

FROM PROTECTION TO PROBLEM: REASSESSING THE FIREARM OWNERS' PROTECTION ACT OF 1986

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I. THE FIREARM OWNERS' PROTECTION ACT OF 1986

The Second Amendment to the United States Constitution guarantees an individual right to “bear arms,” allowing civilian firearm possession; however, this right is not absolute.² Federal law has long limited individuals with felony convictions from transporting, shipping, or receiving firearms through interstate or foreign commerce, absent a pardon or record expungement.³ One of the most significant modern limitations on firearm ownership emerged with the enactment of the Firearm Owners' Protection Act (“the FOPA” or “the Act”) in 1986, which included a ban on the civilian possession of machine guns manufactured after May 19 of that year.⁴ The Act also imposed heightened controls on the sale and transfer of certain machine guns, in furtherance of public safety.⁵ This blog examines the impact of the FOPA, analyzes key court decisions that have either restricted or expanded access to certain firearms, and identifies provisions of the Act that warrant amendment to better fulfill its original goals.

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² See U.S. CONST. amend. II; *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). The Second Amendment has been interpreted as securing an individual right to possess firearms for lawful purposes, particularly self-defense. *Heller*, 554 U.S. at 628–35. The Court emphasized, however, that this right is not unlimited and does not extend to carrying a firearm in any manner or for any purpose. *Id.* at 626. Accordingly, the Court reaffirmed the constitutionality of longstanding prohibitions on firearm possession by individuals with felony convictions or certain mental health conditions, as well as restrictions on carrying firearms in sensitive places, such as schools. *Id.*

³ 18 U.S.C. § 922(g).

⁴ Firearm Owners' Protection Act of 1986, Pub. L. No. 99-308, 100 Stat. 449 (codified in part at 18 U.S.C. § 922).

⁵ *Id.*

II. *FARMER V. HIGGINS*

The scope of 18 U.S.C. § 922(o)'s machine gun prohibition was directly tested in *Farmer v. Higgins*, where the plaintiff sought authorization from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) to manufacture and register a machine gun for his private collection.⁶ The ATF denied the plaintiff’s application, relying on 18 U.S.C. § 922(o), which prohibits the transfer or possession of machine guns not lawfully possessed prior to May 19, 1986.⁷ Following the denial, the plaintiff filed suit in the United States District Court, which ruled in his favor and ordered the ATF to process the application.⁸ The District Court reasoned that the statutory ban did not apply to private collectors such as the plaintiff.⁹ The government appealed, and the United States Court of Appeals for the Eleventh Circuit reversed.¹⁰ The central issue on appeal was whether 18 U.S.C. § 922(o) prohibits private citizens from manufacturing or possessing machine guns not lawfully possessed before the May 19, 1986 cutoff date.¹¹ Relying on the plain language of the statute and its legislative history, the Eleventh Circuit held that Congress intended a comprehensive ban on the possession and manufacture of new machine guns after May 19, 1986.¹²

The Court emphasized that ongoing legislative debates consistently affirmed that the statute was intended “to ban the transfer [and] possession of any machine gun not lawfully

⁶ *Farmer v. Higgins*, 907 F.2d 1041 (11th Cir. 1990); 18 U.S.C. § 922(o). Amended in 1986, § 922(o) provides that it is “unlawful for any person to transfer or possess a machine gun.” 18 U.S.C. § 922(o). However, the subsection includes exceptions, stating that the transfer or possession of a machine gun by or under the authority of the United States, or by any department, agency, or political subdivision is not subject to the limitations imposed under § 922(o). *See id.* Additionally, any lawful transfer or possession of a machine gun manufactured before May 19, 1986, is exempt from the restrictions established by the statute. *See id.*

⁷ *Farmer*, 907 F.2d at 1041; 18 U.S.C. § 922(o).

⁸ *Farmer*, 907 F.2d at 1045. The court noted that the § 922(o) amendment imposed an unreasonable burden on the plaintiff, as a private firearms collector. *Id.*

⁹ 18 U.S.C. § 922(o); *Farmer*, 907 F.2d at 1045.

¹⁰ *Farmer*, 907 F.2d at 1045.

¹¹ 18 U.S.C. § 922(o); *Farmer*, 907 F.2d at 1045.

¹² *Farmer*, 907 F.2d at 1044–45.

possessed on the date of enactment.”¹³ The Court reasoned that allowing the registration of newly manufactured machine guns would render the prohibitions meaningless.¹⁴ The Court also relied on the ATF’s interpretation of the statute, as reflected in 27 C.F.R. § 179.105, reinforcing the agency’s authority to deny such applications.¹⁵ Ultimately, the Court concluded that § 922(o) bars private citizens from possessing machine guns manufactured after May 19, 1986, and accordingly reversed the District Court’s order.¹⁶ In doing so, the court laid a firm foundation for the modern enforcement of the machine gun prohibition under the FOPA.¹⁷

III. APPLICATION

Congress enacted the FOPA to protect citizens’ Second Amendment rights while also promoting public safety.¹⁸ One of the most consequential components of the FOPA was the addition of 18 U.S.C. § 922(o), marking a definitive halt to the civilian machine gun market.¹⁹ Nearly forty years later, the United States faces a persistent and evolving crisis of gun violence, particularly mass shootings.²⁰ Despite federal regulations like the FOPA and other state-level firearm restrictions, the frequency and lethality of mass shootings continue to rise.²¹ This reality raises a critical question: whether the legal and regulatory framework, including the FOPA, has succeeded in reducing gun violence, or whether it has fallen short of its protective purpose.²²

One of the landmark decisions interpreting § 922(o) was *Farmer v. Higgins*.²³ Yet, while *Farmer* was influential in clarifying the law, its practical impact on gun violence remains

¹³ *Farmer*, 907 F.2d at 1045.

¹⁴ *Id.*

¹⁵ *Farmer*, 907 F.2d at 1045; 27 C.F.R. § 179.105.

¹⁶ *Farmer*, 907 F.2d at 1045.

¹⁷ Firearm Owners’ Protection Act of 1986, Pub. L. No. 99-308, 100 Stat. 449 (codified in part at 18 U.S.C. § 922).

¹⁸ Firearm Owners’ Protection Act of 1986, *supra* note 4; *see* U.S. CONST. amend. II.

¹⁹ Firearm Owners’ Protection Act of 1986, *supra* note 4.

²⁰ *See* Daniel W. Webster et al., *Evidence Concerning the Regulation of Firearm Design, Sale, and Carrying on Fatal Mass Shootings in the United States*, 19 CRIMINOLOGY & PUB. POL’Y 171 (2020).

²¹ *Id.*

²² Firearm Owners’ Protection Act of 1986, *supra* note 4.

²³ *Farmer v. Higgins*, 907 F.2d 1041, 1044–45 (11th Cir. 1990).

unclear.²⁴ Empirical research demonstrates that not all firearm regulations are equally effective.²⁵ A 2020 study found that state laws requiring handgun purchaser licensing and bans on large-capacity magazines (LCMs) were associated with significant reductions in fatal mass shootings.²⁶ In contrast, assault weapons bans and background check laws, when implemented in isolation, showed limited impact.²⁷ These findings suggest that statutes such as § 922(o), while symbolically significant, do not operate effectively on their own.²⁸ Effective enforcement of such bans therefore, must be accompanied by complementary policies that regulate access to firearms, rather than focusing solely on the categories of firearms prohibited.²⁹

IV. DISCONNECT BETWEEN LAW AND REALITY

The logic underpinning § 922(o) is increasingly misaligned with the realities of firearm violence today.³⁰ Contemporary mass shootings are most often committed using LCMs, which are employed nearly twice as frequently as assault weapons.³¹ While the FOPA effectively curtailed access to newly manufactured machine guns, it failed to anticipate the modern proliferation of semiautomatic firearms and equally lethal alternatives.³² The judiciary's continued deference to the FOPA's original framework, as reflected in *Farmer v. Higgins*, may therefore no longer represent an adequate or effective approach to firearm regulation.³³ Empirical evidence suggests that only a limited set of regulatory measures have produced demonstrable

²⁴ *Farmer*, 907 F.2d 1041, 1044–45.

²⁵ See Daniel W. Webster et al., *Evidence Concerning the Regulation of Firearm Design, Sale, and Carrying on Fatal Mass Shootings in the United States*, 19 CRIMINOLOGY & PUB. POL'Y 171, 180 (2020).

²⁶ *Id.* at 172.

²⁷ *Id.*

²⁸ *Id.* at 181.

²⁹ *Id.* at 187.

³⁰ See Webster et al., *supra* note 20, at 181–87.

³¹ *Id.* at 188.

³² *Id.* at 187–88. Modern society has shifted from the use of machine guns to assault rifles and LCMs. *Id.* Evidence indicates that assault rifles are frequently linked to mass shootings with higher fatalities. *Id.* at 188. The design of these weapons enables the rapid discharge of numerous rounds of ammunition with minimal interruption for reloading. *Id.*

³³ See *Farmer*, 907 F.2d at 1041.

reductions in firearm violence.³⁴ The most notable include: (1) requiring firearm purchasers or owners to obtain a license through an in-person application process that includes fingerprinting, and (2) prohibiting the sale or possession of LCMs or ammunition-feeding devices for semiautomatic firearms.³⁵

Research indicates that from 2006 to 2015, following the expiration of the federal LCM ban, approximately 67% of mass shootings involved LCMs, and 26% of the weapons used were classified as assault rifles.³⁶ Although researchers cannot definitively isolate causal factors behind mass shootings, LCMs consistently appear as a primary variable.³⁷ These findings suggest that firearm prohibitions are largely ineffective unless accompanied by broader, complementary legislative measures.³⁸ Jurisdictions that require in-person licensing and fingerprinting have experienced a 56% reduction in mass shootings, while LCM bans have corresponded with a 48% reduction overall.³⁹ This evidentiary disconnect underscores a broader gap between law and reality: legal prohibitions alone are insufficient without supportive, preventive frameworks.⁴⁰ The implementation of the FOPA, standing by itself, merely prohibits machine gun ownership.⁴¹ Accordingly, meaningful reform requires either amending the FOPA or enacting complementary legislation that imposes LCM and assault rifle restrictions to ensure a measurable, nationwide reduction in mass shootings.⁴²

³⁴ See Webster et al., *supra* note 20, at 187.

³⁵ *Id.*

³⁶ *Id.* at 188.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Webster et al., *supra* note 20, at 188.

⁴⁰ *Id.* at 181.

⁴¹ 18 U.S.C. § 922(o).

⁴² See Webster et al., *supra* note 20, at 181.

V. CONCLUSION

The legal foundation laid by the FOPA and § 922(o) was, at the time, a significant federal effort to limit the proliferation of particularly dangerous firearms.⁴³ The *Farmer* court and others have consistently interpreted this provision by upholding the categorical ban on post-1986 machine guns.⁴⁴ These decisions reaffirm Congress's authority to regulate firearm possession in the interest of public safety and maintain clear boundaries around which weapons are deemed too dangerous for civilian use.⁴⁵ The question, then, is not whether the FOPA was a meaningful legislative step, but whether its legacy has constrained subsequent innovation and reform in gun policy.⁴⁶ Courts have focused on statutory interpretation and legislative intent, but public safety is not static, and neither should be the laws that claim to protect it.⁴⁷

As emerging empirical research highlights the effectiveness of licensing regimes, magazine capacity limits, and focused deterrence strategies, the narrow focus of § 922(o) appears increasingly outdated.⁴⁸ Judicial interpretation, empirical evidence, and statistical data collectively demonstrate that reform should not only rely on the type of weapon, but must also account for who possesses firearms and for what purpose.⁴⁹ To move forward, courts and legislators alike must critically reassess whether the protective intent of laws like the FOPA has been fulfilled.⁵⁰ Such reassessment will not only help bridge the gap between law and reality, but also allow for the creation of constitutionally sound firearm regulations capable of saving lives.⁵¹

⁴³ 18 U.S.C. § 922(o).

⁴⁴ *See Farmer*, 907 F.2d at 1041.

⁴⁵ *Id.*; *see also Webster et al.*, *supra* note 20.

⁴⁶ Firearm Owners' Protection Act of 1986, Pub. L. No. 99-308, 100 Stat. 449 (codified in part at 18 U.S.C. § 922).

⁴⁷ *See Farmer*, 907 F.2d at 1041.

⁴⁸ *See Webster et al.*, *supra* note 20.

⁴⁹ *See id.*; *see also Farmer*, 907 F.2d at 1041.

⁵⁰ 18 U.S.C. § 922(o).

⁵¹ *See Webster et al.*, *supra* note 20.