

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, AND EXPLOSIVES
(BATFE) MODERNIZATION AND
REFORM ACT OF 2006

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5092) to modernize and reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as amended.

The Clerk read as follows

H.R. 5092

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) Modernization and Reform Act of 2006".

SEC. 2. GRADUATED PENALTIES FOR CIVIL VIOLATIONS BY FEDERAL FIREARMS LICENSEES.

(a) IN GENERAL.—Section 923 of title 18, United States Code, is amended by striking subsections (e) and (f) and inserting the following:

"(e)(1)(A) If the Attorney General determines that a licensee under this section has willfully violated any provision of this chapter or any regulation prescribed under this chapter, the Attorney General may—

"(i) if the violation is of a minor nature—
"(I) impose on the licensee a civil money penalty of not more than \$1,000 for each such violation, except that the total amount of penalties imposed on a licensee under this subclause for violations arising from a single inspection or examination shall not exceed \$5,000; or

"(II) suspend the license for not more than 30 days, and specify the circumstances under which the suspension is to be terminated, if, in the period for which the license is in effect, there have been at least 2 prior occasions on which the licensee has been determined to have violated this chapter; or

"(ii) if the violation is of a serious nature—
"(I) impose on the licensee a civil money penalty of not more than \$2,500 for each such violation, except that the total amount of penalties imposed on a licensee under this subclause for a violations arising from a single inspection or examination shall not exceed \$15,000;

"(II) suspend the license for not more than 90 days, and specify the circumstances under which the suspension is to be terminated;

"(III) revoke the license; or

"(IV) take the actions described in subclauses (I) and (II), or subclauses (I) and (III).

"(B)(i)(I) In determining the amount of a civil money penalty to impose under subparagraph (A) on a licensee, the nature and severity of the violation involved, the size of the firearms business operated by the licensee, and the prior record of the licensee shall be considered.

"(II) On request of the licensee, the Attorney General may consider the ability of the licensee to pay a civil money penalty, and may allow the licensee to submit documents and information to establish the ability of the licensee to pay. The Attorney General shall not make part of any public record any document or information so submitted, and shall return to the licensee any such document or information.

"(III) The total amount of penalties imposed on a licensee under subparagraph (A) with respect to violations of a minor nature and of a serious nature arising from a single inspection or examination shall not exceed \$15,000.

"(ii) For purposes of subparagraph (A), violation of a provision of this chapter with re-

spect to 2 or more firearms during a single transaction shall be considered a single violation of the provision.

"(iii) The Attorney General may defer, or suspend, in whole or in part, the imposition of a civil money penalty on a licensee whose license is suspended under this paragraph.

"(C) For purposes of subparagraph (A):

"(i) A violation of this chapter shall be considered to be of a serious nature if the violation—

"(I) results in or could have resulted in the transfer of a firearm or ammunition to a person prohibited from possessing or receiving the firearm or ammunition under this chapter or under State or local law;

"(II) obstructs or could have obstructed bona fide criminal investigation or prosecution, or an inspection or examination under this chapter; or

"(III) prevents or could have prevented a licensee from complying with subsection (a)(7), (a)(8), (b)(1), (b)(3), (b)(4), (j), (k), (o), or (p) of section 922, subsection (g)(7) of this section, or subsection (b) or (h) of section 924.

"(ii) A violation of this chapter shall be considered to be of a minor nature if the violation is not of a serious nature.

"(D) The Attorney General may not commence an enforcement action under subparagraph (A) with respect to a violation, after the 5-year period that begins with—

"(i) the date the violation occurred; or

"(ii) if the licensee intentionally obstructed discovery of the violation, the date the violation is discovered.

"(2)(A) Not less than 30 days before the effective date of any penalty imposed on a licensee by reason of a determination made under paragraph (1), the Attorney General shall send the licensee a written notice—

"(i) of the determination, and the grounds on which the determination was made;

"(ii) of the nature of the penalty; and

"(iii) that the licensee may, within 30 days after receipt of the notice, request a hearing to review the determination.

"(B) A hearing to review a determination made under paragraph (1) with respect to a licensee shall not be held unless the licensee requests such a hearing within 30 days after receiving the notice of the determination sent pursuant to subparagraph (A).

"(C) On timely receipt from the licensee of a request for such a review, the Attorney General shall stay the imposition under paragraph (1) of any penalty involved, pending resolution of the review, unless, in the case of a suspension or revocation of a licensee, the Attorney General establishes, at a hearing before an administrative law judge, by clear and convincing evidence, that the continued operation by the licensee of the business poses an immediate and grave threat to public safety.

"(3)(A) Within 90 days after timely receipt from a licensee of a request to review a determination made under paragraph (1) (or at such later time as is agreed to by the Attorney General and the licensee), an administrative law judge shall hold a hearing, at a location convenient to the licensee, to review the determination.

"(B) Not less than 30 days before the hearing, the Attorney General shall deliver to the licensee—

"(i) a document identifying each person whom the Attorney General intends to call as a witness during the hearing;

"(ii) a copy of each document which will be introduced as evidence at the hearing; and

"(iii) copies of all documents on which the determination is based.

"(C) Within 90 days after the hearing, the administrative law judge shall issue a written decision setting forth findings of fact and conclusions of law, and a decision as to

whether to affirm, modify, or reverse the determination.

"(D) On request of the licensee, the Attorney General shall stay the effective date of any penalty, suspension, or revocation until there has been a final, nonreviewable judgment with respect to the determination involved, unless, in the case of a suspension or revocation of a licensee, the Attorney General establishes, at a hearing before an administrative law judge, by clear and convincing evidence, that the continued operation by the licensee of the business poses an immediate and grave threat to public safety.

"(E) The action of an administrative law judge under this subsection shall be considered final agency action for all purposes, and may be reviewed only as provided in subsection (f).

"(4) This subsection shall not be interpreted to affect the authority of the Attorney General under section 922(t)(5).

"(f)(1) Within 60 days after a party receives a notice issued under subsection (d)(3) of a decision to deny a license, or a notice issued under subsection (e)(3)(C) of a determination to impose a civil money penalty or to suspend or revoke a license, the party may file a petition with the United States district court for the district in which the party resides or has a principal place of business for a de novo review of the decision or determination.

"(2) In a proceeding conducted under this paragraph, the court shall, on application of a party, consider any evidence submitted by the parties to the proceeding whether or not the evidence was considered at the hearing held under subsection (d)(3) or (e)(3).

"(3) If the court decides that the decision or determination was not authorized, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.

"(4) If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of a regulation prescribed under this chapter, and the licensee is acquitted of the charges, or the proceedings are terminated, other than upon motion of the Government before trial on the charges, the Attorney General shall be absolutely barred from denying a license under this chapter, suspending or revoking a license granted under this chapter, or imposing a civil money penalty under subsection (e), if the action would be based in whole or in part on the facts which form the basis of the criminal charges.

"(5) The Attorney General may not institute a proceeding to suspend or revoke a license granted under this chapter, or to impose a civil money penalty under subsection (e), more than 1 year after the filing of the indictment or information."

(b) CONFORMING AMENDMENT TO PROCEDURE APPLICABLE TO DENIAL OF APPLICATION FOR LICENSE.—Section 923(d) of such title is amended by adding at the end the following:

"(3) If the Attorney General denies an application for a license, an administrative law judge of the Department of Justice shall, on request by the aggrieved party, promptly hold a hearing to review the denial, at a location convenient to the aggrieved party. If, after the hearing, the administrative law judge decides not to reverse the denial, the administrative law judge shall give notice of the final denial decision to the aggrieved party."

SEC. 3. CONSIDERATION OF FEDERAL FIREARMS LICENSE APPLICATIONS.

(a) IN GENERAL.—Section 923(d) of title 18, United States Code, as amended by section 2(b) of this Act, is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4) and inserting after paragraph (1) the following:

“(2) The Attorney General shall make a preliminary determination as to whether to approve or deny an application submitted under subsection (a) or (b). If the preliminary determination is to deny the application, the Attorney General shall notify the applicant in writing of the preliminary determination and the reasons for the preliminary determination, and shall afford the applicant an opportunity to supplement the application with additional information and to request a hearing on the application. If the applicant, in a timely manner, requests such a hearing, the Attorney General shall hold the hearing at a location convenient to the applicant, and shall notify the applicant in writing of the time and place of the hearing.”.

(b) **CONFORMING AMENDMENT.**—Section 923(f) of such title, as amended by section 2(a) of this Act, is amended by striking “(d)(3)” each place it appears and inserting “(d)(4)”.

SEC. 4. DEFINITION OF WILLFULLY.

Section 923(e) of title 18, United States Code, as amended by section 2(a) of this Act, is amended by adding at the end the following:

“(5) For purposes of this subsection, the term ‘willfully’ means, with respect to conduct of a person, that the person knew of a legal duty, and engaged in the conduct knowingly and in intentional disregard of the duty.”.

SEC. 5. ESTABLISHMENT OF FORMAL INSPECTION, EXAMINATION, AND INVESTIGATIVE GUIDELINES.

The Attorney General shall establish guidelines for how the Bureau of Alcohol, Tobacco, Firearms, and Explosives is to conduct inspections, examinations, or investigations of possible violations of chapters 40 and 44 of title 18, United States Code.

SEC. 6. REVIEW BY THE INSPECTOR GENERAL OF THE DEPARTMENT OF JUSTICE OF THE GUN SHOW ENFORCEMENT PROGRAM; REPORT.

(a) **REVIEW.**—The Inspector General of the Department of Justice shall conduct a review of the operations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, for the purpose of assessing the manner in which the Bureau conducts the gun show enforcement program and blanket residency checks of prospective and actual firearms purchasers.

(b) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a written report that contains the findings of the review required by subsection (a), and includes such recommendations as may be appropriate.

SEC. 7. LIMITATIONS ON USE OF FIREARMS PURCHASER INFORMATION.

Section 923(g)(1)(D) of title 18, United States Code, is amended in the last sentence by inserting “, except that information identifying a person who has purchased or received firearms or ammunition and who is not prohibited from doing so may not be so made available or so provided unless the agency involved has certified that the agency will not disclose the information to any entity other than a court, federal, State or local law enforcement agency, or prosecutor” before the period.

SEC. 8. LIQUIDATION OF INVENTORY IN FEDERAL FIREARMS LICENSE EXPIRATION, SURRENDER, OR REVOCATION CASES.

Section 923 of title 18, United States Code, is amended by adding at the end the following:

“(m)(1) Except as provided in paragraph (2), a person whose license issued under this

chapter is expired, surrendered, or revoked shall be afforded 60 days from the effective date of the expiration, surrender, or revocation to liquidate the firearms inventory of the person, which time may be extended upon a showing of reasonable cause. During such 60-day period (including any extension of the period), the license involved shall continue to be considered valid.

“(2) Paragraph (1) shall not apply with respect to a person if a United States District Court for the judicial district in which the person resides or in which the principal place of business of the person subject to the license is located finds, by clear and convincing evidence, that the continued operation by the person of the business poses an immediate and grave threat to public safety.”.

SEC. 9. OPPORTUNITY TO CURE VIOLATIONS AFTER ACQUISITION OF FIREARMS BUSINESS.

Section 923 of title 18, United States Code, is further amended by adding at the end the following:

“(n) If the Attorney General is made aware that a business licensed under this chapter has transferred to a surviving spouse or child of the licensee, to an executor, administrator, or other legal representative of a deceased licensee; or to a receiver or trustee in bankruptcy, or an assignee for benefit of creditors, and, before the transfer, or on the first inspection or examination by the Attorney General of the records of the licensee after the transfer, the licensee is found to be operating the business in violation of this chapter, the Attorney General—

“(1) shall notify the transferee of the violation by the transferor; and

“(2) shall not presume that the transferee is committing the violation.”.

SEC. 10. STANDARDS FOR CRIMINAL VIOLATIONS OF RECORDKEEPING REQUIREMENTS.

Section 922(m) of title 18, United States Code, is amended—

(1) by striking “any false entry” and inserting “a materially false entry”;

(2) by striking “appropriate entry” and inserting “a materially significant entry”;

(3) by striking “properly maintain” and inserting “retain custody of”.

SEC. 11. AUTHORITY TO COLLECT INFORMATION ON EXPLOSIVES STORED UNDER STATE LAW; REGULATIONS GOVERNING STORAGE OF EXPLOSIVES MADE APPLICABLE TO STORAGE OF EXPLOSIVES BY AGENCIES OPERATING UNDER STATE LAW.

(a) **AUTHORITY TO COLLECT INFORMATION ON EXPLOSIVES STORED UNDER STATE LAW.**—

(1) **IN GENERAL.**—Section 846 of title 18, United States Code, is amended by adding at the end the following:

“(c) Each agency operating under the law of any State or political subdivision thereof that stores or keeps explosive materials shall submit to the Attorney General, at such time as the Attorney General shall prescribe in regulations, a written report that specifies each location at which the agency stores or keeps explosive materials that have been shipped or transported in interstate or foreign commerce, and the types and amounts of such explosive materials that are stored or kept at the location.”.

(2) **REGULATIONS.**—Within 6 months after the date of the enactment of this section, the Attorney General shall prescribe the regulations referred to in section 846(c) of title 18, United States Code.

(b) **REGULATIONS GOVERNING STORAGE OF EXPLOSIVES MADE APPLICABLE TO STORAGE OF EXPLOSIVES BY AGENCIES OPERATING UNDER STATE LAW.**—Subpart K of part 555 of subchapter C of chapter II of title 27, Code of Federal Regulations, shall apply with re-

spect to the storage by agencies operating under the law of any State or political subdivision thereof of explosive materials that have been shipped or transported in interstate or foreign commerce.

SEC. 12. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect at the end of the 180-day period that begins with the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Maryland (Mr. VAN HOLLEN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5092 currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5092, the Bureau of Alcohol, Tobacco, Firearms, and Explosives Modernization and Reform Act of 2006. The bill is a bipartisan bill aimed at providing ATF with a full complement of enforcement tools needed to ensure compliance by Federal firearms licensees with Federal regulations.

A series of oversight hearings by the Crime Subcommittee showed that ATF'S existing enforcement authorities actually hinder its ability to enforce our Nation's gun laws and unfairly impact Federal firearms licensees. This legislation provides a comprehensive response to the concerns raised in those hearings.

For too many years, ATF has labored under a restrictive enforcement scheme which forces the ATF to either revoke a license or do nothing at all. This bill would provide ATF with graduated penalties so that licensees will face the possibility of civil penalty suspensions and the ultimate penalty, revocation of the license. No longer will ATF have to try to cajole licensees to comply or threaten them with heavy-handed revocation proceedings. With this measure ATF will be able to seek a penalty that fits the infraction, depending upon the seriousness of the violation.

In addition, the bill replaces the existing adjudicatory system, which consists of former ATF employees who sit as Administrative Law Judges, with a professional and neutral staff of ALJs who will sit and hear enforcement cases. The bill includes deadlines for hearings and decisions so that enforcement will be expedited. The bill also authorizes ATF to shut down licensees who pose a serious harm to the public.

The bill also remedies a significant problem of enforcement. ATF has used

its enforcement authority to threaten revocation of licenses against gun dealers who make inadvertent or technical mistakes in their paperwork. The subcommittee has heard testimony on this issue, which revealed that ATF treats virtually all errors in dealers records, no matter how few or how minor, as willful violations.

For example, a witness cited that a licensee received a revocation notice for writing a "Y" or an "N" instead of writing out "yes" or "no" on a firearms transactions form. That does not make sense. Or in a number of transactions, a revocation notice cited the failure of a firearm purchaser to identify country of residence, although the purchaser listed county of residence.

Such enforcement activities are not fair to any notion of due process. The bill clarifies that violations must be knowing and intentional violations versus good faith or technical mistakes in recordkeeping.

I urge my colleagues to vote in favor of this bipartisan bill, which will improve ATF's enforcement authorities and fairness and justice of their treatment of gun dealers.

Mr. Speaker, I reserve the balance of my time.

Mr. VAN HOLLEN. Mr. Speaker, at the outset, I yield 3½ minutes to the gentleman from Virginia (Mr. SCOTT), even though he is in support of the bill.

Mr. SCOTT of Virginia. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of H.R. 5092. I join with the gentleman from North Carolina, the subcommittee chairman, Mr. COBLE, in developing this bill, which will focus on improving the due process and effectiveness in ATF enforcement of Federal gun laws and regulations.

Currently as many as 98 percent of violations cited by ATF against gun dealers result in nothing more than a letter of reprimand or meeting with ATF officials at their office, backed by some threats of revocation. There are complaints, on the one hand, that the enforcement system treats Federal firearms licensees unfairly by focusing too much on minor technical violations with threats of revocation. So, on the occasional, though rare, occasion, where the gun dealer's license is actually revoked for what is perceived to be a minor violation, it generates perceptions of unfairness and breeds disrespect of the regulatory process.

If a violation is challenged, the system perpetuates a further appearance of unfairness by using ATF employees, responsible to their supervisors, to decide the case. On the other hand, there are complaints that ATF is unable to effectively license the licensees, because the only available sanction is revocation, and licensees note they are unlikely to be revoked for anything more than a serious violation. Therefore, they can be casual with a lesser violation since they are unlikely to receive anything less than a warning.

H.R. 5092 addresses these problems with a system of intermediate sanctions, applied on a graduated basis. For violations the ATF designates as minor, the bill makes available to the ATF fines of up to \$1,000, with cumulative fines up to \$5,000 per inspection process. After two incidences of minor violations, suspensions up to 30 days are available.

For violations designated as serious, there can be fines up to \$2,500 per violation, up to \$15,000 per inspection; and in addition to such fines, suspensions up to 90 days or revocation are also available. The ATF will decide by regulation what constitutes a minor violation or a major violation. But anything which actually endangers the public will count as a major violation.

I would also note that, under the bill, any violation that results in or could have resulted in the transfer of a firearm to a prohibited person, or prevents the dealer from complying with gun tracing or anything like that, must be considered a major violation. Therefore, the suggestion that the bill allows for unaccounted-for guns to be treated as a minor violation is not true.

To ensure fairness in the process, the bill revamps the hearing process by requiring that hearings be conducted by Administrative Law Judges.

Mr. Speaker, in summary, for minor violations, virtually all of which are now treated with just a letter of reprimand or warning, the bill provides for substantial fines and treats repeat offenders with suspensions and/or additional fines. For major violations, the vast majority of which also result only in a letter of reprimand or a warning, the bill provides for even more substantial fines, longer suspensions or revocations. That will result in improved, fair and meaningful enforcement of our gun laws.

For that reason, I urge my colleagues to support the bill.

Mr. VAN HOLLEN. Mr. Speaker, this bill says that its purpose is to, and I quote, modernize and reform, unquote, the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

But what it really does, under the guise of so-called modernization and reform, is to make it virtually impossible for Federal law enforcement officers in the ATF to revoke the licenses of those gun dealers who have violated the gun laws. It guts their power to go after the worst offenders.

You don't have to take my word for it. Let me just read to you from the first paragraph of a letter that was sent to Members of Congress on June 30 of this year:

As former officials of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, we write to urge you to oppose H.R. 5092, the so-called ATF Modernization and Reform Act. Far from modernizing ATF, this legislation would severely undermine the Bureau and protect corrupt gun dealers and gun traffickers. If passed, this bill would make it extremely difficult for ATF to successfully prosecute gun traffickers and dealers who break the law or to revoke dealers' licenses.

□ 1530

They go on to specifically point out that the requirement that the ATF prove that a gun trafficker or corrupt gun dealer not only broke the law, only specifically intended to break the law, would make it virtually impossible for ATF to successfully enforce our Nation's gun laws. That is signed by a number of former members of the ATF, including two of the former directors of ATF.

Let me also quote from David DiBetta, who is an 18-year veteran of the ATF and who is President of the Federal Law Enforcement Officers Association's ATF Division. He said it very simply: "It could be crippling."

Look, people have said when various Members of Congress have proposed new gun safety laws. They have said, just enforce the laws on the books. And we need to enforce the laws on the books. So what is especially troubling is that we are here today not to increase enforcement of the laws on the books but to weaken the ability of Federal law enforcement officers to go after the worst offenders.

I find it somewhat puzzling that we are gathered here in what has been dubbed by some so-called "Security September" to consider a bill that ties the hands of Federal law enforcement officers and gives a break to those few bad apples among the gun dealers who sell mostly to the criminal market. That is what is especially puzzling.

According to the ATF itself, nearly 60 percent of the guns that are sold to the criminal market are sold by just 1 percent of the gun dealers. The vast majority of people who are selling guns in this country are honest, law-abiding citizens. But this bill isn't designed to help them. This bill will help those who are the worst violators.

In a little bit I am going to go into how this impacts my State of Maryland where the ATF has been trying to revoke the license of one of the worst violators. But he ran down here to Capitol Hill to lobby against the ATF officials, and here we are on the floor. His voice seems to have a stronger influence than the voice of so many law enforcement officers who are out here, as well as others.

I will just close this portion with this. This has also been presented to us, this bill, as part of the so-called "American Values Agenda." This bill is part of the American Values Agenda. And I just want to know, Mr. Speaker, since when did protecting the worst violators of the law become part of an American value?

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 5 minutes to the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Mr. Speaker, I thank the gentleman from Wisconsin, chairman of the full committee.

Mr. Speaker, this bill has been mischaracterized in many ways since its inception. The distinguished gentleman from Virginia, Mr. Bobby

Scott, and I cosponsored this bill. We have attracted 152 cosponsors, including 32 Democrat Members.

I regard this bill, Mr. Speaker, as a streamlined management tool for ATF. It, furthermore, creates a revenue stream. When gun dealers are in fact found guilty of violations, fines may now be imposed, creating an incentive, if for no other reason, to comply with the law at hand.

I have had some calls from gun dealers around the country complaining about the bill because they say it opens the door for them to be the beneficiary of fines to be imposed against them. Well, if they commit violations, I think fines are appropriate and in order.

I think this is a good bill, as evidenced, as I said before, by 152 of our colleagues who obviously believe it is. It establishes graduated penalties for civil violation by Federal firearms licensees, it imposes graduated civil penalties, and it includes fines, suspensions and/or revocation against licensees who violate gun laws. The penalties are graduated based on whether the violation is a serious or a non-serious violation. The nature and the severity of the violation, the size of the firearms business and the prior record for compliance by these dealers are considered in determining the civil penalty imposed.

I think, on balance, it is long overdue. This addresses an issue that should have long ago been addressed. Under the law today, the ATF, in response to a gun dealer having committed a violation, has one of two choices: He either does nothing or he revokes.

By the way, Mr. SCOTT and I conducted at least three hearings on this matter. At one of the hearings, we learned that a purchaser of a firearm in response to an answer, and I don't recall whether it was yes or no, but let's assume for the sake of discussion it was no, the purchaser inserted the initial "N" rather than spelling out no. Well, this was deemed to be a violation. Technically, I guess it was a violation, but it was an accidental, incidental violation. Obviously, there was no willfulness involved, nothing for which the door should be slammed upon a dealer. I think this bill will provide this sort of latitude and enlarge the parameters as the ATF goes about its business of enforcing the laws of our land.

Finally, I don't mean to speak for Mr. SCOTT, but I think neither Mr. SCOTT nor I are interested in hamstringing the ATF. I am pro-ATF, but I know for a fact that in some instances the ATF agents have become heavy-handed, maybe even unruly, particularly in the Virginia situation. So I think this will address that problem.

I find it very interesting, Mr. Speaker, and I have told the chairman this earlier, the silence has been deafening as far as response from the ATF. Gun owners of America, they have not come to me in opposition to this bill.

So I want to thank my good friend from Virginia, Mr. SCOTT, Mr. Vassar and our very able staff on our side, Michael and his assistants. We have put together a good piece of legislation. I urge its passage.

Mr. VAN HOLLEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, I thank the distinguished gentleman from Maryland, who has put so much of his time and intelligence into an examination of H.R. 5092, which is called the "Modernization and Reform Act."

This bill is taken up as the reported incidence of gun violence continues to rise. It is truly unfortunate that some would advance a proposal such as this, because this measure only threatens to make a troubling situation even more problematic.

Earlier this month, the Department of Justice told us that criminal gun violence grew by nearly 50 percent between the years 2004 and 2005. And up until now, what has been the majority's response to this growing epidemic? Well, simply to take up a bill that will only lead to an additional increase in the number of illegal firearms that on a daily basis constantly go on our streets and communities.

The measure before us, ladies and gentlemen, promises to all but eliminate the ATF's current authority to revoke the Federal firearms licenses of corrupt dealers. If enacted, it would make it virtually impossible for ATF to shut down rogue gun dealers by elevating current burden of proof requirements beyond that of any other major industry.

So let us understand: This is not about going after honest firearms dealers, which constitute the majority of those in the trade. It is not about that. This is about giving a break to the rogue dealers.

This is what is a bit disturbing, because we create in this proposal two vague classifications of gun laws: the serious and the non-serious. It allows for license revocation only for serious violations. But it, unfortunately, defines these violations in such a way that enforcement would be extremely rare.

It excludes many violations that are, in fact, quite dangerous, such as when a gun dealer has numerous weapons lost from its inventory with no record of sale. The bill would require Alcohol, Tobacco and Firearms to automatically stay or postpone the imposition of a fine, a suspension or revocation pending completion of an administration hearing, no matter how egregious the violation.

This standard strongly favors the violator and should be changed so that the alleged violator is required to prove the likelihood of the success of his challenge, as is the current practice for most civil proceedings.

Keeping dangerous firearms out of the hands of violent criminals con-

tinues to be one of the most pressing concerns of our Nation. I know somebody besides me is going to talk about the newly released data that shows a total of 3,012 children and teens were killed by gunfire in the United States in one year. That roughly comes out to approximately one child every 3 hours, eight children every day, and more than 50 children every week.

This is what we are legislating under a suspension of the rules. I predict that this suspension is in big trouble, because more and more people are listening to the remarks of the gentleman from Maryland, who has made it clear that most of the community that enforces gun laws is against this.

Now, let's look at it globally. American children are more often at risk from firearm-related injuries and fatalities than any other industrialized nation on the planet. Firearms were reportedly used to kill 19 young people in Great Britain, 57 in Germany, 153 in France, and a staggering 5,285 children in the United States.

As a concerned Member of Congress who serves on this committee, we need to do more to protect our children, and not less. To protect our children and adequately address such problems, we must empower the ATF with the necessary tools and resources to properly police unscrupulous firearms dealers. That is what this measure is about. Unfortunately, the proposals contained therein have taken us in the opposite direction.

So I conclude by pointing out why I join in opposition to this measure. Because the International Brotherhood of Police Officers is against this measure, because the International Association of Chiefs of Police is opposed to this measure, because the Major Cities Chiefs of Police is opposed to this measure, and because the Attorney General of California and two former directors of the Bureau are opposed to this measure.

So I urge my colleagues to let common sense prevail and let the interests of our citizens trump the rogue dealers who have a mysterious way of keeping losing weapons in their inventory with no record of sale. We are on to them. We know what it means. Nobody here is that naive.

□ 1545

So here, ladies and gentlemen, is going to be a very important test, and I hope that the majority of those that will vote on this measure will join me in causing a defeat in the suspension of this measure, H.R. 5092.

SEPTEMBER 18, 2006.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: The Major Cities Chiefs write to express our strong opposition to H.R. 5092, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) "Modernization and Reform" Act. This legislation would have a devastating effect on the ability of law enforcement to stem the flow of firearms from lawbreaking gun dealers to violent criminals.

H.R. 5092 would make it virtually impossible for ATF to revoke the licenses of gun dealers who violate federal law. Instead, ATF would be limited to imposing minimal fines and temporary suspensions, but only if it met a new, extraordinary burden of proof that would make even these meager sanctions incredibly rare. If H.R. 5092 is enacted into law, ATF's ability to stop corrupt gun dealers from supplying firearms to the criminal market will be crippled.

For example, H.R. 5092 redefines violations of many of our nation's gun laws as only "minor" violations. License revocation would be prohibited for these so-called "minor" violations, no matter how many times a dealer violated these federal laws or how egregious those violations may be. Included as "minor" violations are what are, in fact, serious violations such as a dealer's failure to account for large numbers of firearms missing from its inventory. A dealer may claim that hundreds or thousands of weapons have been "lost," preventing ATF from completing a trace of any such guns recovered at crime scenes. Missing firearms also frequently indicate "off-the-book" sales to gun traffickers or felons. Yet H.R. 5092 would remove ATF's power to revoke the licenses of these gun dealers, greatly jeopardizing ATF's ability to enforce federal gun laws and our ability to use crime gun traces to protect our communities from illegal guns.

Another dangerous provision of H.R. 5092 would allow gun dealers whose licenses have been revoked for violations of federal law to continue operating for 60 days after revocation. ATF would have no discretion to waive this 60-day sales period, even if it found that a dealer posed a dire threat to public safety. The idea that ATF would be required by law to allow a lawbreaking gun dealer to continue selling guns for 60 days after its license has been revoked simply makes no sense.

It is not hard to see the devastating effect that H.R. 5092 would have on law enforcement around the country. Crime gun data compiled by ATF shows that just 1% of our nation's gun dealers supply nearly 60% of all crime guns. If ATF is unable to revoke the licenses of corrupt gun dealers, our communities will continue to be flooded with firearms from these irresponsible gun sellers. It is imperative that ATF have the power to stop the flow of guns from, lawbreaking gun dealers to violent criminals in our cities.

We urge you to stand up for law enforcement and oppose H.R. 5092. Thank you.

Sincerely,

HAROLD L. HURTT,
President,
Major Cities Chiefs.

SEPTEMBER 22, 2006.

DEAR MEMBERS OF CONGRESS: As former officials of the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"), we write to urge you to oppose H.R. 5092, the so-called ATF "Modernization and Reform Act," passed by the House Judiciary Committee on September 7, 2006. Far from "modernizing" ATF, this legislation would severely undermine the Bureau and protect corrupt gun dealers. If passed, this bill would make it extremely difficult for ATF to revoke the licenses of gun dealers who break the law.

Federal law already impedes ATF's law enforcement powers by requiring it to meet a heightened burden of proving a "willful" violation of federal law to revoke the licenses of dealers who blatantly break the law. This "willfulness" standard was imposed by Congress in 1986. To meet this standard for license revocations, ATF must show that a dealer was plainly indifferent to known legal obligations, for example, by proving that the dealer repeatedly broke the law. *See, e.g.,*

Willingham Sports, Inc. v. ATF, 415 F.3d 1274, 1276 (11th Cir. 2005). H.R. 5092 would redefine the definition of "willful," overriding court rulings on the meaning of this burden of proof. H.R. 5092 would instead require that ATF prove a lawbreaker's specific mental state and purpose. This requirement that ATF prove that a corrupt gun dealer not only broke the law but also specifically intended to break the law would make it virtually impossible for ATF to revoke federal firearms licenses. There is no reason to protect lawbreakers, at the expense of public safety, by requiring such an extraordinary burden of proof.

H.R. 5092 also redefines most violations of federal gun laws as "minor." It prohibits license revocations for such so-called "minor" violations, no matter how egregious the violations. License revocations would be limited to so-called "serious" violations. The bill excludes from so-called "serious" violations the most common and serious record keeping violations for which ATF is able to produce evidence to revoke the licenses of rogue dealers. Such record keeping violations include the failure to account for weapons missing from inventory, a dangerous practice that may be used by a federally licensed dealer to mask illegal sales or gun trafficking. A dealer may claim that hundreds or thousands of weapons have been "lost," preventing ATF from completing a trace of any such guns recovered at crime scenes. H.R. 5092 would remove ATF's power to revoke the licenses of such gun dealers, greatly jeopardizing ATF's ability to enforce federal gun laws and protect our communities from illegal guns.

H.R. 5092 also grants ATF the ability to impose fines and temporary license suspensions, although it then places such severe impediments on ATF's ability to impose these sanctions as to make them nearly meaningless. For example, it caps damages at \$15,000 for all "serious" violations uncovered by an ATF inspection and \$5,000 for "minor" violations. Under H.R. 5092, if ATF uncovered 5,000 violations at one inspection because of massive numbers of "lost" guns with no record of sale, it would be limited to a \$5,000 cap in fines, or an average of only a meager \$1 fine per violation. It also requires stays of fines and temporary license suspensions in most cases, through all administrative hearings and court appeals. This means that an ATF attempt to impose a few thousand dollars in fines or suspend a license for a month could be delayed through years of litigation. It also requires courts to review ATF administrative findings de novo, requiring courts to reconsider a case without giving any weight to the findings of an administrative hearing, and allows a dealer to introduce new evidence in court that was not submitted at the agency hearing. These procedures simply encourage prolonged litigation as a way of delaying fines or license suspension through years of court battles. Instead of these illogical limits and procedures, ATF should be allowed to impose real fines and license suspensions without automatic stays for the most egregious violators.

H.R. 5092 also contains other unreasonable restrictions on ATF that favor lawbreakers. It allows even the most dangerous violators of federal law to continue selling guns for 60 days after they have had their licenses revoked or if their licenses expire. ATF should have the discretion to limit such sales where they pose a risk to the community and the nation's law enforcement officers. The bill also redefines record keeping requirements by making it more difficult to sanction dealers who fail to keep proper records of their firearms. For example, it would end the requirement that dealers keep their records organized according to long-standing regula-

tions, instead requiring them simply to keep "custody" of such records, in any manner or method chosen by the dealer. This would shield rogue dealers by requiring ATF inspections to sort through records kept in disarray, greatly increasing the cost and length of inspections and the likelihood that record keeping violations will not be discovered.

ATF already faces severe constraints in its ability to crack down on gun dealers who violate the law. H.R. 5092 would further jeopardize ATF's ability to enforce the law against these rogue elements. Instead of enacting H.R. 5092, Congress should support legislation that gives ATF the power to impose fines and license suspensions on gun dealers who violate the law without extraordinarily high burdens of proof, automatic stays, and unreasonably low maximum fines.

Stephen Higgins, Director (Ret.) ATF 1982-1993,

Joseph J. Vince, Jr., Chief (Ret), Crime Gun Analysis Branch, ATF,

Gerald Nunziato, Special Agent in Charge (Ret), National Tracing Center, ATF,

Frank Wandell, Special Agent & District Senior Operations Officer (Ret), ATF,

Rex Davis, Director (Ret.) ATF 1966-1978, William Vizzard, Special Agent in Charge (Ret), ATF,

Julius Wachtel, Resident Agent in Charge (Ret), ATF, Long Beach Field Office,

Gerald C. Benedict, Special Agent in Charge, Louisville District (Ret), ATF.

STATE OF CALIFORNIA,
OFFICE OF THE ATTORNEY GENERAL,
Sacramento, CA.

Re: H.R. 5092.

HON. F. JAMES SENSENBRENNER, JR.,
Chairman, House Judiciary Committee, House of Representatives, Washington, DC.

DEAR CONGRESSMAN SENSENBRENNER: I am writing to express the strong opposition of the California Department of Justice to H.R. 5092, which is now pending in the United States Congress. If H.R. 5092 were to become law, it would dangerously undermine the regulation of the nation's gun dealers on both the state and federal level.

H.R. 5092 would eviscerate the ability of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to regulate federally licensed firearms dealers (FFLs). Under H.R. 5092, ATF would only be able to revoke a license when it proved that a dealer "willfully" committed a "serious" violation. Only three types of violations would be classified as "serious" under H.R. 5092. All other firearms and weapon offenses (including the importation, possession or sale of a machine gun; possession of a firearm without a serial number; possession of a bomb, grenade, rocket or missile) would be considered "non-serious."

H.R. 5092's distinction between "serious" and "non-serious" violations would undercut the enforcement of state laws, as well as federal laws. Federal law makes it a felony to sell a firearm in violation of a state law [18 U.S.C. §922(b)(2)]. For example, it is a crime for an FFL to sell a rifle to a California resident that is considered an assault weapon under California law. Under current law, the dealer would be subject not only to criminal prosecution, but also FFL revocation for the offense. Under H.R. 5092, ATF would be unable to revoke a dealer's license for failure to comply with state law because that crime would not be considered a "serious" violation.

Even "serious" violations by firearms dealers would rarely result in license revocation. H.R. 5092 would require that in order to revoke an FFL, ATF would have to prove that

the dealer deliberately intended to commit the "serious" violation. Current law allows ATF to revoke a federal firearms license in cases where a dealer "willfully" violates a provision of the Gun Control Act of 1968, or any rule or regulation issued pursuant to the Act. (18 U.S.C. §923(e).) A person commits a willful violation when the person knows of his legal duty, and disregards or is plainly indifferent to that duty. (*Perri v. Department of the Treasury*, 637 F.2d 1332, 1336 (9th Cir. 1981).)

H.R. 5092 redefines the term "willfully" in a radical manner that conflicts with common sense and legal precedent. While Merriam-Webster's Dictionary of Law defines the term "willful" to mean "not accidental: done deliberately or knowingly and often in conscious violation or disregard of the law, duty, or the rights of others," H.R. 5092 gives it a completely different meaning: "intentionally, purposely, and with the intent to act in violation of a known legal duty."

By redefining a familiar, accepted and well-established term, H.R. 5092 would make it virtually impossible for ATF to shut down rogue gun dealers, even when their violations are numerous, repeated, or linked to crimes involving guns. The standard to prove a "willful" violation is unprecedented in administrative law and more difficult to prove the mental state required in most criminal prosecutions. I am aware of no other federal regulatory agency that is held to such a high standard in its attempt to regulate licensees.

The only sanction for "non-serious" violations under H.R. 5092 would be temporary suspension and fines, even when the violations are numerous and repeated. The fines set by H.R. 5092 appear to be much lower than fines set in administrative schemes for other licensees. Fines can only be assessed by ATF, furthermore, for "willful" violations of "non-serious" provisions.

For these reasons, and many others, H.R. 5092 would directly and negatively affect the State of California. The Firearms Division of California DOJ works closely and collaboratively with ATF to monitor firearms dealers in the state for compliance with state and federal laws. California DOJ inspectors notify ATF when they observe dealers who are in violation of federal law and are likewise notified when ATF agents observe state violations. Our ability to monitor dealers in the state will be compromised if ATF's authority to enforce federal law is weakened.

At a time when it is paramount for law enforcement agencies to work collaboratively to combat the threat of terrorism, it is outrageous that legislation would be proposed to hamper law enforcement cooperation. Without any evidence that ATF has abused its ability to revoke FFLs, it is outrageous to propose gutting that power. In fact, H.R. 5092 undercuts the fundamental rationale for the Gun Control Act of 1968: "to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence." Therefore, I urge you in the strongest terms to reject it.

Sincerely,

BILL LOCKYER,
Attorney General.

LAW ENFORCEMENT OPPOSITION TO H.R. 5092,
THE BUREAU OF ALCOHOL, TOBACCO, FIRE-
ARMS AND EXPLOSIVES (ATF) MODERNIZA-
TION AND REFORM ACT

U.S. CONGRESS,
The Capitol,
Washington, DC:

The undersigned law enforcement organizations/association and law enforcement executives represent law enforcement officers who are actively engaged in providing law

enforcement, public safety and homeland security services in the United States. We are writing to join with the Major City Chiefs Association to express our strong opposition to H.R. 5092, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) "Modernization and Reform" ACT. This legislation would have a devastating effect on the ability of law enforcement to stem the flow of firearms from lawbreaking gun dealers to violent criminals.

H.R. 5092 would make it virtually impossible for ATF to revoke the licenses of gun dealers who violate federal law. Instead, ATF would be limited to imposing minimal fines and temporary suspensions, but only if it met a new, extraordinary burden of proof that would make even these meager sanctions incredibly rare. If H.R. 5092 is enacted into law, ATF's ability to stop corrupt gun dealers from supplying firearms to the criminal market will be crippled.

For example, H.R. 5092 redefines violations of many of our nation's gun laws as only "minor" violations. License revocation would be prohibited for these so-called "minor" violations, no matter how many times a dealer violated these federal laws or how egregious those violations may be. Included as "minor" violations are what are, in fact, serious violations such as a dealer's failure to account for large numbers of firearms missing from its inventory. A dealer may claim that hundreds or thousands of weapons have been "lost," preventing ATF from completing a trace of any such guns recovered at crime scenes. Missing firearms also frequently indicate "off-the-book" sales to gun traffickers or felons. Yet H.R. 5092 would remove ATF's power to revoke the licenses of these gun dealers, greatly jeopardizing ATF's ability to enforce federal gun laws and our ability to use crime gun traces to protect our communities from illegal guns.

Another dangerous provision of H.R. 5092 would allow gun dealers whose licenses have been revoked for violations of federal law to continue operating for 60 days after revocation. ATF would have no discretion to waive this 60-day sales period, even if it found that a dealer posed a dire threat to public safety. The idea that ATF would be required by law to allow a lawbreaking gun dealer to continue selling guns for 60 days after its license has been revoked simply makes no sense.

It is not hard to see the devastating effect that H.R. 5092 would have on law enforcement around the Country. Crime gun data compiled by ATF shows that just 1% of our nation's gun dealers supply nearly 60% of all crime guns. If ATF is unable to revoke the licenses of corrupt gun dealers, our communities will continue to be flooded with firearms from these irresponsible gun sellers. It is imperative that ATF have the power to stop the flow of guns from lawbreaking gun dealers to violent criminals in our cities.

We urge you to stand up for law enforcement and oppose H.R. 5092. Thank you.

Major City Chiefs Association.
International Brotherhood of Police Officers.
National Black Police Association.
School Safety Advocacy Council.
National Latino Police Officers Association.

Minnesota Association of Chiefs of Police.
Michigan Association of Chiefs of Police.
Chief R. Gil Kerlikowske, Seattle Police Department, Seattle, WA.
Commissioner Sylvester Johnson, Philadelphia Police Department, Philadelphia, PA.

Chief Scott Knight, Chaska Police Department, Chaska, MN.

Michael J. Chitwood, Superintendent of Police, Upper Darby Township Police Department, Upper Darby, Pa.

Chief Michael J. Carroll, West Goshen Township Police Department, West Chester, Pennsylvania, 4th Vice President, International Association of Chiefs of Police.

Mark L. Whitman, Police Commissioner, York, PA, IACP General Chair, State Associations of Chiefs of Police.

Curtis S. Lavarello, Executive Director, School Safety Advocacy Council, Sarasota, FL.

Mr. VAN HOLLEN, Mr. Speaker, let me thank my colleague from Michigan, the ranking member of the Judiciary Committee, Mr. CONYERS, for his leadership on this and for pointing out the law enforcement agencies that are opposed to this important legislation and in favor of the arguments that we put forth in opposition. And, again, I just cite from David DiBetta, who is the president of Federal Law Enforcement Officers Association ATF division, who said: "This bill would be crippling to their efforts to enforce our gun laws."

INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS,

Alexandria, VA, September 20, 2006.

U.S. CONGRESS,
Washington, DC.

DEAR REPRESENTATIVE: The International Brotherhood of Police Officers (IBPO), representing federal, state and local police officers around the country, strongly opposes H.R. 5092, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) "Modernization and Reform" Act. This senseless legislation would serve only to cripple law enforcement's ability to track and prevent the flow of illegal guns across the country.

H.R. 5092 diminishes the ATF's ability to revoke, suspend or fine gun dealers by unnecessarily raising the standard of proof required for adverse action from federal investigators against gun dealers who blatantly violate federal law regulating the sale and transfer of guns.

In addition, H.R. 5092 reclassifies serious violations of federal gun to lesser or "minor" violations resulting in negligent or criminal dealers being held to a lower standard, and in some cases, giving them a free ride because guns claimed as "lost" from their inventory would be impossible to trace if recovered at a crime scene.

Another shameful provision of H.R. 5092 would allow gun dealers whose licenses have been revoked for violations of federal law to continue operating for 60 days after revocation. The ATF would have to allow these negligent or criminal gun dealers to continue to sell guns for 60 days after issuing a revocation.

The IBPO stands strongly against H.R. 5092 because of its detrimental effects to proven, successful crime fighting tools used by federal agents and local police. A vote for H.R. 5092 in any form is a vote against police officers and it's a vote against the safety of our communities. H.R. 5092 serves no justifiable purpose to law enforcement or legitimate gun owners.

We urge you to vote against this unnecessary and dangerous legislation.

Respectfully,

STEVE LENKART,
Director of Legislative Affairs.

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
Washington, DC, 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,

ROBERT D. EVANS.

BRADY CAMPAIGN—TO PREVENT GUN
VIOLENCE

HOW H.R. 5092 WOULD PROTECT CORRUPT GUN
DEALERS AND WEAKEN FEDERAL GUN LAWS

H.R. 5092, the so-called Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) "Modernization and Reform Act," would undermine law enforcement and protect corrupt gun dealers. The bill would make it virtually impossible for ATF to revoke the licenses of gun dealers who violate federal law.

The problem of rogue gun dealers is vividly illustrated by National Rifle Association Board Member Sanford Abrams, operator of Valley Gun shop of Baltimore, Maryland. Valley Gun violated federal law over 900 times, and after nearly a decade of violations, ATF was family able to revoke its firearms license. The U.S. Department of Justice called Valley Gun an "irresponsible gun shop" that has engaged in "dangerous operations" as a "serial violator" of federal gun laws.

Under H.R. 5092, in cases like Abrams' where an irresponsible dealer was serially violating federal gun laws, the burden imposed by the legislation to show "willfulness"—defined in the bill as requiring a specific intent to break the law—would make license revocation nearly impossible. Because the bill imposes the same new definition of "willfulness" for fines and suspensions, those lesser remedies would be unrealistic as well and, in any event, could be delayed through years of legal appeals.

H.R. 5092 CHANGES THE DEFINITION OF A "WILLFUL" VIOLATION OF FEDERAL LAW TO PROTECT CORRUPT GUN DEALERS (SECTION 4)

Federal law currently places severe restraints on ATF's ability to revoke licenses from gun dealers who break the law. Even though ATF inspections often reveal scores of illegal acts by gun dealers, ATF rarely is able to revoke a dealer's federal firearms license. In 2003, ATF inspectors found violations at 1,812 gun dealers, averaging over 80 violations per dealer. Despite this large number of dealers with multiple violations, ATF issued license revocation notices for only 54 dealers that year.

ATF's limited ability to revoke licenses of lawbreaking gun dealers is due, in part, to the overly burdensome requirement that ATF prove a dealer "willfully" violated the law. Courts have defined "willfulness" as requiring proof that the dealer not only broke the law but also knew that his or her conduct was unlawful. Yet H.R. 5092 would make it even more difficult to revoke the licenses of gun dealers who break the law by changing the current legal definition of "willfulness" to require that ATF prove that a lawbreaker not only knew of the requirements of the law and broke the law, but also specifically intended to violate the law. H.R. 5092's requirement that ATF prove a lawbreaker's specific mental state and purpose would present a nearly insurmountable burden. This dangerous provision is contrary to Supreme Court precedent and would cripple ATF's ability to enforce firearms laws.

H.R. 5092 REDEFINES MANY SERIOUS FEDERAL GUN CRIMES TO BE "MINOR" VIOLATIONS AND PROHIBITS DEALER LICENSE REVOCATION FOR THESE CRIMES (SECTION 2)

H.R. 5092 re-classifies federal gun laws as "serious" and "minor," and allows license revocation only for so-called "serious," willful violations. So-called "serious" violations would be rare and would exclude many violations that are extremely dangerous, such as when a dealer has "lost" numerous weapons from its inventory with no record of sale. Even so-called "minor" violations would be nearly impossible to prove, as these also would require proof of a specific intent to break the law. For example, ATF occasionally revokes licenses of dealers who fail to maintain records for hundreds or thousands of guns. Without proper records, any such guns recovered in crime would be virtually untraceable, severely hindering law enforcement's ability to solve gun crimes. Yet it would be nearly impossible for ATF to prove that a dealer failed to maintain records with the specific intent to break the law, as this bill requires.

H.R. 5092 ALLOWS ATF TO IMPOSE MEAGER FINES AND TEMPORARY LICENSE SUSPENSIONS, BUT ONLY IF IT MEETS A NEARLY INSURMOUNTABLE BURDEN OF PROOF AND ONLY AFTER LENGTHY DELAYS FAVORING LAWBREAKERS (SECTION 2)

H.R. 5092 would allow ATF to impose fines up to \$5,000 for so-called "minor" violations of federal law and \$15,000 for "serious" violations, but only if ATF proves a dealer specifically intended to violate the law, making it unlikely that ATF could impose any fines

at all. This maximum fine applies to all violations uncovered at an inspection, no matter how many occurred. For example, ATF recently revoked the license of Trader Sports, a San Leandro, California gun dealer that supplied hundreds of guns to criminals. ATF found 7,477 firearms unaccounted for and dozens of other violations at Trader Sports, but under H.R. 5092 the maximum possible fine would be \$15,000, or an average fine of only a few dollars per violation. In comparison, the Consumer Product Safety Commission can impose fines on sellers of most unsafe consumer products of \$8,000 per violation, up to a maximum of \$1,825,000.

The bill also allows license suspension of up to 30 days for so-called "minor" violations and 90 days for "serious" violations. The bill would require proof of a specific intent to violate the law in order to suspend a license, however, making it unlikely that ATF could meet this difficult burden. Moreover, suspensions could only be imposed for so-called "minor" violations after a gun dealer violated federal gun laws on two prior occasions.

The bill would require ATF to stay (postpone) a fine, suspension or revocation through administrative hearings and years of possible court appeals, in most cases. It also requires courts to review ATF administrative findings de novo, giving no weight to administrative judges' findings, rendering the administrative process largely meaningless and a waste of resources.

H.R. 5092 ALLOWS GUN DEALERS WHO VIOLATE FEDERAL LAW TO CONTINUE SELLING GUNS EVEN AFTER THEY HAVE HAD THEIR LICENSES REVOKED (SECTION 8)

H.R. 5092 would allow dealers who violate federal gun laws to continue selling guns for 60 days after they have had their license revoked for willful violations of federal gun laws or after their federal firearms license expires, even if they pose a dire threat to public safety. This makes a mockery of license revocation by allowing dealers to evade revocation and continue operating even though they committed federal crimes, and allows dealers to temporarily avoid renewing licenses as currently required by federal law.

H.R. 5092 PROTECTS GUN DEALERS WHO FAIL TO KEEP TRACK OF THEIR GUNS (SECTION 10)

H.R. 5092 redefines federal law to make it more difficult to sanction dealers who fail to keep proper records of their firearms and allows dealers to keep records in disarray. If dealers are not required to properly maintain records, it makes it much more difficult for ATF to determine if firearms are missing or if the dealer is failing to keep proper records of firearm transactions. This provision would allow dealers to attempt to hide missing firearms by maintaining records in disarray, but still in their "custody." For example, a dealer who had been in business for 50 years could simply throw all of its files in a back room, maintaining "custody" of them but making it very difficult for ATF to audit the dealer's records to discover violations.

VIOLENCE POLICY CENTER,
Washington, DC, September 22, 2006.

Hon. JOHN CONYERS,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE CONYERS: The Violence Policy Center (VPC) urges you to oppose H.R. 5092. This dangerous legislation will only make it harder to crack down on illegal gun trafficking—even as new Department of Justice statistics show a steep increase in gun crime. H.R. 5092 is scheduled for House floor consideration under suspension of the rules on Monday, September 25, 2006.

H.R. 5092 will turn Supreme Court precedent on its head by significantly increasing

the burden of proof required to revoke the license of a corrupt gun dealer by changing the definition of "willfulness" as it applies to revocation proceedings. Section 4 of the bill would establish a definition of "willfulness" that would operate as an "ignorance of the law" excuse for corrupt gun dealers.

This major weakening of current law will make it much more difficult to stop illegal gun trafficking since corrupt gun dealers are the number one source of illegally trafficked firearms according to the Bureau of Alcohol, Tobacco, Firearms and Explosives' 2000 report *Following the Gun*.

The Supreme Court stated in *Bryan v. U.S.*, 534 U.S. 184 (1998) that a "willfulness" standard that excuses ignorance of the law only applies in the context of highly technical tax code and cash reporting violations that present "the danger of ensnaring individuals engaged in apparently innocent conduct." The court found such a heightened standard to be unnecessary and inappropriate in the context of illegal gun trafficking.

Rather than making it easier for corrupt dealers to skirt the law, the focus should be on stopping illegal gun trafficking. The Violence Policy Center urges you to oppose H.R. 5092.

Sincerely,

M. KRISTEN RAND,
Legislative Director.

Mr. Speaker, I yield 5 minutes to the gentlewoman from New York (Mrs. MCCARTHY) and thank her for her leadership on this very important matter.

Mrs. MCCARTHY. Mr. Speaker, I have to say, in my 10 years in Congress I have never seen a bill with a more misleading name than this legislation. Instead of modernizing or reforming the ATF, it makes it tougher for ATF to crack down on illegal guns. I know the vast majority of gun sellers are honest, and we know that. But why does Congress feel the need to protect the small minority who sell guns illegally?

This legislation ties the hands of the ATF in its dealings with 1 percent, you have heard that figure before, 1 percent. Why aren't we going after that 1 percent? I know the mayor of New York has been trying to go after that 1 percent, because in New York that is where the illegal guns are coming from, this 1 percent, and they are killing our police officers, they are killing our citizens. And you wonder why some of us get so up in arms about this.

We should be giving the ATF the tools to crack down on these illegal guns. The bill relaxes recordkeeping requirements by no longer requiring dealers to properly maintain the records. Not maintaining the records. Again, it was said by my colleague that we should be enforcing the laws on the books. All of us agree on that, and there is not one of us that is trying to take away the right of someone to own a gun. But, again, the NRA comes down here, and we hear on how many people have signed on to this bill. Actually, more than that will be there because they are petrified of the NRA. Why? Because the NRA will organize their members and basically just go after that Member if they dare to vote against them.

But even if the ATF is able to revoke a corrupt unlicensed dealer, this bill gives the dealer 60 days to sell off the remaining inventory. How crazy is that? You know, we hear constantly that we are after DWI drivers all the time. And if a tavern is proven to be selling constantly to underage drivers, they lose their license. They don't have any time to sell off all their liquor. I mean, let's have a little common sense here. I mean, we seem to be going backwards constantly in going forward in trying to protect our police officers and certainly our front liners out there.

Proponents of this bill will tell you that it is to protect honest gun sellers who are unfairly targeted by the ATF. I don't know why the gun dealers aren't standing up and saying let's go after these unscrupulous gun dealers. They are the ones who are giving them the bad name. The current law already protects honest dealers.

In fact, while the ATF regularly uncovers illegal acts of gun dealers, it is very rare that it is able to revoke their license. In fact, and the last we have is from 2003, the ATF found violations at more than 1,800 gun dealers in 2003. The ATF found an average of 80 violations. That is not an overlook, 80 violations, that is someone that is committing a crime at these gun dealers, but only issued license revocation notifications at 54.

The ATF is doing its job. It is looking at who the bad guys are and going after them. It is clear that only the worst violators lose their licenses. Every gun dealer who acknowledges selling a gun to a criminal reflects poorly on the entire gun industry. It is in the best interests of the gun industry that dishonest and negligent sellers are forced to shut their doors. This is a misguided piece of legislation that allows a small minority of corrupt gun sellers to continue to sell guns to criminals without penalties.

You know, we are starting to see crime go up continuously in our small communities, in our cities. We are seeing guns flooding our streets; we see gangs being able to buy guns illegally. Where are they coming from? Where are they coming from? Our police departments are seeing statistics going up constantly, and especially from 2005 to 2006. We have seen more police officers die in the line of duty killed by illegal guns. Why aren't we doing something to crack down on the illegal guns? That is what this country should be doing; that is what this Congress should be doing, and not certainly backing down to the NRA because we have an election coming up. This is juice for all their members. It is crazy.

You know, this debate on gun violence certainly since I have been here has gone backwards and backwards and backwards. We talk about how many people have died every year because of gun violence. A lot of that is accidental deaths, a lot of those are certainly guns that people have in their homes.

No one even talks about the survivors, how it is costing this health care system over \$1 billion a year because of gun violence. We can do a better job. We should be doing a better job.

Mr. VAN HOLLEN. Mr. Speaker, I urge opposition to the bill.

Mr. KING of New York. Mr. Speaker, I rise today in opposition to H.R. 5092 the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE).

We have been granted the right to bear arms; however, this right is granted to those who can operate safely and responsibly within the auspices of the law. Those who cannot operate within the law should not be given greater opportunities to obtain weapons. Rather than address this problem, this legislation actually weakens our current law, and makes it easier for dangerous weapons to get into the hands of criminals. Instead of weakening current law, we should be giving law enforcement better tools to combat gun trafficking.

According to a 2000 ATF report, corrupt gun dealers are the number one source of illegal firearm trafficking. With that information, we should be working to impose tighter measures and better law enforcement, so that we can protect innocent Americans who often fall victim to crimes caused by firearm abuse. Instead, H.R. 5092 does just the opposite by sympathizing with the gun dealer and adding obstacles to law enforcement.

Under current law, the ATF can punish gun dealers for illegal gun sales. H.R. 5092 makes punishment more difficult. In addition, this bill would prohibit the ATF from considering large amounts of "lost" firearms as a violation of law. It is this same type of "lost inventory" that armed the DC sniper.

It is important that we give our law enforcement agents the proper tools to end gun trafficking, not make it more difficult. It is unthinkable to me to support any type of legislation that favors the rights of criminals over the protection of our friends and family. Finally, I would like to commend Mayor Mike Bloomberg for his dedication to this issue and his opposition to this legislation. I also oppose H.R. 5092, and I encourage my colleagues to do the same.

Ms. WATSON. Mr. Speaker, I rise in opposition to H.R. 5092. This bill does not protect small businesses. In fact, it victimizes them, and the general public, because it would make it more difficult for the Federal government to shut down the rogue gun dealers who are arming the gangs that plague our neighborhoods.

Mr. Speaker, the vast majority of American gun dealers are legitimate businesspeople. They play by the rules, and deserve to have their government support them rather than harass them. The problem is that H.R. 5092 doesn't protect legitimate gun dealers. In fact, there is absolutely no evidence that legitimate gun dealers are falling victim to an overzealous Federal government.

In reality, H.R. 5092 is a giveaway to those few gun dealers who just can't be bothered to comply with the law. As such, H.R. 5092 doesn't help average, law-abiding gun dealers. Instead, it puts them at a disadvantage to the few bad actors who see dollar signs in the carnage that plagues our neighborhoods.

Most gun dealers know that they have a unique responsibility to make sure their products do not fall into the wrong hands. And so,

they put in the extra effort to make sure they keep track of the guns in their inventory. But why should any small businessperson put in the effort to comply with their responsibilities if the Federal government cannot shut down the guy across the street who acts irresponsibly? Why would anyone take the time and expense to do the right thing if they are going to be run out of business by the few bad apples doing the wrong thing?

This is the danger we face if H.R. 5092 becomes law. This law will not protect law-abiding gun dealers. In fact, it will make them victims of the lawbreakers, by tying the hands of the hard-working Federal agents who work to keep illegal guns off our streets. I urge my colleagues to vote "no" on H.R. 5092, and protect small businesspeople and the general public from those few gun dealers who are too irresponsible to comply with the law.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I appreciate this opportunity to explain my concerns with the bill, H.R. 5092. My primary concern with the bill is that it hampers the ability of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF) to put corrupt gun dealers out of business, and thus help reduce the carnage taking place in many of the Nation's major urban centers.

H.R. 5092 was introduced by Mr. COBLE and Mr. SCOTT as a bipartisan attempt to address enforcement issues raised during ATF oversight hearings conducted by the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security. Specifically, those hearings focused on ATF's Richmond gun show enforcement program and generally on ATF's licensing and revocation authority over Federal Firearms Licensees.

The bill addresses a number of issues relating to ATF's enforcement authority, including authorization of civil penalties (e.g., fines and suspensions); creation of independent Administrative Law Judges to hear enforcement cases; definition of serious and non-serious violations; DOJ Inspector General investigation of ATF gun show enforcement program; limitation on ATF authorities; clarification of several enforcement regulations; and, most significantly, modification of the requisite intent for violations.

The bill provides in Sec. 4, entitled "Definition of Willfully," that "willfully" is defined as: "intentionally, purposely, and with the intent to act in violation of a known legal duty."

My concern with this provision of the bill is that it defines "willfully" to impose a much higher standard of proof upon law enforcement officials than currently. There does not appear to be any compelling reason for increasing the government's evidentiary burden at this time. The definition of willfulness is well-settled in the law and means that defendant knew his conduct was unlawful; not that he knew of the specific statute he is accused of violating or had the specific intent to violate that precise provision.

Mr. Speaker, changing the evidentiary standards governing elements of penal offenses should be done sparingly and with the utmost care. This is particularly true where, as here, we do not have the benefit of the considered views of thoughtful criminal law scholars, experienced prosecutors and police officers with front-line experience, or the Department of Justice.

The redefinition of "willfully" contained in the bill illustrates my concern. As I noted, the bill

defines willfully as "intentionally, purposely, and with the intent to act in violation of a known legal duty." This definition, however, has been repeatedly rejected by the Federal courts. *Bryan v. U.S.*, 524 U.S. 184 (1998); *U.S. v. Andrade*, 135 F.3d 104 (1st Cir. 1998); *U.S. v. Allah*, 130 F.3d 33 (2d Cir. 1997); *U.S. v. Collins*, 957 F.2d 72 (2d. 1992)

In the Bryan case, the defendant was convicted of willfully dealing in firearms without a Federal license. Specifically, the defendant did not have a Federal firearms license; he used "so-called "straw purchasers" in Ohio to acquire pistols he could not have bought himself; that he knew the straw purchasers made false statements when purchasing the guns; that defendant assured the straw purchasers that he would file off the serial numbers; and that defendant resold the guns on Brooklyn street corners known for drug dealing. Despite this conduct, defendant claimed that he could not be convicted under the Federal firearms laws unless the government proved he knew of the Federal licensing requirement. The Supreme Court rejected this claim, stating:

"the willfulness requirement . . . does not carve out an exception to the traditional rule that ignorance of the law is no excuse; knowledge that the conduct is unlawful is all that is required." 524 U.S. at 193.

Similarly, in another case, *U.S. v. Collins*, the Second Circuit rejected the argument that willfully requires proof that defendant had specific knowledge of the Federal firearms license requirements, stating:

"[T]he element of willfulness not contained in §922(a)(1) was meant to be read broadly to require only that the government prove that defendant's conduct was knowing and purposeful and that the defendant intended to commit an act which the law forbids." 957 F.2d at 76.

According to the court, the government was not required to prove more than just the defendant's general knowledge that he or she is violating the law." *Id.* at 75.

Other courts have reached similar conclusions and I list them in my statement. The point, Mr. Speaker, is that the Federal firearms license statute is and has been an important tool for law enforcement to crack down on the illegal trafficking in firearms and the wanton violence this conduct exacerbates. I do not believe that a compelling case has been made on this record to take this tool away from law enforcement. Neither does the American Bar Association nor several former directors of the ATF. Therefore, I would urge my colleagues to vote against the bill.

Mr. VAN HOLLEN. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 5092, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. VAN HOLLEN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the

Chair's prior announcement, further proceedings on this question will be postponed.

AUTHORIZING SALARY ADJUSTMENTS FOR JUSTICES AND JUDGES OF THE UNITED STATES

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5454) to authorize salary adjustments for Justices and judges of the United States for fiscal year 2007.

The Clerk read as follows:

H.R. 5454

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF SALARY ADJUSTMENTS FOR FEDERAL JUSTICES AND JUDGES.

Pursuant to section 140 of Public Law 97-72, Justices and judges of the United States are authorized during fiscal year 2007 to receive a salary adjustment in accordance with section 461 of title 28, United States Code.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Maryland (Mr. VAN HOLLEN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 5454 currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5454, to provide a cost-of-living adjustment for Federal judges in fiscal year 2007.

In 1975, Congress enacted the Executive Salary Cost of Living Adjustment Act to give judges and Members of Congress and high-ranking executive branch officials automatic COLAs accorded other Federal employees unless rejected by Congress. In 1981, Congress amended the statute by enacting section 140 of Public Law 97-92, which requires specific congressional authorization to grant judges a COLA. The legislation we consider today is substantially similar to other cost-of-living increases for Federal judges approved in previous fiscal years.

Mr. Speaker, I believe in fairness, which is why I introduced this bill to ensure that Federal judges receive a COLA when other civil servants, including Members of Congress, receive theirs. I urge Members to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I ask unanimous consent to control the remainder of the legislation under suspension.