



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.4477 (Fix NICS Act of 2017)**
Position: **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 to express our concerns about the Fix NICS Act of 2017 (hereinafter “H.R.4477” or the Act). We hope that you will consider our following comments (based on Rules Committee Print 115-45 at <https://rules.house.gov/bill/115/hr-38>) when you evaluate H.R.4477.

1. Mandatory Law Enforcement Reporting is Fundamentally Unwise, and the Act Should Include a Means of Self-Checking a Person’s Firearms Eligibility Status Without Incurring Criminal Liability.

As we hail from the State of California—and are, therefore, intimately familiar with all manner of gun control statutes and regulations—we have seen firsthand how statutes like many of those contained in H.R.4477 can be applied against law-abiding and un-aware people alike.

But even a broken clock is right twice a day. The State of California’s Personal Firearms Eligibility Check (“PFEC”) process allows an individual to verify—without attempting to take possession of a firearm or engaging in any conduct that could be unlawful—their ability to legally possess and acquire firearms before they consider participating in any firearms transaction.

See, e.g., Personal Firearms Eligibility Check Program Frequently Asked Questions (online at <https://oag.ca.gov/firearms/pfecfaqs>):

What is a Personal Firearms Eligibility Check?

Pursuant to California Penal Code section 30105, an individual may request that the Department of Justice perform a firearms eligibility check on that individual. Authorized state records shall be examined to determine if the individual is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

A February 2013 report published by the U.S. Department of Justice Bureau of Justice Statistics (*Background Checks for Firearm Transfers, 2010 - Statistical Tables*, online at <http://bit.ly/2B1c5ly>) reveals that **nearly one-quarter of all NICS denials are appealed** and **over one third of all denials that are appealed are reversed** (as the purchaser should never have been denied in the first place). (“In 2010, nearly 37,000 [NICS] denials (24%) were appealed. More than 12,000 appeals (34%) resulted in reversal of the denial (table 6),” report at p.2.) This is strong evidence that many of those denied by NICS are unaware of their latent prohibition—or worse, are not actually prohibited at all.

And some prohibitions may simply be temporary disqualifications imposed by states that fail to report the reversal of the disability or court orders that have expired. Failure of various state and local agencies to update the system (reflecting the end of the prohibition period) may not be performed with the same prudence and care as the initial reporting, if such reporting is done at all.

Moreover, as we recently saw in response to increased gun buyer demand, the FBI at one point chose to stop processing appeals from NICS denials altogether, cutting off one of the most important avenues to addressing these issues outside of criminal investigations and prosecutions. (“The surge of criminal background checks required of new gun purchasers has been so unrelenting in recent months that the FBI had been forced to temporarily halt the processing of thousands of appeals from prospective buyers whose firearm purchase attempts have been denied.” *FBI official: ‘Perfect storm’ imperiling gun background checks*, USA TODAY, 1/20/2016, online at <https://usat.ly/2A1mlIp>, last visited 12/4/2017.)

Especially because so many people are unaware of their prohibited status, lack of proper notice in our court systems, murky circumstances going back decades, false database matches of law-abiding people with the criminal data on a prohibited person, and the fact that thousands of people every year are caught up in a sticky web of erroneous database information, mandatory reporting of NICS issues to law enforcement is fundamentally unwise.

In the absence of a Federal analogue to California's PFEC system and an efficient pre-transaction NICS record correction program, thousands of people every year may be inadvertently (or wrongly) implicated in criminal circumstances that, under H.R.4477, would necessarily be reported to law enforcement authorities. The Fix NICS Act of 2017 should include the addition of a PFEC-like system so that people can review their firearms eligibility (or disability) status and correct any defects in the record before participating in a potentially purchase or transfer that could be unlawful or lead to police officers showing up at their front door.

2. The Act Should be Amended to Include Clear Limits on Federal Executive Powers.

While the Act's well-meaning aims are clear, good policy is made when legislation that respects constitutional principles is grounded in a well-considered, effect-based framework that goes only as far as necessary to achieve the desired (and permissible) outcome.

Indeed, Americans have learned quite well what can happen when poor, over-broad legislation empowers a power-hungry executive branch that, more often than not, rules with a pen and a phone.

The checks and balances contained in the Act go only as far as the executive branch wants them to. We can imagine what sort of approach an Attorney General Eric Holder, for example, would have taken with these velveteen boundaries. We strongly encourage you to appropriately amend H.R.4477 to include stronger, clear limits on executive powers to protect against government abuses.

3. The Federal Rights Restoration Process Should Be Itself Restored and Fully-Funded.

Through the lens of the Act’s statutory language, it becomes clear to us that one important component to achieving the bill’s objectives is missing.

Our Constitution was structured precisely to ensure that fundamental rights are only taken away from people who have been provided adequate notice and due process, and only then for conditions that fit the circumstances. For people who have been disenfranchised from their civil rights, it is important that the government provide a means of rights restoration is available from the Federal government for people who should have their disabilities remedied.

Thankfully, one such vehicle is already on the books. But, for too long, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) has been affirmatively prohibited from operating under existing federal law to evaluate and provide firearms disability relief on a case-by-case basis. See, e.g., answer to ATF Q&A “Is there a way for a prohibited person to restore his or her right to receive or possess firearms and ammunition?” (online at <http://bit.ly/2ijJ2MP>):

Although Federal law provides a means for the relief of firearms disabilities, since October 1992, ATF’s annual appropriation has prohibited the expending of any funds to investigate or act upon applications for relief from Federal firearms disabilities submitted by individuals. As long as this provision is included in current ATF appropriations, the Bureau cannot act upon applications for relief from Federal firearms disabilities submitted by individuals.

The Act (or other advancing legislation) should be amended to ensure that the Federal rights restoration program is well-funded and operationally capable of once again helping good people comply with Federal and state law.

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The Fix NICS Act of 2017 is a well-intentioned bill that paves the road to some unfortunate and potentially unconstitutional places.

It should be appropriately amended to ensure that the fundamental, individual rights at stake are protected.

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: Honorable Members of the House of Representatives