

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Twelfth Congress

January 27, 2011

Chairman Lamar Smith
House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20015

Dear Chairman Smith:

We write to you in the aftermath of the recent shootings in Tucson to ask that you convene hearings on the relevant issues as they relate to matters within the Judiciary Committee's jurisdiction.

As you no doubt recall, in the wake of the Oklahoma City bombing in 1995, the Committee conducted hearings and moved legislation which ultimately passed into law.¹ Subsequent to the Columbine mass shootings in 1999, the Committee again conducted hearings and moved legislation to the House floor.² Most recently, in the wake of the shootings at Virginia Tech, the Committee shepherded the NICS Improvement Amendments Act of 2007 (the "NICS Improvement Act") to the floor, which was signed into law by President George W. Bush.³

We fully recognize and appreciate the sensitivity of the subjects raised by the recent tragedy in Tucson in which our colleague, Gabrielle Giffords, was shot and eighteen others were wounded or killed, including members of her staff, a Federal Judge, and several other citizens. However, we also believe it is not only possible, but imperative that Congress review the relevant issues in a civil and objective matter.

Among the issues we believe warrant hearings by the Judiciary Committee are the following:

¹ "Antiterrorism and Effective Death Penalty Act of 1996," Pub. L. 104-132 (1996). See also "Comprehensive Antiterrorism Act of 1995," H.R. 1710, 104th Cong. (1995); Hearing before the Subcomm. on Crime of the H. Judiciary Comm., 104th Cong. (May 3, 1995).

² "Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999," H.R. 1501, 106th Cong. (1999). See also "Pending Firearms Legislation and the Administration's Enforcement of Current Gun Laws," hearing before the Subcomm. on Crime of the H. Judiciary Comm. (May 27, 1999).

³ "NICS Improvement Amendments Act of 2007," Pub. L. No. 110-180 (2007).

1. High Capacity Ammunition Magazines – The 1994 Assault Weapons ban, which lapsed in 2004, included a ban on high capacity magazines.⁴ It has been widely reported that Mr. Loughner used a magazine that allowed him to fire over 30 rounds, and that only when he attempted to reload was he able to be subdued.⁵ Such high capacity magazines were also used in the mass shootings at Columbine and Virginia Tech. As a result of these events, former Vice President Cheney has recently stated that he believes it may be time to consider proposals to limit the size of ammunition magazines.⁶ Given the tragic recent history of these high capacity magazines, we also believe this issue should be reviewed.
2. Mental Health Records and NICS Database – The NICS Improvement Act was intended, among other things, to insure the accurate dissemination of records regarding individuals found to be mentally defective into the NICS database to prevent such individuals from acquiring firearms. Notwithstanding the law, it appears that some 1.6 million disqualifying mental records are missing from the NICS database.⁷ Given reports that the alleged perpetrator of the Tucson shootings, Jared Loughner, may have had mental health issues, we believe that three years after enactment of the NICS Improvement Act, additional Congressional oversight and review is needed.
3. Illegal Drug Use and NICS Database – Federal law prohibits the possession of firearms by individuals who are unlawful users of or addicted to controlled substances.⁸ At the same time, it has been reported that Mr. Loughner had a history of illegal drug use.⁹ We therefore believe that hearings should also examine the operation of this law and whether regulatory or legislative

⁴ Sec. 110103 of “Violent Crime Control and Law Enforcement Act of 1994,” Pub. L. No. 103-322 (1994).

⁵ “Sheriff: Three People Subdued Jared Loughner,” CBSNews.com, Jan. 9, 2011, available at <http://www.cbsnews.com/stories/2011/01/09/national/main7228655.shtml>

⁶ “Cheney Opens Door to Tighter Gun Restrictions,” MSNBC.com, Jan. 19, 2011, available at http://www.msnbc.msn.com/id/41154929/ns/us_news-crime_and_courts/

⁷ There are about 2.7 million people who have been involuntarily committed to mental institutions. General Accounting Office, “Gun Control: Options for Improving the National Instant Criminal Background Check System” 59 (April 2000), report GAO/GGD-00-56, available at <http://www.gao.gov/archive/2000/gg00056.pdf> (citing Office of Technology Assessment, “Automated Record Checks of Firearm Purchasers: Issues and Options,” report OTA-TCT-497 (July 1991)). As of December 31, 2010, the NICS index contained only 1.1 million “adjudicated mental health” records. Federal Bureau of Investigation, “Active Records in the NICS Index” available at <http://www.fbi.gov/about-us/cjis/nics/reports/nics-index> (last visited Jan. 24, 2011). Subtracting these two figures indicates that at least 1.6 million records are missing.

⁸ 18 U.S.C. 922(g)(3).

⁹ Mark Thompson, How Marijuana Use Aborted Jared Loughner’s Military Career, Time Magazine, Jan 10, 2011, available at <http://www.time.com/time/nation/article/0,8599,2041634,00.html>

modifications are needed to insure that appropriate records are included in the NICS database.

We strongly believe the House Judiciary Committee can and should conduct a carefully crafted and narrowly focused review of these issues and other possible loopholes in current law. Thank you for arranging for a bipartisan staff briefing by the FBI to discuss how the NICS operates. While this will be helpful to staff, we believe hearings are the appropriate means for a thorough public discussion of the more detailed questions we raise. We of course realize that the Committee has a very busy agenda in the new Congress, but at the same time, we believe that the above described subjects are of sufficient magnitude to warrant review by the Committee.

We look forward to discussing these matters with you at your earliest convenience.

Sincerely,

Steve Cohen

Shulman

Jerold Nadler

Bass

Ked Dent

Mr. Quigg

Judy Chu

Joe

Hart Johnson

Shule Jackson Lee

Wm. J. King

Howard L. Burr

Alvin

Alpine Waters

Debra L. Watt

Debbie Wasserman Schultz