

United States Senate

Senator Tom Coburn, MD

March 7, 2013

Senator Chuck Schumer
United States Senator
322 Hart Senate Office Building
Washington DC, 20510

Dear Senator  Schumer,

I want to thank you for your time and efforts as we have worked to bridge our differences on the complex and contentious issue of Second Amendment rights. As you know, I entered these talks because I recognize we can do more to give law-abiding citizens the tools they need to make sure they are not transferring a firearm to a person who will be a threat to themselves or others. The American people should be encouraged we have found so much common ground. We've achieved breakthroughs in a number of key areas such as improving the reporting of mental health records and expanding background checks in a way that is simple for gun owners to use while respecting the 2nd Amendment and the central role that states play in our Constitutional government. Those are significant achievements I hope will be reflected in a final version of legislation that can pass Congress and reach the president's desk. I want to make sure that my concerns and differences are known to you know as we look for a resolution on this important issue moving forward.

Unfortunately, there is no legislation that will eliminate all violent crime or that can fully ensure firearms do not fall into the hands of the dangerous. Likewise, expanding background checks cannot prevent how guns used in crimes are predominately procured through stealing, illegal markets, or taken from relatives. However, we all agree that there is a legitimate policy gap to be addressed where prohibited purchasers can easily access firearms in legal secondary markets without a background check. The more than \$1 billion in federal tax dollars spent on creating and maintaining the National Instant Criminal Background Check System (NICS) is rendered useless when a prohibited purchaser can just as easily procure a firearm from a gun show or an internet marketplace without a background check as they can at a gun store.

In addition to our concerted efforts to improve the record reporting rates by states, my central purpose in these discussions is to mitigate illegal purchasers from occurring in these secondary markets by giving responsible citizens a tool to ensure that the counterparty to a transfer is not on the NICS list. The reason why "mandatory background checks" polls at more than 90 percent is that people do not want firearms to end up in the wrong hands, not because they want a more robust record keeping system. I truly believe the vast majority of the benefits of our efforts will derive from implementing an efficient, effective, and nonintrusive system that will empower

law-abiding citizens that share our stated goals. The overwhelming support found in public polling indicates the American people are ready to take up that mantle.

I appreciate your desire to see that the law is complied with by means other than the self-interest of public safety benefits. Without unpacking the issue, I fully understand why it may seem like common sense to need a record as evidence of compliance. Unfortunately, the flaw with using record keeping to confirm a background check takes place is that it cannot be used to enforce the law on the 250-300 million firearms in current circulation without the government knowing where all of them are on the date of enactment. An unknown portion of firearms in circulation have been transferred beyond their original owner and cannot be traced to the current possessor. A record generated during the private transfer of one of these firearms can never be found during a trace, making the act of record keeping the proverbial tree in the woods. Further, those possessing a firearm that do not want to comply with a background check law on private sales can simply say the firearm was transferred prior to the date of enactment. That is the case no matter what options are made available to comply with a new law, including forcing every transfer through a Federally Firearms Licensed (FFL) dealer. There is nothing illegitimate or irrational about suspicions of a registry when record keeping for enforcement cannot be utilized without linking all of the 250 million plus firearms to their current owners.

Even for firearms that come into circulation after the date of enactment, the idea that a lack of a record in a traceability chain constitutes a violation of federal law is a policy that potentially places more harm on innocent law-abiding citizens without the commensurate benefits of enforcement of compliance. A lack of a record during a crime gun trace could indicate a willful violator of the law or a straw purchaser. A lack of a record could also indicate the gun was stolen, exchanged through an exempt transfer such as between family members, or the record was lost, destroyed or misplaced. Can law enforcement differentiate between those in the former group posing as the latter? Moreover, the average "time to crime" measuring the original point of purchase to the time of the crime trace is 11 years. Is losing a record of sale from more than a decade ago really a federal crime? My goal in these talks is to empower law-abiding gun owners, not criminalize them in a web of paperwork trails.

A record can only affirmatively prove that a background check took place, while a lack of a record cannot prove the opposite. Record keeping can only be utilized to document a legal action between two self-selecting law-abiding citizens, an act of redundant self-enforcement. The type of person that will comply with the background check law for the sole purpose that they might get caught will do so because of front-end stings, not back-end record keeping.

I understand the desire of the law enforcement community to trace firearms that are used in crimes. However, expanding background checks does not solve the current problems with tracing firearms. Further we have to balance this goal with the privacy rights of American citizens, the Second Amendment rights of law-abiding citizens, and our long tradition of treating

American citizens as innocent until proven guilty. This is an issue unrelated to background check enforcement necessitating its own separate debate before Congress.

It is important to consider that there are no preventative benefits from a record being kept during a transfer, as the firearm being traced has already been used to commit a crime. In addition, record keeping can never be used to trace a gun to a prohibited person because by construct of the proposed law such a record cannot exist. The effect of what we all agree and hope to have with this bill is forcing those with malicious intent to be caught and prevented during the illegal act of procuring a firearm, rather than being traced to it.

Finally, lost in the record keeping debate is the entire purpose of the bill, which is to keep firearms out of the hands of the prohibited. Of course we want to make sure that sellers will comply with a law, but the public safety benefit is not catching the non-compliant seller who already has the firearm; it is keeping that firearm out of the hands of the potential prohibited buyer.

While I respect your opposing view on the issue of record keeping, I will not concede to the idea that a bill without record keeping will not have a substantial impact on keeping firearms out of the hands of felons and the dangerously mentally ill and is not worth the time and effort of Congressional consideration. We have all agreed there is a legitimate policy gap in which prohibited purchasers can easily access firearms in legal secondary markets without a background check. It is so important to underscore that the vast majority of gun owners in America are law-abiding citizens. A law that provides a tool for Americans to prevent firearms from winding up in the wrong hands will be the most significant impact of this bill. I also steadfastly maintain that Congress should implement a policy that makes the transfer of firearms safer, not more expensive, onerous, or invasive.

Though we were not able to bridge our substantive differences on the issue, I appreciate your honest and forthright approach to our conversations and very much look forward to a continued discussion on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Coburn". The signature is stylized with a large, sweeping initial "T" and a cursive "Coburn".

Tom A. Coburn, M.D.
U.S. Senator