

May 16, 2006

Honorable F. James Sensenbrenner, Jr.  
Chair  
Committee on the Judiciary  
U.S. House of Representatives  
2138 Rayburn Office Building  
Washington, D.C. 20515

Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
2138 Rayburn Office Building  
Washington, D.C. 20515

Dear Chairman Sensenbrenner and Representative Conyers:

We understand that the Committee may soon consider several bills that propose changes in federal gun law and regulation. I am writing on behalf of the American Bar Association to state our views on these pending bills.

**H.R.1415, the NICS Improvement Act of 2005.** The ABA strongly supports H.R.1415, legislation that would amend the Brady Handgun Violence Prevention Act to make key improvements in the National Instant Criminal Background Check System (NICS). H.R.1415 would provide a needed push to speed implementation of the NICS system used in conducting instant background checks prior to gun purchases. At the federal level, it would require federal agency cooperation in providing relevant records to the Attorney General for inclusion in NICS. It also proposes a grant program for state and Indian tribal governments to establish or upgrade information and identification technologies for firearms eligibility determination and to improve the automation and transmittal to Federal and State record repositories of criminal history determinations, including records relevant to determining whether a person has been convicted of a misdemeanor crime of domestic violence, or is the subject of court orders and mental health adjudications or commitments. The NICS improvement legislation has been endorsed by leading organizations on both sides of the gun policy debate and has broad bipartisan support in Congress. We urge the Committee to approve H.R.1415 so that it may soon be considered by the full House of Representatives.

**H.R.5092, the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) “Modernization and Reform Act of 2006.”** The ABA opposes H.R.5092 and urges the Committee to reject it. H.R.5092 would restructure ATF revocation powers regarding federal gun dealer licensing in ways that would weaken ATF oversight of licensees and strengthen gun dealer defendants in an unbalanced and unwarranted fashion that we believe would not serve public safety. Foremost among these provisions in H.R.5092 is the proposed new definition of the applicable burden of proof the government must meet to either revoke or suspend a federal gun license for a “serious” violation of law. H.R.5092 would amend the current standard of “willful” misconduct to require proof that a defendant in acting willfully acted “intentionally, purposely, and with the intent to act in violation of a known legal duty.” This latter standard is exceptionally high for a civil penalty proceeding and has been generally limited only to criminal prosecutions of complex and arcane tax laws. *See Cheek v. U.S.*, 498 U.S. 192, 199 (1991). Gun dealers who refuse to comply with elemental requirements for firearms sales do not deserve this new, extraordinary federal protection.

H.R.5092 would replace revocation in most instances with a new regime of minor fines and temporary license suspensions. Its proposed provisions are particularly troubling in regard to offenses often related to illegal gun trafficking. It would limit fines for violations from a single inspection or examination to minimal amounts no matter how many guns are “missing” from inventory records and unaccounted for. It also specifically provides that violations that derive from transfer or sale of two or more firearms during a single transaction shall be considered a single violation. Multiple gun sales violations – often incident to illegal gun trafficking – would only result in a single penalty rather than penalty that is a multiple of the number of guns involved, under H.R.5092. The bill provides for license suspensions of 30 days for “non-serious” violations and 90 days for “serious” violations (requiring proof meeting the new standard for “willful” violations). These provisions will serve to insulate rogue gun dealers – the one percent of the Nation’s licensed gun dealers from which 60 percent of crime guns originate – from license revocation in most instances. We believe these proposed changes in H.R.5092 would neither modernize nor reform ATF but would serve to further weaken the agency and its service of public safety.

**H.R.5005, the Firearms Corrections and Improvements Act of 2006.** The ABA also opposes H.R.5005. Among a number of proposed changes in federal law contained in the bill, H.R.5005 would bar disclosure of firearm trace data in almost all circumstances permitted under current law. Specifically, H.R.5005 would bar disclosure of “information in the firearms trace system database” including information about multiple handgun sales required to be reported by licensed dealers under current law “to any entity” with the sole exception to law enforcement agencies. Disclosure to law enforcement agencies is restricted further by H.R.5005 to information that “pertains to the geographic jurisdiction” of the agency or prosecutor requesting the disclosure.

This provision would prevent ATF from issuing reports based on its crime gun trace database and multiple sale data used to educate law enforcement and the public about the nature of illegal gun trafficking. It would also prevent ATF from providing information

to scholars, the press and Members of Congress, in their respective roles regarding the problems of guns and crime, particularly regarding guns traced to crimes originating from sales from licensed gun dealers. Such a restriction would also effectively prevent law enforcement agencies from using gun trace data to develop effective enforcement strategies. Gun trace data collected and publicized under current law has shown that illegal trafficking of guns is seldom limited in scope to a local area and is best addressed in partnerships that coordinate local, state and federal law enforcement strategies. The ABA believes that the public interest in stronger enforcement of gun laws and the use of gun crime trace data by law enforcement agencies at all levels of government are compelling reasons to continue to collect such data and for its disclosure and dissemination as public data. We strongly oppose H.R.5005 and urge the Committee to reject it.

Thank you for consideration of our views on these important issues pending before the Judiciary Committee.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans". The signature is written in black ink and is positioned below the word "Sincerely,".

Robert D. Evans

cc: Members of the Committee.