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Submission to the House Select Committee on Mass Violence Prevention and Community Safety as a Designated Party on Duty # 1: "Examine options for strengthening enforcement measures for current laws that prevent the transfer of firearms to felons and other persons prohibited by current law from possessing firearms."

Federal and Texas law already address this issue in comprehensive fashion. Functioning together, these two sets of laws create criminal penalties for both buyer and seller in this unlawful transaction. (*See responses to General Questions, below.*) This situation is easily analogized to laws governing the possession, purchase, and sale of illegal narcotics. Severe penalties for all parties to the transaction are already in place under the law, and there is no further Constitutionally permissible method to prevent people from engaging in these criminal acts. Individuals will sell and purchase narcotics illegally despite strong laws against the practice, and will be charged and punished once caught. In like kind, prohibited persons will (and do) obtain firearms illegally through theft and by purchasing weapons on the black market. Once caught in possession of a firearm, the prohibited party will be arrested and prosecuted. If identified and if liable under the law, the seller will also be arrested and prosecuted. Short of criminalizing "thought crime" or "pre-crime," there is no more we can do to prohibit the practice from taking place. Imposing background checks on private sales of firearms is unnecessary—the prohibited purchaser is already violating the law by engaging in the transaction, and the seller may be in violation as well if he/she "knowingly" sold to a prohibited person. Further, Texas has historically valued the freedom to contract and freedom to dispose of one's own property as one see fit. The cost, time, and geographic barriers to mandatory background checks would grossly limit the right of Texans to engage in private sales, and would trod on these historically valued interests.

General Questions to all Designated Parties from Representative Blanco:

1. What specific statutes related to the transfer and possession of firearms do you believe need to be strengthened? *None. The current interplay between federal law and the Texas Penal Code is sufficient.*
2. NICS is central to background checks and preventing certain persons from purchasing firearms. What specific statutory changes do you believe we need to make regarding information reported for NICS purposes and to improve the quality and responsiveness of that database? *None.*
3. Can you please identify any gaps in current law that might allow the purchasing and transfer of firearms to persons prohibited by current law from possessing firearms? In other words, how are these persons coming into possession of firearms and what recommendations do you have to prevent them from acquiring firearms? *Prohibited persons generally acquire firearms through theft or through black market purchase. Theft of*

firearm is illegal, as is the knowing transfer to a prohibited person. Therefore, no further laws can or should be enacted.

4. Can you explain the laws that address the transfer and purchasing of firearms online? What gaps can you identify related to internet purchases? And what specific statutory recommendations do you have to ensure persons not allowed to possess firearms are not able to acquire them online? Online purchases of firearms must go through the same NICS background check process as any other commercial sale. Once purchased online, the online retailer ships the firearm to an FFL dealer local to the purchaser. The purchaser then must complete ATF form 4473 and pass the standard background check.
5. Can you please provide an exhaustive list of all persons prohibited by current law from possessing firearms? Do you believe certain other persons should be prohibited from purchasing firearms?
 - a. Federal: 1) Strawman purchasers; 2) persons under indictment or information in any court for a felony offense or one for which the person could be imprisoned for more than one year; 3) persons who have been convicted in any court of a felony offense or one for which the person could be imprisoned for more than one year; 4) persons who are a fugitive from justice; 5) persons who are unlawful users of, or addicted to, marijuana, any depressant, stimulant, narcotic drug, or controlled substance; 6) persons who have been adjudicated as mentally defective or have been committed to a mental institution; 7) persons who have been dishonorably discharged from the Armed Forces; 8) persons subject to an active protective order for stalking, or threatening the person's child, or an intimate partner or child of such partner; 9) persons convicted in any court for a misdemeanor crime of domestic violence; 10) persons who have renounced their United States citizenship; 11) persons who are aliens illegally in the United States; 12) persons admitted under a non-immigrant visa who do not qualify for an exception.
 - b. Additionally, in Texas it is illegal to: 1) sell, rent, lease, loan, or give a handgun to a person that the seller knows intends to commit an unlawful act; 2) intentionally sell, rent, lease, or give (or even offer to do so) a firearm to any child; 3) intentionally, knowingly, or recklessly sell a firearm or ammunition to an intoxicated person; 4) knowingly sell a firearm or ammunition to any person convicted of a felony before the lapsing of five years from release from confinement or supervision; 5) sell, rent, lease loan, or give a handgun to a person knowing that the person is subject to active protective order.
6. Are persons convicted of a hate crime prohibited from possessing firearms? Only if the crime was punishable by more than one year's imprisonment, regardless of what punishment was actually assessed.
7. What specific statutory recommendation would you have to address stranger to stranger sales that currently don't involve background checks? How could your recommendation(s) be enforced? The second part of this question dictates the answer to the first: There is no feasible way to enforce background checks for private sales. Further, Texas has historically valued the freedom to contract and freedom to engage in private disposition of property. The cost, time, and geographic barriers to mandatory background checks would grossly limit the right of Texans to engage in private sales.
8. What happens when someone who is prohibited from purchasing/possessing a firearm tries to purchase a firearm and is discovered and barred because of a background check? Is there any follow up from law enforcement with that person who tried to illegally obtain a firearm? Is the attempted purchase a crime for that person who is prohibited by law? Yes, this is enforced under federal law. When a person completes ATF form 4473, they swear

under penalty of perjury that their answers are true and correct. When it is discovered that a person perjured themselves on the form 4473, it is often (though not always) referred to the local ATF field office for investigation and subsequent prosecution.

9. Do you believe the current crime or punishment is effective for possessing a firearm for persons who are prohibited by law? Yes.
10. Do you have any specific statutory recommendations on addressing straw purchases? No. This practice is already criminalized.
11. Do you have any specific recommendation on expanding background checks? No. I believe they are sufficient.
12. What specific recommendations could you make regarding the disarming of persons prohibited of possessing firearms? I believe the current state of the law already does all that is Constitutionally permissible. Once an officer discovers a prohibited person illegally in possession of a firearm, they will be disarmed and prosecuted for the offense. Firearms are never returned to a prohibited person. There is no mechanism for "finding more illegal firearms" that does not trample upon Fourth Amendment protections against unreasonable searches and seizures.
13. Do you have any other recommendations or opinions on addressing and preventing mass gun violence? See introductory narrative.