



Dear Chair Grad and Committee Members,

Thank you for the opportunity to offer live testimony during your committee's hearing on S. 30 and Representative Notte's proposed amendments. As I listened to your careful consideration of the issue at hand, I wanted to offer some support into the record to clarify some issues raised during the hearing.

The first issue I'd like to address is about the Charleston, South Carolina shooter, Dylann Roof. There was some confusion raised in testimony opposing the bill as to whether he was, in fact, a prohibited person. On July 10, 2015, then director of the FBI, James Comey, released a public statement (which I have submitted into the record for the Committee) explaining the details of the case, and verifying that "Dylann Roof should not have been able to legally buy a gun that day".¹ The statement confirms that when Dylann Roof was transferred a firearm, the results of his background check were still pending, and that he should ultimately have been denied. The statement explains why this particular case took longer. As I described in my testimony, the more complex cases are those where the NICS investigator needs to contact local courts, inquire about the disposition of cases, and also learn the underlying facts of cases, to determine whether a potential firearm purchaser is prohibited. In Dylann Roof's case, the facts eventually revealed that Dylann Roof was an "unlawful drug user or addict," and thus not eligible to purchase the firearm he used in the horrific shooting under 18 USC § 922(g)(3). Unfortunately, his background check was not completed within three business days, and so the FFL legally transferred the gun to him, despite the background check not yet being approved.

We agree with those who offered testimony that the FBI NICS records check system works efficiently and accurately and is continuing to improve following the passage of the Fix NICS Act of 2017. Still, we know that a small, but significant number of firearms continue to be sold each year to people who have not yet passed a background check. Testimony from those opposed to the bill correctly pointed out that FFLs currently have discretion as to whether they proceed with a sale in the rare instances that after three business days, they have not yet received approval of someone's background check. Indeed, this is the loophole that Rep. Notte's proposed amendments are intended to address. As Mr. Comey points out in his statement, "[m]any large retailers exercise their discretion not to proceed until given a clear 'yes,' but many other retailers conclude the transaction after the three business days even in the absence of a clear decision, which is what the law allows." The discretion in federal law is exactly what has led to over 5,807 guns needing to be retrieved from people whose background checks took longer than three days, but were ultimately denied between January 1 and November 12, 2020 in this country.²

¹ FBI Press Release, Statement by FBI Director James Comey Regarding Dylann Roof Gun Purchase, July 10, 2015, <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-comey-regarding-dylan-roof-gun-purchase>

² U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, December 18, 2020 response to FOIA request submitted November 3, 2020:



These transfers are happening in Vermont, as Representative Notte and Mr. Wallin described during the hearing.

Vermont's background check laws are a crucial protection that prevents guns from making their way into the hands of those who shouldn't have them. During Thursday's Committee meeting, you were presented clear evidence that prohibited purchasers in Vermont continue to acquire guns through the Charleston Loophole, as well as a clear case for why it matters so much to give adequate time for background checks that take longer than three business days to be completed. Every gun that makes its way into the hands of an abuser or other person who has a demonstrated history of dangerous behavior is a potential threat to Vermonters' lives and communities. Ensuring a comprehensive, responsible background system is the just course of action in this case.

I'd also like to address the concern raised that closing the Charleston Loophole would shut down the operation of gun shows in the state. First, it's important to recognize that nearly 90% of checks are completed within a matter of minutes, and 97% are completed within three days.³ So only a very small number of checks would not be completed for someone attempting to purchase a firearm at a gun show, which could not reasonably have the effect of shutting down all gun shows. We also know that gun shows would not be shut down because they continue to operate in states that have closed the Charleston Loophole. A quick internet search revealed several gun shows scheduled in the coming months in states like Massachusetts, Illinois, and Colorado which have all closed the Charleston Loophole.⁴ I'd also like to affirm that, indeed, if someone from out of state does not have an approved background check at the gun show, that generally the guns can be shipped to a licensed firearms dealer in the person's home state once the check has been approved.⁵

Lastly, I would like to address the troubling insinuation that the ATF agents who are responsible for retrieving the firearms are undeserving of the same safety consideration as our local law enforcement officers. To be clear, ATF agents live, raise their families, and work in their local

https://everytownresearch.org/documents/2021/02/2021-0075-final-response-packet-_atf_everytown_redacted.pdf/

³ Everytown for Gun Safety Support Fund, "Undeniable: How Long-Standing Loopholes in the Background Check System Have Been Exacerbated by COVID-19," December 10, 2020, <https://everytownresearch.org/report/background-check-loopholes/>.

⁴ Massachusetts: <https://gunshowtrader.com/gunshows/massachusetts-gun-shows/>; Illinois: <https://gunshowtrader.com/gunshows/illinois-gun-shows/>; Colorado: <https://gunshowtrader.com/gunshows/colorado-gun-shows/>

⁵ See ATF's Explanation of Rules Regarding shipping of firearms by a licensee to a non-licensee in another state, Referencing 18 U.S.C. 922(b)(3); 27 CFR 478.99(a): <https://www.atf.gov/firearms/ga/may-licensee-sell-firearm-nonlicensee-who-resident-another-state>. Long guns may be shipped through the US Postal Service, see ATF's <https://www.atf.gov/firearms/ga/may-licensee-sell-firearm-nonlicensee-who-resident-another-state>. Handguns must be shipped by a common or contract carrier, i.e. see FedEx's Instructions on Shipping Firearms: <https://www.fedex.com/en-us/shipping/how-to-ship-firearms.html>



communities. They are law enforcement personnel who put their lives on the line each day to protect Vermonters just like any member of your local police or sheriff's department. We should make every effort to ensure their resources and their lives are protected. Representative Notte's amendment to S.30 would make it so that no ATF agent ever again has to go into a potentially dangerous situation to retrieve a firearm that never should have been sold to begin with.

Sincerely,

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