



May 23, 2016

The Honorable Sam Johnson  
Chairman, Subcommittee on Social Security  
Committee on Ways and Means  
United States House of Representative  
1102 Longworth House Office Building  
Washington, DC 20515

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**Re: ACLU Endorses H.R. 3516, the Social Security Beneficiary 2nd Amendment Rights Protection Act**

Dear Chairman Johnson:

The American Civil Liberties Union (ACLU) is pleased to support H.R. 3516, the Social Security Beneficiary 2nd Amendment Rights Protection Act.

For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, DC, for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

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. Accordingly, we endorse the Social Security Beneficiary 2nd Amendment Rights Protection Act.

In response to executive action in January,<sup>1</sup> the Social Security Administration (SSA) is proposing a rule<sup>2</sup> that would categorize all beneficiaries with mental

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<sup>1</sup> White House, FACT SHEET: New Executive Actions to Reduce Gun Violence and Make Our Communities Safer, Jan. 4, 2016, available at <https://www.whitehouse.gov/the-press-office/2016/01/04/fact-sheet-new-executive-actions-reduce-gun-violence-and-make-our>.

<sup>2</sup> Social Security Administration, A Proposed Rule on the Implementation of the NICS Improvement Amendments Act of 2007, May 5, 2015, available at <https://www.federalregister.gov/articles/2016/05/05/2016-10424/implementation-of-the-nics-improvement-amendments-act-of-2007>. Comments on the proposed rule are due July 5, 2016.

disabilities who rely upon a representative payee as having “been adjudicated as a mental defective” for purposes of the Brady Handgun Violence Protection Act.<sup>3</sup>

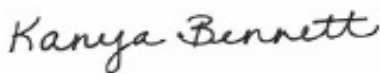
This proposal is based upon harmful assumptions, and is not supported by existing law. A representative payee merely helps beneficiaries who need assistance in managing their benefits, and a beneficiary’s use of this tool has no bearing on their mental capacity, nor is it a “determination” that the individual “[l]acks the mental capacity to ... manage his own affairs.”<sup>4</sup> To the contrary, the statutory standard for appointing a representative payee explicitly disclaims this relationship. A representative payee may be appointed if “the interest of any individual under this subchapter would be served thereby ... regardless of the legal competency or incompetency of the individual.”<sup>5</sup> A beneficiary may voluntarily request a representative payee without any supporting medical documentation.

Even more troubling is the agency’s contention that the proposed rule constitutes a “reasonable and appropriate fit” between the representative payee standard and firearm prohibitions. This conclusion is based upon the harmful assumption that an individual with a mental disability who needs help in one area (in this case, managing a disability benefit) is automatically incompetent in all areas, including gun ownership.

For these reasons, the ACLU supports H.R. 3516, which would prohibit SSA determinations, including those related to the use of representative payees, from being considered to be a determination that the individual has “been adjudicated as a mental defective” for purposes of criminal liability for gun possession and sales.

If you have any additional questions, please feel free to contact Kanya Bennett, Legislative Counsel, at [kbennett@aclu.org](mailto:kbennett@aclu.org) or (202) 675-2307 or Claudia Center, Senior Staff Attorney, at [ccenter@aclu.org](mailto:ccenter@aclu.org) or (415) 343-0762.

Sincerely,



Kanya Bennett  
Legislative Counsel  
Washington Legislative Office



Claudia Center  
Senior Staff Attorney  
Disability Rights Project

cc: Members of U.S. House Committee on Ways and Means

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<sup>3</sup> 18 U.S.C. § 922(d)(4), (g)(4) (2012).

<sup>4</sup> 27 C.F.R. § 478.11 (2015).

<sup>5</sup> 42 U.S.C. § 405(j)(1)(A) (SSDI) (2012); *see* 42 U.S.C. § 1383(a)(2)(A)(ii)(I) (establishing the same benefits standard for Social Security Income (SSI)).