



Monday, November 27, 2017

The Honorable Rep. Richard Hudson
429 Cannon House Office Building
Washington, D.C. 20515

Regarding: **H.R.38 (Concealed Carry Reciprocity Act of 2017)**
Position: **Support / Amendments Requested**

Dear Representative Hudson:

I write you once more on behalf of Firearms Policy Coalition and our law-abiding members and supporters across the United States.

Because H.R.38, the Concealed Carry Reciprocity Act of 2017 (hereinafter “H.R.38”), is so critically important to millions of law-abiding gun owners who reside in (or visit) states and political subdivisions that are openly hostile to the fundamental, individual right to bear arms—indeed, it is these very disenfranchised and oppressed people that this bill seeks to serve—we wanted to follow up with additional discussion of H.R.38’s serious flaws that we first identified and discussed in our prior March 1 letter.

Also below (at Issue Requiring Amendment No. 6) is an additional request for amendment concerning how this measure could and should be modified to protect the rights of law-abiding people who do not reside in [or are visiting] a “State or political subdivision thereof.”

Issue Requiring Amendment no. 1

As written, H.R.38 would leave law-abiding people exposed to serious criminal liability stemming from a byzantine patchwork of state and local prohibitions, given the language in proposed 18 U.S.C. § 926D(b)(2), which undermines the core protections created through this measure, by providing that it “. . . shall not be construed to supersede or limit the laws of any State that . . . prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.”

Potential Solution to Issue no. 1

1. Delete the entirety of subsection (b) from the proposed 18 U.S.C. § 926D; alternatively, delete (at minimum) paragraph (2) of subsection (b) to allow for other refinements, below.
2. Add new text in subsection (b) to expressly pre-empt state and local laws that conflict with the right of law-abiding Americans who meet the criteria under proposed subsection (a) to carry firearms in public for lawful purposes, including self-defense.
3. Delete 18 U.S.C. § 922(q), in its entirety, or, at a minimum, amend the language of § 926D, subsection (f)(1), as described below in the discussion of Issue Requiring Amendment No. 2, because doing so is necessary to effectuate the purpose of the exception under that subsection— i.e., to insulate people from criminal liability under § 922.
4. Conforming changes as necessary to effectuate the above.

Issue Requiring Amendment no. 2

As written, H.R.38 leaves important terms undefined. For example, this measure—a bill about the possession and carrying of firearms outside the home—does not define what it means to “possess or carry” a handgun.

Moreover, as written, H.R.38 does not define what a “concealed handgun” is—creating a circumstance in which a hostile prosecutor could file criminal charges for the mere accidental exposure of a holstered firearm or even the “printing” (outlining) of part of a handgun frame, that is otherwise unseen, through articles of clothing.

Potential Solution to Issue no. 2

1. Amend H.R.38 to delete the word “concealed” such that the law would apply to the lawful carrying of “a handgun” under subsection (a). Alternatively, at a minimum, clearly and broadly define “concealed handgun” to be a handgun that is holstered,

carried, or possessed on or about the person even if it is visible or its presence is suggested by its affect on clothing or the person carrying the handgun.

2. Conforming changes as necessary to effectuate the above.

Issue Requiring Amendment no. 3

As currently written, H.R.38's exemption of specified conduct from the federal Gun Free School Zone Act is of limited utility. Under 926D subsection (f)(1), "A person who possesses or carries a concealed handgun under subsection (a) shall not be subject to the prohibitions of section 922(q) with respect to that handgun." (Underline added.)

Notably, the exemption applies only to "that" (singular) "concealed handgun" (as discussed above, a dangerously undefined term).

Potential Solution to Issue no. 3

1. Amend H.R.38 as proposed in the Potential Solution to Issue No. 1, described above, by deleting § 922(q), in its entirety.
2. Alternatively, should § 922(q), be left in place, proposed § 926D, subsection (f)(1), should be amended to provide: "A person who possesses or carries a handgun under subsection (a) shall not be subject to the prohibitions of section 922(q)." The prohibition established in § 922, subsection (q), applies to the mere of possession of "a firearm," not just a "concealed" firearm. In order for § 926D, subsection (f)(1), to do what it is designed to do and establish a meaningful exception to criminal liability that may otherwise attach under § 922 and/or other applicable law, the scope of the protection established must be as broad as the scope of potential criminal liability. Thus, this exception should be written to apply to "a handgun," not just "a *concealed* handgun."
3. Conforming changes as necessary to effectuate the above.

Issue Requiring Amendment no. 4

As currently written, H.R.38 would define the term “handgun” as including solely “any magazine for use in a handgun” and “any ammunition loaded into the handgun or its magazine.” (Underline added.)

The use of these vague and undefined terms in their singular form, while excluding common firearm accessories and appurtenances, could easily lead to narrow constructions, inconsistent with the clear intent to establish a broadly applicable protection with this measure.

This is especially true in jurisdictions hostile to Second Amendment rights where the benefits of H.R.38 are crucial to preserving those rights, thereby leaving unprotected common firearms-related activities of those lawfully carrying handguns in public.

Potential Solution to Issue no. 4

1. Amend proposed 18 U.S.C. §926D, subsection (e)(2), to read as follows (or a substantive equivalent): “The term ‘handgun’ includes any magazine, ammunition, accessory, holster, or appurtenance for a handgun carried under of subsection (a).”
2. Conforming changes as necessary to effectuate the above.

Issue Requiring Amendment no. 5

H.R.38 should be amended to (1) unhinge it from the constitutionally-antagonistic Commerce Clause doctrine, and (2) expressly provide statutory protection of the fundamental, individual rights under the Second Amendment made applicable to the States and local governments by the Fourteenth Amendment.

Potential Solution to Issue no. 5

1. Amend proposed 18 U.S.C. § 926D to include appropriate Findings consistent with the Second and Fourteenth Amendments. *See, e.g.*, 15 U.S.C. § 7901(a).

2. Amend proposed 18 U.S.C. § 926D to include appropriate Purposes expressly stating that the Act is designed to protect the fundamental, individual right of law-abiding Americans to “keep and bear arms,” which “shall not be infringed.” *See, e.g.*, 15 U.S.C. § 7901(b); *see also District of Columbia v. Heller*, 554 US 570 (2008); *McDonald v. Chicago*, 561 US 742 (2010); *Moore v. Madigan*, 702 F. 3d 933 (7th Cir. 2012); *Caetano v. Massachusetts*, 577 US __ (2016); *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017, *en banc* review denied).
3. Conforming changes as necessary to effectuate the above.

Issue Requiring Amendment no. 6

As written, H.R.38 applies only to States and political subdivisions thereof; it does not apply to the District of Columbia or any of the other commonwealths, republics, or territories administered or controlled by the United States (i.e., American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands).

Potential Solution to Issue no. 6

1. H.R.38 should be amended, with conforming changes throughout, to ensure its application to—and Second Amendment rights of—the law-abiding people who reside in or visit a federal district, commonwealth, republic, or territory.
2. Conforming changes as necessary to effectuate the above.

* * *

As we said in March, H.R.38 is a significant piece of legislation that—properly amended to address the issues discussed above—would establish one of the greatest, if not the greatest, legislative advancements of Second Amendment rights so far in the history of our federal government. And with just a few simple but important changes, H.R.38 could unlock and protect the Second Amendment right to bear arms for all law-abiding people—especially where it is denied today.

But if H.R.38 is not amended to address our concerns, we predict that this well-intentioned measure would leave millions of peaceful and law-abiding people exposed to serious criminal liability.

Indeed, legislation that does not properly address the issues we explain in this and our prior letter may very well indirectly cause people to be prosecuted and lose their Second Amendment rights over harmless mistakes.

As we are headquartered in *Sacramento, California*—often considered the “belly of the beast” with respect to gun control policies [and other bad ideas]—it is not at all difficult for us to see a future in which good people would inadvertently, but still unlawfully, carry a handgun and/or its accoutrements under an under-inclusive and vague statutory pre-emption scheme within the very ‘hostile’ environments that this measure purports to provide them the ability to exercise their rights in.

We hope that you will consider these requests and our perspective on these important subjects as this legislation moves forward. Please do not hesitate to contact us at (916) 378-5785 or policy@fpchq.org if we can be of any further assistance to you or your office.

Thank you very much for your time and consideration.

Sincerely,



Brandon Combs
President

cc: H.R.38 co-sponsors
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