

The New York Times

A Libertarian Case for Expanding Gun Background Checks

By: Robert A. Levy – April 26, 2013

LAST week, senators blocked a compromise measure that would have compelled unlicensed sellers at gun shows and online gun sellers to conduct background checks, despite polls that showed that 90 percent of the public supported the idea.

I'm a libertarian who played a role in reducing handgun restrictions in the nation's capital. In 2008, in a landmark case I helped initiate, *Heller v. District of Columbia*, the Supreme Court declared for the first time that the Second Amendment protected an individual's right to bear arms.

But the stonewalling of the background check proposal was a mistake, both politically and substantively. Following a series of tragic mass shootings, public opinion is overwhelmingly in favor of reasonable legislation restricting the ownership of guns by people who shouldn't have them. There was also plenty in the proposal that gun-rights proponents like me could embrace.

The compromise — carefully negotiated by two moderate gun-rights supporters, Senators Joe Manchin III, Democrat of West Virginia, and Patrick J. Toomey, Republican of Pennsylvania — should be reintroduced in the Senate. I am convinced that, with some modifications, it could still be passed, because it would add reasonable protections for both gun owners and sellers.

Gun-rights advocates should use this interval to refine their priorities and support this measure, with a few modest changes. If they don't, they will be opening themselves to accusations from President Obama and others that they are merely obstructionists, zealots who will not agree to common-sense gun legislation.

The focus on background checks should not distract gun owners from the positive provisions in the Manchin-Toomey proposal.

It would allow Americans to buy handguns from out-of-state sellers, which is not allowed currently.

It would explicitly prohibit the creation of a national gun registry, and make it a felony, punishable by up to 15 years in prison, to misuse records from the national database used for background checks.

It would affirm that unloaded guns with a lock mechanism in place can be transported across state lines.

It would immunize private gun sellers from lawsuits if a gun they have sold is used unlawfully, unless the seller knows or should have known that the buyer provided false information or was otherwise ineligible to buy a gun. Extending background checks to unlicensed sellers shouldn't be cause for alarm. Background checks are already required for purchases from federally licensed dealers, whether at stores or gun shows, over the Internet or by mail. Moreover, gun buyers would be exempt from background checks if they had a carry permit issued within the last five years.

To my mind, the Manchin-Toomey proposal needs additional improvements to satisfy the demands of certain gun rights advocates. These changes might have helped save the proposal, which was supported by 54 senators — six votes short of the supermajority needed to overcome a filibuster.

The proposal prohibits the attorney general (as head of the Justice Department) from creating a firearms registry, but this prohibition should be broadened to cover all government agencies.

The proposal should also exempt certain rural residents who live too far from a licensed gun dealer for a background check to be practicable.

Currently, dealers can charge up to \$125 for background checks. If these fees are supposed to promote public safety, the taxpayers — and not just law-abiding gun owners — should foot some of the bill. And more F.B.I. staff members to manage the database would also help expedite the process.

In the current proposal, background checks at gun shows would be given priority over checks at gun stores. The government needs to hire enough staff members to promptly conduct checks at both places.

Current law denies gun permits to anyone who uses, or is addicted to, a controlled substance. The punishment for omitting this information on a background-check form is up to 10 years in federal prison — a penalty that is too harsh for someone who has merely smoked marijuana.

In the days since the defeat of the Manchin-Toomey proposal, advocates of gun restrictions have gone on the offensive. Gun-rights supporters should not stand in the way of reasonable reform. The Manchin-Toomey proposal, with the changes I've suggested, would offer substantial benefits while imposing tolerable restrictions, none of which intrude on our core Second Amendment liberties. Gun-rights advocates should get behind it and push for its passage.