

April 9, 2013

The Honorable Lindsey Graham  
290 Russell Senate Office Building  
Washington, DC 20510

The Honorable Mark Begich  
111 Russell Senate Office Building  
Washington, DC 20510

Dear Senators Graham and Begich,

We are writing to express grave concern about a bill that you are sponsoring, the “NICS Reporting Improvement Act of 2013” (S. 480). Contrary to the title of the bill, the legislation as drafted would make it far more difficult to include and keep those who are a danger to themselves or to others in the National Instant Check System (NICS). Indeed, S. 480 could have serious unintended consequences that would actually increase, not decrease, risk of suicide and harm to the public. We want to highlight a few of the problems that your bill creates.

- **S. 480 appears to create a revolving door by means of which people whose names are entered in the NICS would get their gun rights back rapidly, with no determination of whether they are still a danger to themselves or to others.**

Currently, anyone committed to a psychiatric hospital is prohibited from buying or possessing firearms until he or she petitions for the restoration of his or her rights and a court or administrative body in the state where the commitment occurred restores those rights. Under S. 480, people would no longer have to go through a review process to have their gun rights restored—these rights would be restored automatically on their release from involuntary treatment. Thus, persons recently hospitalized and still recovering from a mental health crisis could go directly from the hospital to a gun store—and legally buy a firearm. Firearms that were seized at the time of hospitalization would have to be returned. The expiration of an involuntary commitment order is often just the starting point in a person’s ongoing recovery from an acute episode of a mental disorder, and does not necessarily mean that the person’s complete stability has been restored. Indeed, attempts at suicide and acts of violence following hospitalization are most likely to occur shortly after hospital discharge, with the risk diminishing over time. Whether, and when, to restore gun rights to a person with a mental disorder is an important determination that should be made in a separate proceeding, informed by appropriate expert opinion as to recovery from a gun-disqualifying mental health condition and the likelihood of relapse.

- **S. 480 would allow gun prohibition only after a commitment hearing, thus permitting persons who are subject to commitment to keep their gun rights by waiving their right to a hearing.**

The proposed law's gun-prohibiting criteria would only apply "*after a hearing...at which the person had an opportunity to participate with counsel.*" In reality, many patients who are hospitalized on emergency commitments waive their rights to contest a subsequent petition for judicial commitment, and thus never have a hearing; under the provisions of S. 480, these persons would retain gun rights despite their potential risk of harming themselves or others. Indeed, in some states, the majority of committed patients waive their rights to a hearing. In effect, the law could render tens of thousands of otherwise disqualifying mental health records ineligible for NICS reporting.

- **S. 480 would effectively remove records of involuntary outpatient commitment from the scope of NICS reporting by requiring a finding of "imminent dangerousness."**

Most states that have implemented mandated community treatment (often called "outpatient commitment") use a lower threshold of dangerousness not requiring "imminence." S. 480 would allow persons committed under these statutes to retain their gun rights. The Virginia Tech shooter was committed under such a statute; after the massacre, Virginia made sure that such records would be reported to NICS. S. 480 takes a step in the opposite direction.

We applaud your efforts to improve mental health reporting in the NICS. However S. 480 would actually make the system less effective, more confusing, and would increase the risk that those who are a danger to self or others will be able legally to purchase firearms. We would be happy to discuss our concerns in more detail and offer our assistance in drafting effective and clear legislation.

Sincerely,

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