[FPC] FIREARMS POLICY COALITION

Friday, March 2, 2018

The Honorable Thomas Massie
2453 Rayburn H.O.B.
Washington, D.C. 20515

Regarding: **H.R.5112 (The SAFER Voter Act)**

Position: **STRONGLY SUPPORT**

Dear Congressman Massie:

I write you today on behalf of Firearms Policy Coalition (FPC) and our law-abiding members and supporters across the United States to express our strong support for your H.R.5112 (The SAFER Voter Act). This common-sense measure would remedy a glaring, inequitable, and unconstitutional defect in federal law that denies a fundamental, individual right to law-abiding, legal adults who have reached the age of majority.

As you know, virtually all federal firearm laws were enacted before the Supreme Court's landmark decisions of *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783 (2008), and *McDonald v. City of Chicago*, 561 U. S. 742, 130 S.Ct. 3020 (2010).[1] Yet, since then, there have been no serious corresponding efforts to conform federal laws to these Supreme Court precedents (or, for that matter, the text, history, and tradition of the Constitution itself).

Indeed, the Gun Control Act [of 1968] (as amended) still clings to outdated and misguided statutory relics, like the "sporting purpose" test, as justification for allowing or denying the People of the United State access to constitutionally-protected items and conduct. Conversely, "self-defense"—as held by the Supreme Court, the

[1] More recently, the Supreme Court weighed in on the scope of instruments protected under the Second Amendment in the case of *Caetano v. Massachusetts*, 136 S.Ct. 1027 (2016), wherein the Court vacated the opinion of the Supreme Judicial Court of Massachusetts and rejected the lower court's holding that the Second Amendment does not protect all bearable arms that are not dangerous and unusual. "This reasoning defies our decision in *Heller*, which rejected as bordering on the frivolous the argument that only those arms in existence in the 18th century are protected by the Second Amendment." *Id.* at 1029 (Alito, J., with Thomas, J., concurring in the judgment) (internal quotations and citations omitted, italics in original). "As the *per curiam* opinion recognizes, [*Heller*'s] is a conjunctive test: A weapon may not be banned unless it is *both* dangerous *and* unusual." *Id.* at 1031 (italics in original).

"core" of the right to keep and bear arms (*Heller*, 128 S.Ct. 2783 at 2818)—is completely missing from virtually all relevant federal statutes and regulations. FPC, our members, and supporters across the country believe this Congress must undertake important remedial actions to eliminate unconstitutional statutory conflicts and limitations on the right to keep and bear arms—precisely the kind of action taken in your H.R.5112.

Federal statutes recognize that the "militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States [ ]." 10 U.S.C. § 246(a). The "the unorganized militia [ ] consists of the members of the militia who are not members of the National Guard or the Naval Militia." 10 U.S.C. § 246(b)(2). And the American unorganized militia is *expected* to be able to muster, at any time, with bearable arms of the type in common use for lawful purposes throughout the United States.

As *Heller* elucidated, the term "bearable arms" necessarily "includes any '[w]eapo[n] of offence' or 'thing that a man wears for his defence, or takes into his hands,' that is "carr[ied] ... for the purpose of offensive or defensive action." 554 U.S., at 581, 584, 128 S.Ct. 2783 (internal quotation marks omitted). This, of course, includes handguns—which are, for many reasons, some of the most popular firearms in common use for lawful purposes (including, but not limited to self-defense) sold today. In *Heller*, Justice Scalia put it thusly:

> It is no answer to say, as petitioners do, that it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is allowed. It is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon. There are many reasons that a citizen may prefer a handgun for home defense: It is easier to store in a location that is readily accessible in an emergency; it cannot easily be redirected or wrestled away by an attacker; it is easier to use for those without the upper-body strength to lift and aim a long gun; it can be pointed at a burglar with one hand while the other hand dials the police. Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.

Heller, 554 U.S. 570, 128 S.Ct. 2783 at 2818.

Yet, 18 U.S.C. § 922(b)(1) makes exercising fundamental, individual Second Amendment rights a federal crime:

> "It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver . . . any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age."

To be sure, this terminally-defective statute is a continuing injustice perpetrated against the People by the government, enforced on pain of criminal liability, or even fine and imprisonment, and is a great offense to the Constitution itself.

The ban at 18 U.S.C. § 922(b)(1) must be repealed.

* * *

FPC strongly opposes all laws that impose an age-based, discriminatory limitation of constitutional rights against law-abiding, legal adults who have reached the age of majority.

And we strongly support repealing or appropriately reforming, federal laws to conform with the Second and Fourteenth Amendments, such as by eliminating the unconstitutional age-based ban at 18 U.S.C. § 922(b)(1).

There is no pre-existing human right, such as the right to keep and bear arms, that can lawfully or legitimately be proscribed—or criminalized—until such time that a legal, law-abiding adult reaches the arbitrary age of twenty-one.

And any such ban would be—and should be—fiercely rejected. Thus, your H.R.5112 must be passed to jettison the constitutional infirmity at issue here.

For all of the reasons stated above and many others not mentioned here, FPC offers our strong support of your common-sense and principled H.R.5112, The SAFER Voter Act.

Please do not hesitate to contact us at (916) 378-5785 or policy@fpchq.org if we or our counsel can be of any assistance to you or your office.

Thank you for your leadership on this issue of paramount importance.

Sincerely,

Brandon Combs
President
Firearms Policy Coalition

cc: Speaker of the House Paul Ryan