Kevin Schmidek  
Professor Burnam

Political Power and American Public Policy GOVT-210-002

15 April 2021

Policy Memo: H.R.1446

1. **Description/Significance:** Gun violence has long been a problem in the United States, particularly as the severity and frequency of mass shootings continues to rise in communities all over the country. In the year 2020, gun violence killed nearly 20,000 Americans (Washington Post). While all Americans can agree these acts of violence are abhorrent and should be stopped, the method of which to address this crisis is a matter of extremely polarized debate. Gun-control legislation proposed predominantly by members of the Democratic Party has been met with strong opposition from members of the Republican Party. These objections have largely been based on the 2nd Amendment of the Constitution, which opponents of gun control claim provides overarching protection of Americans’ right to purchase and own firearms. However, gun control is an urgent, necessary, and extremely important policy objective in modern American society, and lawmakers must pass gun control legislation immediately.
2. **Contributive Factors:** There are many contributing factors making gun control an urgent need in modern American society. Assault weapons and high ammunition capacity magazines are available to individuals outside of the U.S. Armed Forces, even as there is no legitimate and legal need for these weapons to be in the possession of ordinary citizens. Additionally, there are many loopholes and opportunities to circumvent current gun control laws, such as gun shows and internet gun sales, as well as the manufacturing of homemade firearms not registered in any database. There are also various additions and augments available for firearms that facilitate mass shooting events, such as pistol-stabilizing braces, of which one was used in a mass shooting in Boulder, CO, that left 10 individuals dead in March 2021 (Associated Press).
3. **Analysis of Options:** All of the above issues likely require individual action for them to be addressed, but there are several options currently available to strengthen gun control in the United States as a whole. On 8 April 2021, President Joe Biden introduced six executive actions to address gun violence, including one to address homemade firearms and one to address the availability of pistol-stabilizing braces (Associated Press). Though these actions do represent positive progress in the strengthening of gun control, they are inherently limited, as executive actions affect the federal government and executive agencies, not private citizens. The House of Representatives in March 2021 passed two pieces of legislation, one of which requires background checks on all firearm sales and transfers. The other closes the “Charleston loophole,” which refers to occurrences in which the National Instant Criminal Background Checks System (NICS) is unable to produce a definitive result on a background check for an individual, granting the FBI three business days to investigate the individual’s background. If, after three business days, the FBI has not concluded their investigation or produced a result, the gun seller has the discretion to proceed with the sale, despite the lack of an affirmative result from the FBI as to whether the individual passed the background check (Center for American Progress). This is also referred to as a “default proceed” sale, and it is now referred to as the “Charleston loophole” because a default proceed sale allowed Dylann Roof to procure a firearm and murder nine individuals on 17 June 2015 in Charleston, NC.
4. **Recommendation:** Gun control is a national epidemic, and it will take far more than a single piece of legislation to address this issue. However, the Charleston loophole is a clear and obvious problem with the current state of gun control in the United States, and it must be addressed immediately in order to prevent atrocities such as the Charleston massacre. **The House of Representatives and the Senate must pass the Enhanced Background Checks Act of 2021 (H.R.1446), which increases the length of time allotted to the background check initiated in the case of an inability to produce a definitive result by the NICS.** The official summary of H.R.1446 states: “Specifically, [H.R.1446] increases the amount of time, from 3 business days to a minimum of 10 business days, that a federal firearms licensee must wait to receive a completed background check prior to transferring a firearm to an unlicensed person. (This type of transaction is often referred to as a default proceed transaction.) If a submitted background check remains incomplete after 10 business days, then the prospective purchaser may submit a petition for a final firearms eligibility determination. If an additional 10 days elapse without a final determination, then the federal firearms licensee may transfer the firearm to the prospective purchaser” (CONGRESS.GOV). While this is, in no way, a complete addressing of all of the current flaws within the current system of gun control in this country, it is an excellent start in addressing a loophole that has been directly linked to the occurrence of a mass shooting in the United States and thousands of firearms purchased and transferred to ineligible individuals in the country.
5. **Counter-Arguments:** In response to the Charleston loophole, the National Rifle Association Institute for Legislative Action (NRA-ILA) published a series of counter-arguments that well summarize the objections to action to address default process sales (all information provided by NRAILA.ORG).
   1. The NRA-ILApushes back against the term “loophole” and instead characterizes default process sales as a necessary component of the current background check system.
   2. If the background check is not completed within the 3-day period, the gun seller has the option to sell the gun to the unverified customer. They are not required to do so.
   3. The 3-day period incentivizes the FBI to complete background checks in a timely manner, and default process sales in the instances where the FBI does not complete these background checks ensure that gun purchasers are not denied their Second Amendment rights.
   4. Delaying the ability to procure a firearm in a timely manner infringes on an individual’s right to defend themselves. “In 2015, Carol Bowne of Berlin, New Jersey was murdered by her ex-boyfriend after waiting more than forty days for a firearm permit. Eliminating the 3 day proceed to sale provision would expose law-abiding Americans to the same type of deadly delay that prevented Ms. Bowne from defending herself” (NRAILA.ORG).
   5. The time limit set within default process sales should be decreased, not increased, due to technology improvements. NICS is “premised on the idea that background checks should be instant, accurate, and fair” (NRAILA.ORG).
   6. The murders in Charleston committed by Dylann Roof would not have been prevented by lengthening the amount of time in which default process sales are delayed. The transaction proceeded five days after the FBI background check was initiated, and the transferal of the firearm did not impede the continued investigation. The shooter’s criminal history was not sufficient to prevent the transfer of a firearm, and in the case that it was, the Bureau of Alcohol, Tobacco, Firearms and Explosives would have been responsible for the recovery of the firearm. However, the investigation had not concluded at the time of the Emanuel AME Church shooting.
6. **Response to Counter-Arguments:** In response to these counter-arguments:
   1. Background checks are indeed a necessary part of gun control, but the process should not continue if a background check has not occurred, or if a final result has not yet been determined. The “default” should not be that the vendor then has personal discretion over whether to transfer the firearm to the customer.
   2. This is irrelevant. The decision to transfer the firearm should not be for the vendor to determine.
   3. Regardless of time frame, background checks should be completed, and results should be provided to gun vendors. The Second Amendment states that the right to bear arms should not be infringed upon, not that citizens have the right to purchase a firearm immediately and without any form of background or safety check.
   4. This is one piece of anecdotal evidence, and it is seemingly unrelated to the issue at hand. Thousands of guns in 2020 alone were procured by individuals through default process who were legally prohibited to own them (NPR).
   5. Indeed, background checks should be instant, accurate, and fair. However, in the cases in which NICS is unable to produce a definitive result, there should be a background check initiated by the FBI, and the FBI should have ample time to conduct this background check.
   6. Incorrect. Federal law prohibits individuals with pending felony charges from obtaining firearms (Washington Post). Roof indeed had pending felony charges, and therefore should have been prohibited from procuring the firearm; however, default process allowed the firearm to be transferred to him.
7. **Conclusion:** H.R.1446 is an excellent start at addressing a truly urgent crisis in this country. Its extension of the background check process from 3 days to a maximum of 20 days (10 days initially, 10 additional days after petition submission) will help prevent the illicit transferal of firearms to ineligible individuals, as well as preventing individuals such as Dylann Roof from procuring firearms in the future. Its passage, however, is highly unlikely, as the narrow Democratic majority in the Senate means that ten Republican Senators would need to join Democrats in voting in favor of this bill. As long as the majority of Republicans continue to oppose and filibuster pieces of legislation like H.R.1446, meaningful gun control will continue to be unattainable in the United States.

Works Cited

Brown, Matthew. “House Passes Bills to Expand Background Checks for Gun Sales and Close 'Charleston Loophole'.” USA Today, Gannett Satellite Information Network, 11 Mar. 2021, [www.usatoday.com/story/news/politics/2021/03/11/house-passes-bill-expanding-background-checks-gun-sales/6923667002/](http://www.usatoday.com/story/news/politics/2021/03/11/house-passes-bill-expanding-background-checks-gun-sales/6923667002/).

“Frequently Asked Questions About the ‘Charleston Loophole.’” Center for American Progress, 10 Feb. 2021, [www.americanprogress.org/issues/guns-crime/reports/2021/02/10/495615/frequently-asked-questions-charleston-loophole/](http://www.americanprogress.org/issues/guns-crime/reports/2021/02/10/495615/frequently-asked-questions-charleston-loophole/).

Guo, Jeff. “The Legal Loophole That Allowed Dylann Roof to Get a Gun.” The Washington Post, WP Company, 18 June 2015, [www.washingtonpost.com/blogs/govbeat/wp/2015/06/18/the-legal-loophole-that-allowed-dylann-roof-to-get-a-gun/](http://www.washingtonpost.com/blogs/govbeat/wp/2015/06/18/the-legal-loophole-that-allowed-dylann-roof-to-get-a-gun/).

“H.R.1446 - 117th Congress (2021-2022): Enhanced Background Checks Act of 2021.” Congress.gov, 11 Mar. 2021, [www.congress.gov/bill/117th-congress/house-bill/1446](http://www.congress.gov/bill/117th-congress/house-bill/1446).

Jaffe, Alexandra, et al. “Biden Orders Gun Control Actions - but They Show His Limits.” AP NEWS, Associated Press, 9 Apr. 2021, [www.apnews.com/article/joe-biden-violence-merrick-garland-gun-politics-gun-violence-7ddb30681ca3abbf1a0faa286e3df7b2](http://www.apnews.com/article/joe-biden-violence-merrick-garland-gun-politics-gun-violence-7ddb30681ca3abbf1a0faa286e3df7b2).

“NRA-ILA: What Is the Charleston ‘Loophole’?” NRA-ILA, [www.nraila.org/get-the-facts/what-is-the-charleston-loophole/](http://www.nraila.org/get-the-facts/what-is-the-charleston-loophole/).

Summers, Juana. “House Passes Bills To Strengthen Gun Laws, Including Expanding Background Checks.” NPR, NPR, 11 Mar. 2021, [www.npr.org/2021/03/11/976000003/house-passes-bills-to-strengthen-gun-laws-including-expanding-background-checks](http://www.npr.org/2021/03/11/976000003/house-passes-bills-to-strengthen-gun-laws-including-expanding-background-checks).

Thebault, Reis, and Danielle Rindler. “Shootings Never Stopped during the Pandemic: 2020 Was the Deadliest Gun Violence Year in Decades.” The Washington Post, WP Company, 24 Mar. 2021, [www.washingtonpost.com/nation/2021/03/23/2020-shootings/](http://www.washingtonpost.com/nation/2021/03/23/2020-shootings/).