



January 11, 2013

Vice President Joseph R Biden, Jr.
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

**Re: Recommendations to the Gun Violence Task Force for Protecting
Americans *and* their Civil Rights through Smart Reform**

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

Laura W. Murphy
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

Dear Vice President Biden:

On behalf of the American Civil Liberties Union (ACLU), its over half a million members, countless additional supporters and activists, and fifty-three affiliates nationwide, we commend you for spearheading an initiative in response to the horrific tragedy that took place at Sandy Hook Elementary School and for working towards making our nation a safer place. As the White House gun violence task force weighs the proposals of a wide variety of stakeholders and considers the best way forward on this issue of enormous national importance, we write to offer our recommendations for ensuring that a federal solution not only protects the physical security of Americans, but also protects their civil rights and liberties.

We urge you to carefully evaluate any potential legislative solutions to ensure that they will not lead, even inadvertently, to unintended consequences such as the increased policing and over-criminalization of young people, including any disproportionate impact on students of color and students with disabilities and mental health issues, the infringement of First Amendment rights, or rollbacks of privacy rights. We hope to work with you to craft smart legislation that avoids these pitfalls, while effectively addressing the serious issues we face as a nation.

Over-policing and Criminalization of Students

This tragedy has sparked a long overdue national conversation about gun safety generally and school safety in particular. However, it is important to note that gun violence occurs everywhere, and what happened in Newtown was not the result of school-specific problems. We understand that you are considering proposals to increase federal dollars available to schools that want to hire police officers and install surveillance equipment.¹ We strongly caution against accepting any proposals aimed at increasing police presence in schools, which can harm educational opportunities by unnecessarily pushing students out of school and into the juvenile and criminal justice systems.

¹ Philip Rucker, *White House may consider funding for police in schools after Newtown*, WASHINGTON POST, Jan 10, 2012, available at http://www.washingtonpost.com/politics/white-house-considers-funding-for-police-in-schools-after-newtown/2013/01/10/e0044e58-5b3f-11e2-9fa9-5fbd9530eb9_story.html.

While well-meaning policymakers might assume that adding police, metal detectors and surveillance necessarily makes students safer, experience demonstrates otherwise. In practice, most school police spend a significant portion of their time responding to minor, nonviolent infractions—children who have drawn on desks or talked back to teachers, for example—rather than behaviors that seriously threaten school safety. In New York City, which employs a school security force of over 5,000, schools with permanent metal detectors reported that 77% of incidents in which police personnel were involved during the 2004-2005 school year were classified as “non-criminal.”² Only 4% were classified as “major crimes against persons,” and only 2% were classified as “major property crimes.”³

Criminalizing minor misbehavior that should be handled by teachers or school administrators has serious consequences for kids and only contributes to the school-to-prison pipeline – that is, pushing kids out of classrooms and into jail cells. When students are arrested just once, their chances of graduating drop dramatically and they face lifelong repercussions as a result.⁴ We must ensure that a legislative solution does not result in children being punished more severely in the name of school safety.

This is not the first time this nation has reacted to a violent act with proposals for increasing law enforcement in schools, and we should not ignore the lessons of the past. Immediately following the 1999 Columbine High School massacre, President Clinton dramatically increased federal funding for school-based police officers, and the Department of Justice created the COPS in Schools (CIS) grant program the same year to help local communities pay for increasing police presence in schools.⁵ Three school districts in the Hartford, Connecticut area, just an hour from Newtown, were among the many that took advantage of this funding, and the ACLU of Connecticut examined the results.⁶ In all three districts, the study found, very young students were being arrested at school, including numerous children in grade three and below.⁷ Among them, students of color were arrested at rates clearly disproportionate to their representation in the student population, and in some cases were even arrested for infractions when white peers were not.⁸ Though statistics do not capture the full story, the numbers in Connecticut included the arrest of two Hispanic fourth graders for “insubordination,” the arrest of an African American first grader for “leaving school grounds,” and the arrest of a Hispanic kindergartner for battery.⁹ It is difficult to imagine any circumstances under which these arrests, rather than discipline meted out by an educator, were appropriate.

² New York Civil Liberties Union and American Civil Liberties Union, *Criminalizing the Classroom: the Over-Policing of New York City Schools*, 20 (2007), available at http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf

³ *Id.*

⁴ Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 *Justice Quarterly* 462, 473 (2006).

⁵ American Civil Liberties Union and ACLU of Connecticut. *Hard Lessons: School Resource Officers and School Based Arrests in Three Connecticut Towns*, 14 (2008), available at http://www.aclu.org/files/pdfs/racialjustice/hardlessons_november2008.pdf.

⁶ *See id.*

⁷ *Id.* at 26.

⁸ *Id.* at 36.

⁹ *Id.* at 44.

The disproportionate impact of over-policing and punitive school discipline policies on students of color, as well as students with disabilities, is a nationwide problem. According to national data released by the Department of Education, students of color are likely to be punished more harshly and more frequently in schools for the same infractions as white students.¹⁰ Of all students arrested or referred to law enforcement nationally, 70% were Latino or African American.¹¹ African American students were also 3 1/2 times more likely than their white peers to be suspended—and while they represented just 18% of the students in the sample, they accounted for 39% of expulsions.¹² Students with disabilities, similarly, are more than twice as likely as their peers to receive one or more out-of-school suspensions.¹³

Recently, the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights heard testimony from Edward Ward, who attended a public high school on the west side of Chicago with a completely African American and Latino student body, where he saw these trends first hand.¹⁴ Though Ward graduated—one of just 27.7% of his classmates to do so—he described seeing many of his peers pushed out of school by the harsh policing practices at the school. Specifically, he noted that each morning he was faced with metal detectors, x-ray machines, and uniformed security officers, making school feel like a hostile, prison-like environment.¹⁵ He testified that:

[w]hen my classmates were suspended from Orr, they would disappear for days and when they were kicked out they would disappear sometimes for weeks. What was most shocking to me was discovering that they were being suspended for minor infractions, the kind of infractions that shouldn't merit more than a stern warning or reminder.¹⁶

A New York Civil Liberties Union complaint details another outrageous incident in which a school officer handcuffed and arrested a girl who tried to enter the school early to catch up on schoolwork, and then arrested the principal for attempting to intervene.¹⁷

Unfortunately, these stories are all too common. Past experience demonstrates that increasing police presence in schools after a tragedy, while well-intentioned, is misguided. The cost to the health and wellbeing of our children is just too great. Any proposals that would bring more police, school resource officers (SROs), or even the National Guard, as some current legislative proposals suggest, *must be rejected*.¹⁸ Militarizing our schools is not the answer to improving school climate.

¹⁰ Tamar Lewin, *Black Students Face More Harsh Discipline, Data Shows*, N.Y. TIMES, March 6, 2012, available at http://www.nytimes.com/2012/03/06/education/black-students-face-more-harsh-discipline-datashows.html?_r=1&hp.

¹¹ DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, THE TRANSFORMED CIVIL RIGHTS DATA COLLECTION 2 (2012), available at <http://www2.ed.gov/about/offices/list/ocr/docs/crhc-2012-data-summary.pdf>

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of Edward Ward), available at <http://www.judiciary.senate.gov/pdf/12-12-12WardTestimony.pdf>.

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ Amended Complaint, *B.H., et al. v. City of New York, et al.* (E.D.N.Y. June 11, 2010) (No. 10-cv-0210).

¹⁸ For example, Senator Barbara Boxer (D-CA) introduced two extremely troubling bills at the end of last Congress, immediately following the Newtown tragedy. The Save Our Schools Act (S. 3692) would facilitate the

And in schools that already have a law enforcement presence, lawmakers and school administrators must put appropriate safeguards in place to ensure that officers do what they are intended to do—prevent serious crimes—not usurp the role of educators by engaging in routine school discipline. Some safeguards should include:

- Specific, written agreement on the appropriate role of police involvement, limiting that involvement to serious criminal law matters only to ensure that law enforcement intervention is only used as a last resort;
- High-quality specialized training for all police who work in schools in such areas as youth development, non-violent conflict resolution, cultural competency, implicit bias, and interacting with students with disabilities;
- Regular data collection and reporting to state and local governments about police activity in schools, so that data can be monitored and corrective action taken as necessary;
- Reduction or elimination of federal funds where there is the overuse and/or the racially disproportionate use of law enforcement to respond to student misbehavior;
- School reporting on the use of law enforcement and development of plans for reducing reliance on police, as well as any racial disparities in arrests, citations, or tickets; and
- Denial of renewal grants where the federal government identifies persistent overreliance or racial disparities.

Improving Outcomes for Students

Instead of focusing on proposals that would direct even more funds towards increased school policing, we encourage you to pursue federal funding for efforts that proactively improve learning opportunities and school climate for all students, such as training for teachers, additional counselors and health professionals, and more programs to support students.¹⁹ Some specific examples of positive steps to take at the federal level include:

- The Positive Behavior for Safe and Effective Schools Act, which would provide schools with the tools they need to improve learning environments by allowing them to dedicate Title I federal funds to the development of school wide positive behavior supports.²⁰ Positive behavior supports are evidence-based practices demonstrated to reduce

installation of National Guard troops in U.S. schools and the School Safety Enhancements Act of 2012 (S. 3693) would expand the U.S. Department of Justice’s COPS Secure Our Schools grants, create a national tip line to report students, and increase surveillance at schools. Both proposals, in our view, would militarize schools to the detriment of students. S. 3692, 112th Cong. (2012); S. 3693, 112th Cong. (2012). We urge the Task Force to not include these proposals in any proposed legislation.

¹⁹ For a more detailed discussion of ACLU’s federal recommendations for ending the school-to-prison pipeline and improving school climate, please see *Ending the School to Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (statement of the Laura W. Murphy and Deborah J. Vagins, American Civil Liberties Union), available at http://www.aclu.org/files/assets/aclu_statement_for_sjc_subcomm_hearing_on_the_school_to_prison_pipeline_12_2012.pdf.

²⁰ Positive Behavior for Safe and Effective Schools Act, H.R. 3165, 112th Cong. (1st Sess. 2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3165ih/pdf/BILLS-112hr3165ih.pdf>

disciplinary referrals, suspensions and expulsions, increase academic achievement, and improve school safety.²¹ The bill would help to reduce reliance on suspensions, expulsions, and referrals to law enforcement, all of which push students out of schools and put graduation out of reach.²² It would also enable the Department of Education to provide more training and technical assistance on effective school discipline practices and to support the development of alternatives to over policing.²³

- The Youth PROMISE Act, which seeks to curb youth violence and gang involvement by providing federal funding and support to local stakeholders to identify underlying causes of violence and implement evidence based prevention programs intended to keep youth from ever entering the criminal justice system. The legislation provides support for local youth organizations to create a PROMISE advisory panel, which would work with parents, teachers, law enforcement officers and other community members to evaluate needs of the community and identify and implement programs designed to address the drivers of crime in that community. This legislation is an important model for stopping more young people – overwhelmingly African American and Latino– from being funneled into the juvenile and adult criminal justice systems.
- Strengthening the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJDDP), which over the past decade has suffered depletion of funding and support. Funding levels for OJDDP have declined more than 90% since 2002. The Juvenile Justice and Delinquency Prevention Act (JJDPA) is more than five years overdue for reauthorization. In addition, the lack of a permanent OJDDP Administrator has halted progress in advancing reforms, and slowed the reauthorization of the JJDPA, sending a message that federal leadership in juvenile justice is not a priority. We urge the Administration to act quickly to appointment a strong permanent OJDDP Administrator and provide the clear direction and resources needed to help states create and sustain juvenile justice systems that are less costly, enhance public safety, and offer appropriate interventions for court involved youth.

Upholding the First Amendment

In addition to our concerns about the collateral impact legislation could have on the school-to-prison pipeline, there are other civil liberties issues we hope would not be implicated by any gun control legislation. We understand that you are consulting with representatives of the entertainment industry on the subject of media violence, and we urge you not to propose any federal program or policy that would violate the First Amendment. Courts, including the Supreme Court, have repeatedly found no evidence to link interactive media with real-world violence, and have applied the First Amendment full-force to such media.²⁴ Additionally, we

²¹ Deborah J. Vagins, *Teach (and Treat) Our Children Well*, Huffington Post, Dec. 3, 2009, http://www.huffingtonpost.com/deborah-jvagins/teach-and-treat-our-child_b_378794.html.

²² Letter from the Dignity in Schools Campaign to Members of Congress (Dec. 18, 2009), available at http://www.aclu.org/files/assets/PBSESA_-_Dignity_in_Schools_Campaign_HR_2597_Support_Letter_FINAL.pdf

²³ Positive Behavior for Safe and Effective Schools Act, H.R. 3165, 112th Cong. (1st Sess. 2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3165ih/pdf/BILLS-112hr3165ih.pdf>.

²⁴ See, e.g., *Brown v. Entm't Merch. Ass'n*, 131 S. Ct. 2729, 2733 (2011) (“[V]ideo games qualify for First Amendment protection The Free Speech Clause exists principally to protect discourse on public matters, but we have long recognized that it is difficult to distinguish politics from entertainment, and dangerous to try.”); *Am. Amusement Mach. Ass'n v. Kendrick*, 244 F.3d 572, 577, 579-80 (7th Cir. 2001) (“All literature (here broadly

hope you will consider whether any proposal could result in self-censorship by the entertainment industry. Historically, calls for government scrutiny of disfavored media content, even without express threats of regulation, have resulted in industry pressure on content producers to censor themselves. This can also pose significant First Amendment considerations.

Protecting the Right to Privacy and Preserving Mental Health Protections

Finally, all people deserve a fair adjudication before any determination is made about their mental fitness to purchase or sell a firearm or ammunition, be employed in a gun store, or as part of any other related activity. Whether these determinations are based on criminal background checks, mental health status or other factors, the information used to reach these decisions must be kept private. Whether held by the states and federal government or disseminated in databases, it should be kept securely, not be used or shared for any other purpose and only retained for a limited period of time.

In particular, proposals have been floated to create an expansive national database to include people who have sought mental health treatment. Efforts to “track” people who receive mental health care will only further stigmatize and deter people from seeking treatment.

People with psychiatric disabilities are in danger of being targeted and scapegoated in an effort to respond to the national crisis of gun violence. Many public commentators and legislators have proposed the idea of “forced treatment” for people with psychiatric disabilities. Yet, data shows that people with mental disabilities are no more likely to be violent than the general population, but are much more likely to be victims of violence.²⁵

Any federal proposal under consideration should not include provisions on involuntary treatment. Not only would it be a significant infringement of an individual’s civil liberties, it is also a poor therapeutic approach, since forced treatment can create an understandable fear and suspicion of the mental health care community. Voluntary treatment, on the other hand, available in a variety of community settings, is underfunded.²⁶ Every state already has laws to detain and commit those who are viewed as a danger to themselves or others. What we do not have are sufficient resources to keep people from getting to that point.

Conclusion

Thank you for your leadership in seeking real reform and beginning a crucial national dialogue about safety in our nation. We look forward to engaging in this dialogue and working with you to implement smart reforms that will make us safer without sacrificing our civil rights and liberties.

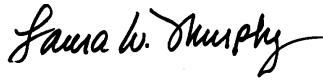
defined to include movies, television, and the other photographic media, and popular as well as highbrow literature) is interactive; the better it is, the more interactive.”); *Wilson v. Midway Games, Inc.*, 198 F. Supp. 2d 167, 169 (D. Conn. 2002).

²⁵ Grohol, J. M. “Dispelling the violence myth.” *Psych Central*. (June, 1998); Monahan, J. “Mental Disorder and Violent Behavior: Perceptions and Evidence.” *American Psychologist* vol. 47 iss.4 (1992): 511-521.

²⁶ Charles M. Blow, *Guns, Smoke and Mirrors*, THE NEW YORK TIMES, Dec. 21, 2012, at A25.

We would like to meet with the Task Force to discuss our concerns as soon as possible. To set up that meeting or if you have any other questions, please contact Senior Legislative Counsel Deborah Vagins at 202-675-2335 or dvagins@dcacclu.org.

Sincerely,



Laura W. Murphy
Director



Deborah J. Vagins
Senior Legislative Counsel