

# Wax

## **Why disabilities rights activists like me sided with the NRA on an Obama gun control rule**

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Last Thursday, the House voted to reverse a December 2016 Obama administration rule that prevented firearms purchases by Social Security beneficiaries with a mental disability who have designated a representative to manage their finances. The Obama administration rule sought to limit firearms purchases based on the rationale that those who cannot manage their finances independently might pose a danger with a weapon.

The reaction from progressive commentators to the House vote was swift and outraged. “Is there someone who ran for office on the need to get guns into the hands of people who are literally too mentally ill to cash a check?” tweeted MSNBC’s Rachel Maddow.

There was much more along those lines:

As a liberal disability rights activist who worked closely with the Clinton campaign and continues to fight Trump, I tend to be on the side of those condemning actions by the congressional GOP. But this time, I and my disability rights colleagues found myself in an unusual position: siding with the Republicans and, yes, the National Rifle Association. Because while congressional Democrats have been admirable allies to the disability community on the vast majority of issues, when it comes to gun violence, both parties use people with mental illness as props — in ways that don’t help public safety, and that put vulnerable people at risk. In this case, it was the Democrats that got the issue wrong. Who makes use of a “representative payee,” and why?

Last December, the Social Security Administration issued a new regulation that had the dubious distinction of bringing together pro-gun groups, and disability and civil rights advocates — the latter including the ACLU and the Autistic Self Advocacy Network. The rule required SSA to

send names from the agency's database of certain people receiving disability benefits who had a representative payee — an individual designated by the beneficiary or the agency to help manage a person's finances — to the National Instant Criminal Background Check System (NICS). That's a separate federal database that keeps track of those prohibited from purchasing a gun.

More specifically, the new rule mandated that the agency send to NICS the names of all beneficiaries receiving disability payments who possess a mental impairment — and use a payee. People affected by the rule could have a range of mental disabilities — from dementia to autism to agoraphobia. Predictably, in the run-up to the debate, gun-control groups and gun-rights groups lined up on opposite sides of the issue. But disability rights groups and civil rights organizations were also concerned that the rule lacked a solid connection to public safety and might serve to restrict the rights of people with mental disabilities in other areas.

The issue had been brewing for a while. As far as back as 2013, the National Council on Disability — on which I served as an Obama appointee — had written to the Vice President's Task Force to Curb Gun Violence urging against any measure linking up the SSA representative payee database with NICS. Around the same time, a coalition of 11 major disability rights groups issued a similar warning, expressing concern that such a measure might set “a dangerous precedent going well beyond the issue of gun violence.”

Accessing a representative payee is a common procedure for people with a wide variety of cognitive, developmental, and psychiatric disabilities. It means they designate a friend, family member, or other person to assist them in managing their finances. But far from implying an individual is permanently incapacitated, a representative payee is often used as a less restrictive alternative to a court declaration that an individual is incompetent to manage his or her own affairs. Representative payees are used in a broad variety of circumstances, from an aging grandmother delegating finances to a child to an autistic young adult, or a middle-aged man with an anxiety disorder, choosing a representative payee to help them make sure their rent and utility bills get consistently paid on time.

We worried this could set a precedent for other restrictions on autonomy

During my time at the Autistic Self Advocacy Network, I heard from a number of autistic adults who were concerned that their use of a representative payee would prevent them from taking part in hunting and other aspects of rural culture involving firearms. Still, despite that, the primary reason I and other disability advocates opposed the Rep Payee rule is less about guns than it is about the precedent the rule might set for other kinds of rights.

Disability advocates are concerned with setting the precedent that needing help with financial matters implies a lack of capacity to exercise other rights. These concerns are rooted in discrimination people with mental disabilities face in other areas of life, such as parenting and voting rights. On these issues, people with mental disabilities often face an assumption of incapacity, forcing disability and civil rights advocates and attorneys to fight to overturn assumptions that a diagnosis or determination of support need in one area should lead to a loss of rights in an unrelated area. Many of the same groups active in defending the voting and parenting rights of people with mental disabilities chose to weigh in against the Social Security rule for

similar reasons; they feared that using the representative payee database for prohibiting gun purchases might constitute a “thin end of the wedge” for loss of more important rights down the road.

Advocates are also concerned that shifting names from the representative payee database into NICS might threaten the privacy rights of people with psychiatric disabilities. In a joint op-ed with a pro-gun-rights Cato Institute scholar, my old colleague at the Autistic Self Advocacy Network Samantha Crane noted:

Many security, construction, transportation, and other similar businesses often require clearance through the NICS database, even for jobs that do not directly require the individual to handle explosives or carry a gun. Even if the representative-payee is appointed temporarily, an individual may be permanently barred from returning to the work force.

While some of these harms may seem minor or speculative to some, they are very real concerns to a mental disability community that is heavily and inappropriately stigmatized by unfounded perceptions of violence. More importantly, they represent too high a cost for a rule for which no evidence suggests will contribute to public safety.

No research supports the premise that those who use representative payees, for reasons of mental impairment or any other, are more likely to be perpetrators of gun violence than members of the general population. Indeed, the statute authorizing representative payees explicitly allows people to make use of the program “regardless of the legal competency or incompetency of the qualified individual.” There does not seem to be any clear nexus between needing assistance in managing finances and posing a threat to public safety. It is entirely possible to need help in cashing a check or keeping track of your finances and not pose any risk to oneself or others.

In the gun violence debate, both parties have failed people with mental disabilities

It is somewhat ironic to see the congressional GOP adopt the role of champion for the rights of people with psychiatric disabilities in the gun control debate. For the past several years, many in the Republican Party have deliberately scapegoated this group in order to shift the conversation away from sensible firearms restrictions. Shortly after the Newtown massacre, the same National Rifle Association that collaborated with the disability community in opposing the Social Security rule issued a bizarre and terrifying proposal for “an active national database of the mentally ill,” a far more expansive proposal than anything to come out of the Obama Administration.

Subsequently, congressional Republican leaders began using mental illness as a convenient way of shifting the conversation away from gun control measures. Led by Rep. Tim Murphy (R-PA), who introduced legislation to strip people with psychiatric disabilities of HIPAA privacy protections, limit legal aid to the community, and dramatically expand coercive treatment, Republicans began consistently pointing to those with mental health diagnoses as the real cause of the nation’s gun violence problem.

Back then, congressional Democrats were the good guys for the disability community, bravely standing up to Rep. Murphy’s proposals until the Republican leadership withdrew the worst of them. Last year, a dramatically weakened version of the original Murphy bill passed Congress,

with the most counterproductive provisions, like the HIPAA rollback, stripped back to mostly symbolic measures.

This advocacy was rooted in an understanding that people with mental disabilities should not lose their civil rights because of their diagnoses. In standing up to Rep. Murphy's proposals, Democrats showed they understood that mental illness was being used as a distraction, as a way for Republicans to avoid discussing opposition to politically popular proposals such as a ban on assault rifles or high capacity magazines.

When it comes to the representative payee rule, however, these roles have switched. Understandable efforts by the outgoing Obama administration to find an area for executive action on gun control brought them to this ill-conceived proposal. A desire to defend one of very few "victories" on gun control has motivated progressives to bemoan its repeal, despite its lack of merit. The politics of this regulation have taken on a heavy symbolism connected to the debate over more substantive gun control measures, lending arguments over it a passion well beyond the rule's actual impact on public safety.

With any luck, both parties will stop using mental health as a cudgel in the gun control debate. People with disabilities deserve better than to be used as props in the country's ongoing back and forth on gun control.

And with President Trump preparing to move against vital programs used by people with disabilities and other low-income populations, both disability rights advocates and progressives are better served working together than apart.