



February 9, 2017

Vote YES on the Resolution of Disapproval, S. J. Res. 14 (Social Security Administration NICS Final Rule)

Vote NO on the Resolution of Disapproval, S. J. Res. 12 (Federal Acquisition Regulation/Fair Pay and Safe Workplaces EO)

Dear Senators:

On behalf of the American Civil Liberties Union (ACLU), we urge members of the Senate to support the resolution disapproving the final rule of the Social Security Administration which implements the National Instant Criminal Background Check System Improvement Amendment Acts of 2007.

Additionally we urge members to oppose the resolution of disapproval of the rule submitted by the Department of Defense, the General Services Administration, and NASA relating to the Federal Acquisition Regulation that implement the Fair Pay and Safe Workplaces Executive Order 13673.

Social Security Administration (SSA)'s Implementation of the NICS Improvement Amendment Acts of 2007 Harms People with Disabilities

In December 2016, the SSA promulgated a final rule that would require the names of all Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefit recipients – who, because of a mental impairment, use a representative payee to help manage their benefits – be submitted to the National Instant Criminal Background Check System (NICS), which is used during gun purchases.

We oppose this rule because it advances and reinforces the harmful stereotype that people with mental disabilities, a vast and diverse group of citizens, are violent and should not own a gun. There is no data to support a connection between the need for a representative payee to manage one's Social Security disability benefits and a propensity toward gun violence. The rule further demonstrates the damaging phenomenon of "spread," or the perception that a disabled individual with one area of impairment automatically has additional, negative and unrelated attributes. Here, the rule automatically conflates one disability-related characteristic, that is, difficulty managing money, with the inability to safely possess a firearm.

The rule includes no meaningful due process protections prior to the SSA's transmittal of names to the NICS database. The determination by SSA line staff that a beneficiary needs a representative payee to manage their money benefit is simply not an "adjudication" in any ordinary meaning of the word. Nor is it a determination that the person "[l]acks the mental capacity to contract or manage his own affairs" as required by the NICS. Indeed, the law and the SSA clearly state

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that representative payees are appointed for many individuals who are legally competent.

We recognize that enacting new regulations relating to firearms can raise difficult questions. The ACLU believes that the right to own and use guns is not absolute or free from government regulation, since firearms are inherently dangerous instrumentalities and their use, unlike other activities protected by the Bill of Rights, can inflict serious bodily injury or death. Therefore, firearms are subject to reasonable regulation in the interests of public safety, crime prevention, maintaining the peace, environmental protection, and public health. We do not oppose regulation of firearms as long as it is reasonably related to these legitimate government interests.

At the same time, regulation of firearms and individual gun ownership or use must be consistent with civil liberties principles, such as due process, equal protection, freedom from unlawful searches, and privacy. All individuals have the right to be judged on the basis of their individual capabilities, not the characteristics and capabilities that are sometimes attributed (often mistakenly) to any group or class to which they belong. A disability should not constitute grounds for the automatic per se denial of any right or privilege, including gun ownership.

Fair Pay and Safe Workplaces Regulations Advance Worker Safety and Rights

The rules implementing the Fair Pay and Safe Workplaces Executive Order take an important step towards creating more equitable and safe work conditions by ensuring that federal contractors provide workplaces that comply with federal labor and civil rights laws.

Employers that have the privilege of doing business with the federal government must meet their legal obligations. The Fair Pay and Safe Workplace regulations are crucial because they help ensure that federal contractors behave responsibly and ethically with respect to labor standards and civil rights laws and that they are complying with federal labor and employment laws such as the Fair Labor Standards Act (which includes the Equal Pay Act), Title VII of the Civil Rights Act, the Americans with Disabilities Act of 1990 and the Occupational Safety and Health Act, and their state law equivalents. The Executive Order also bans contractors from forcing employees to arbitrate claims under Title VII of the Civil Rights Act as well as claims of sexual harassment and sexual assault.

Congress should stand with workers, increase the accountability of federal contractors and oppose any attempts to undo the Fair Pay and Safe Workplaces regulations. These rules will help ensure that the federal government does not contract with employers that routinely violate workplace health and safety protections, engage in age, disability, race, and sex discrimination, withhold wages, or commit other labor violations.

If you have any questions, please feel free to contact Vania Leveille, senior legislative counsel, at vleveille@aclu.org or (202) 715-0806.

Sincerely,



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