

September 25, 2006

Dear Representative:

We understand that the House of Representatives will soon consider H.R.5092, the Bureau of Alcohol, Tobacco, Firearms and Explosives (“BATFE”) Modernization and Reform Act of 2006. I am writing on behalf of the American Bar Association to express our opposition to this legislation and to urge you to vote against it.

H.R.5092 would restructure BATFE revocation powers regarding federal gun dealer licensing and create a new administrative process for review of gun dealer violations of federal law. Foremost among our concerns among the proposed changes to current law contained in H.R.5092 is that regarding the standard of proof required in civil penalty proceedings brought against defendant gun dealers. 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). Penalty proceedings in this area of law are currently rare and involve violations of laws that are not complex. We do not believe there is a demonstrable reason to change the current “willful” standard of proof.

We are also concerned with the proposed new regulatory scheme in H.R.5092 that would create a range of new non-criminal penalties. H.R.5092 would replace BATFE revocation of federal licenses 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. Furthermore, multiple gun sales violations – often incident to illegal gun trafficking – would only result under H.R.5092 in a maximum fine of \$15,000, an amount too modest to deter crime.

We remain concerned that, despite bipartisan efforts to moderate key provisions in H.R.5092 during its consideration by the Judiciary Committee, H.R.5092 would unduly weaken BATFE oversight of federal gun dealers. We believe the proposed new standard of proof for penalty proceedings brought against gun dealers and the new administrative

regime proposed in H.R.5092 would make actions against rogue or corrupt gun dealers too difficult and would weaken the agency's oversight role.

For these reasons, we urge you to vote against H.R.5092.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans". The signature is written in black ink and is positioned above the typed name.

Robert D. Evans