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June 8, 2000

The Honorable Henry J. Hyde
 Chairman, Committee on the Judiciary
 2138 Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairman Hyde:

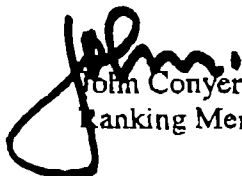
I write to inquire again about your willingness to accept my gun safety proposal that meets the criteria set out in your letter of May 12.

On May 12 – on the eve of the Million Mom March – you wrote expressing your willingness to make several concessions in an effort to move our discussions forward on gun safety legislation. Heartened by your willingness to compromise on several sticking points, I replied immediately by sending you actual legislative language that incorporated the criteria you outlined in your letter. Based on your spokesman's comments to the media that "(w)e'll have an answer for Mr. Conyers sooner rather than later," Associated Press, May 16, 2000, I eagerly awaited your reply. I felt especially motivated to reach an agreement on gun safety in response to the overwhelming show of support for such measures by the 750,000 mothers and their families who marched on Mother's Day.

Since I provided you with compromise language, our nation has witnessed another rash of gun violence tragedies that are both senseless and preventable. Most notably, in Fort Worth, Florida, a high school student shot his teacher on the last day of school. In the words of the school's superintendent, "(i)f this gun had been locked, ladies and gentlemen, if this gun had a lock on it, we wouldn't be here having this tragic conversation today." This could not make it any clearer that the Congress's inaction on gun safety legislation not only is measured in days, but in lives.

I have offered a reasonable compromise that translates your criteria into legislation. My offer is still open, but I still have not heard from you. The Conference Committee has been dormant for nearly one year. If you sign on to my proposed compromise, we would need only one other Republican signature to have a House position and move this legislation forward.

Sincerely,


 John Conyers, Jr.
 Ranking Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FAX COVER SHEET

DATE: _____

TO: LEANNE SHIMABUKURO; DEANNE BENOS

PHONE NO. _____

FAX NO. 456-7028

FROM: JOSEPH GRAUPENSPERGER

PHONE NO. 514-3951

FAX NO. 305-2643

NO. OF PAGES: 4 (EXCLUDING COVER)

COMMENTS: The latest exchange between Hyde & Congers.

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June 9, 2000

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
Washington, D.C.

Dear John:

Thank you for your letter of June 8, 2000, concerning gun safety legislation. I think it might be helpful if I respond by summarizing the remaining differences between our most recent proposals with an eye toward determining if we might yet be able to reach an agreement.

Definition of "gun show". Your proposal continues to define the term "gun show" as an event at which 50 or more firearms are offered or exhibited for sale, and at which there are not less than five vendors. In my most recent offer, as communicated in my letter to you of May 12, 2000, I also would require 50 or more firearms and not less than five vendors. I further proposed modifying the "purpose of the event" language in my earlier proposal in favor of a definition that covers all "events that are used to facilitate the sale of firearms." This new "facilitation" language is intended to address your concern about flea markets being the occasion for gun sales, while at the same time exempting a county fair or group yard sale which might unknowingly have five persons selling firearms which, in the aggregate, total more than 50 firearms.

"Trigger language" (leading to the 3 day background review period). Your most recent proposal provides that any "information obtained in the course of completing the background check" that a person is ineligible may trigger the longer three day review period. As you recall, I provided that any "official record" of possible ineligibility could trigger the longer review period. I believe that this difference is minimal, and yet you have not responded to my last communication in which I explained the rationale for my language. I look forward to your response on this point.

Instant check registrants. Your most recent proposal only allows current or retired law enforcement officers to serve as instant check registrants. My proposal allows anyone to be an instant check registrant so long as they meet the same requirements that are imposed on federally licensed vendors (including passing a background check). My proposal also imposes the same

The Honorable John Conyers
June 9, 2000
Page Two

criminal liability on instant check registrants that is imposed on federally licensed vendors. The likely outcome of your proposal to limit instant check registrants to current or retired law enforcement officers is that few, if any, persons will become instant check registrants. This, in turn, could have a substantial detrimental effect on gun shows. Again, I remain open to considering additional provisions that will further ensure the fitness and lawful conduct of instant check registrants.

Used firearm serial numbers. Your proposal requires in the case of used firearms, that the federally licensed vendor or instant check registrant who performs the background check transmit the make, model, and serial number of the used firearm to the manufacturer (or to the Secretary of the Treasury if the manufacturer has discontinued business). While I personally would be comfortable with such a requirement, I am concerned that such a new record-keeping requirement would make our agreement even more difficult to sell to a majority of House Members.


Immediate destruction of records. And finally, your proposal provides that the NICS records of approved purchasers may be retained for up to 90 days. This is the same time period proposed in a pending FBI regulation to reduce the record retention period from the current 180 days. As I have previously indicated, with regard to the immediate destruction of records for approved purchasers, it may be that you and I will ultimately have to agree to disagree. I personally believe that retaining records for a 90 day period would be useful for law enforcement; however, such a provision would be extremely threatening to many Americans who would see such a policy as a troubling threat to the privacy interests of law-abiding citizens and a possible prelude to longer or even permanent record retention. I would also note again that majorities in the House and the Senate have both voted for the immediate destruction provision during this Congress.

As you have acknowledged on a number of occasions, and most recently in your letter of yesterday, I have made many concessions over the course of our negotiations. Through it all, I have had to bear in mind the varied views of members on both sides of the aisle with an eye toward reaching an agreement that might garner at least 218 votes. As you know, on April 21st, I sent a letter to the President offering comprehensive legislation that includes reasonable gun safety provisions, including an effective background checks at guns shows, gun safety locks, a juvenile Brady provision, a ban on juvenile possession of assault weapons, and a ban on large capacity clips. That proposal has the support of a majority of the House Republican conferees on gun related provisions. If you and just two other Democratic conferees would support that proposal, we could advance the debate with an offer to Senate conferees.

The Honorable John Conyers
June 9, 2000
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I remain open to any recommendations that might lead to needed improvements.

Sincerely,



Henry J. Hyde
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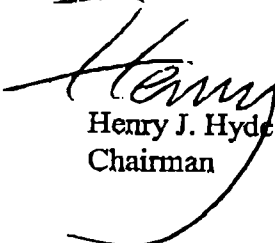
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June 15, 2000

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 Chairman
 Committee on the Judiciary
 Washington, D.C.

Dear Mr. Chairman:

Thank you for your letter of June 9 responding to my May 12 proposed gun safety legislative compromise. I am attaching a draft gun safety conference report that incorporates comments and proposals made in your most recent letter. If you would sign on to my compromise, we would need only one other Republican signature to report a gun safety conference report back to the full House. My current proposal makes the following additional concessions beyond that which I've already offered to you in my previous letters.

(1) **Narrowing Language in Gun Show Definition** – Although my proposal would allow for the inclusion of precisely the purpose language you suggest in your letter, I remain concerned that purpose language could be misinterpreted to allow gun sales without background checks at gun shows and other events where many guns are sold. If indeed the stated rationale for this language is to protect "yard sales," I am struggling to understand why we need such language. While I have seen clocks, baby clothes, stuffed animals, children's books, and lawn furniture at yard sales, I have never heard of – much less attended – a yard sale where 50 or more guns are sold by five or more firearm vendors. I would appreciate any examples of such yard sales that you can provide. In the meantime, however, I am willing to set aside my concerns and accept your compromise language.

(2) **Raising Numerical Threshold in Gun Show Definition** – The Senate-passed gun show bill would have defined a "gun show" as any event at which 50 or more guns are offered for sale, transfer or exchange. My proposal (in addition to the limitation described above), would limit requiring background checks by unlicensed persons to events where 50 or more guns are offered for sale, transfer or exchange and **where there are 5 or more firearm vendors**. While I remain troubled by the fact that events where four vendors sell hundreds of guns would be excluded from background checks, I will not allow the perfect to become the enemy of the good and am prepared to accept this compromise language.

The Honorable Henry Hyde
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(3) **24-Hour Time Limit on Background Checks at Gun Shows** – The Senate-passed gun show bill would have allowed law enforcement authorities to take the same amount of time to complete checks at gun shows as gun stores, up to three business days. My proposal makes a significant concession by limiting background checks at gun shows to 24 hours unless a “red flag” is raised. In those cases, law enforcement authorities could take additional time to complete the check, but in no event could the NICS delay the transfer of a firearm for more than three business days. Your letter asserts that the language you use to describe “red flags” comes from current law. In fact, my language precisely mirrors the language used to describe “red flags” in current law. 18 U.S.C. § 922(t)(4). As you have acknowledged in the past, purchasers for whom background checks take more than 24 hours are 20 times more likely to be prohibited purchasers. It would, therefore, be unwise to force law enforcement authorities to play “beat the clock” to investigate some “red flags,” while allowing up to three business days for others, as I believe your proposal does. Since we both want the same end result – keeping guns out of the hands of questionable buyers – I see no reason for departing from the existing statutory language to craft the new provision.

(4) **Allowing Instant Check Registrants to Conduct Background Checks** – In response to your concern that there some buyers at gun shows may be slightly inconvenienced by having to wait in line for background checks, my proposal compromises significantly from the Senate provision by allowing for the use of instant check registrants, a new largely unregulated entity empowered to utilize a federal apparatus heretofore limited to federal licensed dealers to conduct background checks. Although I remained concerned that we not create a new class of background checkers who lack the same the credentials and expertise as licensees and do not have the same deterrents against wrongdoing as licensed dealers, I reluctantly will agree to drop the language you found objectionable requiring that the registrants be current or retired law enforcement officers. However, I would limit the use of instant check registrants to events where there are not enough licensed dealers available to make background checks easily available.

(5) **Preventing the Creation of a Gun Registry** – I understand that, while you are personally comfortable with the exceedingly short term (90 day) retention of background check records, you are fearful that such a provision might trigger the paranoia of the NRA and its allies in Congress about the creation of a gun registry. As the Department of Justice has explained to both the majority and minority last summer, the instant check system simply cannot work without some records retention for a limited period of time. Audits are necessary to check against wholesale fraud and conspiracies to circumvent the Brady law. After the DOJ briefings, I think both you and your staff appreciate that.

However, in response to your continuing political concerns regarding the provision, I previously proposed empowering the GAO to audit NICS to ensure that records of approved gun sales are not being used to create a registry. Because you still suggest that this is not enough, I

The Honorable Henry Hyde
Page Three
June 15, 2000

have gone one step further by adding language to create an independent board whose membership will be bipartisan and would include government officials as well as representatives of advocacy organizations. The board could, of course, include the NRA, and it would meet to evaluate whether records of approved gun sales are being used to create a gun registry.

(6) **Disallowing Government Retention of Tracing Records** – In response to your concern about triggering unjustified paranoia of the NRA and its allies in Congress about the government retaining serial numbers (without any additional identifying information) in order to trace guns used in crimes, I have proposed requiring gun manufacturers to retain the serial numbers.

(7) **Let's Step Outside Transactions** – While I continue to believe that all gun show transactions should be covered by background checks, in the spirit of compromise, I have reluctantly agreed to your language which could exclude some offers to sell guns at gun shows from background check requirements.

(8) **Enforcement Against Gun Criminals** – While I continue to argue that – in addition to gun safety laws – we need rigorous gun law enforcement, I will, in order to reach consensus, reluctantly agree to your proposal that significantly cuts (in some cases, by half) the sentences that can be imposed on gun criminals from the sentence lengths in the Senate-passed gun safety bill.

(9) **Fees for Background Checks** – While your language prohibiting a user fee would discourage states from participating in the instant check system, I am, in order to reach consensus, reluctantly willing to accept your language prohibiting NICS fees for background checks (although I continue to find it ironic that opponents of a user fees are themselves the putative advocates for states' rights in other instances).

These are nine significant further concessions to what is admittedly an exceedingly modest bill, the Lautenberg amendment, to put an obvious, common-sense proposition – closing the gun show loophole – into law. I believe that there are the votes in the House to pass my proposal. The McCarthy amendment, which mirrored the Lautenberg amendment, failed by only 21 votes – and that was after the Dingell amendment passed by a mere six votes. In addition to picking up your vote, I hope that you would use your considerable influence and power as Chairman to garner a meager 20 additional votes on the floor. We could then have the bill that American mothers and their families deserve.

As I stated to you in my last letter, the cost of inaction on this bill is measured not only in days, but also in lives. I would, therefore, appreciate your prompt response to this offer so that we can pass meaningful gun safety legislation before the of election-year political gamesmanship make it impossible to do so. Furthermore, I believe that your considerable influence can be used,

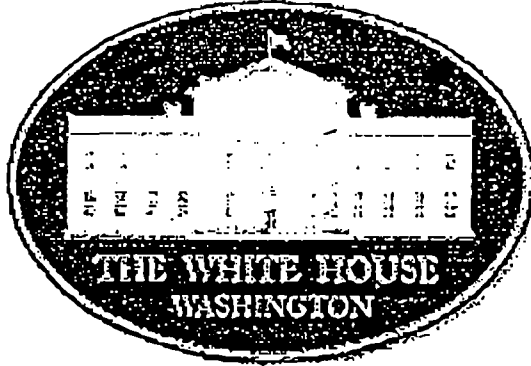
The Honorable Henry Hyde
Page Four
June 15, 2000

should you so elect, to successfully persuade Chairman Hatch to convene a conference which has been laying dormant for ten months.

Sincerely,


John Conyers, Jr.
Ranking Member

THE WHITE HOUSE
OFFICE OF LEGISLATIVE AFFAIRS
HOUSE LIAISON



112 East Wing
Office phone: 456-6620
Office fax: 456-2604

FACSIMILE TRANSMISSION

DATE: 5/12/00

TO: Leanne Shimabukuro / Neane Benos

FAX: 6-7028

PHONE: _____

FROM: BRODERICK JOHNSON
 LISA KOUNTOUPES
 MARK MAGANA
 MARTY HOFFMANN

JOSH ACKIL
 ERICA MORRIS
 BRIAN MASON
 TANEESHA JOHNSON

Comments: _____

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May 12, 2000

President Bill Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

Please permit me to share with you the most recent correspondence with Rep. John Conyers, the Ranking Democrat on the House Judiciary Committee, who wrote to me on May 4th regarding our continuing effort to forge compromise gun safety legislation.

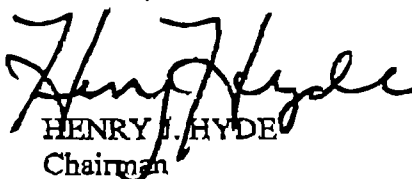
As you will see by my letter to John, I have made additional modifications to my proposed compromise in an effort move forward with this important legislation:

First, I am prepared to drop the provision in my original proposal that allows for certain firearms shipments by federally licensed vendors and instant check registrants.

Second, I am committed to changing the definition of a "gun show" by substantially modifying the purpose-of-the-event language to ensure that all events that constitute a gun show are subject to Brady background checks.

As you are aware, a majority of Republican House conferees on gun safety legislation have signed onto my proposed compromise. I need three Democratic members of the conference committee to pledge support for this proposal so that we may formally present the compromise to the Senate. It is my hope that you will do all in your power to help us break this logjam and encourage members of your own party to help us enact meaningful gun safety legislation this year.

Sincerely,



HENRY J. HYDE
Chairman

HJH:s

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May 12, 2000

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
Washington, D.C. 20515

Dear John:

Thank you for your letter of May 4, 2000, concerning gun safety legislation.

I have noted again your concerns about my proposed use of the term "official records" for triggering the longer three-day background check review period. I am increasingly of the view that we are talking past one another on this issue and that no real difference exists regarding how we want the 24-hour/three business day review to operate. We both agree that there should be a general requirement that all background checks at gun shows be accomplished within 24 hours. We both further agree that the 24-hour limit should give way to a longer, up-to-three-business-day review period when the would-be purchaser has not been cleared within 24 hours due to the existence of information in the National Instant Check System (NICS) which indicates that the would-be purchaser might be ineligible under the Brady law. While I remain open to modified language which best accomplishes this outcome, I do want to explain more fully the rationale that led to the use of the term "official records."

My initial proposal in our negotiations, based on discussions with the FBI's NICS Program Office, provided that the trigger for the longer, three-business day review period would simply be arrest records. This is because, according to the NICS Program Office, the only kind of record in the NICS database that is not a final disposition record but that still might indicate that a would-be purchaser is ineligible, is an arrest record: if the arrest led to a felony conviction or a domestic violence misdemeanor conviction, and there is an available record of such a conviction, then such a person would be ineligible. On the other hand, under current law and under your proposal, an arrest record by itself is not sufficient basis for prohibiting a sale from occurring. This ambiguity, in my judgment, necessitated the three-day review.

You expressed concern that having arrest records as the trigger for the three-day review was too narrow and that other records of possible Brady prohibitions might be in the NICS system and should also trigger the longer review period. You expressed the concern that as states continue to improve their capabilities to enter information of possible Brady disqualifications into the NICS system, a greater variety of types of records would be part of the background check, and hence, arrest records might not be the only available indicator of a purchaser possibly being ineligible. I thought your concern had merit; therefore, I broadened the trigger beyond simply arrest records to include any other official record in the NICS database of a possible Brady violation.

Honorable John Conyers
May 12, 2000
Page 2

In opposing the use of the term "official record," you urged in your letter of May 4 that "we should use the plain and unambiguous language of current law." I agree: that's why I used the term "official record." As you know, the section of the 1993 Brady law that established the NICS system is codified as a note at the conclusion of section 922 of title 18, United States Code. You will note that Subsection (e)(1), which directs the establishment of the NICS database, is headed by the subtitle, "Authority to obtain official information." The NICS system has always been a database of official records, meaning relevant records submitted to it by government agencies. It has never been contemplated that "official" information or records require "that records from state and local law enforcement be notarized, properly signed or printed on letterhead," as you suggest in your letter. Rather, it simply includes all information relevant to a determination of ineligibility under Brady that has been properly provided by a federal, state or local agency. This includes non-finalized restraining orders and any communication from courts and law enforcement authorities regarding mentally disturbed persons.

You have again expressed concern about the proposed definition of "gun show" in my proposal. Specifically, you write that the "'purpose' language...would make the entire gun background check regimen apply to almost no one." That is simply not the case. It might be the case if the purpose-of-the-event test was subjectively determined; that is, each event would be left free to declare whether or not its primary purpose is to facilitate the sale of firearms. This, however, is plainly not how the purpose test would work. Rather, it would be an objective test. As you appreciate, the challenge facing us is to develop a definition that covers all events that constitute actual gun shows, without unintentionally covering all manner of private transactions and imposing the regulatory requirements and civil and criminal liability on parties involved in such transactions. To that end, I am prepared to modify the purpose language to ensure that events that are used to facilitate the sale of firearms are included in the definition of gun show. I remain prepared to work with you to ensure an effective and workable gun show definition.

I believe I can put the high capacity ammunition clip ban issue and the issue concerning the background check for those under indictment to rest once and for all. I continue to support the exact language regarding the ammunition clip ban that Rep. Zoe Lofgren (D-CA) and I offered on the House floor in June.

While I may have floated modified language during our past months of negotiations, I remain supportive of the language I offered in June, and would like to see it become law. And concerning those under indictment receiving the longer, three-day background check, you will find my most recent draft proposal clearly provides the three-day review for those under indictment. I remain convinced that the three-day review should occur anytime there are records that indicate that receipt of a firearm might violate Subsections 922(g) or (n).

I am also prepared to drop the provision in my proposal that allows for certain firearms shipments by federally licensed vendors and instant check registrants. As you know, current law already permits the interstate shipment of firearms from one federally licensed vendor to another. I continue to believe that the regulatory controls and criminal penalties that cover federally licensed vendors and instant check registrants are sufficient to ensure that any shipments of firearms made by them would be as safe and secure as shipments of firearms under current law.

Honorable John Conyers
May 12, 2000
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Nevertheless, my interest in reaching an agreement with you leaves me prepared to simply maintain current law on this point.

Finally, with regard to the immediate destruction of records for approved purchasers, it may be that you and I will ultimately have to agree to disagree. I do not dispute your contention that retaining such records for a prolonged period may be useful in various ways for law enforcement; however, I believe that any such utility would be more than outweighed by the concerns of law-abiding citizens that the Federal government was retaining certain personal information about them in connection with their lawful purchase of a firearm. I would also note that majorities in the House and the Senate have both voted for the immediate destruction provision during this Congress.

John, I continue to hope that we might be able to reach an agreement on comprehensive legislation that includes reasonable gun safety provisions, including an effective background check at guns shows, gun safety locks, a juvenile Brady provision, a ban on juvenile possession of assault weapons, and a ban on large capacity clips. I believe that a review of our correspondence shows how far I am prepared to move to reach an agreement; I have yet to see any such movement on your part. John, do you really want to forge a compromise?

I remain open to any recommendations that might lead to needed improvements.

Sincerely,


HENRY J. HYDE
Chairman

cc: President William J. Clinton

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May 4, 2000

RECEIVED

MAY 04 2000

Committee on the Judiciary

The Honorable Henry J. Hyde, Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hyde:

I am in receipt of your April 14 letter concerning gun safety legislation.

At the outset, I would note that no one is more interested in enacting meaningful gun safety legislation than I am. As you know, I am on record as strongly supporting the "Lautenberg" amendment which passed the Senate. However, as I have repeatedly stated to you, I would be and am willing to negotiate a compromise from that position, so long as the legislation is not a sham, does not weaken current law, and truly shuts down, rather than perpetuates, the gun show loophole to the Brady law. It is in this spirit that I have proposed to you language requiring that the vast majority of gun show Brady checks occur within 24 hours, an important departure from the Lautenberg language.

Notwithstanding your professed commitment to closing the gun show loophole, I am concerned that the House Republican Leadership is the principal obstacle to enacting meaningful gun safety legislation. I need not remind you that it was the House Republican Leaders who have said they would not allow a vote in their "pro-gun House" on any bill that departed from NRA-authored proposals. I also continue to be frustrated by the failure of the Majority to convene a meeting of the juvenile justice conference, so that our positions can be aired openly and debated in a public forum.

As for your last two "compromise" proposals, I am profoundly concerned by their continuing fidelity to loopholes, and by the manner in which you have proposed them to me. Both proposals were released to the press, rather than to me. Both proposals parrot the loopholes in your earlier draft which would effectively allow in some cases for criminals to get guns at gun shows. I've explained these problems to you in repeated letters - the substance of which I might add you have never refuted. And amazingly to me, these tactics were used just one day after you signed a joint letter to Chairman Hatch stating that "(w)e have pledged to each other to begin anew negotiations." Yet, the very next day, you wrote to the President that "(Representative Conyers and the Democratic Leadership) have again rejected meaningful negotiations." Yet, less than 24 hours later, you made such a declaration without a single conversation with me or my staff.

The Honorable Henry J. Hyde

Page 2

May 4, 2000

As to the substance of your April 14 "compromise," I am disappointed that it contains all of the loopholes and drawbacks as your November 4 proposal. Among these loopholes are the following:

1. **The Fugitives, Felons and Stalkers Loophole:** Your discussion of your "official records" loophole appears to miss the point completely. All we are asking for is that we preserve the same language that is already in the Brady law to describe when law enforcement can take more time to finish background checks. Current law allows up to three business days to investigate any information available to the system that indicates that receipt of the firearm may violate federal or state law. The purpose of this leeway is to allow up to three business days to investigate - to the fullest extent of the law - the 5 percent of purchasers who are 20 times more likely than the average purchaser to be fugitives, felons or stalkers. The law permitting this minimal period of time does not require that records from state and local law enforcement be notarized, properly signed or printed on letterhead. It would seem obvious that, if our objective is not to weaken current law, we should use the plain and unambiguous language in current law that has worked to prevent over 500,000 felons, fugitives and stalkers from purchasing guns.
2. **The Gun Show By a Different Name Loophole:** Your definition of gun show, derived from the NRA-drafted Hatch-Craig amendment and rejected by the Senate, is so tortured that it would not even apply to most gun shows, so long as they sell items other than guns such as camping equipment, survival gear and knives. While you consistently contend that your definition of gun show is any event where 50 or more guns are sold and there are five or more vendors (a definition I could, in a spirit of compromise, agree to), you also include "purpose" language that would make the entire gun show background check regimen apply to almost no one.
3. **Meaningless Ammunition Clip Ban Loophole:** I am also frustrated that you continue to assert that there is agreement on all the other gun safety provisions. Your large capacity ammunition clip ban strikes essential language **that was in the amendment you offered on the House floor** and renders this provision *completely meaningless*. We never discussed changes to this important provision and I am disappointed that you are backing away from your own amendment.

I am also baffled that you view this proposal as progress when in fact it is weaker than your November 4 proposal. Every time we appear to be closer to agreement, I am concerned that you push the goal posts backward and make further concessions to the NRA and your leadership. In my judgment, your April 14 proposal takes the following steps backward:

- **Guns for Murder Suspects Loophole:** Your November 4 proposal explicitly guaranteed a background check of up to three days for "official records" that indicate a person is

The Honorable Henry J. Hyde
Page 3
May 4, 2000

under indictment but your April 14 proposal does not. It would, therefore, allow persons under indictment for murder, rape, child molestation and other potentially dangerous persons to purchase guns at gun shows if a background check could not be completed within 24 hours.¹

- **Bad Apple Gun Dealer Loophole:** Unlike your November 4 proposal, your April 14 proposal calls for immediate destruction of Brady background check records. This provision alone would prevent effective enforcement of the Brady law by removing one of the only means of holding fraudulent gun dealers accountable. Recent cases have been brought against licensed dealers who have entered false information into the Instant Check system in order to fraudulently sell guns to criminals. Without an ability to compare the information sent to the Instant Check system with a dealer's records, we would provide an invitation to fraud that would permit thousands of criminals the ability to evade background checks and purchase guns. On balance, is the NRA's paranoia about any recordkeeping really worth letting criminals get guns and criminal gun dealers get away?
- **Lee Harvey Oswald Loophole:** Unlike your November 4 proposal, your April 14 proposal substantially weakens the ban on interstate sales on firearms, enacted over thirty years ago in response to Lee Harvey Oswald's interstate purchase of the rifle used to kill President Kennedy.

As to my acceptance or counteroffer to your proposal, you have had my counteroffer since October. You have never responded to it. However, Chairman Hyde, this six-month-old game of floated "compromises" and missives has brought us no closer to producing a gun safety bill that the American people overwhelmingly want and deserve. In contrast, a meeting of the conference could produce such a bill. I, therefore, implore you to use your considerable influence on your leadership and request that they cease obstructing the gun safety bill and allow a meeting of the conference committee.

Sincerely,



John Conyers, Jr.
Ranking Member

¹ In your November 4 proposal, you explicitly required a three-day check for individuals for whom an "official record" indicates "receipt of a firearm would violate subsection (g) *or* (n) (the section which prohibits the transfer of a firearm to an individual under indictment) of section 922." Your April 14 proposal would merely allow a three day check where an "official record" indicates a person is prohibited under 922(g).

Chronology

-- After Senate passage of gun safety, during a Judiciary Committee markup(5/26/99), Mr. Conyers moves that the Committee immediately take up juvenile justice legislation so that gun safety can be considered (the juvenile justice bill had been postponed by the Chairman three times from markup because Reps. were afraid of gun amendments):

Mr. Conyers. ...You know, as well as I, that delay is really a gift to the opponents of gun violence legislation...

Mr. Hyde. We will have a bill, and it will be ready the first day we are back (from Memorial Day recess). We will mark that bill up. You will have the opportunity to offer any and all amendments you want that are germane. We will take them. We will deal with them. We will vote on them. Then we will take it to the floor the following week, which would be the 14th..

Notwithstanding his assurances, the Committee scheduled nothing the week following recess and instead took the bill straight to the floor where the bill was reported under a restrictive rule that gamed the process in favor of the gun lobby (as Conyers predicted).

-- On May 26, Knight Ridder reports that Hyde says he is "supportive" of the Senate bill. On May 31, AP reports that "(t)he House will likely pass a package of gun -control measures approved last week by the Senate and could go even further, said Rep. Henry Hyde, R-Ill. 'I see the Senate bill at least (passing in the House) ... and maybe more,'" However, Hyde subsequently offers a gun show amendment weaker than the Senate bill which shortens background checks from three business days to 72 hours, replicates the NRA's loophole placed in the Hatch-Craig gun show amendment, allows private citizens to run background checks, requires immediate destruction of Brady records. Etc. This year, on "Meet the Press" (4/16), he criticizes the Senate bill and says "Lautenberg won't fly."

-- Hyde offers an amendment to the Rules Committee to prohibit handgun purchases by persons under 21. The Rules Committee allows it to be offered on the floor. Inexplicably, Hyde walks off the floor when his amendment is to be offered and declines a request from Rep. Jackson-Lee to offer the amendment in his place. The amendment is never offered.

-- Two months go by without Hyde appointing any conferees on the legislation.

-- The conference meets the first time on August 4. Members are disallowed from offering legislation and are simply allowed to make statements. Hatch claims that staff will meet over recess and then a conference will be called to iron out differences staff cannot iron out. The conference meet still hasn't been called.

-- During recess Hyde staff and Conyers staff meet to discuss a gun safety bill and whether compromise is possible. Conyers staff suggests a 24 hour background check period unless a red flag is raised. In such cases, 3 business days would be allowed. No other loopholes. Staff

agree.

-- Hyde gives Conyers draft. It does not allow three business days for all red flags and contains a number of loopholes. Conyers staff immediately responds by email (probably available if requested) and subsequently by letter with concerns. Inexplicably, Hyde claims Conyers has never responded to proposal in the Washington Times on September 23:" the Democrats have stalled for two weeks on a compromise gun proposal floated by House Judiciary Committee Chairman Henry J. Hyde, Illinois Republican. "I think he's had adequate time to digest it," Mr. Hyde said yesterday." In addition, few, if any, of the concerns in the original e-mail or correspondence were ever addressed. Conyers gives Hyde a counterproposal -- Hyde never responds.

-- Hyde repeatedly leads the press to believe a deal is near on guns despite the fact that Hyde and Conyers are nowhere close and Hatch and Hyde never come forward with a bill. An example from Roll Call on October 11: "After months of delay, House and Senate GOP negotiators have reached agreement on controversial new gun control provisions that will be unveiled to a conference committee as early as tomorrow. The agreement worked out by House Judiciary Chairman Henry Hyde (R-Ill.) and Senate Judiciary Chairman Orrin Hatch (R-Utah) will require that 95 percent of the background checks for purchases at gun shows be completed within a day...Hyde said in an interview that he hopes the compromise gun control proposal he worked out with Hatch can be unveiled on Tuesday." (A number of other reports indicated that Conyers and Hyde were close to a deal).

-- On October 7, after doing so privately, Conyers -- in writing -- asks for a conference meeting to resolve remaining differences. Hyde writes that "there is a good chance we will meet early next week" on October 8. No such meeting ever occurs.

-- On November 3, Conyers receives NRA bulletin that indicates Hyde is circulating a proposal Conyers has never seen that is worse than his previous proposals.

-- On November 4, to coincide with the Vice-President's visit to Capitol Hill to promote gun safety, Hyde publicly releases a new proposal in a letter to Gephardt. Among other things, it creates a new "official records" loophole that would probably not allow the Brady system to use a record not signed, notarized or printed on letterhead.

-- It also should be noted that his proposal weakens the very good amendment he offered on the floor to ban the importation of large capacity ammo clips. The provision now does NOTHING. It simply reletters and renumbers existing sections. Hyde explained the provision on the floor as the following:

"Current law prohibits the transfer or possession of large capacity ammunition feeding devices, such as clips and other types of magazines. But current law also provides a major exception. It permits the possession and transfer of any such device lawfully possessed on or before the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994. That is

September 13, 1994.

The world is awash in high-capacity ammo clips manufactured before the effective date of the 1994 Act, and such devices have been approved for importation into the United States if importers submit evidence establishing that the devices were manufactured on or before September 13, 1994.

Our proposal would amend the definition of a 'large capacity ammunition feeding device' to delete the language limiting the definition to devices manufactured after September 13, 1994.'¹

Yet, a simple comparison of his amendment and his November 4 proposal does not contain the essential language amending this definition.

-- Conyers repeatedly writes to Hyde and Hatch requesting a conference meeting. He receives no response.

-- Conyers asks Hyde to join in letter requesting conference meeting on March 9. No response.

-- Conyers and Hyde meet with POTUS. Conyers says he will be happy to begin negotiations with Hyde if Hatch will call a conference meeting. No deal.

-- Hyde staff contacts Conyers staff requesting negotiations. Conyers writes on March 16 reiterating that he will negotiate if a meeting is called. No deal.

-- Hyde brings NRA sponsored Project Exile block grant bill straight to the floor without a Crime Sbcmt. Or full Committee markup. The bill is placed on the suspension calendar where Democratic amendments related to enforcement, like ATF funding, cannot be offered nor can gun safety amendments be offered.

-- On April 11, Hyde signs on to letter with Conyers requesting that Hatch call a conference meeting and pledging to "begin anew negotiations." Inexplicably, the next day -- to coincide with POTUS meeting on gun safety in Colorado -- Hyde releases a proposal in a letter to POTUS weaker than his Gephardt proposal and previous drafts (among other things it opens up an indictment loophole and requires immediate destruction of Brady records in addition to loopholes in previous drafts). Strangely, despite the good faith tone of the previous day's letter, Hyde asserts in letter to POTUS that Conyers refuses to negotiate and that proposal is an improvement on November 4.

¹*Congressional Record*, House of Representatives, June 17, 1999.

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July 12, 2000

The Honorable John Conyers, Jr.
 Ranking Minority Member
 Committee on the Judiciary
 Washington, D.C.

Dear John:

I wish to thank you again for your letter of June 15, 2000 concerning gun safety legislation. As I indicated I would do in my letter to you on June 16, 2000, I have now reviewed your letter and draft report and wish to provide a more detailed response.

(1) Narrowing language in gun show definition. I am pleased you are willing to support the definition in my most recent offer. As you recall, in my offer I defined "gun show" so as to include all events that are used to facilitate the sale of firearms and where there are 50 or more firearms and not less than five vendors. As I indicated, this new "facilitation" language is intended to address your concern about flea markets being the occasion for gun sales, while at the same time attempting to exempt certain gatherings (i.e., a county fair or group yard sale) that might unknowingly have five persons selling firearms which, in the aggregate, total more than 50 firearms. I continue to believe that such gatherings should not be converted into "gun shows," with all of the attendant criminal and civil liability for participants. You stated that you have "never heard of — much less attended — a yard sale where 50 or more guns are sold by five or more firearm vendors." While I have not attended such yard sales personally either, I have been made aware of the existence of such yard sales in more rural areas, where there are occasional, informal gatherings where personal property and effects are sold. Such gatherings represent a less formal version of a town or county fair. I am pleased that you would be prepared to support language intended to cover bonafide gun shows while being careful to exempt gatherings of this kind which might unknowingly have more than 50 firearms present.

(2) Raising numerical threshold in gun show definition. I was unaware that you were rethinking the number of firearm vendors required for an event to be a gun show, but I am pleased you continue to stand by this portion of the definition that we have agreed upon now for many months.

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(3) 24-hour time limit on background checks at gun shows. Your most recent proposal continues to provide that any "information obtained in the course of completing the background check" that a person is ineligible may trigger the longer three day review period. As you recall, I have proposed that any "official record" of possible ineligibility would trigger the longer review period. You state that your "language precisely mirrors the language used to describe "red flags" in current law, 18 U.S.C. 922(t)(4)." While your language closely resembles the language of current law as found in 18 U.S.C. 922(t)(4), it does not "precisely mirror" it. The relevant part of section 922(t)(4) states the following: "If the national instant check system notifies the licensee that **the information available to the system** does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person..." My proposal included the term "official record" simply because the adjective "official" is used in the portion of the Brady Act which established the National Instant Check System and which describes the type of information would be available to the NICS system (Pub.L. 103-322, Title XXI, section 210603(b), Sept. 13, 1994, 103 Stat. 2074; See note on the "National Instant Criminal Background Check System" at the end of 18 U.S.C. 922, and specifically, subparagraph (e)(1), entitled "**Authority to obtain official information.**")

It is my contention, based on the plain language of the relevant law, that the only records and information available to the NICS system are "official" records and information. I remain open, however, to working with you on modified language that, in fact, precisely mirrors the language of section 922(t)(4).

(4) Allowing instant check registrants to conduct background checks. You state in your letter that instant check registrants are a "largely unregulated entity." You also state that instant check registrants "do not have the same deterrents against wrongdoing as licensed dealers." This is simply not the case. My proposal subjects instant check registrants to the same background and approval process that exists for federally licensed vendors and imposes the same criminal liability on instant check registrants that is imposed on federally licensed vendors. Even with your concerns, you nevertheless state that you would support instant check registrants, so long as their use is limited "to events where there are not enough licensed dealers available to make background checks easily available." While I am willing to consider this limitation, I am not certain how such a provision would work. What does "easily available" mean? Who would make such a determination, and when? If such a determination were made only after the event itself began, it is not clear that instant check registrants could then be secured in a timely manner. I look forward to learning more about this provision.

(5) Preventing the creation of a gun registry. I appreciate your creativity in seeking to address the concern of some that we not establish a gun registry. I am open to exploring how the General Accounting Office (GAO) could be used to ensure that NICS records of approved purchasers are not used to create a registry. I wonder if you would be willing to work with me on language that distinguishes between approved purchasers (i.e., applicants for whom there are no

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records and no red flags, or for whom a final disposition record is available and known and which indicates that the person is an eligible purchaser) and purchasers who are neither approved nor disapproved by the end of the three-day review period. As you know, under current Brady law, after the three-day review period, if an applicant is not affirmatively disapproved, the purchase is permissible. Such a sale may occur even if there is a record of a possible disqualifying offense (i.e., a "red flag,") where the final disposition of such an offense is unknown. I would be willing to try to develop language that calls for the immediate destruction of records of approved purchasers but that permits the retention of records for up to 90 days for purchasers who are not approved because of a "red flag." And the GAO could be empowered to audit NICS to make sure that such a system was properly functioning.

(6) Disallowing government retention of tracing records. Your proposal requires in the case of used firearms, that the federally licensed vendor or instant check registrant who performs the background check transmit the make, model, and serial number of the used firearm to the manufacturer (or to the Secretary of the Treasury if the manufacturer has discontinued business). As I have previously stated, I am personally comfortable with such a requirement; however, I continue to believe that such a new record-keeping requirement would make our agreement even more difficult to sell to a majority of House Members. I would ask you to seriously consider dropping this new requirement for the sake of increasing the prospects of our securing a majority of votes.

(7) Let's step outside transactions. You state that you have reluctantly agreed to my language which would exclude some offers to sell guns at gun shows from background check requirements. I am glad that you continue to support language that you have supported for many months. But I would remind you that my proposal explicitly addresses those who would use a gun show to line up purchases and sales but then make such transactions outside the gun show. My proposal makes it a crime for anyone to receive a firearm from another person that the person knows has been transferred to the recipient in violation of law. My proposal further makes it a crime for any person to structure or assist in structuring a firearms transaction to evade the background check requirement.

(8) Enforcement against gun criminals. You have expressed your reluctant agreement with my proposal that includes lower sentences on gun criminals than the sentences included in the Senate bill. The only reason I included lower sentences in my proposal than those in the Senate-passed bill was in response to Democrat concerns and in an effort to find more Democrat votes for our proposal. In light of your recently expressed support and the longstanding, united support of Republicans for the tougher sentences in the Senate, I am in agreement that we should include the increased sentences in my proposal.

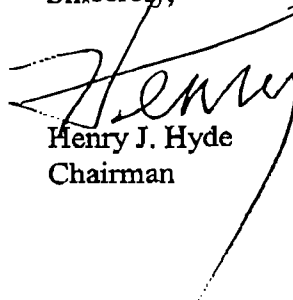
(9) Fees for background checks. I am glad that you continue to support the language which prohibits the imposition of a user fee for the NICS system. Once again, such language is

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crucial to our chances of garnering a majority of votes.

I was pleased to receive your letter and to have you reaffirm your support for a number of the provisions that we previously agreed to. And I appreciate your continued willingness to search for common ground on the various other provisions. I believe we are continuing to make progress in narrowing our disagreements in the area of the gun show background check section and, as such, are improving the prospects of reaching agreement on the larger comprehensive legislation. I look forward to your response to my letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry", is written over a printed name and title. The signature is fluid and somewhat stylized, with a long horizontal stroke at the beginning and a long vertical stroke at the end.

Henry J. Hyde
Chairman