

Minority Views regarding H.R. 3504, as amended

The Minority offers the following Minority views regarding H.R. 3504, as amended.

The Minority supports, H.R. 3504, as amended, but believes that bill would have been improved if the Majority considered and adopted an amendment to the amendment in the nature of a substitute (ANS) to H.R. 3504 that was offered by Representative Roy of Texas. The ANS to H.R. 3504 makes various improvements to programs within the Department of Veteran's Affairs (VA) Veterans Benefits Administration including specially adapted housing grants, work-study, and the Fry Scholarship. Representative Roy's amendment would have added to those improvements by codifying VA's practice of not sending personally identifying information (PII) on beneficiaries to the Federal Bureau of Investigation's National Instant Criminal Background Check System (NICS) solely based on an adjudication of service-connection for a disability.

Under current law, Section 922(g)(4) of Title 18, United States Code, an individual "who has been adjudicated as a mental defective or committed to a mental institution" may not "ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." Section 922(d) makes it a felony to knowingly sell a firearm or ammunition to such individuals. The Brady Handgun Violence Prevention Act of 1993, Public Law 103-159 (Brady Act), requires federal agencies, upon the request of the Attorney General, to report PII of certain individuals, including those adjudicated as a mental defective, to the FBI's National Instant Criminal Background Check System (NICS). NICS is a database that federal firearms licensees use to verify if an individual may lawfully purchase a firearm or ammunition. Currently, VA does not report PII of veterans based solely on an adjudication for service-connected disability compensation benefits.

On February 28, 2019, the House passed H.R. 1112, as amended, The Enhanced Background Checks Act of 2019, by a recorded vote of 228-198. H.R. 1112, as amended, would change the language in Section 922(g)(4) and (d)(4) of Title 18 from "adjudicated as a mental defective" to "adjudicated with mental illness, severe developmental disability, or severe emotional instability". Veterans and veterans' advocates have raised concerns that, if H.R. 1112, as amended, was enacted, VA could interpret an adjudication of an award of service-connected disability compensation for PTSD or any other mental disorder or disability as sufficient reason to report veterans to the NICS list. To put this into perspective, according to information provided by VA, more than one million veterans receive disability benefits for mental illness. If H.R. 1112, as amended, is enacted, VA could begin reporting veterans to NICS without evidence that the individual is a danger to themselves or others.

Despite the devastating and far-reaching implications H.R. 1112, as amended, may have on veteran's constitutional rights by potentially requiring VA to report information on veterans,

H.R. 1112, as amended, was never considered or debated within the Committee. As such, prior to floor consideration of H.R. 1112, as amended, Ranking Member Roe offered an amendment at the House Rules Committee to clarify that veterans with a VA identified mental illness and other affected VA adjudications should be exempt from the standard in H.R. 1112, as amended. However, Ranking Member Roe's amendment was ruled out of order on February 25, 2019.

In response to concerns raised by Veterans of Foreign Wars, during floor consideration of H.R. 1112, Chairman Jerrold Nadler of the House Committee on Judiciary (Judiciary Committee) clarified that the bill was not intended to change current law and that he would work with stakeholders to address the problems identified.¹ Although the Minority was encouraged by Chairman Nadler's statement, as of the date of the markup, the Judiciary Committee had not presented any legislation that would address the concerns stated above. Due to the lack of action by the Judiciary Committee Majority, Representative Roy introduced H.R. 3450, a bill that is similar to the amendment Ranking Member Roe offered at the Rules Committee. Ranking Member Roe requested that H.R. 3450 be included on the June 20, 2019 Full Committee Legislative Hearing and July 11, 2019 markup agenda, but both these requests were denied.

During the Full Committee markup of H.R. 3504, Representative Roy offered an amendment to codify VA's existing practice of not sending certain personally identifying information to NICS, solely on an adjudication that a veteran has a service-connected disability. Both the ANS to H.R. 3504 and the amendment to the ANS offered by Representative Roy, pertain to benefits administered by the Under Secretary for Benefits. Representative Conor Lamb of Pennsylvania, however, raised a point of order pertaining to germaneness. Despite the Minority's objections to the use of procedure to avoid debating and voting on the merits of the amendment, Chairman Takano ruled the amendment non-germane. Representative Roy moved to appeal Chairman Takano's ruling. However, Representative Lamb successfully moved to table the appeal. Representative Lamb's motion was agreed to by a recorded vote of 15-12, with 15 members the Majority voting to end debate on the germaneness of the amendment and one member of the Majority joining with 11 members of the Minority in voting to continue debating the germaneness of the amendment.

The Minority is concerned that veterans might not seek VA benefits because they fear they will lose a constitutional right. As the National Alliance for Mental Illness states, "creating new federal or state gun laws based on mental illness could have the effect of creating more barriers to people being willing to seek treatment when they need it most. Solutions to gun violence associated with mental illness lie in improving access to treatment, not in preventing people from seeking treatment in the first place."² Representative Roy's amendment would have provided veterans with the assurance that their Second Amendment rights are protected if they seek care

¹ Enhanced Background Checks Act of 2019, *Congressional Record*, daily edition, vol. 165 (February 28, 2019), pp. H2281.

² <https://www.nami.org/learn-more/mental-health-public-policy/violence-and-gun-reporting-laws>

or benefits from VA. The Minority feels strongly that veterans with a service-connected mental disability should not be stigmatized as dangerous or suicidal because of their disability rating. We agree that an individual who a court rules is a threat to themselves or to others should not be permitted to possess a firearm. However, a VA employee granting a compensation claim for PTSD or depression is not the same as a judicial ruling or a physician finding that a veteran is a danger to himself/herself or society. Equating the threat of violence with a mental health diagnosis reinforces dangerous stereotypes that can prevent veterans from getting help and increase feelings of shame, isolation, and suicidal ideation.³

The Minority disagrees with the manner in which Chairman Takano used parliamentary procedure for partisan purposes to avoid debating the amendment. Chairman Takano's decision to deny consideration of Representative Roy's amendment is an affront to the bipartisan manner this Committee has worked in the past to find solutions both sides of the aisle can agree on. The Minority would have welcomed ideas from the Majority to address the issue Representative Roy's amendment sought to correct. Regrettably, the Majority has refused to entertain any discussion on the problem created, and acknowledged, by Chairman Nadler with passage of H.R. 1112.

The Minority appreciates Veterans of Foreign Wars of the United States, Vietnam Veterans of America, and Heritage Action for America for supporting the amendment.



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³ U.S. Department of Veterans Affairs, National Strategy for Preventing Veteran Suicide: 2018–2028

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