



## Schumer-Toomey gun bill deserves a committee hearing

By: David Kopel – April 11, 2013

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When it comes to passing federal gun control legislation, no one can match the record of New York's Senator Charles Schumer. Schumer was the House sponsor of the 1994-2004 ban on magazines and "assault weapons," and also the House sponsor of the Brady Act. Now, Schumer is back with a 14-part blockbuster, this time as part of a deal worked out with Pennsylvania Republican Senator Pat Toomey.

Based on Toomey's record, gun owners would have as much reason to trust Toomey as they would to worry about Schumer. But maybe gun owners should be worried about Toomey, too. Earlier this week, his staffers told concerned telephone callers that the notion of Toomey working on a gun control bill was a mere "media rumor." Except this rumor, first reported in the Washington Post, was true; Toomey was already working on the gun control bill while his staff claimed otherwise.

(West Virginia Senator Joe Manchin — who has told constituents that he only believes in guns for sporting purposes — is touting the bill as his joint product with Toomey. Informed journalists have reported that Toomey's negotiations were really with Schumer.)

The Schumer-Toomey language is on a rocket track to a floor vote, even though few in the Senate and no one in the general public have even seen it. According to Toomey's website, the bill covers 14 different federal gun law topics.

Almost surely, the actual bill language will tilt far more anti-gun than does the sketchy list of talking points on Toomey's website. During the drafting process, Toomey would have been bereft of assistance from experienced pro-Second Amendment attorneys, since he shut them out of the process. Meanwhile, Schumer had every opportunity to use lawyers such as those affiliated with stridently anti-gun New York Mayor Michael Bloomberg.

Indeed, those lawyers have demonstrated that they are capable of making an actual Schumer bill considerably more anti-gun than Schumer intends. Consider, for example, Schumer's "Fix Background Checks Act," introduced a few weeks ago. Schumer explained that his bill would not affect "your ability to borrow your Uncle Willie's hunting rifle."

Well, that's true if Uncle Willie hands you the rifle while the two of you are out in the field hunting deer. However, if Uncle Willie stays home, and just lets you borrow his rifle

when you go hunting for the weekend, then both of you are guilty of a federal felony — the same felony as if each of you had knowingly sold a gun to a convicted violent felon.

The Bloomberg lobby is behind the effort to felonize people for borrowing a gun for a couple days. The Schumer bill used the exact same language as has been introduced in other bills pushed by Bloomberg, including in states such as Colorado, where Bloomberg was the main lobbying force for a similar bill. The “Uncle Willie problem” was fixed by the Colorado legislature when it was pointed out during committee hearings.

But in the U.S. Senate, the process of passing the Schumer-Toomey bill is designed to evade committee hearings. A hearing creates the risk that witnesses might explain to Senators Schumer and Toomey what is actually in their bill.

During the previous Congress, I testified in the Senate Subcommittee on Crime about Schumer’s 2011 version of the “Fix Background Checks Act.” The lead-off witness represented Mayor Bloomberg, and described the legislation as Bloomberg’s flagship bill.

Senator Schumer was genuinely surprised and indignant when I pointed out a problem in his bill: It would impose a lifetime gun ban on anyone who had ever been ordered by a school or college to receive psychological counseling. Schumer insisted that the bill simply required schools and colleges to report counseling orders to state governments, and those governments would make the decision about a gun ban.

So I read aloud the specific language in the bill: the ban would be triggered by the educational institution’s counseling order. State governments had no discretion; their only role was to transmit the information to the FBI, so the student could be entered on the lifetime “prohibited persons” list.

I don’t think Schumer is an anti-gun nut. Before his 1998 election to the Senate, he had announced that he thought the Second Amendment was an individual right. That wasn’t a typical position for a New York City Democrat back then.

But it may be true that Schumer, like most other congresspersons, can sometimes be tricked by bill drafters who have a far more extreme agenda than the congresspersons themselves do.

That’s why the Schumer-Toomey bill deserves a prompt committee hearing. Then, witnesses can point out issues raised by the precise language in the bill, and the American public can have the opportunity to read the bill and inform their own legislators about how the actual language would affect them.

Public safety and constitutional rights are both at stake. A good bill can enhance both simultaneously. A bill that’s rushed through before the public can read it could do deadly harm to both.