

## How gun makers can help us

### Make firearms manufacturers figure out how to reduce the 12,000 shooting deaths each year.

By Jeffrey Fagan and Stephen D. Sugarman

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This year, about 12,000 Americans will be shot to death. It's a staggering figure, and even though lawmakers have continued to pass gun-control laws to try to bring the number down, they have not significantly reduced the murder rate. Indeed, for the last decade, guns have steadily remained the cause of about two-thirds of all homicides.

Gun manufacturers insist that these deaths are not their fault, preferring to pin the blame on criminals and irresponsible dealers. They have fiercely resisted even minimal restrictions on sales and have simultaneously washed their hands of responsibility for this "collateral damage."

On Thursday, the U.S. Supreme Court made the problem a little more difficult to solve, ruling in *District of Columbia vs. Heller* that the individual's right to bear arms is indeed protected by the 2nd Amendment -- and making it clear that some laws banning guns would have a difficult time passing constitutional muster in the future.

What is to be done? The conventional regulatory approaches seem to be failing. A more recent strategy, in which victims or municipalities bring lawsuits against gun manufacturers or retailers, seems legally and politically unpromising since the 2005 passage of the Protection of Lawful Commerce in Arms Act, which shields gun manufacturers from civil liability.

We propose a new way to prod gun makers to reduce gun deaths, one that would be unlikely to put them out of business or to prevent law-abiding citizens from obtaining guns. By using a strategy known as "performance-based regulation," we would deputize private actors -- the gun makers -- to deal with the negative effects of their products in ways that promote the public good.

In other words, rather than telling gun makers what to do, performance-based regulation would tell them what outcome they must achieve: Reduce deaths by guns. Companies that achieve the target outcomes might receive large financial bonuses; companies that don't would face severe financial penalties. Put simply, gun makers -- whose products kill even when used as directed -- would have to take responsibility for curbing the consequent public health toll.

Under our plan, Congress might require gun makers in the aggregate to reduce gun homicides from 12,000 to, say, 7,000 in 10 years, with appropriate interim targets along the way. Individual firms would each have their own targets to meet, based on the extent their guns are currently used in homicides. Or Congress might simply leave it to neutral experts to determine just how much of a numerical reduction should be required -- and how quickly. Either way, the required decline would be substantial.

How would gun companies go about reducing gun deaths? The main thing to emphasize is that this approach relies on the nimbleness, innovation and experimentation that come from private competition -- rather than on the heavy-handed power of governmental regulation. Gun makers might decide to add trigger locks to their guns, or to work only with dealers who meet certain standards of responsibility. They might withdraw their semiautomatic weapons from the

consumer market, or even work hand in hand with local officials to fight gangs and increase youth employment opportunities. Surely they will think up new strategies once they have a legal obligation and financial incentive to take responsibility for the harm their products cause.

Performance-based regulation leaves it up to them to decide. This is the same outcome-based approach that the No Child Left Behind program takes concerning schools. Through No Child Left Behind, parents and school officials set achievement targets for students, and schools then have to figure out how to meet the targets. Similarly, performance-based regulation is used in a variety of pollution-control schemes and is becoming the preferred global strategy to combat climate change. For example, under pressure from coalitions of environmentalists, scientists and citizens, regulatory bodies are ordering public utilities to sharply cut their carbon emissions. The companies are responsible for designing solutions to best achieve that goal, which could include switching fuels, changing the way they produce electricity, installing scrubbers on smokestacks and so on.

Sen. Michael D. Enzi (R-Wyo.) has put forward a proposal along the same lines to target tobacco. Typically, anti-smoking organizations lobby Congress to give the Food and Drug Administration regulatory power over cigarette companies, and press locally to increase tobacco taxes, run more government anti-tobacco ads and boost enforcement of bans on sales to minors. Under Enzi's performance-based regulation plan, however, the tobacco companies would simply be told by Congress that they have to cut their customer base by about 50% in 12 years. It would then be up to the companies to figure out how to curtail smoking rates.

So how exactly might this work in the case of gun makers? For more than half of all gun homicides, law enforcement officials are able to identify the precise type of lethal weapon that was used. From that data, reliable statistical projections can be made to determine each company's approximate share of all homicides. Each company's quotas would be based on the data, and tied to an ever-decreasing number of deaths.

A more fine-tuned strategy would set different gun-death-reduction quotas based on the specific weapon -- with larger reductions mandated for guns that are more commonly used in homicides.

The plan might even include a "cap and trade" feature. If some gun makers managed to reduce the gun deaths caused by their product even faster than the rules required, they could sell that excess to other companies.

If gun makers fail to reach the performance targets, they would face substantial financial penalties that would hike the cost of the guns they make and drive home the huge negative social consequences they now cause.

Our proposal is not a tax on gun sales. As long as gun companies met their goals, they would pay nothing extra to the government. Indeed, the plan might reward them with bonuses.

Performance-based regulation is not about the government denying people access to guns. It's not an academic theory about the underlying causes of gun deaths, nor is it a restriction on the right of law-abiding citizens to bear arms. Instead, it is a practical way to align the gun companies' interests with the public interest and, ultimately, to save lives.

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