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The Viscoli Loophole:

WHEN IGNORANCE OF
THE LAW IS AN EXCUSE

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New Mexico Gov. Michelle Lujan Grisham has announced her plans to call the Legislature back to the Roundhouse for a special session in July. As with the recently-completed 30-day session, Lujan Grisham will likely push for legislation that limits New Mexicans' 2nd Amendment rights.

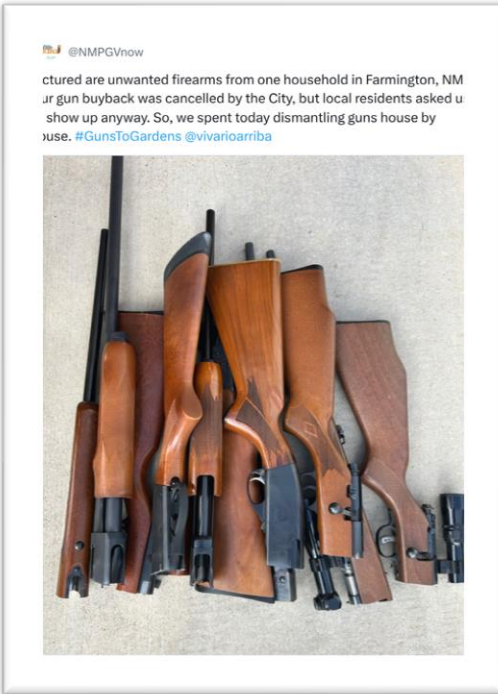
Alas, passing laws is one thing, but enforcing them is quite another. Take the example of Miranda Viscoli. Viscoli is the co-president of the 501(c)(3) New Mexicans to Prevent Gun Violence (NMPGV) organization. She is also a FoM, or friend of Michelle, who is often pictured alongside Governor Michelle Lujan Grisham at legislation signing events. Miranda is perhaps the most prominent and politically well-connected anti-gun voice in New Mexico and a key contributor to most of the state's recent anti-gun legislation.



Miranda Viscoli (top left) of New Mexicans to Prevent Gun Violence attends bill signing.

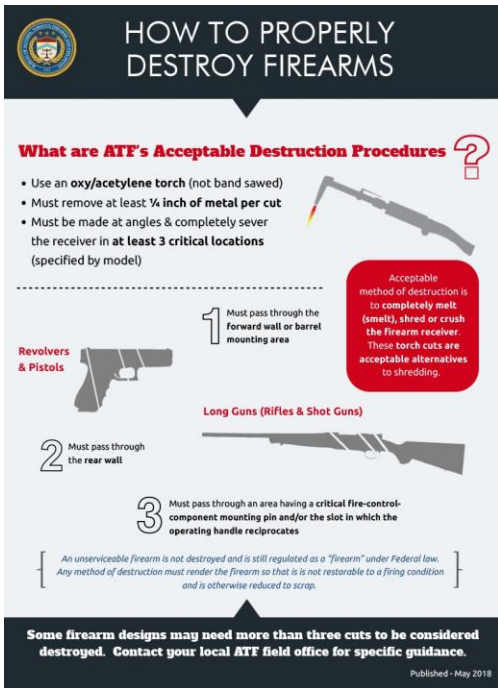
In 2019, with Viscoli's help, New Mexico passed a universal background check law ([NM Statute 30-7-7.1](#)) governing the private sale of firearms. With a few exceptions for family and law enforcement, this statute requires that all firearm sales between private individuals be subjected to and pass a Federal Form 4473 background check conducted by a licensed Federal Firearms License (FFL) dealer.

Last December, after [public uproar](#) forced the Farmington police to cancel a similar event, Viscoli's group sponsored a gun buyback in Farmington, NM, without law enforcement's participation. At this (now infamous) buyback, NMPGV took possession of and "destroyed" multiple hunting rifles by cutting them in half with a chop saw. In exchange for submitting their gun for destruction, at least one gun owner was provided a gift card (i.e., "consideration") of undetermined value.



Per NMPGV's statements, the rifle halves were subsequently provided to New Mexico high school students for an art project. Similar comments and social media posts suggest that pieces were also provided to RAWTools, a Colorado-based organization with whom NMPGV often partners.

According to the law Viscoli co-authored and championed, anything of value exchanged between the parties for the delivery or possession of a firearm constitutes a sale for which a background check must be conducted. Unfortunately for Viscoli, no background checks were performed during the December buyback. Additionally, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has very strict guidelines pertaining to the [proper destruction of firearms](#). These destruction rules were not followed at the Farmington buyback.



Indeed, according to photos on their official website, NMPGV has a long history of improper firearm destruction. As a result, many of the guns that NMPGV considered "destroyed" were still operational and, according to the ATF, firearms when they were given to students at a New Mexico high school. Exacerbating the situation, many of the chop saw cuts possibly created short barrel rifles, another type of firearm regulated by the ATF under the National Firearms Act of 1934 (NFA).

In summary, pictorial and social media evidence strongly suggests Miranda Viscoli and [NMPGV](#) [violated](#) the following federal and state laws:

- Failure to conduct a background check on a private firearm sale in NM (State)
- Possession of a firearm on public school property (Federal, State)
- Creating an unregistered NFA-regulated short-barrel rifle (Federal)

- Possibly transporting short-barrel rifles across state lines to Colorado without notifying the ATF (Federal)

Following social media outcry, the San Juan County Sheriff's Office [opened an investigation](#) into one of the possible violations, NMPGV's failure to conduct state-mandated background checks. After many months of consultation with the New Mexico Attorney General's office and the ATF, Sheriff Shane Ferrari declined to bring charges. In a [letter to the public](#) explaining his decision, Sheriff Ferrari concluded that he did "not feel it was the intent of NMAGV [sic] to purposely violate New Mexico law" and that "New Mexico legislation needs to define 'permanently inoperable condition' to interpret our laws." For the politically well-connected, ignorance is indeed bliss.

While it is tempting to focus on the irony of a gun control group being ensnared by unfamiliarity with legislation they co-authored and to despair at New Mexico's two-tiered "rules for thee, but not for me" justice system favoring the politically connected, Second Amendment enthusiasts should instead rejoice that New Mexico's universal background check has effectively been defanged.



An inoperable firearm under the Viscoli loophole.

In laying down [dubious legal cover](#) for the exoneration of a favored group, the Attorney General's office provided defense attorneys with precedents that should help render the statute unenforceable. Anyone charged under this law would do well to A.) establish their good intentions by pinky-swearing to the arresting officer of their heartfelt desire to destroy the firearm in question, and B.) immediately engage the safety mechanism and disassemble the firearm to make it "permanently inoperable"

According to this new precedent, as long as a buyer has good intentions and the firearm could plausibly purport to be inoperable, New Mexico's universal background check law does not apply. Additionally, defense attorneys can now point to a case where a white/Caucasian, high-profile political figure was not charged or seriously investigated despite well-documented admissions and photographic evidence.

Such a case sets the stage for a selective prosecution dismissal. Taken together, the new "Viscoli loophole" is big enough to drive a truck through and ought to deal New Mexico's ineffective and [unenforced](#) universal background check statute a mortal blow. For this gift, New Mexican gun owners should thank their most vocal opponent and her unwavering commitment to ignorance.

During the upcoming special legislative session the Gov. should urge the Legislature to focus on crime prevention and enforcement, not ill-conceived and constitutionally-dubious anti-gun measures.

The Rio Grande Foundation is a 501(c)(3) nonpartisan nonprofit that works to increase liberty and prosperity for all of New Mexico by informing citizens of the importance of individual freedom, limited government, and economic opportunity.



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