



Monday, December 4, 2017

**VIA EMAIL AND FACSIMILE**

The Honorable Chairman Pete Sessions  
The Committee on Rules  
U.S. House of Representatives  
H-312 The Capitol  
Washington, D.C. 20515

The Honorable Speaker Paul Ryan  
Speaker of the House of Representatives  
U.S. House of Representatives  
H-232 The Capitol  
Washington, DC 20515

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

Dear Chairman Sessions and Mr. Speaker:

I write you today on behalf of Firearms Policy Coalition (“FPC”) and our many law-abiding members and supporters across the United States regarding the Concealed Carry Reciprocity Act of 2017 (hereinafter “H.R.38” or the Act).

From the outset, we wish to be clear that—while we do have concerns about the Act as it is written today—we support the bill and genuinely wish to see a strong, carry reciprocity measure passed into law as soon as possible.

Following material amendments in the House Judiciary Committee’s November 29th hearing on H.R.38, we wish to provide additional constructive discussion of what we view to be new unconstitutional and troubling flaws in the bill. We also wish to reiterate our sincere desire for changes to be implemented to address the concerns that we have identified (and proposed solutions to) in our March 1st and November 27th letters (available online at <http://passHR38.com>).

To provide context for these [and previous] comments on H.R.38, our analysis centers on how the Act would work in practice where it is needed most. Said differently, we evaluate the measure from the perspective of how it would help the least protected people to safely exercise their fundamental, individual right to bear arms in the most politically and legally hostile environments.

By taking this approach, we seek to ensure that the rights of currently-disenfranchised and oppressed people—the millions of law-abiding gun owners who reside in and visit states and political subdivisions that are openly hostile to the fundamental, individual right to bear arms—are protected and substantively advanced.

**1. Issues that FPC Previously Identified and Proposed Solutions to Should be Addressed Prior to Passage by the House.**

Out of respect for your time, we will not reiterate here all of our prior analysis on H.R.38 (which is, as noted, available at [PassHR38.com](http://PassHR38.com)). To summarize, the concerns we have raised to date are thus:

- A) 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);
- B) As it is written, H.R.38 leaves important terms (e.g., “concealed”) undefined—or, at least, unclear—which could lead to criminal liability for people attempting to carry under the Act;
- C) As currently written, H.R.38’s exemption of specified conduct from the federal Gun Free School Zone Act is of limited utility;
- D) The Act’s use of 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;
- E) H.R.38 should be amended to 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; and,

F) H.R.38 should be amended to ensure its application to—and uphold the Second Amendment rights of—the law-abiding people who reside in or visit a federal district, commonwealth, republic, or territory.

It is our position that, “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.”

## **2. Extra-Special Gun Rights for Federal Judges are Unconscionable and Likely Unconstitutional—and Should Be Removed from the Act.**

During the Committee’s hearing on H.R.38, it took up and adopted a proposed amendment (Amendment #8, available online at <http://bit.ly/2iarz9c>) by Rep. Issa of California. This amendment (adding 18 U.S.C. § 926E, “Interstate carrying of firearms by Federal judges”) not only violates the spirit, if not the text, of the Constitution, but, we believe, represents the worst kind of policy: Legislatively creating a caste system of privileged classes of “special” government employees with more and better “rights” than others.

As the Act was amended, the new § 926E would allow any Federal judge who “is not prohibited by Federal law from receiving a firearm” to carry any concealed firearm—not only a handgun—in “any State.”

Full stop.

In fact, § 926E would not limit the carrying of firearms by Federal judges to the same qualifications and limitations imposed on “regular” law-abiding citizens under proposed § 926D. It would not, as it is in proposed § 926D, limit a Federal judge to carrying “a concealed handgun (other than a machinegun or destructive device) that has been shipped or transported in interstate or foreign commerce.”

No, this *deplorable* provision would elevate Federal judges into a special, new privileged class of people with special gun rights available only to them.

The consequent message of Amendment #8 is, troublingly, that if the American People want to access the “real” Second Amendment right to bear arms, they must go to law school, pass the bar, undertake sufficient political activities to garner favor with a sitting president to obtain a nomination, and be confirmed to a Federal bench.

As a matter of policy, and having direct experience with hundreds of anti-gun bills—many inclusive of similarly-awful provisions—we can think of few proposed laws that would be more shocking to the moral conscience than one which tells law-abiding people that *their lives*—and rights—are *worth less* than a Federal judge’s.

And the “special gun rights” provision for Federal judges in § 926E is also sure draw this Act into litigation—and almost certainly be found unconstitutional. If the goal is to create a strong carry reciprocity bill that can survive legal scrutiny, § 926E undermines that goal. By treating those who hold a valid license to carry a concealed handgun different from Federal judges authorized to carry a concealed firearm, the provision likely violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution. *See Silveira v. Lockyer*, 312 F.3d 1052, 1088 (9th Cir. 2002). “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citation omitted).

In *Silveira*, the Ninth Circuit struck down a provision exempting retired peace officers from the prohibitions of the California Assault Weapons Control Act on Equal Protection grounds, holding that there was no rational basis to treat retired officers different from similarly situated members of the general public. 312 F.3d at 1089-92.

Creating a broad gun privilege for Federal judges while subjecting similarly-situated citizens to far more limited (and risky) protections would fail constitutional scrutiny for the same reason: it “arbitrarily and unreasonably affords a privilege to one group of individuals that is denied to others.” *Id.* at 1091.

We respectfully request that this provision be stricken from the Act.

**3. The Committee’s Addition of a Troubling Provision to Allow Law Enforcement Harassment Stops and Arrests.**

Also adopted during the Committee’s hearing on H.R.38 was Amendment #2 (available online at <http://bit.ly/2zKd17L>) by Rep. Rutherford of Florida. This amendment, adding a rule of construction, is deeply concerning.

This provision of the Act would allow law enforcement officers to “stop and frisk” law-abiding people on the street during a “brief investigative stop,” presumably so officers can see if there is anything they can arrest a person for under arcane state or local laws that the Act’s text currently does not protect adequately against.

Indeed, the “reasonable suspicion” standard would allow near-limitless harassment of law-abiding people—and potentially near-limitless arrests under non-preempted laws. We cannot possibly believe that H.R.38’s intent is furthered by granting law enforcement a federal statutory authority to hassle citizens. That is the exact opposite of the common-sense intent of carry reciprocity.

When viewed in light of our other concerns about the Act, this provision would likely be employed by government officials to its logical extreme: scrutinizing innocuous conduct for pretextual bases on which to arrest and even prosecute peaceable people who are merely exercising their fundamental, individual right to bear arms in public for self-defense. And, it is reasonable to conclude that such tactics will in fact be employed in hostile jurisdictions—most likely overwhelmingly against minorities and those least able to afford high-priced defense lawyers.

Of course, we do not suggest that proper [and constitutional] law enforcement activities against actual violent criminals should be constrained. And under a more-appropriate “probable cause” standard, such activities may be properly conducted. But the American people are—and must remain—innocent until proven guilty, and policies such as this undermine that presumption.

This provision should be stricken from the Act, or at minimum, appropriately narrowed to protect law-abiding people against harassment and abusive enforcement practices by hostile government actors.

**4. Unequal, if not Unconstitutional, Special Privileges for Government Employees Under the Committee’s Amendment in the Nature of a Substitute Should be Removed from the Act.**

Lastly, as with the addition of special privileges for Federal judges, the Committee’s Amendment in the Nature of a Substitute by Rep. Goodlatte of Virginia (available online at <http://bit.ly/2AQ3YGw>) requires serious scrutiny—and begs for amendments to restore the equal protection of the laws.

Some of the Substitute bill’s changes would provide special gun privileges to off-duty law enforcement officers and “qualified retired law enforcement officers.” But there is no good cause for such an additional privilege.

And in these times of deep social unrest, this kind of legislation would reinforce a growing dystopian opinion that there are two kinds of people in the United States: the “haves” (made up of the affluent, influent, and government officials), and the “have-nots” (made up of the rest of the citizenry).

Indeed, it could be fairly said that a law-abiding person is a law-abiding person...unless, as here, the government furthers the divide between the “regular” class and the “privileged” class by promulgating legislation that adds fuels to the fire.

Sixty-two years ago, the courageous woman, Rosa Parks, refused to be treated differently than her fellow human beings.

Perhaps this is the right opportunity to remember that “all men are created equal, that they are endowed by their Creator with certain unalienable Rights,” and that “Governments are instituted among Men, deriving their just powers from the consent of the governed...”

In the final analysis, the law-abiding American People should not be afforded fewer or lesser rights than the people they employ—or employed—in their service.

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We have consistently maintained that H.R.38 is a significant piece of legislation that—properly amended to remedy the issues discussed above—would establish one of the greatest legislative advancements of Second Amendment rights in history.

And H.R.38 is, without question, a critically-important measure that *should* be advanced—hopefully in a form that better protects law-abiding citizens, while respecting the rule and equal protection of law.

We respectfully request that you consider our analysis as the House continues to evaluate the bill and any further amendments.

Please do not hesitate to contact us at (916) 378-5785 or [policy@fpchq.org](mailto: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: Honorable Members of the House of Representatives