read it carefully. Their scrutiny revealed lots of problems. And once a law is passed via the initiative process rather than going through the Legislature, the Legislature is largely powerless to fix any problems with it, no matter how badly needed. That's the main reason that even the leading anti-gun-owner politicians also don't support Newsom's nonsense. (The other reason being he is hogging their political spotlight.)

In fact, Newsom's nonsense proposals are a laundry list of failed legislation that couldn't even pass in the overwhelmingly anti-gun owner California Legislature. These proposals failed largely because the Legislature or the governor ultimately realized the laws are unworkable or unfair.

AMMUNITION REGISTRATION COSTS

Making it prohibitively expensive to get ammunition is a big part of the gun-ban lobby's latest back-door strategy to reduce the number of firearm

owners and target shooters. Newsom's initiative would mandate extremely burdensome changes. Stores will have to move all ammunition behind the counter, and every single ammunition sale would require a store employee to help a customer select ammo, process a background check on the buyer, and record a litany of private information (including residential address and phone number). As recognized when a similar proposal failed in the Legislature, the cost of these burdens will be passed on to consumers. The price of ammunition will skyrocket. The cost of using a gun will become prohibitive, and taxpayers will pay more for the huge amounts of ammo that police use to train. Police are *not exempt* from Newsom's scheme.

Attempts to implement this kind of regulatory scheme have been tried and failed, most recently in New York. Gov. Andrew Cuomo, who is as anti-gun as a politician can get, suspended the provision last July because managing the law was practically impossible. Some estimates found that building and maintaining the necessary databases could cost over \$100 million.

"New York tried. California will be the first to do it," Newsom has vaguely pronounced – again talking concept, not content. But Newsom is giving California bureaucrats far more credit than they deserve. The California Department of Justice (DOJ) Firearms Bureau has miserably mismanaged California's existing error-ridden criminal records and gun registration databases so badly that the state auditor has twice criticized the department for its incompetence in administering them. The Ninth Circuit has held that buying ammunition is protected under the Second Amendment. Right now, database and records errors cause DOJ to wrongly deny permission to buy a gun to countless people who aren't prohibited from owning one. Because of DOJ understaffing, it can take months and sometimes thousands of dollars to clear up these mistakes. There are exponentially more ammunition sales than gun sales. Mistakes, delays, and resulting lawsuits will abound.

Years ago, Daniel Patrick Moynihan, the late Democratic senator from New York, argued, "We don't need to

ban guns; we need to ban ammunition, because in 25 years, if you can't buy ammunition, it goes bad." While Moynihan's statement reveals his ignorance about ammunition shelf life, it is also evidence of the gun ban lobby's back-door strategy. By using Newsom to push this scheme, the gun-ban lobby can effectively make guns too expensive for many folks to use.

STANDARD CAPACITY MAGAZINE BAN

Acquiring magazines that can hold over 10 rounds (mislabelled "high capacity") has been illegal in California since 2000. The Legislature agreed to "grandfather" people who already had these magazines so they could continue to possess them. Countless people did, because magazines that hold over 10 rounds are the standard size sold with many firearms. These magazines are sold by the millions in almost every other state. Today, only those exempted people (who are far beyond gang-banging age) and current and retired law enforcement legally possess them. Newsom's nonsense would unfairly force these folks to surrender their lawfully possessed property.

Another word for that is confiscation — something the gun ban lobby has always promised would never happen, but has happened repeatedly in California. The injustice of this has driven more than a few folks in Los Angeles and Sunnyvale to civil disobedience. When those cities passed bans on the possession of these magazines, not a single one was turned in.

This section of Newsom's nonsense is modeled on a 2013 California Senate bill that died in the Legislature, for good reason. In the vast majority of gun crimes, criminals rarely fire more than ten shots. Even in those rare circumstances where they do, criminals aren't deterred by magazine size restrictions. Unlike victims of crimes who must defend themselves at a second's notice, criminals, terrorists, and mass murderers

have time to plan their attack. They can easily plan around magazine size laws. They simply ignore the laws, or carry multiple firearms and magazines.

Even supporters of magazine bans acknowledge that they cannot say that bans would reduce the number of shots fired or the number of people injured during criminal attacks. In 2004, federal magazine capacity restrictions that had been in place for 10 years were not renewed because there was "no evidence that lives were saved [and] no evidence that criminals fired fewer shots during gun fights." And in 2013, an overwhelming 95.4 percent of law enforcement surveyed by the national law enforcement organization PoliceOne responded that they believed magazine bans would fail to reduce violent crime.

The California State Sheriffs Association opposed state legislation to ban standard magazines in 2013. It opposes Newsom's proposal now because "this measure would have little impact on the ability of criminals or other prohibited persons from obtaining large-capacity magazines," and because the law "would unintentionally turn many law-abiding citizens into criminals, subject to felony prosecution, for failing to sell or destroy their lawfully obtained property."

WHY MAKE VICTIMS CRIMINALS?

This part of Newsom's nonsense would require gun owners to report the loss or theft of their firearms, typically within forty-eight hours of when the owner knew or "should have known" the gun was missing. Twice, in 2012 and 2013, Gov. Brown vetoed bills that would have done this. In his veto message, Brown said he believed responsible people already report the loss or theft of a firearm "and irresponsible people do not. I remain skeptical that this bill would change those behaviors." Bingo.

Gun ban advocacy groups disingenuously claim this law would prevent unlawful sales of firearms by "straw pur-

**"COMMON SENSE" IS WHAT
TELLS US THE EARTH IS FLAT.**

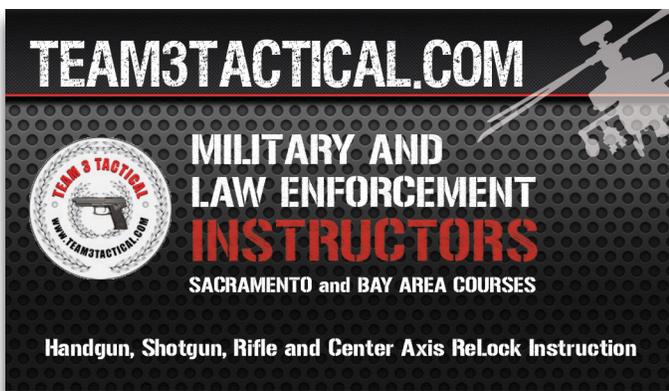
chasers” who buy a gun legally, intending to resell it illegally on the black market. The groups contend that straw purchasers often lie and claim that a crime gun traced back to them was stolen or lost. In reality, these ordinances place legitimate gun owners in jeopardy of prosecution for being a victim of a crime.

If the gun owner failed to report the loss at all, or within 48 hours of when she “should have known” the gun was missing, she faces possible criminal prosecution if she cooperates with police investigating the gun recovered at a crime scene. The gun ban lobby and some anti-gun-owner prosecutors unrealistically contend that “responsible” gun owners “should know” a gun is gone instantaneously. The fear of prosecution will encourage those who miss the 48-hour window not to report the loss at all.

In light of these liabilities, many members of the criminal defense bar are advising gun owners – who would ordinarily be happy to assist law enforcement with their investigation – that they need a lawyer if they are contacted by police about their missing gun. Since gun owners could be prosecuted if they fail to report the theft or loss of a gun, they have a right to remain silent and should get a lawyer to seek immunity.

Ironically, the ordinance cannot be used against the real bad guys. No law can compel lawbreakers to report themselves. So a straw purchaser who legally buys a gun cannot be compelled to report that he resold it illegally. And since it wasn’t actually lost or stolen, he hasn’t violated the ordinance. Similarly, if a felon prohibited from possessing a gun illegally possesses one anyway, and it is lost or stolen, he cannot be prosecuted for failing to incriminate himself by reporting the loss.

Enforcement of these ordinances places prosecutors in a precarious legal and ethical position, which explains why there haven’t been any prosecutions in the few cities that already have these laws. Say a straw purchaser’s gun is recovered at a crime scene and traced back to him. If he lies to police claiming his gun was “stolen” when he really sold it on the black market, will we nonetheless prosecute him for something he did not do (fail to report the stolen gun which wasn’t actually stolen) but to which he “confessed”? Ethics and legality aside, securing a dubious misdemeanor conviction for failing to report a theft (that never occurred) likely prohibits prosecuting the straw purchaser for the more serious felony black market sale or for making a false statement to police.



In 2006 the Sacramento Police Department discovered these ordinances are unused in the cities that have them. Police and district attorneys in Oakland, San Francisco, Berkeley, and Alameda were completely unaware the ordinances existed, and reported that no investigations, arrests, or convictions related to the ordinances had taken place! An experienced inspector in the Weapons Unit of the San Francisco Police Department, who reads 3,000 reports every month, stated that he had not handled nor had he heard of any cases in which the ordinance was invoked. A San Francisco Assistant DA said, “I do not believe it will expand my ability to prosecute crime ...” He’s right.

MORE WORK FOR THE COURTS

Newsom’s nonsense will also require additional court hearings for every case where the defendant is convicted of something that prohibits gun possession. That’s more work in tens of thousands of cases annually -- a significant increase in workload for judges, staff, prosecutors, public defenders, and probation officers. The vast majority of criminal cases are resolved via plea bargain. Usually the plea and sentencing take place in the same hearing. Newsom’s initiative will require a delay in sentencing and more hearings so the court, using a probation officer, can confirm that firearms were surrendered. In reality, administering proof of completion of sentencing hearings and progress reports inevitably involve extensions and delays. Those same delays will plague the administration of Newsom’s mandate, as additional hearings and court work are required to reconcile the state’s broken firearm registration databases with reality. And if there’s a doubt about whether a defendant still has guns, the measure requires a judge – not the police, a judge solely – to attest to probable cause and issue a search warrant.

CONCLUSION

California already has the strictest gun laws in the country. Violent crime, particularly among street gangs and drug dealers, is still out of control. Yet every year, more useless gun laws get introduced. The legacy of most of those laws is the collateral damage that results from the prosecutions and ruined lives of the good people who accidentally violate California’s byzantine gun laws. Working as a prosecutor I saw the price of gun violence up close and personal. I held the hands of victims and their families in hallways outside courtrooms. The diverse members of the Coalition for Civil Liberties, including police and prosecutor groups, want to help them. But Newsom’s self-serving nonsense is not the way.

C.D. Michel is a former prosecutor who is currently the volunteer president of CRPA and operates the law firm of Michel & Associates in Long Beach. The firm’s clients include the NRA, California Rifle and Pistol Association and the Coalition for Civil Liberties. He is the author of California Gun Laws, a Guide to State and Federal Firearm Regulations.