

***The New Jersey "Assault Firearms Law"—P.L. 1990, Chapter 32, an Act Concerning the Manufacture, Sale, Possession and Illegal Use of Assault Firearms and Large Capacity Magazines***

New Jersey P.L. 1990, Chapter 32, commonly referred to as the Assault Firearms Law, is the toughest ban on assault weapons in the nation.<sup>1</sup> This act prohibits the manufacture, sale or possession of assault firearms and large capacity magazines except under certain circumstances.<sup>2</sup> As of May 31, 1991, it is unlawful for "private citizens to possess an assault firearm that has not been licensed, transferred, registered, surrendered, or rendered inoperable in accordance with specific provisions of the act."<sup>3</sup> In addition, "the owner of a licensed or registered assault firearm that is used in a crime is civilly liable for all damages arising out of the crime unless the firearm was stolen and the owner reported the theft within twenty-four hours of learning of it."<sup>4</sup>

A key feature of this law is its manner of defining the terms "assault firearm" and "semi-automatic" so as to exclude legitimate hunting rifles and shotguns.<sup>5</sup> Furthermore, the law allows an owner of a legitimate target-shooting assault firearm to register and keep the firearm, provided the owner belongs to a rifle or pistol club. Thus, this act does not interfere with the legitimate hunter or target shooter. Moreover, this statute, "parenthetically, permits a person in unlawful possession of a firearm to voluntarily surrender it with impunity, at any time, and thus avoid criminal responsibility."<sup>6</sup> In sum, this law is a sound, reasonable approach in trying to protect the citizens of New Jersey from

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<sup>1</sup> *Governor Florio Vetoes Bill to Weaken State's Tough Assault Weapon Law* (Capitol Information Service, Inc., Radio Writer Legislative Alert, Message No. 7993, July 9, 1991) [hereinafter *Veto*].

<sup>2</sup> Act of May 30, 1990, ch. 32, 1990 N.J. Sess. Law Serv. 3 (amending N.J. STAT. ANN. 2C:39-1,-39-5,-39-9,-39-10, P.L. 1983, c. 515, 2C:43-6,-43-7,-44-3,-58-5,-39-3) and Supplementing chapter 58 of title 2C of the New Jersey Statutes.

<sup>3</sup> Memorandum from Attorney General of the State of New Jersey, Robert J. Del Tufo to Robert T. Winter, Director of Division of Criminal Justice, and to All County Prosecutors (May 29, 1991) (regarding assault firearms).

<sup>4</sup> *Veto*, *supra* note 1.

<sup>5</sup> *Attorney General of the State of New Jersey in Support of S.166—The Graves Assault Firearms Bill, before the Senate Judiciary Committee*, 204th Legislature, 1st Sess. (Mar. 12, 1990) (testimony of Robert J. Del Tufo, Attorney General of the State of New Jersey) [hereinafter *Testimony*].

<sup>6</sup> Memorandum from Att'y Gen. Del Tufo, *supra* note 3, at 2.

“weapons of war,”<sup>7</sup> whose singular purpose is to quickly kill and injure large numbers of people.<sup>8</sup>

The Assault Firearms Law drew support from the vast majority of New Jerseyans.<sup>9</sup> Indeed, seventy-three percent of New Jersey residents approve of this law.<sup>10</sup> Equally important, this law has the support of the New Jersey Association of Chiefs of Police, the County Prosecutors Association, and the New Jersey State Policemen’s Benevolent Association.<sup>11</sup>

Despite this strong support, however, the National Rifle Association (NRA) and other gun enthusiasts immediately launched an intense attack against the legislature to disarm this law. In response to this heavy pressure, the legislature then passed a substitute bill, S. 3140, sponsored by Senator Raymond Zane (D-Salem). This bill would, among other changes, “grandfather” people who legally owned assault firearms as of May 31, 1991.<sup>12</sup> But for Governor Florio’s veto of S. 3140, this bill would have severely weakened the “strongest controls on assault rifles in the country.”<sup>13</sup> Moreover, S. 3140 would have “substantially undermined the purpose and impact of the assault firearms law.”<sup>14</sup>

Nevertheless, the struggle between the proponents and the opponents of the Assault Firearms Law has not ended. After the landslide victory of Republicans in both the Senate and the Assembly on November 5, 1991, the fate of this law seems uncertain. The NRA, galvanized by the election results, is seeking a total repeal of this law.<sup>15</sup> The NRA’s goal may be within reach since the overwhelmingly Republican legislature is anticipated to be more sympathetic to the pro-gun arguments. In fact, “with the GOP taking control in January, Republican leaders are saying they will look at the law with an eye toward easing the regulations and may allow people who already own assault rifles to keep

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<sup>7</sup> *Veto*, *supra* note 1.

<sup>8</sup> *Attorney General of the State of the New Jersey in Opposition to S.3140 Before the Assembly*, 204th Legislature, 1st Sess. (Mar. 19, 1991) (Statement of Robert J. Del Tufo) [hereinafter *Opposition*].

<sup>9</sup> *Eagleton Poll*, STAR-LEDGER (Newark), July 7, 1991.

<sup>10</sup> *Id.*

<sup>11</sup> *The NRA is at it Again*, ASBURY PARK PRESS, Jan. 17, 1991, at Other Views.

<sup>12</sup> *Fighting Crime, NRA Style*, TRENTON TIMES, May 6, 1991, at A10.

<sup>13</sup> *Id.*

<sup>14</sup> *Opposition*, *supra* note 8, at 6.

<sup>15</sup> Robert Schwaneberg, *NRA Aims at Repeal of Assault Arms Ban*, STAR-LEDGER (Newark), Nov. 8, 1991, at 1.

them.”<sup>16</sup>

### *I. Legislative History*

The Assault Firearms Law was originally introduced in the New Jersey Senate as S. 3285 by Senator John Russo (D-Ocean) on January 30, 1989.<sup>17</sup> The bill was then re-introduced by Senator Frank Graves (D-Passaic) as S.166 in 1990.<sup>18</sup> The bill passed in the New Jersey Senate on May 17, 1991 by a vote of twenty-one to seventeen.<sup>19</sup> Senator Bill Gormley (R-Atlantic) was the only Republican who supported this bill.<sup>20</sup> In fact, “without Gormley’s vote, the bill would not have become law.”<sup>21</sup> On the same day, S.166 was substituted for A. 3 in the Assembly, and passed by a vote of forty-three to thirty-three.<sup>22</sup> Governor James Florio received S.166 for executive approval, and signed this bill into law on May 30, 1990.<sup>23</sup> The Governor traveled to the steps of the Paterson municipal building for a ceremonial signing of this landmark legislation.<sup>24</sup> He did this in memory of the former mayor of Paterson, the late Sen. Graves, who was the bill’s initial sponsor.<sup>25</sup>

### *II. Legislative Intent*

As the Assault Firearms Law’s most ardent supporter, Governor Florio declared that the major purpose of this law is to “reduce the proliferation of dangerous assault firearms and to promote public safety by strictly regulating the possession of these firearms.”<sup>26</sup> In addition, the law was created to “protect the people of this state from weapons that are specifically designed to rapidly discharge ammunition that will kill or seriously injure

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<sup>16</sup> Booth, *Del Tufo: GOP Win May Spur Many to Stick to Their Guns*, TRENTON TIMES, Nov. 8, 1991.

<sup>17</sup> 76 N.J. LEGIS. INDEX No. 18, at S61 (Jan. 25, 1989).

<sup>18</sup> *Id.* at S3.

<sup>19</sup> *Id.*

<sup>20</sup> Joseph Donohue, *NRA Bid \$50 G. to Gun Down Gormley*, ATLANTIC CITY PRESS, July 10, 1991, at A1.

<sup>21</sup> *Id.*

<sup>22</sup> N.J. LEGIS. INDEX, *supra* note 18.

<sup>23</sup> *Id.*

<sup>24</sup> Jim Hooker, *Florio Vetoes Amended Ban On Assault Guns*, TRENTON TIMES, July 9, 1991, at A1.

<sup>25</sup> *Id.*

<sup>26</sup> *Veto, supra* note 1.

human beings.”<sup>27</sup> When testifying in support of this legislation, Attorney General Del Tufo asserted that “these military firearms were fast becoming the weapon of choice for drug dealers, members of criminal organizations and ordinary street criminals who endanger the lives of our law enforcement officers and innocent citizens.”<sup>28</sup> Furthermore, in his testimony before the Senate Judiciary Committee, General Del Tufo contended that “assault weapons are not now, nor have they ever been, designed for hunting. . . . Rather assault firearms are designed for use on the battlefield—not the streets of New Jersey.”<sup>29</sup> Finally, General Del Tufo claimed that the enactment of this law “in no way interferes with legitimate hunters or target shooters.”<sup>30</sup> Indeed, a key feature of this law is its manner of defining “assault weapons” and “semi-automatic” so as to avoid affecting those shotguns used by hunters and target shooters.”<sup>31</sup> Accordingly, the law is intended to protect the public from the indiscriminate possession and sale of “weapons of war.”<sup>32</sup>

### III. *The Threat of Retreat*

Immediately following the enactment of this law, the powerful gun lobby “mounted an intense pressure campaign against the legislature to repeal the ban [on assault weapons].”<sup>33</sup> Sen. Raymond Zane introduced a substitute bill, S. 3140, that would avoid what he and other supporters claimed is “the unconstitutional confiscation of lawfully acquired semi-automatic weapons” by “grandfathering” persons who legally owned assault firearms as of May 31, 1990.<sup>34</sup> Senator Zane stated that this bill is “needed to prevent law abiding citizens from being transformed into criminals.”<sup>35</sup>

However, S. 3140 goes much further than simply “grandfathering” current owners of assault weapons. This bill

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<sup>27</sup> *Opposition*, *supra* note 8, at 1.

<sup>28</sup> *Id.*

<sup>29</sup> *Testimony*, *supra* note 5, at 2.

<sup>30</sup> *Id.* at 6.

<sup>31</sup> *Id.* at 4-7.

<sup>32</sup> *Veto*, *supra* note 1.

<sup>33</sup> *Id.*

<sup>34</sup> Robert Schwaneberg, *Panel Acts to Weaken Ban On 'Assault Arms'*, STAR-LEDGER (Newark), Jan. 11, 1991, at 1.

<sup>35</sup> *Fighting Crime, NRA Style*, *supra* note 12.

would "substantially undermine the purpose of the enacted assault firearms law."<sup>36</sup> Attorney General Del Tufo maintained that S. 3140 would "effectively eliminate the state's ability to take dangerous assault firearms out of circulation."<sup>37</sup> Moreover, this bill, Del Tufo asserted, "would also substantially limit the scope of the Assault Firearms Law and thereby allow for proliferation of these dangerous weapons."<sup>38</sup> Furthermore, S. 3140 would "alter the grading of the assault firearms law and thereby substantially reduce the deterrent value of the law, and deprive victims injured with assault firearms of just compensation."<sup>39</sup> Undoubtedly, this bill was designed to placate the gun lobby by diluting the purpose and intent of the Assault Firearms Law.

Despite the Governor's stringent efforts to lobby against S. 3140, the legislature caved in to the intense pressure of the gun lobby. On March 14, 1991, the Senate passed this bill by a vote of twenty-eight to nine.<sup>40</sup> S. 3140 was then sent to the Assembly and passed by a forty-eight to twenty-five vote on May 23, 1991.<sup>41</sup> However, the gun lobby's victory was short-lived. On July 8, 1991, Governor Florio publicly vetoed S. 3140 on the steps of the Paterson municipal building.<sup>42</sup> Richard Manning, a lobbyist for the NRA, retorted, "Florio's veto makes a whole bunch of people felons."<sup>43</sup> Moreover, Manning proclaimed that "his group would actively work and contribute to campaigns for the November elections that would target lawmakers who voted against S. 3140."<sup>44</sup> In fact, "the NRA spent more than \$53,000 in its near-successful bid to unseat Sen. William Gormley."<sup>45</sup> Sen. Gormley was the only Republican who voted for Democratic Governor Florio's legislation and against the Zane bill.<sup>46</sup> As of July 26, 1991, an effort to override the Governor's veto was put

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<sup>36</sup> *Opposition*, *supra* note 8, at 7.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id. at 8.*

<sup>40</sup> Association of New Jersey Rifle and Pistol Clubs, Inc., *Zane Bill Passes Senate*, News & Briefs, Apr. 1991, at 1.

<sup>41</sup> 78 N.J. LEGIS. INDEX NO. 22, at S54 (Jan. 21, 1992).

<sup>42</sup> *Veto*, *supra* note 1.

<sup>43</sup> Hooker, *supra* note 24, at A15.

<sup>44</sup> *Id.*

<sup>45</sup> Donohue, *supra* note 20.

<sup>46</sup> Robert Schwaneberg, *Coalition Prods Senate to Spurn 'Dilution' of Ban on Assault Guns*, STAR-LEDGER (Newark), July 24, 1991, at 15.

off indefinitely.<sup>47</sup> Several days before the Senate was scheduled to vote on a motion to override the veto, the New Jersey Citizens to Stop Gun Violence held a press conference in Trenton to urge the Senate to maintain the existing law.<sup>48</sup> Reverend Jack Jackson, the group's chairman, said, "It's time that the Legislature stood with its Governor to make New Jersey a safer place."<sup>49</sup> Sen. Zane pronounced that a "delay until the fall would help the override effort as the elections draw near and the pressure increases."<sup>50</sup> In response, Florio's press secretary replied, "if the Senate is going to consider this issue again in the fall, the Governor will be ready to take that fight on again."<sup>51</sup>

As the second session of the 204th Legislature ended, so did the life of S. 3140. Assemblyman Frank LoBiondo (R-Cape May) in the 205th Legislature introduced A. 7, a bill that would effectively repeal the Assault Firearms Law.<sup>52</sup> Now, the fight is on again.

#### IV. *Analysis of the Law*

##### A. *Definitions*

One of the beneficial features of the Assault Firearms Law is that it "restricts ownership, possession, sale and manufacture of assault firearms with such precision and effectiveness that it includes almost all military firearms, while excluding legitimate hunting rifles and shotguns."<sup>53</sup>

The law defines prohibited assault firearms to include:

1. one that is expressly enumerated in section 2C:39-1(w)(1);
2. one that is "manufactured under any designation which is substantially identical to any of the firearms listed [in 2C:39-1(w)(1)], pursuant to section 2C:39-1(w)(2);
3. one that is a "semi-automatic" shotgun with either a magazine capacity exceeding six rounds, a pistol grip, or a folding stock, pursuant to section 2C:39-1(w)(3);

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<sup>47</sup> Robert Schwaneberg, *Assault gun override Vote put off in Senate, but Zane Predicts Victory*, STAR-LEDGER (Newark), July 26, 1991, at 1.

<sup>48</sup> Schwaneberg, *supra* note 46.

<sup>49</sup> *Id.*

<sup>50</sup> Schwaneberg, *supra* note 47.

<sup>51</sup> *Id.*

<sup>52</sup> Robert Schwaneberg, *Assault Ban Repeal Would Include Stiff Terms for Drug Dealers Using Guns*, STAR-LEDGER (Newark) Apr. 7, 1992, at 30.

<sup>53</sup> *Testimony*, *supra* note 5, at 3.

4. one that is a semi-automatic rifle with a fixed magazine capacity exceeding fifteen rounds, pursuant to section 2C:39-1(w)(4);
5. "a part or combination of parts designed or intended to convert a firearm into an assault firearm, or any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person," pursuant to section 2C:39-1(w)(5).<sup>54</sup>

Section 2C:39-1(w)(1) provides a list of firearms which are considered to be "assault firearms." According to Attorney General Del Tufo, "this list is not intended to be exhaustive, but rather is intended to provide guidance to the reader of the kinds of firearms that constitute assault firearms."<sup>55</sup> Some of the firearms listed include the Baretta AR-70, all Uzi models, the Street Sweeper, the Colt AR-15, and the Ruger K-Mini-14/5F.<sup>56</sup>

Section 2C:39-1(w)(2) which employs the language "substantially identical" to the firearms listed in Section 2C:39-1(w)(1) "was intended to prevent a manufacturer from circumventing the law by simply renaming a firearm."<sup>57</sup> Accordingly, if the statute did not have this provision, the door would open up for the marketing and sale in New Jersey of firearms that are as dangerous as those on the list but that would be exempt from the law."<sup>58</sup>

Section 2C:39-1(w)(3) applies only to "semi-automatic" shotguns "with either a magazine capacity exceeding six rounds, a pistol grip, or a folding stock." The definition of "semi-automatic" is significant in this law "because it excludes any manually loaded firearm."<sup>59</sup> The term "semi-automatic" is defined in section 2C:39-1(x) as "a firearm which fires a single projectile for each single pull of the trigger and is self-reloading or automatically chambers a round, cartridge, or bullet." It follows that, "pump shotguns, double barreled shotguns, slide action and lever-action shotguns are not restricted or prohibited in any manner."<sup>60</sup> In short, "virtually none of the shotguns used by hunters and target shooters are affected [by this

<sup>54</sup> Act of May 30, 1990, *supra* note 2, at 1.

<sup>55</sup> *Id.* at 7.

<sup>56</sup> *Id.* at 1.

<sup>57</sup> *Veto, supra* note 1.

<sup>58</sup> *Id.*

<sup>59</sup> *Testimony, supra* note 5, at 4.

<sup>60</sup> *Id.* at 6.

law]."<sup>61</sup>

The six round magazine limitation for shotguns in this law actually "doubles the amount of rounds that a hunter may lawfully maintain in his shotgun at any one time."<sup>62</sup> Prior to the enactment of this law, no person could hunt with a shotgun that held "more than three shells at any one time or that may be fired more than three times without reloading."<sup>63</sup> In comparison, the current law is far more lenient than the previous law. Attorney General Del Tufo pronounced that "any person who possesses a shotgun with a magazine capacity of more than five rounds intends to hunt something other than game."<sup>64</sup> He also stated that "the same is true of persons who possess a shotgun with a pistol grip<sup>65</sup> or folding stock."<sup>66</sup>

Section 2C:39-1(w)(4) classifies an assault firearm as "a semi-automatic rifle with a fixed magazine capacity exceeding 15 rounds." This definition "applied to rifles with non-detachable, tubular magazines which may be modified to carry an excessive amount of ammunition."<sup>67</sup> The Attorney General declared that "any such rifle with a large capacity fixed magazine could not have a legitimate sporting purpose since there is no need for a target shooter to house in the rifle a large amount of ammunition."<sup>68</sup>

Section 2C:39-1(w)(5) "is intended to discourage anyone from obtaining separate parts that can be used to assemble an assault firearm or convert an ordinary hunting or sporting weapon into an assault firearm."<sup>69</sup> Hence, "a violation of this section occurs when a single person possesses or has control over all of the parts necessary to construct an assault weapon."<sup>70</sup>

The last category of assault firearms is the 'large capacity ammunition magazine'. Section 2C:39-1(y) defines this term as "a box, drum, tube or other container which is capable of holding more

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Act of May 30, 1990, *supra* note 2, § 2C:39-1(z): "pistol grip is defined as a well defined handle, similar to that found on a handgun, that protrudes conspicuously beneath the action of the weapon, and which permits the shotgun to be held and fired with one hand."

<sup>66</sup> *Testimony, supra* note 5, at 7.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 9.

<sup>70</sup> *Id.*



than fifteen rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm.” According to the Attorney General, “while the large capacity magazine is not itself a firearm or weapon, it is an essential accessory for an assault firearm.”<sup>71</sup> Thus, this section “is intended to prohibit their use in assault rifles, shotguns, handguns, and in legitimate hunting and sporting rifles.”<sup>72</sup>

### B. *The Requirements of Current Owners of Assault Firearms*

The “Assault Firearms Law” requires current owners of assault firearms to comply with the law in one of the following ways:

1. Sell or transfer the firearm to a person who may lawfully possess the weapons, pursuant to § 2C:39-12(1);
2. Render the firearm inoperable,<sup>73</sup> pursuant to § 2C:39-12(2);
3. Register the firearm, pursuant to § 2C:39-11;
4. Obtain a license authorizing the person to possess and carry the firearm through an application to the Superior Court, pursuant to § 2C:58-5;
5. Surrender the firearm, pursuant to the provisions of § 2C:39-12.

### C. *Penalties*

Section 2C:39-5(f) establishes a crime of the third degree for “any person who knowingly has in his possession an assault firearm except if the assault firearm is licensed. . . , registered. . . , or rendered inoperable. . . .” In addition, § 2C:39-9(g) also establishes a crime of the third degree for “any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of an assault firearm without being registered or licensed to do so pursuant to N.J.S. 2C:58-1 et seq.” A person who violates these provisions faces a prison term between three and five years.<sup>74</sup>

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<sup>71</sup> *Id.* at 9-10.

<sup>72</sup> *Id.*

<sup>73</sup> Act of May 30, 1990, *supra* note 2, § 2C:39-12(c): “‘inoperable’ means that the firearm is altered in such a manner that it cannot be immediately fired and that the owner or possessor of the firearm does not possess or have control over the parts necessary to make the firearm operable.”

<sup>74</sup> Act of May 30, 1990, *supra* note 2, § 2C:43-6.

Section 2C:39-9(h) establishes a crime of the fourth degree for "any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of a large capacity ammunition magazine which is intended to be used for any purpose other than for authorized military or law enforcement purposes by duly authorized military or law enforcement personnel." A person who violates this provision faces a prison term of up to 18 months.<sup>75</sup>

Section 2C:43-6(g) creates mandatory minimum prison terms for the use of an assault firearm in connection with the commission, attempted commission, or flight from various crimes under any of the following crimes: murder, manslaughter, aggravated assault, kidnapping, aggravated sexual assault, aggravated criminal sexual contact, robbery, burglary, escape, and the manufacturing, distributing, or dispensing of dangerous controlled substances. If the crime is of the first or second degree, the minimum prison term is ten years. Where the crime is of the third degree, the minimum term is five years. A crime of the fourth degree carries a minimum term of eighteen months. In addition, section 2C:43-6(g) provides the court with the ability to "impose presumptive terms of imprisonment pursuant to paragraph (1) of subsection f. of N.J.S. 2C:44-1" where a defendant has committed a crime of the first degree.

Section 2C:43-6(g) also imposes an extended term on any person who has been convicted of an offense enumerated in this subsection and who used or possessed a machine gun or assault firearm during its commission, attempted commission or flight therefrom and who has been previously convicted of an offense involving the use or possession of any firearm as defined in N.J. Stat. Ann. § 2C:43-7(d). This mandatory sentence under subsection (g) can only be imposed after a hearing, at which "the prosecutor shall establish by a preponderance of the evidence that the weapon used or possessed was a machine gun or assault firearm."<sup>76</sup>

Finally, section 2C:43-7(d), provides that "a person sentenced to an extended term pursuant to section 2C:43-6(g)", also faces a mandatory minimum sentence as part of the extended term.

The last section dealing with penalties is section 2C:58-5(h).

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<sup>75</sup> *Id.* at (a)(4).

<sup>76</sup> Act of May 30, 1990, *supra* note 2, § 2C:43-6(h).

This provision imposes civil liability for any damages resulting where “an assault firearm licensed pursuant to the provision of this provision is used in the commission of a crime.” However, a person will not be held liable “if the firearms used in the commission of the crime were stolen and the license holder reported the theft of the firearm to law enforcement authorities within 24 hours of the license holder’s knowledge of the theft.” Governor Florio enunciated that “[this provision is in the law] because assault firearms are dangerous weapons, and owners should bear responsibility for their misuse.”<sup>77</sup> The Governor further stated that “this provision encourages the prompt reporting of thefts, thereby increasing the likelihood of recovery of stolen assault firearms.”<sup>78</sup>

#### D. *Constitutional Concerns*

The powerful gun lobby and others who oppose this law contend that the statute violates their individual right to bear arms under the Second Amendment of the United States Constitution.<sup>79</sup> However, this contention is completely without merit. Attorney General Del Tufo declared that “this argument has no basis in either the history of the amendment or the case law interpreting that provision of the Constitution.”<sup>80</sup> In fact, the New Jersey Supreme Court rejected a Second Amendment challenge to New Jersey’s Firearms Law of 1966 in the case of *Burton v. Sills*.<sup>81</sup> In considering the historical background of the Second Amendment, the court found that the amendment originated from the great fear of military rule during Colonial America.<sup>82</sup> Further, the court opined that due to the colonists “distrust of standing armies and the desire that the Militia be protected from federal encroachment, the [s]tates quickly obtained the adoption of the Second Amendment.”<sup>83</sup> Moreover, the *Burton* court concluded that the Second Amendment “refers to the collective right ‘of the people’ to keep and bear arms in connection with ‘a

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<sup>77</sup> *Veto*, *supra* note 1.

<sup>78</sup> *Id.*

<sup>79</sup> Robert Schwaneberg, *Gun Owners Craft Creative Ways to Keep Weapons Out of State’s Hands*, Sunday, STAR-LEDGER (Newark), June 2, 1991 at S1; U.S. Const. amend. II.

<sup>80</sup> *Testimony*, *supra* note 5, at 16.

<sup>81</sup> 248 A.2d 521 (N.J. 1968).

<sup>82</sup> *Id.* at 526.

<sup>83</sup> *Id.*

well-regulated militia, [and was thus] not framed with individual rights in mind.”<sup>84</sup> Finally, the court asserted that because New Jersey’s Gun Control Law “does not impair the maintenance of the [s]tate’s active, organized militia, [it does not] violate either the terms or the purposes of the Second Amendment.”<sup>85</sup>

Since the Second Amendment does not confer upon individuals the right to ‘keep and bear Arms’, it is obvious that the Second Amendment does not grant an individual right to own assault firearms. Thus, “to the extent that this right exists, it depends upon state and local law.”<sup>86</sup> Due to the fact that “New Jersey has no counterpart to the Second Amendment, a New Jersey citizen has no individual right to own or possess an assault firearm.”<sup>87</sup> Accordingly, “a New Jersey citizen has only such privilege to own or possess an assault firearm as the legislature confers.”<sup>88</sup>

In addition to the Second Amendment challenge, the opponents of this law claim that the requirement that existing owners of assault firearms sell their weapons or render them permanently inoperable is “an unconstitutional confiscation of lawfully acquired semi-automatic weapons — some of them costing thousands of dollars.”<sup>89</sup> However, the Attorney General clearly stated that “any challenge based upon the ‘taking’ clause of the fifth and fourteenth amendments would fail.”<sup>90</sup>

#### V. *Effectiveness of the Law*

When the “Assault Firearms Law” was passed in 1990, the State Police estimated that there were between 100,000 and 300,000 assault weapons in New Jersey.<sup>91</sup> In his annual report to the legislature on December 2, 1991, Attorney General Del Tufo reported that since the law was enacted, his office accounted for a

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 528.

<sup>86</sup> *Testimony, supra* note 5, at 17.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Schwaneberg, *supra* note 34, at 1.

<sup>90</sup> *Testimony, supra* note 5, at 14-16.

<sup>91</sup> Wayne King, *New Jersey Law to Limit Guns is Being Ignored*, N.Y. TIMES, Oct. 26, 1991, at 22.

total of 1911 assault firearms.<sup>92</sup> Of those, 982 were registered as legitimate target-shooting rifles, 903 were rendered inoperable and 26 were surrendered to law enforcement authorities.<sup>93</sup> Del Tufo added, "those numbers do not tell the whole story because there is no way of telling how many New Jersey residents sold their assault firearms to dealers or out-of-state purchasers."<sup>94</sup> Further, Del Tufo opined that "there can be little question that the greatest benefit is derived from the fact that assault weapons are no longer available for sale on the same basis as ordinary hunting guns."<sup>95</sup> Indeed, all New Jerseyans should take comfort in knowing that since this law was enacted, New Jersey "has not contributed to the proliferation of these instruments of human destruction by legitimizing their sale to persons who have no justifiable need to possess them."<sup>96</sup>

The Attorney General also provided crime statistics where assault firearms were involved in his report to the legislature on December 2, 1991. He said, "[f]rom October 15, 1990 through October 31, 1991, there were 110 crimes involving assault firearms: 5 murders, 28 armed robberies, 21 aggravated assaults, 55 unlawful possessions and 1 unlawful sale."<sup>97</sup> "These facts and statistics," Del Tufo posited, "speak for themselves."<sup>98</sup> Moreover, Del Tufo pronounced, "the presence of assault weapons threatens the safety of our citizens and law enforcement officers, [and hence], the legislature should reject any efforts to weaken the law."<sup>99</sup>

Critics of the law, however, constantly claim that this legislation only affects "law-abiding citizens, and that criminals who want firearms will find a way to obtain them."<sup>100</sup> Critics also stress that because so few owners have registered their assault firearms, the law must be flawed.<sup>101</sup> Moreover, an NRA spokes-

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<sup>92</sup> Robert Schwaneberg, *Del Tufo Details 'Crimes, 'Urges Legislators to Keep Assault Gun Ban*, STAR-LEDGER (Newark), Dec. 3, 1991, at 20.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Opposition, supra* note 8, at 5.

<sup>97</sup> Schwaneberg, *supra* note 92.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Robert Schwaneberg, *Florio Vetoes Relaxed Gun Ban; Sportsmen Push for an Override*, STAR-LEDGER (Newark), July 9, 1991, at 1.

man charged that this law "is a waste of law enforcement resources and has caused nothing but mass confusion and dissension in the state."<sup>102</sup> Thus, the opponents feel that "the toughest assault-weapons law in the country is proving difficult if not impossible to enforce."<sup>103</sup>

While the supporters and opponents of this legislation disagree as to whether the ban has been effective, the reality is that the vast majority of assault weapon owners have chosen to completely ignore the law. Obviously, these people feel that they are above the law and therefore do not have to comply with it. Apparently, the assault weapon owners are waiting to see if the legislature will repeal the ban and thus allow them to keep their weapons. However, this is clearly not in accordance with how citizens should behave. "Good citizens, by definition, obey laws."<sup>104</sup> For if citizens fail to obey laws which they simply do not like, and instead wait to see if a new legislature will repeal such laws, anarchy will surely result.

The NRA and other assault weapon cheerleaders make irrational claims when they allege that the Assault Firearms Law turns law-abiding citizens into criminals. Laws do not make people criminals. . . People who break laws make themselves criminals.

## VI. Conclusion

The Assault Firearms Law is a sound, reasonable piece of legislation which addresses a critical problem: the proliferation of weapons whose only purpose is to quickly kill or severely maim human beings. The legislative history clearly indicates that the aim of this law is to protect the innocent citizens of New Jersey from these weapons of war.

There is no doubt that the rights of legitimate hunters and sportsmen must be protected. As stated earlier, this law specifically excludes these people from its reach.

Furthermore, this statute can not possibly violate an assault weapon owner's individual right to bear arms under the Second Amendment, because they do not have this right in the first

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<sup>102</sup> Schwaneberg, *supra* note 92.

<sup>103</sup> King, *supra* note 91.

<sup>104</sup> *Obey the Law*, TRENTON TIMES, May 6, 1991, at A12.

place. Only the legislature has the power to confer upon its citizens the privilege to own an assault firearm. Moreover, the criteria that owners must follow in order to comply with this law are not unreasonable or onerous. Thus, owners of these banned assault weapons should obey the law. Indeed they must.

Although the NRA is already pressuring the newly elected Republican Majority Leaders to repeal this law, hopefully the new members of the legislature will not cave in to the bullets of this powerful interest group. The current law must not be emasculated to placate the NRA at the expense of the safety and welfare of the citizens of New Jersey. Weapons, whose only purpose is to wreak death and terror upon human beings, have no legitimate place in New Jersey. Governor Florio's effort to enact the toughest ban on assault weapons in the country is laudable. The legislature should rise above the narrow self-interest of the assault gun lobby and stand behind the Governor in his fight to preserve the assault weapon ban.

*Jennifer Lee Remington*