

**FIREARM COMMERCE MODERNIZATION ACT, AND  
THE NICS IMPROVEMENT ACT**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

**H.R. 1384 and H.R. 1415**

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MAY 3, 2006  
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**Serial No. 109-107**

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Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

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U.S. GOVERNMENT PRINTING OFFICE

27-333 PDF

WASHINGTON : 2006

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# **FIREARM COMMERCE MODERNIZATION ACT, AND THE NICS IMPROVEMENT ACT**

**WEDNESDAY, MAY 3, 2006**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, the Honorable Howard Coble (Chairman of the Subcommittee) presiding.

Mr. COBLE. Good morning, ladies and gentlemen.

We're going to—let me set the ground rules for us here. Mr. Scott and I have two bills to mark up today. And once we get a working quorum, we will attend to that and suspend the hearing before us.

But until that occurs, we welcome each of you, as well as our three witnesses, to this hearing to examine the need to amend our Nation's gun laws.

Today, the Subcommittee on Crime, Terrorism, and Homeland Security is conducting a legislative hearing on H.R. 1384, the "Firearm Commerce Modernization Act," and on H.R. 1415, the "National Instant Criminal Background Check System"—commonly known as NICS—"Improvement Act of 2005."

H.R. 1384 would remove restrictions on the interstate sale of firearms. H.R. 1415 purports to update existing laws governing interstate firearm sales and ensure all States are providing complete, accurate, and updated data to the NICS system.

Under current law, federally licensed firearm dealers may make rifle or shotgun sales to residents of other States in their States so long as the sale complies with the laws of the State of the seller and the purchaser.

Handguns, however, are treated differently. When a handgun is purchased in a store, the dealer is required to ship the handgun to another federally licensed firearms dealer in the purchaser's home State, where the purchaser can subsequently pick up the gun.

This shipping process does not confer any additional security review or background verification and extends the chain of custody to the mail and another firearms dealer.

H.R. 1384 would further permit dealers to sell handguns to residents of another State so long as the following conditions are satisfied. One, the sale conforms with the laws of both States. Two, the sale is in person. And three, the purchaser must pass a background check.

As we all know, failure to comply can result in Federal criminal charges against the dealer or the purchaser, regardless of their intent.

H.R. 1384 would also permit federally licensed firearm dealers to transfer firearms to other federally licensed firearm dealers at gun shows. Licensed dealers, many of which—or many of whom are small businessmen or small business women, who have all submitted to thorough and lengthy background checks, are currently required to ship firearms from their business premises.

Requiring dealers to ship firearms rather than transfer possession in person confers no additional Federal tracking or registration requirements, nor does it add any additional security or background review.

Finally, H.R. 1415 provides funds and incentive for States to update and automate records provided to NICS, particularly records regarding criminal dispositions, mental illness determinations, restraining orders, and domestic violence misdemeanor convictions.

NICS is operated by the Federal Bureau of Investigation and is used to conduct background checks of firearms purchasers before they are permitted to buy a firearm. When an individual enters a gun dealership to purchase a firearm, the dealer must perform a background check which utilizes the NICS call center, a state-of-the-art computer facility, located in Clarksburg, West Virginia.

I look forward to learning more about these bills and thank our witnesses for participating in today's hearing. And I am now pleased to recognize the distinguished gentleman and my friend from Virginia, the Ranking Member, Mr. Bobby Scott.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman.

And I'm pleased to join you in convening the hearing on H.R. 1384 and 1415. While I fully support 1415, which provides funds and incentives to States to more fully and efficiently update their criminal records, I have concerns about H.R. 1384.

The purpose of the restrictions that 1384 will remove is to limit opportunities for getting guns in the hands of prohibited people through straw purchases or other ways due to an overwhelmed system.

Although I support 1415, the need for the bill clearly tells us that the guns are currently being distributed to people who would not get them if criminal and other disqualifying records were more current and complete, which is the aspiration of the bill.

Given this reality, we should not be making the job of preventing handguns from getting in the hands of the wrong person more difficult before we fix the data system on which we rely so heavily to stop such transactions.

Moreover, I'm concerned that this legislation would make it impossible for States like Virginia to have any meaningful enforcement of its "one gun a month" laws, either on its citizens or others. Right now, out-of-State address documentation effectively prevents anyone from leaving or coming into Virginia and avoiding the impact of its "one gun a month limitation."

With this bill, it would not be feasible to police the requirement, especially at gun shows on weekends, and it's unlikely that people in other States would even be familiar with Virginia's "one gun a month law."

So, Mr. Chairman, I'll listen to the testimony of our witnesses carefully to see how 1384 addresses my concerns, and I look forward to working with you to make sure we continue to make it difficult for guns to get in the hands of the wrong people, particularly handguns, while not unduly restricting the right of law-abiding and otherwise eligible persons to own firearms.

And I also want to welcome—join you in welcoming our colleagues who will be testifying today.

Mr. COBLE. I thank you, Mr. Scott.

The lady and gentlemen, as you all know, it's the practice of the Subcommittee to swear in all witnesses. So if you all would please stand and raise your right hands?

[Witnesses sworn.]

Mr. COBLE. You may be seated. Let the record show that the witnesses answered in the affirmative.

We have three distinguished witnesses with us today and strike that—any other opening statements from the other Members of the Subcommittee will be submitted for the record without objection.

[The statements follow in the Appendix]

Mr. COBLE. And we've been joined by the gentleman from Wisconsin, Mr. Green. Good to have you with us, Mark.

We have three distinguished witnesses with us today. Our first witness is the Honorable Phil Gingrey, M.D., from the 11th Congressional District in Georgia, who was elected to the Congress in 2002.

Representative Gingrey currently serves on the House Rules Committee. In his first term of Congress, he served on the Armed Services Committee, the Committee on Education and the Workforce, and the Science Committee.

Prior to his decision to run for Congress, Representative Gingrey spent 26 years as a medical practitioner and delivered over 5,200 babies. He is a graduate of the Medical College of Georgia and Georgia Tech.

Our second witness is the Honorable Steve King. Representative King represents or serves Iowa's 5th Congressional District and is in his second term.

Representative King started his own business, the King Construction Company, in 1975 and served in the Iowa State Senate for 6 years prior to coming to the Congress. He currently sits on the Judiciary Committee, the Small Business Committee, and the Agriculture Committee.

Representative King studied math and science at the Northwest Missouri State University. In what town is Northwest Missouri, Steve?

Mr. KING. Maryville, Missouri.

Mr. COBLE. Where?

Mr. KING. Maryville, Missouri.

Mr. COBLE. Thank you, sir.

And our third witness is the Honorable Carolyn McCarthy. Mrs. McCarthy serves New York's 4th Congressional District and is currently in her fifth term in the Congress. During her nearly 10 years in the Congress, Representative McCarthy has diligently fought against gun violence, the tragic effects of which she felt with the murder of her husband in 1993.

Representative McCarthy served on the Education and the Workforce Committee and the Financial Services Committee. And I think for about 3 decades, Mrs. McCarthy, you worked as a nurse. So you and Representative Gingrey, if anyone has any medical problems, we are able to satisfy those needs this morning.

Now, folks, as you all know, we operate under the 5-minute rule here, and Mr. Scott and I apply that rule to ourselves as well. So when you see that amber light up here in front of you, you'll know that the ice on which you're skating is getting thin. And the red light, of course, indicates that 5 minutes have elapsed.

Representative Gingrey, why don't we start with you?

**THE HONORABLE PHIL GINGREY, M.D., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA**

Dr. GINGREY. Thank you, Mr. Chairman and Members of the Subcommittee.

I do thank you for the opportunity to testify today in support of my bill, H.R. 1384, the "Firearms Commerce Modernization Act."

I introduced this legislation after I learned about some of the severe and, quite frankly, obsolete restrictions that Federal law imposes on businesses and individuals who want to sell firearms legally through our Nation's interstate economy.

In general, since 1968, it has been illegal for any person without a Federal firearms license to buy or sell handguns across State lines. Licensed dealers cannot sell firearms, except certain collectibles, at a gun show outside of their own State.

Even between dealers, who go through a thorough background check to get a dealer's license, the Bureau of Alcohol, Tobacco, Firearms, and Explosives does not allow face-to-face transfers. So dealers who agree on a sale must go back to their stores and ship the firearm.

Gun theft is a major source of the firearms used in crime, and it is senseless under current law to make a licensed dealer ship a firearm when they can make a legal and documented transaction at the time of purchase.

My bill would do three simple things, Mr. Chairman. Firstly, it would make it legal for a licensed dealer to sell a handgun to a resident of another State as long as they do the sale in person, and they obey the laws of both States as well as Federal law.

And secondly, it would allow dealers to do business at out-of-State gun shows. Again, they would have to obey the laws of the State they were visiting—this addresses Ranking Member Scott's concerns—as well as all the Federal laws and regulations they normally obey.

It would allow, thirdly, dealers to transfer firearms directly to one another, instead of risking theft or loss during shipment.

The reason we can make these changes today is really quite simple. It's based on technology. These restrictions were imposed in 1968, when the only way for a dealer to conduct a background check on an out-of-State buyer was by sending a certified letter to the police in the buyer's home State, waiting for a reply, and then waiting a week before making the sale. That was 1968 technology.

But today, dealers can request background checks with a phone call or online by either contacting the FBI directly or by contacting



a State police agency that uses the FBI's database. They get an answer in seconds and with an exceptional degree of accuracy.

This routine applies one way or another to every gun sold by every dealer in every State. And we're going to improve this database with Representative McCarthy's bill.

Just to show you how far the technology has come, any teenager can go online today and order a \$500 laptop computer that carries more computing power than NASA carried on the first space shuttle 25 years ago. It costs less, and the teenager does not have to be a rocket scientist—no pun intended—to use it.

And if you bought a new cell phone in the last year, you're probably carrying more memory, programmability, and computing power in your pocket than AT&T had in all its long distance systems in the late 1960's.

So, with all of these advances, there is every reason to allow law-abiding individuals to buy handguns in other States, just as we currently allow for long guns. The key point is that anyone purchasing a firearm would, by Federal law, still have to go through the background check, and they would still have to obey the laws of their home State as well as the State where the sale takes place, including Virginia.

And that last point is very important because I know there are some arguments that this legislation bypasses strict or very strict certain State laws. And those arguments are just not true.

If you are from California or Massachusetts or New York, you would still have to obey your own State laws before you could buy a handgun at home or anywhere else. That would include licenses, waiting periods, bans on certain kinds of guns, or any other restrictions. And if a dealer is not confident he can comply with those laws, no one can force him or her to make the sale.

Mr. Chairman, I believe H.R. 1384 is a reasonable piece of legislation that helps get rid of some restrictions that we just do not need anymore and, frankly, can be downright dangerous. And I appreciate your time and effort in considering this legislation.

I thank you and the Members of the Subcommittee, and I would be happy at the appropriate time to take your questions.

[The prepared statement of Dr. Gingrey follows:]

PREPARED STATEMENT OF THE HONORABLE PHIL GINGREY, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify today in support of my bill, H.R. 1384, the Firearms Commerce Modernization Act.

I introduced this legislation after I learned about some of the severe, and frankly obsolete, restrictions that federal law imposes on businesses and individuals who want to sell firearms legally through our nation's interstate economy.

In general, since 1968, it has been illegal for any person without a federal firearms license to buy or sell handguns across state lines. Licensed dealers cannot sell firearms (except for certain collectibles) at a gun show outside their own state. Even between dealers, who go through a thorough background check to get a dealer's license, the Bureau of Alcohol, Tobacco, Firearms and Explosives does not allow face-to-face transfers, so dealers who agree on a sale must go back to their stores and ship the firearm. Gun theft is a major source of the firearms used in crime and it is senseless under current law to make a licensed dealer ship a firearm when they can make a legal and documented transaction at the time of purchase.

My bill would do three simple things:

1. It would make it legal for a licensed dealer to sell a handgun to a resident of another state, as long as they do the sale in person and obey the laws of both states, as well as federal law.
2. It would allow dealers to do business at out-of-state gun shows. Again, they would have to obey the laws of the state they were visiting, as well as all the federal laws and regulations they normally obey.
3. It would allow dealers to transfer firearms directly to one another, instead of risking theft or loss during shipment.

The reason we can make these changes today is quite simple: technology. These restrictions were imposed in 1968, when the only way for a dealer to conduct a background check on an out of state buyer was by sending a certified letter to the police in the buyer's home state, waiting for a reply, and then waiting a week before making the sale.

Today, dealers can request background checks with a phone call or online by either contacting the FBI directly or by contacting a state police agency that uses the FBI's databases. They get an answer in seconds, and with an exceptional degree of accuracy. This routine applies one way or another to every gun sold, by every dealer, in every state.

Just to show you how far the technology has come, any teenager can go online today and order a \$500 laptop computer that carries more computing power than NASA carried on the first space shuttle 25 years ago. It costs less, and the teenager does not have to be a rocket scientist to use it. And, if you bought a new cell phone in the last year, you are probably carrying more memory, programmability and computing power in your pocket than AT&T had in all its long-distance systems in the 1960s.

With all these advances, there is every reason to allow law-abiding individuals to buy handguns in other states, just as we currently allow for long guns. The key point is that anyone purchasing a firearm would by federal law still have to go through the background check and they would still have to obey the laws of their home state, as well as the state where the sale takes place.

That last point is important, because I know there are some arguments that this legislation bypasses strict state laws. Those arguments are just not true. If you are from California, or Massachusetts, or New York, you would still have to obey your own state's laws before you could buy a handgun at home or anywhere else. That could include licenses, waiting periods, bans on certain kinds of guns, or other restrictions. And if a dealer is not confident he can comply with those laws, no one can force him to make the sale.

Mr. Chairman, I believe H.R. 1384 is a reasonable piece of legislation that helps get rid of some restrictions that we just do not need any more. I appreciate your time and effort in considering this legislation. Thank you.

Mr. COBLE. Thank you, Representative Gingrey.  
Representative King.

**TESTIMONY OF THE HONORABLE STEVE KING, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA**

Mr. KING. Thank you, Mr. Chairman and Ranking Member Scott and Members of the Subcommittee. Thanks for the opportunity to testify on the Firearms Commerce Modernization Act.

The key focus of this bill is to remove unnecessary Federal regulations on interstate firearms transactions. Some of those restrictions have outlived their usefulness, based on today's background technology. Other restrictions are based on legal interpretations by the Bureau of Alcohol, Tobacco, Firearms, and Explosives. These restrictions may actually create a greater risk of guns falling into the wrong hands.

H.R. 1384 would remove restrictions on the interstate sale of firearms as long as the sales otherwise comply with Federal law and the laws of the buyer's and seller's States. This would include the Federal background check requirement as well as a host of State restrictions.

I'd like to discuss why this bill is especially relevant to my district and many other rural areas in this country. I represent a large area in western Iowa, and it happens to border on four other States.

We don't have a lot of big cities in my district. In fact, we don't have a single big city in my district. What we do have are a lot of rural residents who live in Iowa, but they do a lot of their shopping and other personal business in another State.

Many of the residents of my district also own firearms. And in this case, the Federal restrictions on interstate firearms transactions really create a burden for my constituents and those in the surrounding States.

Unfortunately, it's quite possible that one of my law-abiding constituents might not be able to find a gun he wants locally, but might find it for sale in, say, Sioux Falls or Omaha or maybe Kansas City. In fact, we allow exactly this type of sale now, but only for rifles and shotguns.

All H.R. 1384 would do is extend that to handguns. And again, we're only talking about law-abiding people. All of the sales would be subject to Federal and State law and would only be carried out after a background check on the buyer.

On that point, I'd like to point out just how limited H.R. 1384 is, and my State's a good example. Both Iowa and all the States surrounding it have restrictions on handgun sales above and beyond the requirements of Federal law. Under H.R. 1384, we wouldn't do away with any State laws. An out-of-State handgun buyer would have to obey the laws of both States.

For example, Iowa requires a handgun buyer to get a permit to purchase before buying a handgun. And Wisconsin has a 48-hour waiting period on handgun sales. If one of my constituents went to Wisconsin and wanted to buy a handgun, he would still have to have the Iowa permit, but also have to wait 48 hours before taking delivery of the gun. And that would be to comply with the Wisconsin law.

Some State laws are so restrictive or so complicated that it would be difficult or impossible to comply with two sets of laws. For example, I don't think anyone would have to worry about interstate sales between, say, Massachusetts and New Jersey, and H.R. 1384 doesn't try to change that.

1384 simply removes certain Federal restrictions that were supposed to help States enforce their internal laws in the days before we had computerized background checks to help prevent gun sales to criminals.

The other provisions of H.R. 1384, which involve dealers' ability to exhibit in out-of-State gun shows and to conduct face-to-face firearm transactions with dealers from other States, are just as relevant to districts like mine. These provisions would allow federally licensed dealers to do business with each other and with the public, but they would still have to obey all the applicable Federal laws as well as the laws of the State where they happen to be doing business.

So, again, if a licensed dealer from Red Oak, Iowa, and another licensed dealer from Wahoo, Nebraska, want to make a trade at a gun show in Omaha, Nebraska, they could do that. They just have

to cross all their T's and dot all their I's under Federal law and Nebraska law. Then they would no longer be forced to go back to their stores and mail a gun, which might be lost or stolen in transit.

The fact that they have to do that now—based on the Government's interpretation of the law—is a ridiculous policy, which, frankly, endangers public safety.

Mr. Chairman, thank you for the privilege to testify before this Committee, and I'd be happy to answer any questions.

[The prepared statement of Mr. King follows:]

PREPARED STATEMENT OF THE HONORABLE STEVE KING, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF IOWA

Mr. Chairman, members of the subcommittee, thank you very much for allowing me to testify on H.R. 1384, the "Firearm Commerce Modernization Act."

The key focus of this bill is to remove Federal restrictions on interstate firearms transactions. Some of those restrictions have outlived their usefulness, based on today's background check technology. Other restrictions are based on legal interpretations by the Bureau of Alcohol, Tobacco, Firearms, and Explosives; these restrictions may actually create a greater risk of guns falling into the wrong hands.

H.R. 1384 would remove restrictions on the interstate sale of firearms, as long as the sales otherwise comply with federal law and the laws of the buyers' and sellers' states. This would include the federal background check requirement, as well as a host of state restrictions.

I'd like to discuss why this bill is especially relevant to my district and many other rural areas in the country. I represent a large area in western Iowa, which happens to border on four other states. We don't have a lot of big cities in my district; in fact, we don't have any big cities in my district. What we do have are a lot of rural residents who live in Iowa, but do a lot of their shopping and other personal business in another state.

Many of the residents of my district also own firearms, and in this case the federal restrictions on interstate firearms transactions really create a burden for my constituents and those in the surrounding states. Unfortunately, it's quite possible that one of my law-abiding constituents might not be able to find a gun he wants locally, but might find it for sale in Sioux Falls or Omaha or Kansas City.

In fact, we allow exactly this type of sale now, but only for rifles and shotguns. All H.R. 1384 would do is extend that to handguns. And again, we are only talking about law-abiding people, and all the sales would be subject to federal and state law and would only be carried out after a background check on the buyer.

On that point, I'd like point out just how limited H.R. 1384 is, and my state is a good example to do that. Both Iowa and all the states surrounding it have restrictions on handgun sales above and beyond the requirements of Federal law. Under H.R. 1384, we wouldn't do away with any state laws. An out-of-state handgun buyer would have to obey the laws of both states.

For example, Iowa requires a handgun buyer to get a "permit to purchase" before buying a handgun, and Wisconsin has a 48-hour waiting period on handgun sales. If one of my constituents went to Wisconsin (an expensive trip at today's gas prices) and wanted to buy a handgun, she would have still have to have the Iowa permit, but would also have to wait 48 hours before taking delivery of the gun.

Some state laws are so restrictive or so complicated that it would be difficult or impossible to comply with two sets of laws. For example, I don't think anyone would have to worry about interstate sales between Massachusetts and New Jersey, and H.R. 1384 doesn't try to change that. H.R. 1384 simply removes certain federal restrictions that were supposed to help states enforce their internal laws in the days before we had computerized background checks to help prevent gun sales to criminals.

The other provisions of H.R. 1384 (which involve dealers' ability to exhibit at out of state gun shows, and to conduct face-to-face firearms transactions with dealers from other states) are just as relevant to districts like mine.

These provisions would allow federally licensed dealers to do business with each other and with the public, but they would still have to obey all the applicable federal laws, as well as the laws of the state where they happened to be doing business. So again, if a licensed dealer from Red Oak, Iowa and another licensed dealer from Wahoo, Nebraska want to make a trade at a gun show in Omaha, they could do that—they'd just have to cross all their Ts and dot all their Is under federal law

and Nebraska law. They would no longer be forced to go back to their stores and mail a gun, which might be lost or stolen in transit. The fact that they have to do that now—based on the government’s interpretation of the law—is a ridiculous policy, which frankly endangers public safety.

Mr. Chairman, thank you for your time, and I appreciate the opportunity to testify.

Mr. COBLE. I thank you, Mr. King.  
Mrs. McCarthy, you’re recognized.

**TESTIMONY OF THE HONORABLE CAROLYN McCARTHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mrs. MCCARTHY. Thank you, Mr. Chairman, for affording me the opportunity to speak here today, and I’d also like to thank Ranking Member Scott for having me here as well. And I’d like to thank the Members of the Committee for also being here.

Mr. Chairman, I’d like permission to enter my entire statement into the record.

Mr. COBLE. Without objection.

Mrs. MCCARTHY. Today, I’d like to—thank you.

Today, I’d like to talk to you about H.R. 1415, the NICS Improvement Act. This is a bill that would increase the effectiveness of the existing National Instant Criminal Background Check System, the database used to check potential firearm buyers for any criminal record or any other disqualifying criteria.

Overall, NICS has been a success. Since 1994, more than 1.2 million individuals have been denied a gun because of a failed background check. NICS also provides the vast majority of honest gun sellers with peace of mind in knowing that they are selling their products to citizens who will use them safely and legally.

However, the NICS system is only as good as the information States provide. And unfortunately, many States don’t have the resources necessary to enter all of this disqualifying criteria into the NICS system.

The end result is that felons and others who are not permitted by existing law to buy guns are passing background checks, buying guns through legitimate means. In fact, 28 States have automated less than 75 percent of their criminal history records. In 15 States, domestic violence restraining orders, which is a disqualifying offense, are not accessible through NICS.

These and other loopholes have cost countless people their lives, including two of my constituents. On March 8, 2002, Peter Troy purchased a .22 caliber semi-automatic rifle from a legitimate gun dealer in New York. He had a history of mental health problems, and his own mother had a restraining order against him as a result of his violent background. Yet his NICS background check turned up no red flags.

It was illegal for him to purchase a gun. But like so many others, he simply slipped through the cracks in the NICS system because of lack of information.

Four days later, Peter Troy walked into Our Lady of Peace Church in Lynbrook, New York, opened fire, and killed Reverend Lawrence Penzes, and a parishioner, Eileen Tosner. Peter Troy had no business being able to buy a gun, and the system created to prevent him from doing so simply failed.

It is only a matter of time before the system's failings provoke larger tragedies. We must improve the NICS and allow it to do what it was designed to do.

The responsibility for the accuracy and the effectiveness of the NICS system ultimately belongs to the States. However, many States' budgets are already overburdened.

This legislation would provide grants to States to update the NICS systems. States would be able to update their NICS database to include felons, domestic abusers, and others not legally qualified to buy a gun.

The bill's goal is to have had all 50 States enter at least 90 percent of this disqualifying information into NICS. States that don't comply or fall short of these goals will be penalized with a 5 percent reduction of their Federal Department of Justice grant allotments.

Also, the bill would provide grants for State courts to promptly enter information into the NICS system. For example, when someone is served with a restraining order stemming from domestic violence, an inefficient NICS system would allow him or her to leave the courthouse and head right to the gun store. My bill would make sure all preventive court records are entered into the NICS before a crime of passion can be committed.

It is important to keep in mind that this bill does nothing to infringe on anybody's second amendment rights, which I support. It creates no new gun laws. It simply gives States the resources to better enforce the current law.

If H.R. 1415 became law, law-abiding citizens who want to buy a gun legally will not experience any delay at the point of purchase, and this bill poses no burden on gun sellers. In fact, I introduced this bill in 2002 with my friend and colleague Mr. Dingell of Michigan, who is well known for his strong support of gun rights.

In 2002, this legislation passed the House by voice vote. Unfortunately, the other body didn't have the time to take up this legislation before the 107th Congress came to an end. The measure had the support of Senators Hatch and Craig, another two long-time supporters of gun rights.

In closing, I believe this is common sense legislation that will keep guns out of the hands of criminals and others who the law prohibits from having firearms. And with it, again, it does nothing to infringe on second amendment rights of law-abiding Americans. I'm happy to work with the Committee to improve this bill so that it better enforces our existing law.

Thank you for the time, and I'll be happy to answer any questions you may have.

[The prepared statement of Mrs. McCarthy follows:]

PREPARED STATEMENT OF THE HONORABLE CAROLYN MCCARTHY, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF NEW YORK

Thank you, Mr. Chairman for affording me the opportunity to speak today. I'd also like to thank Ranking Member Scott. I ask that my complete statement be included in the record.

Today, I'd like to talk to you about H.R. 1415, the NICS Improvement Act.

This bill would increase the effectiveness of the existing National Instant Criminal Background Check System (NICS), the database used to check potential firearms buyers for any criminal record or history of mental illness.

Overall, NICS has been a success. Since 1994 more than 1.2 million individuals have been denied a gun because of a failed background check. At the same time, 98 percent of purchases were cleared.

NICS also provides the vast majority of honest gun dealers peace of mind in knowing they are selling their products to citizens who will use them safely and legally.

However, the NICS system is only as good as the information states provide to it. And unfortunately, many states don't have the resources necessary to enter all of their disqualifying criteria into the NICS system.

The end result is that felons and others who are not permitted by existing law to buy guns are passing background checks buying guns through legitimate means.

In fact, twenty-eight states have automated less than seventy-five per cent of their criminal history records.

In fifteen states, domestic violence restraining orders, which are a disqualifying offense, are not accessible through NICS, because those records are incomplete or not fully automated.

Thirty-seven states do not enter the records of those mentally adjudicated into the NICS database for a number of reasons.

These loopholes have cost countless people their lives, including two of my constituents.

On March 8, 2002, Peter Troy purchased a .22 caliber semi-automatic rifle from a legitimate gun dealer in New York. He had a history of mental health problems and his own mother had a restraining order against him as the result of his violent background.

Yet his NICS background check turned up no red flags.

It was illegal for him to purchase a gun; but, like so many others, he simply slipped through the cracks in the NICS system because of a lack of information.

Four days later, Peter Troy walked into the Our Lady of Peace Church in Lynbrook, New York, opened fire, and killed Rev. Lawrence Penzes and a parishioner, Eileen Tosner.

Peter Troy had no business buying a gun, and the system created to prevent him from doing so simply failed.

It is only a matter of time before the system's failings lead to larger tragedies.

We must fix the NICS system and allow it do what it was designed to do.

The responsibility for the accuracy and effectiveness of the NICS system ultimately belongs to the states; however, many state budgets are already overburdened.

This legislation would provide grants to states to update the NICS system. It includes \$250 million for each of the next three years for state law enforcement and \$125 million for each of those three years for state court systems. States would have the resources to update their NICS databases to include felons, people that have been adjudicated with certain mental and emotional disabilities, and domestic abusers.

The bill's goal is to have had all 50 states enter at least 90% of their disqualifying information into NICS. States that don't comply or fall short of these goals will be penalized with a 5% reduction of certain Department of Justice grant allocations.

It is important to keep in mind that this bill does not infringe on anybody's 2nd Amendment Rights, which I support. It simply enforces current law.

If H.R. 1415 becomes law, law-abiding citizens who want to buy a gun legally will not experience any delay at the point of purchase.

And this bill poses no new burden on gun sellers.

In fact, I first introduced this bill in 2002 with my friend and colleague, Mr. Dingell of Michigan, who is well known for his strong support of gun rights and the 2nd Amendment.

In 2002, the House passed this legislation by voice vote. Unfortunately, the other body didn't have the time to take up this legislation before the 107th Congress came to an end. The measure had the support of Senators Hatch and Craig, another two longtime supporters of gun rights.

Mr. Chairman, as you know, the Brady check under the NICS System consists of two-steps.

First, the NICS Call Center representative or NICS E-Check system runs a computer search of several databases to see if the purchaser has a record that prohibits him or her from possessing a firearm under 18 U.S.C. Section 922(g). Specifically, the NICS computer search includes a search of the:

- **Interstate Identification Index (III)**—a computerized system that contains records from participating states and the FBI's criminal history databases;

- **National Crime Information Center 2002 (NCIC)**—a system that stores data provided by state and local law enforcement, including information on wanted persons, missing persons, stolen property, protection orders, etc; and
- **NICS Index File**—a compilation of databases ranging from the DHS/INS files on immigration status to a miscellaneous file, which States can use to inform NICS that a person is in a prohibited category or cannot purchase a firearm under state law.

In the end, this initial computer search seeks to determine whether or not the purchaser falls within one of the nine categories prohibiting a person from purchasing a firearm under 18 U.S.C. Section 922(g).

The Brady check is complete at this stage if the initial computer search indicates the purchaser has no record (“*Proceed*”) or a record indicates the purchaser is prohibited from purchasing a firearm (“*Denied*”). The NICS System immediately notifies gun dealers if one of these determinations is reached. The vast majority of Brady checks fall into this category and are completed in a matter of minutes, if not seconds.

Second, if the initial computer search cannot reach a final determination, the call is passed on to a NICS representative to conduct a human search for missing information that will allow NICS to reach a determination. The NICS System typically cannot reach a determination because information it should receive from the states is not available. A classic example is when III or NCIC indicates that a purchaser was arrested in a state, but the state has not entered the disposition of the case into III or NCIC. In short, the NICS System cannot determine whether the purchaser was convicted or acquitted and cannot make a final determination. In this situation, the NICS representative literally must attempt to get missing information to make a NICS determination by calling state and local courthouses, judges, clerks or law enforcement to get information.

If the NICS System cannot give a response to the gun dealer within three business days, the dealer has permission to sell or transfer the firearm to the purchaser under the Brady law. However, the NICS System will continue to attempt to reach a final determination for a brief period of time. If after three days it discovers the purchaser was ineligible to purchase a firearm, the FBI NICS System notifies ATF and agents will seek to recover the firearm from the unauthorized purchaser.

I want to reiterate that the system works best when it has all relevant information. Legal sales are approved promptly, and federal agents do not have to waste time tracking down unauthorized weapons.

Mr. Chairman, I now want to remind you of several reports from the Department of Justice on the NICS process and on the data used by NICS to conduct background checks.

In August 2004, the Office of Justice Programs, Bureau of Justice Statistics (BJS), published *Survey of State Records Included in Presale Background Checks: Mental Health Records, Domestic Violence Misdemeanor Records, and Restraining Orders*, 2003 (NCJ 206042). BJS conducted a survey to examine the quality and availability of State records for these categories of people who are barred under current law from possessing a gun. Once you review this report, you will understand why each state needs a central repository for criminal and court records of those persons who are not legally entitled to a gun. The present records system in many states is incomplete and fragmented.

Criminal history disposition is a key component of a total NICS system. In January 2005, the FBI’s Criminal Justice Information Services Division issued its “NICS Operations Report 2003–2004.” It notes that “[f]inal disposition information is vital to the NICS because it is required in order to determine the eligibility of potential firearm purchasers.”

The final disposition of arrests is crucial to the accuracy of a NICS background check. I am not talking about only felony arrests. The law denies a gun to a person convicted of a domestic violence misdemeanor offense. Accurate records in NICS keep guns out of the hands of abusive people. All it takes is one incomplete record, and tragedy ensues.

The FBI’s comments were reinforced by the BJS report *Improving Access to and Integrity of Criminal History Records* (July 2005, NCJ 200581). This report notes that in a 2001 survey “[s]ix states reported that 90% or more of their arrests had corresponding final dispositions.” It also noted that “[i]n nine States less than half of the arrests had final dispositions recorded in the databases.”

In many states, no single agency is responsible for providing information on final disposition. In one state, it may be the arresting agency. In another, the prosecutor. In a third, the court. We need timely and accurate information on the disposition of cases so that barred people do not walk out of court and into a gun shop. We



need coordination and cooperation between state courts and state law enforcement. Otherwise, we cannot enforce existing law.

I was pleased to see that the July 2005 BJS report included five recommended action items. These recommendations included (1) obtaining full participation of the States in the FBI's Interstate Identification Index (III); and (2) improving State contributions to the FBI's national databases of prohibited purchasers. The NICS Improvement Act would help implement those recommendations.

Mr. Chairman, I would never claim to have all the answers to improving the background check process. I welcome the suggestions and comments of the members of this committee, the administration, and other parties interested in keeping guns out of the hands of criminals.

I have three goals that I hope to achieve with H.R. 1415. First, strengthen the enforcement of existing law. Second, help the states compile and provide the data that will enforce existing law. Third, get as much of that data into NICS as quickly as possible.

I want to work with you and others to achieve these goals.

The background records system is much better than it was 12 years ago. However, much more needs to be done before all relevant records are provided to NICS.

In closing, I believe that H.R. 1415 is common sense legislation that will keep guns out of the hands of criminals and others who the law prohibits from having firearms.

And it does this without infringing on the 2nd Amendment rights of law-abiding Americans.

Thank you for time, and I'd be happy to answer any questions you may have.

**ATTACHMENT**

**SUMMARY OF HR 1415**

**Enforce 1968 Gun Control Act**

Under the 1968 Gun Control Act, an individual is prohibited from possessing a firearm if he or she:

- (a) is under indictment or has been convicted of a crime punishable by more than one year;
- (b) is a fugitive from justice;
- (c) is an unlawful user or an addict of any controlled substance;
- (d) has been adjudicated as a mental defective or has been committed to any mental institution;
- (e) is subject to a court order restraining them from domestic violence;
- (f) has been convicted of a domestic violence misdemeanor;
- (g) has been dishonorably discharged from the military;
- (h) is an illegal alien; or
- (i) has renounced U.S. citizenship.

The NICS Improvement Act enforces existing law by requiring states to automate and share disqualifying records with the FBI's NICS database.

**Transmittal of Federal Records to NICS**

All federal agencies shall transmit all relevant records relating to persons disqualified from acquiring a firearm under federal law to the Attorney General for inclusion in NICS.

For example, the Department of Homeland Security shall transmit all relevant records of persons disqualified from acquiring a firearm under federal law, including illegal aliens, visitors to the United States on student visas, and visitors on tourist visas.

**Transmittal of State Records to the NICS**

Each State shall provide information on disqualified persons to the U.S. Attorney General for inclusion in NICS.

- **Access to information** - Any information provided to the Attorney General under this section may only be accessed by personnel legally entitled to access NICS for the purposes of conducting a background check for a firearm purchase.
- **Privacy protections** - The Attorney General shall work with federal, state, local law enforcement and the mental health community to establish protocols for protecting the privacy of information sharing.

**Grants to States**

The Attorney General shall award a grant to each state to offset the initial costs directly associated with complying with this section.

- **Authorization of Appropriations** - \$250,000,000 for fiscal years 2006, 2007, 2008.
- **Incentive for State Participation** – Waive the 10 percent state matching requirement for National Criminal History Improvement Program (NCHIP) grants for a state that automates and shares at least 90 percent of all disqualifying records. The waiver period shall not exceed 5 years
- **Noncompliance** - After three years, the FBI will report on the progress of states automating their databases and supplying that information to the federal NICS database. The Department of Justice will be authorized, but not required, to deny up to 3 percent of funds available under the Omnibus Crime Control and Safe Streets Act of 1968, to any state that fails to automate 60 percent of its disqualifying records and supplying that information to the federal NICS database.

After 5 years, if states have failed to automate at least 90 percent of its disqualifying records, and supply that information to the federal NICS database, the Department of Justice is required to deny 5 percent of funds available each year under the Omnibus Crime Control and Safe Streets Act of 1968 until the state has automated at least 90 percent of disqualifying records, and has supplied that information to NICS.

- **Waiver by Attorney General** - The Attorney General may grant a waiver to states that do not comply if they provide compelling evidence explaining their inability to automate at least 90 percent of all records covered by this bill.

#### **Grants to State Courts for the Improvement in Automation and Transmittal of Disposition Records**

Establishes a grant program for state courts to assess and improve handling of proceedings related to criminal history dispositions, and temporary restraining orders, as they relate to disqualification from firearms ownership under state and federal laws.

In the first fiscal year after the enactment of this Act, the Attorney General shall make grants to the Chief Judicial Officer of each state for the purpose of conducting *assessments* of state courts, and automating and transmitting court arrest and conviction disposition records as they relate to disqualification from firearms ownership under state and federal laws.

In subsequent fiscal years, the Attorney General shall make grants to the Chief Judicial Officer of each state for the purpose of *implementing systems and procedures* for the automation and transmittal of court arrest and conviction disposition records as they relate to disqualification from firearms ownership under state and federal laws.

- **Authorization of Appropriations** - \$125,000,000 for fiscal years 2006, 2007, 2008.

Mr. COBLE. Thank you, Mrs. McCarthy.

If you all will suspend just a moment and let me confer with Mr. Scott?

[Pause.]

Mr. COBLE. Thank you. We appreciate the witnesses' comments here. I would like to know, just as a matter of interest, if either of you three know—

Strike that. We will revert to the suspension. So if you all will rest easy for the moment, and we will bring up two bills to mark up.

[Recess.]

Mr. COBLE. And I thank the witnesses for your patience.

Now we will examine you all, and we will start the 5-minute barometer on us.

Let me ask each of you three, just as a matter of interest, has the Justice Department expressed an opinion to your bills to either of you?

Dr. GINGREY. Mr. Chairman, on 1384, to my knowledge, they have not.

Mr. COBLE. Mr. King?

Mr. KING. And I have to defer to Mr. Gingrey's response to that.

Mr. COBLE. Mrs. McCarthy?

Mrs. MCCARTHY. I wouldn't say they have responded to this particular bill. But in August of 2005, they did come out with a report basically saying the shortcomings of the States of not reporting the information that they needed to do a complete check.

Mr. COBLE. So at least by implication, lending support, I would assume?

Mrs. MCCARTHY. Yes.

Mr. COBLE. Mr. Gingrey, you're the original sponsor of the bill before us. How would this bill build upon or reinforce existing gun laws?

Dr. GINGREY. Well, Mr. Chairman, the title of the bill, I think, really says it all—the Firearms Commerce Modernization Act. And it would, in its simplest description of that—simplest answer, would be the law—the current law that's applicable to long guns would also be applicable to handguns. And that's, in essence, what this does.

And as we pointed out, of course, back in the Gun Control Act of 1968, there was a lot of concerns about States' rights, and States had their databanks and information on—on who could or should not be allowed to buy a handgun or even a long gun, for that matter.

But as I pointed out in my opening testimony, Mr. Chairman, we've come a long way since 1968. And I gave those examples of the purchasing of a computer with more memory than NASA had back in those days when they were trying to put a man on the Moon.

And this is just simply what it is. It's modernizing the Firearms Commerce Act.

Mr. COBLE. Thank you, sir.

Mrs. McCarthy, I'll be a little more detailed as opposed to my first question. Has the Justice Department documented any problems collecting and updating background information from States,

A? And B, do you know how much Federal funding is provided to States to collect background information?

Mrs. MCCARTHY. Answering to your first question, we have found that because a number of States—let's take the issue of mental illness. A lot of States, because of the privacy laws, don't want to put that information into the NICS system, which is really a shame. Because basically, when you look at the NICS system and, say, someone is going to buy a gun, what it pops up is either denied or, you know, go forward.

So no matter what the law—you know, 1968 Gun Control Act has 9 provisions on those that shouldn't be able to buy guns. With that being said, no one knows why someone is being denied. So privacy is in there.

Also in my legislation, the attorney general will have the right and the Department of Justice will have the flexibility to work with the States to make sure all privacy is protected.

As far as the amount of money that has been allotted in past years to bring the NICS system up, I believe it was like \$300 million. But again, that was from the beginning, and it has done a fairly good job.

But up to even going past 10 years, a lot of the names because of States not having the equipment, especially the equipment that we're talking about that has become so more advanced—like the courts. The majority of courts do not have computers to be able to put the information that they need right then and there into the system, where it would automatically go.

I actually think this will end up saving money also. Because when someone is denied the use of—or the permit of being able to buy a gun, it has to go back down to the FBI. They have to do a visual search. So that's manpower that's being used.

So I think, in the end, this can actually, number one, save lives.

Mr. COBLE. Thank you.

Mr. King, you heard Mr. Gingrey's response to my question. Do you want to extend that or weigh upon it?

Mr. KING. I endorse the response given by Mr. Gingrey, and I just think that when we're—as this society moves forward, Government is always behind the curve on technology. We'll never keep up with the changes that are brought technology-wise. But it's incumbent upon us to try.

And I think this is a very valid effort, especially because it respects individual laws of each State and helps facilitate these transactions and doesn't violate the second amendment. So I think this is a well thought out piece of legislation.

And really, the people that are, you know, they're opposed to gun rights still shouldn't object to this because it doesn't expand any rights. It simply—it simply facilitates technology use.

Mr. COBLE. I thank you. I thank the three of you for being with us.

Dr. GINGREY. Mr. Chairman, if I can just have a little add-on to that? I think, really, for the very same reasons that 1415 is a good bill—Mrs. McCarthy's bill—it's the same thing as what she said. The technology is there to get this information, and it would be foolish not to do it.

Mr. COBLE. I thank you.

The gentleman from Virginia?

Mr. SCOTT. Thank you.

Dr. GINGREY, you went a long way in saying how this is just an extension of the present law for rifles. Is that right?

Dr. GINGREY. Yes.

Mr. SCOTT. Now one of the things that we're dealing with is crime. Isn't it more likely that a crime will be committed with a handgun than a rifle, and isn't the difference in treatment, therefore, justified?

Dr. GINGREY. Well, in response to the Ranking Member, Mr. Scott, I think you're absolutely right. I think that it is more probable that a crime would be committed with a handgun than a long gun for fairly obvious reasons. And again, I think this is the thinking that existed back in 1968 in the Gun Control Act in regard to having a difference the way you would restrict a sale of a long gun versus a handgun.

But as we've been saying, both myself and Representative McCarthy, things have changed so much in regard to the ability to get this information and to get it in a timely fashion. And I think that we certainly are still concerned with crime and handguns. But I think this—the safeguards are there. The technology is there, and I think we need to bring them into—

Mr. SCOTT. But the point I was making is that a difference in approach is not unreasonable. If you have a licensee in one State trying to apply rules and regulations of another State, is there anything—as a condition of getting the license, is there anything that a Virginia licensee is required to know about the laws of other States?

Dr. GINGREY. Mr. Scott, as far as I know, my understanding, of course, is the license of a firearm dealer is both—primarily a Federal license. And someone, let's say a licensed dealer in Georgia that's having a gun show in Virginia. And he or she has that Blue Book there in front of them, which is updated, I guess, on an annual basis.

Mr. SCOTT. Is there anything in terms of him getting a license in Georgia that would require him to know what Virginia laws are?

Dr. GINGREY. I'm not sure of the answer to that question, Mr. Scott.

Mr. SCOTT. Well—

Dr. GINGREY. But I know that they have the book that lists the requirements of gun purchases in every State in the union, and that's the so-called Blue Book, FF—

Mr. SCOTT. Somebody in Virginia—somebody in Georgia might not know about Virginia's "one gun a month" law. Is that right?

Dr. GINGREY. Well, that's possible. This Member certainly does know about Virginia's "one gun a month law," and the no guns in Massachusetts or in the city of Washington, D.C. But—

Mr. SCOTT. Well, do some States have waiting periods and others not have waiting periods?

Dr. GINGREY. It—I think that is true, Representative Scott. They do. Georgia, of course, now has the instant background check system. They used to have a waiting period.

But again, those States that would have requirements like that, a waiting period of several days or a one gun a month or a no gun

under any circumstances, no handgun, those laws would absolutely have to be adhered to. And the most stringent would trump the least stringent.

Mr. SCOTT. The problem, though, is that the licensee may not be familiar with the laws, and that would be the problem we're getting into. Would there be some crimes that would disqualify you for getting a firearm in one State would not disqualify you in another State?

Dr. GINGREY. And I'm glad you ask that question, Representative Scott, because that is true. There are. I mean, as an example, in Georgia, if you have been charged with spousal abuse, as an example, you are not eligible to purchase a handgun. You would fail the instant background check, according to Georgia law.

And of course, prior to having this system, this NICS system, someone that maybe had three charges of spousal abuse in the State of New York could come to the State of Georgia and with a new wife or, you know, as a divorcee and purchase a handgun, and that record would not be available until we have this—

Mr. SCOTT. I think that gets us to Mrs. McCarthy's bill. Just how far behind are some of these States?

Mrs. MCCARTHY. Well, some States, like I said, have come up to, you know, 75 percent. A lot of the States have come nowhere near it.

And I think the perfect example is when you're talking about interstate, and I think that's where, you know, my bill would certainly enhance the safety of the background checks being done. We want to look back, you know, 10 years. And then after 5 years, there would be a lookout to see how far we could go back.

Right now, most of the States are nowhere near 90 percent, nowhere near it. And most of them do not have the information that is needed, which is the criteria of the 9 reasons why someone shouldn't be able to buy a gun.

Mr. SCOTT. Ninety percent is somewhat of a modest goal because that means 1 out of 10 records would be missed.

Mrs. MCCARTHY. Well, when we passed the bill back in 2002, we worked through this Committee. And basically, they felt that going higher than 90 percent would not be realistic. I'm certainly more than willing to work with the Committee if they would like to raise it higher.

Mr. SCOTT. Well, thank you.

And Mr. Chairman, I think your bill would go a long way into giving the States the resources to get it even higher, and I appreciate your legislation.

Thank you, Mr. Chairman.

Mr. COBLE. I thank you, Mr. Scott.

And I ask the witnesses again if you will suspend, and I apologize to all of you for the irregular procedure. But once we have a reporting quorum here, we need to strike while the iron is hot.

[Recess.]

Mr. COBLE. Now we will return to our panel, and I recognize the distinguished gentleman from Florida, Mr. Feeney. I think—is he still here? Mr. Feeney is gone.

Mr. Miller, I think, was the next one in attendance. Mr. Miller, the gentleman from Florida? Mr. Miller, do you want to make a comment on this? Mr. Keller. I'm sorry. I stand corrected.

Mr. KELLER. No questions.

Mr. COBLE. The distinguished gentleman from Maryland (sic), the Ranking Member of the full Committee, Mr. Conyers?

Mr. CONYERS. Thank you, Mr. Chairman.

This gun problem is a serious one. I ask unanimous consent to have my opening statement included in the hearing.

Mr. COBLE. Without objection.

[The prepared statement of Mr. Conyers follows in the Appendix]

Mr. CONYERS. And I thank you.

I understand there's delicate negotiations going on. But in Detroit, my friends, there is a group called SOSAD, S-O-S-A-D, created by an African-American mother who lost two children to gunfire. And what I'm concerned about, and it may have been mentioned, but I sure want to talk about the tragedy of young people being killed in America by weapons, handguns, which outnumber every other country—modern country in the world.

Here we have 19 children killed annually in Great Britain, 57 in Germany, 109 in France, 153 in Canada, and 5,285 children in the United States. Now Clementine Barfield of Save Our Sons and Daughters, SOSAD, which tries to deal with violence prevention and victims services, is doing a fantastic job. She's received numerous awards from both Presidents Clinton and Reagan for victim advocacy, and she gets funding from corporations and foundations and Government.

But is there going to come a day in the Judiciary Committee where we deal with this? Nobody is talking about gun rights in Detroit or limiting hunters or blowing off the second amendment to the Constitution. We're worrying about people getting killed needlessly, and kids at that.

And it seems to me that this is where my focus has become because I'm the representative of the parents of all these young children that are getting needlessly wasted because of the proliferation of guns in America.

Could you help me feel more comfortable when I leave work today that we addressed this subject somewhere, somehow? Starting with Mrs. McCarthy.

Mrs. MCCARTHY. Thank you, Mr. Conyers, and thank you for being here.

As you know that, since I've been here, reducing gun violence in this country has been my number-one issue. I have been working with a number of States, local to see what we can do to make sure that kids don't get their hands on guns, and that's one of the biggest problems.

Right here in the D.C. area, we have a wonderful program that I'm trying to bring into the New York area, where we go in and educate our young people not only on why they shouldn't, you know, join gangs to get their hands on guns, but also what guns can actually do. You know, with what they see on TV and everything, they think it's a movie until it really happens.

And the sad part is many of my young people in my district, and I live in a suburban district, most—especially young men—do not



expect to live past 17 or 18 years old, which is a terrible thing to even think about.

I spend a lot of time in my schools, talking to these young people. They have the power to change, and we have to change the culture of that, that violence is acceptable on any level.

Mr. CONYERS. Yes. And I'd like to get you and Clementine Barfield together in the Detroit area one of these days.

Mrs. MCCARTHY. Well, I plan on doing a lot more traveling, State to State.

Mr. CONYERS. Good.

Mrs. MCCARTHY. Talking to all these unfortunate victims and to work with them.

Mr. CONYERS. Thank you.

Could I ask Mr. King and Mr. Gingrey to weigh in on this subject, please?

Mr. KING. Thank you, Ranking Member Conyers. And I appreciate the sensitivity that you bring to this issue.

You know, it occurs to me that my wife, living here in Washington, D.C., lives in a higher risk environment as a civilian here in Washington, D.C., than a civilian does in Iraq. In that the violent fatalities per 100,000 in Iraq are 27.51. The violent fatalities in Washington, D.C., are 45.9 per 100,000 residents.

And Detroit happens to be 41.8 violent fatalities per 100,000 residents. So it's significantly more dangerous to be in either Washington, D.C., or Detroit than it is to live in Iraq. But—

Mr. CONYERS. But Brother King, there are no suicide bombers in D.C.

Mr. KING. This—this takes into account the suicide bombers in Iraq of the death of civilians. And also—and my point, though, is we have very strict gun laws here in Washington, D.C., and yet a very high fatality rate.

Mr. CONYERS. But you know what the deal is. They're bringing them in from everywhere else. I mean, the freeway is loaded with people bringing in truckloads of guns into D.C., even though it's against the law to purchase them here.

Could I ask for an additional minute?

Mr. COBLE. Without objection.

Mr. CONYERS. Thank you. This is a very good interchange, and I'm so happy to have you participating in it.

Mr. Gingrey?

Dr. GINGREY. Well, let me just say to the distinguished Ranking Member of the Committee, the whole Committee, I appreciate exactly what he's saying. And to be here with Mrs. McCarthy, and I understand the personal tragedy that she has gone through, and I know that the distinguished Ranking Member is a strong proponent of the second amendment and gun owners rights.

And I think really a lot of it, Mr. Conyers, is the violence that our society is exposed to. It's pretty sad, really, when you—when you look at what's on television or in the movies, what Hollywood is producing or, indeed, on the Internet. Kids go to these video arcades, and it's about blowing up and killing everybody.

Mr. CONYERS. It's cultural, isn't it?

Dr. GINGREY. It's a cultural problem. It really is, Mr. Conyers. You're right on target, and I don't think it's our laws. I think our laws are good.

And as Mr. King pointed out, you know, a lot of these crimes with handguns are theft situations. They're not guns that are purchased with instant background checks.

Mr. CONYERS. Do you think that the National Rifle Association would join in a discussion like this and agree with us in principle?

Dr. GINGREY. Indeed, I do. I mean, I've had many conversations with them, as I'm sure you have, too. I know you've worked closely with them, and I think they would join with us in being concerned about the level of violence in this society.

Mr. CONYERS. Well, I haven't talked to anybody there recently. But you know, we all have to come together. We're coming together on the Voting Rights Act extension, and this is another very sensitive subject that I think the more dialogue that we could have, Chairman Coble, the better off we'll be toward some real solutions.

And I thank the witnesses for their contributions.

Mr. COBLE. I agree. And I say to the distinguished Ranking Member, Mr. Conyers, it astounded me when you gave those comparative figures of our fatalities here as compared to Great Britain, for example, Canada.

I knew we were ahead, but I had no idea that it was that decisive. And I thank you for sharing that with us.

The distinguished gentlelady from California, Ms. Waters?

Ms. WATERS. Mr. Chairman and Members, unfortunately, because we are public policymakers that are elected to have to deal with all of the subject matter, we have to continue to deal with the concerns of districts because of the use of firearms and the violence and the deaths, et cetera, et cetera, et cetera.

And I'm always surprised to see that there is any attempt to make it easier for gun sales, easier for people who are selling guns not to have to come under close scrutiny. I welcome a tough ATF. I welcome the idea that they go to gun shows, and they find out whether or not people are from out of State, whether or not people are violating the law. And I want them to have a presence and to let people know that we don't take lightly violating any laws in any shape, form, or fashion as it relates to gun sales.

Now what worries me about this bill is that it seems that even though it appears that there are a few things that may be good, what is this definition of "willfully?" This section clarifies the definition of "willfully" when establishing the intent for a violation.

The intent standard as applied to licenses would reflect the fact that licenses are provided with extensive education and notice of all legal and regulatory obligations. Thus, a violation of a known legal obligation would require ATF to establish that the licensee was aware of the obligation and intentionally or purposely violated such obligation.

The standard here is ignorance is no excuse. So why are we trying to—why are we trying to change that and err on the side of the gun seller? Don't we want ATF to do its job? Why are we setting up higher standards and developing more difficult criteria for them to deal with people who are violating the law? That bothers me.

And then I see in section 7 limitations on the use of firearms purchasing information. Now I am about privacy, and we work very hard around here to protect privacy. But some of you were very adamant I think in the PATRIOT Act and some other things we've done in fighting terrorism that we are able to share information, so as to fight terrorism and to make it easier to apprehend people who may be involved in potential acts of terrorism. But here, you reverse it.

And now we want to—we want to basically shut down the ability of ATF to share information that they gather about these individuals who are involved in gun sales. And there are a few other things. But let's just deal with those two.

And if I may ask both of our representatives, Mr. Gingrey and Mr. King, to respond to my concerns?

Dr. GINGREY. Ms. Waters, thank you very much for your concerns. And absolutely, I agree with you. We do not want to make it more difficult for ATF to go after Federal licensed gun dealers who are not abiding by the requirements of their license. And in fact, that would be applicable even if the Firearms Modernization Act was not in existence, 1384, because we would want ATM—ATF to go after them within the States where they're—where they're currently doing business.

But you know, you referenced the PATRIOT Act and connecting the dots and that sort of thing, and I remember so clearly the 911 Commission report talking about the stovepipe existence of our intelligence community. And really, in the 1968 Gun Control Act, you literally had 50 different stovepipes.

And so, the fact now that we have a national database, NICS, within the Federal Bureau of Investigation, and all of the States feed their information to Georgia. In Georgia, it's called the GBI. So I think that's good that we have done that.

And with this system, I feel that it's just clearly this bill, 1384, Firearms Commerce Modernization Act, doesn't change any existing law. It just allows us to do some things that because of technology and computer and ability, that's bringing it into the 21st century.

Ms. WATERS. Mr. King?

Mr. KING. Yes, thank you, Ms. Waters.

Ms. WATERS. Excuse me?

Mr. COBLE. Without objection.

Ms. WATERS. Thank you very much.

Mr. COBLE. You are recognized for 1 additional minute.

Mr. KING. If I could just reference a clarification with regard to Mr. Gingrey's. As far as not changing any existing law, I think it doesn't change existing responsibilities and doesn't interfere with any State laws or change any State laws or preempt any State laws. But it does seek to expedite the process by using modern technology.

And I think you lost me a little bit when you used the language about "willfully violate." I have the bill in front of me. Could you point out where that language is that would be—would be lowering the enforcement ability by adding the word "willfully" in the bill?

Ms. WATERS. Yes, I will. I beg your pardon. Oh, okay. It's in another bill.

Mr. KING. I'm sorry. That would be why I didn't pick up on it then.

Ms. WATERS. Thank you. Thank you. Thank you very much for bringing that to my attention.

Mr. KING. Thank you.

Ms. WATERS. Thank you. I yield back.

Mr. COBLE. I thank the gentlelady.

And I, again, thank the witnesses and those in the hearing room who stayed with us. And I apologize to the witnesses for having to make you all jump through hoops time and again. But when you report bills out, you know how that goes with the reporting quorum.

We appreciate very much your contribution to our three Members. In order to ensure a full record and adequate consideration of this important issue, the record will be left open for additional submissions for 7 days. Also any written question from any Member who wants to submit questions to the witnesses should be submitted within that same 7-day timeframe.

This concludes the legislative hearing on H.R. 1384, the "Firearm Commerce Modernization Act," and H.R. 1415, the "NICS Improvement Act." Thank you for your cooperation.

And the Subcommittee stands adjourned.

[Whereupon, at 11:05 a.m., the Subcommittee was adjourned.]

## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

The legislative proposals under consideration today are as different as day and night.

The first bill, HR 1415, introduced by Ms. McCarthy and which I am a cosponsor of seeks to make it harder for felons and domestic violence offenders to legally purchase firearms from a licensed gun dealer. The second bill, HR 1384, which was introduced by Mr. Gingrey aspires to make it much easier.

I have several concerns with the latter proposal. First and foremost, it proposes to overturn a longstanding prohibition in our current system of gun laws which restricts the ability of an individual to travel across state lines to purchase handguns.

Under current law, individuals are required to purchase handguns in their home state as a means of protecting state and local law enforcement officials. In addition, such policies were enacted as a way of discouraging residents of one state from attempting to travel across state lines to a more lenient state jurisdiction in order to evade more stringent gun law protections in their home state. Unfortunately, in one fell swoop this bill threatens to eliminate both sets of protections.

Second, the bill unwisely proposes to allow licensed firearms dealers to travel across state lines in order to distribute firearms at local gun shows and other venues. Remarkably, this new change comes at a time when all of the available research clearly indicates that gun shows continue to pose a significant problem for law enforcement.

Gun shows are the second leading source of firearms recovered in illegal gun trafficking investigations conducted by the ATF. In fact, in September 2003, the St. Louis Post-Dispatch reported that ATF agents seized 572 firearms from five unlicensed sellers who were exploiting the gun show loophole in ways that threaten the safety of American citizens.

We also know that in at least two cases in the past terrorists have targeted gun shows in order to purchase firearms. The first case involved Ali Boumelhem, a known member of the terrorist group Hezbollah. Mr. Boumelhem was convicted on September 10, 2001 by a federal court in Detroit on seven counts of weapons charges for smuggling shotguns, ammunition, flash suppressors, and assault weapons parts to Lebanon.

During the course of their investigation, FBI agents followed Boumelhem to at least three Michigan gun shows in October 2000. And, according to the Associated Press, "[The] agents said they watched [him]. . . buy gun parts and ammunition for shipment overseas."

The second case involved Muhammad Asrar, a Pakistani national with suspected al-Qaeda ties. Asrar admitted to authorities that he had bought and sold a variety of guns at Texas gun shows over the previous 7 years, including a copy of a Sten submachine gun, a Ruger Mini-14 rifle, two handguns, and a hunting rifle.

By working together we can prevent the 30,000 or so firearm-related deaths that occur annually, but only if we choose to enact commonsense proposals that truly make it harder for felons to gain access to dangerous firearms. One bill, HR 1415, does just this. The other I'm afraid does not.

PREPARED STATEMENT OF THE HONORABLE SHELIA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS

I thank the Chairman and Ranking Member. I am also happy to welcome three of our most distinguished colleagues as witnesses. Mr. Gingrey, Mrs. McCarthy, and Mr. King, I am happy you are here and I look forward to hearing your testimony.

This hearing has been convened to examine the need to update and modify existing law regarding the interstate sale of firearms; and the need to assist States to ensure that they provide complete, accurate and updated data to the National Instant Criminal Background Check System (NICS).

As I understand it, H.R. 1384, the bill before the subcommittee sponsored by Mr. Gingrey and Mr. King, does three things:

1. It would make it legal for a licensed dealer to sell a handgun to a resident of another state, as long as they do the sale in person and obey the laws of both states, as well as federal law.
2. It would allow dealers to do business at out-of-state gun shows.
3. It would allow dealers to transfer firearms directly to each other without having to use a shipper.

I must say Mr. Chairman that I was unaware that federal gun trafficking laws were antiquated in urgent need of revision. It is not immediately apparent to me why a buyer needs to travel out of state to buy a handgun. Or why a gun dealer in Texas needs to travel to Maine to sell firearms at a gun show. I will also be interested to learn why it is no longer advantageous to require dealers to use a shipper when transferring firearms and why law enforcement can do without the documentary record such transactions generate.

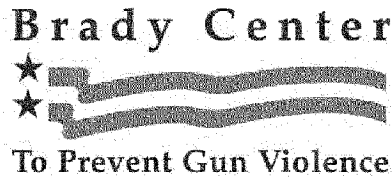
I am particularly interested in the witnesses' response to the concerns raised by some that if enacted, the effect of H.R. 1384 will be to make it easier to become a gun trafficker or that it will result in local gun shows being transformed into huge, national munitions bazaars.

Thank you for convening this hearing Mr. Chairman and welcome to the witnesses.

I yield back the remainder of my time.

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LETTER FROM THE BRADY CENTER FOR GUN VIOLENCE TO THE HONORABLE F. JAMES SENSENBRENNER, JR., CHAIRMAN OF THE COMMITTEE ON THE JUDICIARY AND THE HONORABLE JOHN CONYERS, JR., RANKING MEMBER, COMMITTEE ON THE JUDICIARY



May 10, 2006

Honorable F. James Sensenbrenner, Jr.  
2138 Rayburn House Office Building  
Washington, DC 20515

Honorable John Conyers, Jr.  
2138 Rayburn House Office Building  
Washington, DC 20515

Re: H.R. 1384, "Firearm Commerce Modernization Act"

Dear Chairman Sensenbrenner and Ranking Member Conyers:

The Brady Center to Prevent Gun Violence, and its affiliate, the Brady Campaign to Prevent Gun Violence, the nation's largest, non-partisan, grassroots organizations dedicated to an America free from gun violence, oppose H.R. 1384, the "Firearm Commerce Modernization Act." H.R. 1384 amends Sec. 922(b)(3) and 923(j) of the Gun Control Act to eliminate restrictions on sales of handguns. The effect of H.R. 1384 will likely be to endanger communities by undercutting the effectiveness of strong state gun laws and increasing sales at gun shows.

The Gun Control Act currently prohibits the interstate sale of handguns. Federally-licensed dealers may only sell handguns to purchasers who are residents of the same state.<sup>1</sup> Congress placed restrictions on sales of handguns because of their disproportionate use in crime. Handguns generally account for over half of all weapons used in crime and account for more than eighty percent of firearms used in homicides,<sup>2</sup> while making up only a third of total firearms sold each year.<sup>3</sup>

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<sup>1</sup> Long guns may be purchased from gun dealers in any state, regardless of the purchaser's state of residence.

<sup>2</sup> See, e.g., Federal Bureau of Investigation, *Uniform Crime Report 2004*, Table T.9, p. 19 (2005).

<sup>3</sup> ATF, *Annual Firearms Manufacturing and Export Report* (2004).

Congress was also concerned about trafficking of handguns from out-of-state gun dealers. During debate on the Gun Control Act, Congress found that the purchase of firearms by out-of-state residents “is a serious contributing factor to crime. . . large numbers of criminals and juveniles have availed themselves of this source of firearms in order to circumvent the laws of their respective jurisdictions.”<sup>4</sup> The Gun Control Act’s limits on the interstate sale of handguns were meant to prevent traffickers and prohibited purchasers from searching out sources of handguns in states where there may be little or no state-level control of handgun sales, in order to purchase guns for illegal use.

The ban on interstate sales of handguns helps to discourage trafficking of handguns from states with weak gun laws to states with strong gun laws. Traffickers travel to states with weak gun laws to try and avoid lengthy waiting periods, permitting requirements, or one-gun-a-month restrictions. In-state residency requirements force traffickers to use straw purchasers with in-state identification, which complicates traffickers’ operations and increases their risk of apprehension, ultimately helping to discourage handgun trafficking.

By proposing to allow federally licensed dealers to sell handguns to out-of-state residents, H.R. 1384 would undo the Gun Control Act’s restrictions. H.R. 1384 replaces “rifle or shotgun” with “firearm” in Sec 922(b)(3), thereby allowing dealers to sell handguns to out-of-state residents. This change will increase the potential for handgun trafficking by allowing traffickers to travel to weak gun states and purchase handguns without the need for in-state straw purchasers. H.R. 1384 also allows traffickers to seek out corrupt gun dealers, no matter what state they are in, as easy sources for guns for the illegal market.

The law will require handgun sales to be in compliance with state laws (both the laws of the seller’s and purchaser’s state of residence), but the onus is on the dealer to determine and comply with the gun laws of all fifty states. Such a change will likely result in more mistakes in compliance with state laws. While a dealer should be very familiar with his own state and local laws, he must also become familiar with the state laws of the purchaser’s state of residence, as well as legitimate forms of identification issued by the other state. Dealers are currently required to comply with other states’ laws for sales of long guns to out-of-state residents, but the potential risk to a community when dealers do not properly comply with state laws is magnified for sales of handguns because of their disproportionate use in crime.

Additionally, H.R. 1384 would also eliminate restrictions on sales at gun shows. Currently, federally-licensed dealers may only sell guns at the business location covered by their license, or at gun shows within the same state. This restriction prevents dealers from traveling from state to state to sell guns at gun shows. By striking “and such location is in the state which is specified on the License” in Sec. 923(j), licensed gun

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<sup>4</sup> Senate Report No. 1501 [to accompany S. 3633] from the Committee on the Judiciary, Sept., 6, 1968 at 24.



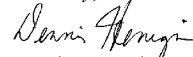
dealers will now be able to sell firearms in any state. This will likely result in an increase in the number and size of gun shows, and the number of total sales at gun shows.

There are already more than 4,000 gun shows in every region of the country each year.<sup>5</sup> Gun shows are attractive sources of guns for criminals, terrorists, and other prohibited purchasers, who can easily avoid criminal background checks by shopping at gun shows where many sellers are willing to do business with no questions asked. A report by the Department of Justice and the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), summarizes the problem:

Gun shows provide a large market where criminals can shop for firearms anonymously. . . . **[U]nscrupulous gun dealers can use these free-flowing markets to hide their off-the-book sales.** While most gun show sellers are honest and law-abiding, it only takes a few to transfer large numbers of firearms into dangerous hands.<sup>6</sup>

Nearly 20 percent of ATF investigations at gun shows over one year involved licensed dealers who were selling firearms "off the books."<sup>7</sup> Because gun shows continue to be a "major trafficking channel," according to the ATF,<sup>8</sup> Congress should not act to increase the number of sales at gun shows.

Sincerely,

  
Dennis A. Henigan  
Legal Director

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<sup>5</sup> See Bureau of Alcohol, Tobacco and Firearms, *Gun Shows: Brady Checks and Crime Gun Traces* (Jan. 1999).

<sup>6</sup> *Id.* at 19.

<sup>7</sup> U.S. Dep't of the Treasury and U.S. Dep't of Justice, *Gun Shows: Brady Checks and Crime Gun Traces* (1999) at 8.

<sup>8</sup> Bureau of Alcohol, Tobacco and Firearms, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (June 2000) at 12