

Written by Gun Owners
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by Gun Owners of America
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On April 18, 1996, the House of Representatives voted to pass the Government Terror bill by a vote of 293-133. The Senate passed the bill one day earlier by a vote of 91-8. Here's what passed as part of the final version:

* "Anti-hunter" rifle and ammo study (Sec. 809). Hunters are in the "cross hairs" of an anti-terrorism bill! The BATF will be authorized to study ammunition and recommend which kinds need to be included under the "armor piercing" ban. (It is already well known that much hunting ammunition can penetrate body armor.) Furthermore, the BATF is required to specifically look at policemen killed with handguns, rifles and shotguns, and thus, this opens the door to calling for the regulation of all gun sales.

* BATF pay increase of \$40 million. Originally, this section was specifically written to give the BATF a \$100 increase. After loud protests from the gun community, legislators rewrote the section. The pay increase has now been reduced to \$40 million and the intended recipient of the money is now the "Department of Treasury" -- which of course, is the parent department over the BATF. It appears that legislators have tried to "conceal" their vote for BATF funding by redirecting the money through the Treasury head (Section 816). It is outrageous that this agency, which should be on the chopping block for its gross violations of civil rights, could now receive a huge increase in its budget.

* Federalize State Crimes. Sec. 702 could federalize many state crimes that deal with violence and property, thus tremendously increasing the scope and jurisdiction of the BATF. Conduct must "transcend national boundaries" and affect interstate commerce. But these terms have been defined so broadly that a Bernie Goetz who uses, say, an Italian-made Beretta to defend himself and then affects interstate commerce in the slightest way would trigger federal involvement and a BATF investigation.(1) Moreover, the shooter could now be subject to a 30 year sentence for an "assault with a dangerous weapon."

* Tap 'em, entrap 'em and zap 'em. Title I will severely curtail the ability of gun owners to successfully appeal previous court decisions where evidence was destroyed or suppressed by

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prosecutors (like in Waco). Moreover, this Habeas Corpus "deform" provision will severely damage the ability of the courts to rescue honest gun owners who are unjustly incarcerated.

As stated by Stephen Halbrook, who has litigated many cases for the NRA, gun owners who are railroaded by anti-gun state judges will have no recourse under the provisions of the terrorism bill "as long as the federal court could not conclude that the state court conclusion was wholly unreasonable according to well-established case law. Given the contempt some courts have for selective parts of the Constitution, particularly the 'embarrassing' Second Amendment and the 'incredibly shrinking' Fourth Amendment, this will be no standard at all" (New Gun Week, 3/20/96).

Pro-gun Rep. Helen Chenoweth (R-ID) introduced an amendment to delete this provision from the bill, since it threatens gun owners' rights and does not just deal with death penalty cases, as some have insinuated. According to the Bureau of Justice Statistics, death row habeas appeals only account for 1% of the habeas caseload (BJS, Federal Habeas Corpus Review, September, 1995).

* Punish dealers for selling ammunition? Section 706 will punish anyone who transfers "explosive materials, knowing or having reasonable cause to believe" that such explosives would be used in a crime of violence. The problem is both the "explosive" materials" and the "having reasonable cause to believe" language. Could this language apply to ammunition? Experts in the industry certainly think it could. And any anti-gun judge can make a reasonable argument that it does. After all, firing ammunition out of a gun creates a condition that everyone would recognize as creating an explosion. The question is, how will the BATF interpret this provision?

The terrorism bill itself assumes that smokeless powder could be interpreted to be an "explosive." In Section 732, "black or smokeless powder" is exempt from the tagging of explosive materials study. It would be foolish to exempt an item that could never be interpreted as an "explosive." Thus, gun dealers are in real danger of having a "reasonable cause to believe" standard -- which has already been abused by the BATF -- applied to them after selling over-the-counter ammunition.

Already, Gun Owners Foundation has assisted honest gun dealers against the BATF, which has frequently argued that dealers should have known -- or had a "reasonable cause to believe" -- that prohibited gun purchasers were using fake ID's. Should every person who sells a gun have

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to hire a private investigator to check out a prospective buyer? To apply this negligence standard in this context will open the floodgates to additional BATF harassment.

Even as far back as 1982, the Senate Subcommittee on the Constitution stated that "approximately 75 percent of BATF gun prosecutions were aimed at ordinary citizens who had neither criminal intent nor knowledge, but were enticed by agents into unknowing technical violations."

This problem will only be exacerbated under the provisions of the terror bill. Gun dealers might have to become clairvoyant before selling a box of ammunition. One never knows when the next box of ammo will be used in a violent crime.

* Secret Evidence. Title IV will allow the government to use "secret evidence" against certain individuals (i.e., aliens). Since there have already been attempts to apply immigration law to civilians, the concern is that this precedent could later be expanded in the criminal code and applied to all citizens. If so, then government officials could bring charges against gun owners and prevent them from cross-examining the witnesses who are accusing them.

* Removal of protections against wiretapping wireless data. Do you send e-mail messages? Well, Section 731 removes the current protections against intercepting wireless data, such as e-mail and document transmission when done by a wireless modem or through a laptop connected to a cellular phone. These protections were originally enacted as part of the Electronic Communications Privacy Act (ECPA), a law that prohibits outside parties from intercepting private communications and requires government agents to get a warrant or court order before implementing any wiretaps. While this provision strips these protections, you won't find the word "wiretap" anywhere in the section!

* Requirement of banks to freeze the assets of domestic groups in certain situations. Section 303 is another provision that could be used against politically incorrect groups. This section requires banks to freeze a domestic group's assets if the bank believes -- or is being pressured to believe by law enforcement authorities -- that the group is acting as an agent for a foreign terrorist group. It does not matter that the domestic group is not, nor cannot be, labeled a terrorist group. The bank must freeze the funds. Moreover, there is no way for the group to appeal the bank's action to freeze the assets.

Strange "Bedfellows" Help Pass Terror Bill

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The bill which Rep. Charles Schumer (D-NY) and President Clinton had pushed for so long found help from an unlikely source -- 188 Republicans who were in large part brought to the table because of their leadership. Republicans like House Speaker Newt Gingrich (R-GA), Majority Leader Dick Armey (R-TX), and Judiciary Chairman Henry Hyde (R-IL) all spent much time pushing the bill among their colleagues. And Rep. Bob Barr -- an important fixture on the Judiciary Committee -- did considerable work lobbying other Republicans, urging their support for the bill.

Freshmen stand tall. Despite pressure from the top, more than two dozen Freshmen Republicans bucked their leadership and refused to violate the Constitution. Several of these Freshmen -- and some long-term Congressmen -- were staunch pro-gunners who clearly saw the assault being waged on the Second Amendment and all the Bill of Rights.

Pro-gun Congressmen voting against the bill included Steve Stockman (R-TX), Helen Chenoweth (R-ID), Rep. Phil Crane (R-IL), Joe Scarborough (R-FL) and others. These Congressmen were among that group of men and women who temporarily killed the terror bill last year when GOA activists bombarded the House with calls, postcards, faxes and e-mails. Roll Call, which is the newspaper of record on Capitol Hill, reported in February that "Gun Owners [of America] played a leading role in killing last year's anti-terrorism legislation. . . . Conservative House Republicans -- many of them freshmen -- backed the [GOA] position and refused to follow Barr."

In fact, GOA and friends were able to get many, many harmful provisions removed, including a provision that could have put the firearms industry out of business. Indeed, this one provision would have severely punished gun dealers for selling a firearm to someone that they should have known was going to use it in a violent crime. Without being clairvoyant, gun dealers would have faced tremendous harassment from the BATF.

Coalitions FOR and AGAINST the terror bill. The Washington Post stated on April 19 that "Most of the opponents [in Congress] were Democratic liberals or conservative Republicans." This was generally true, although there were a few notable exceptions.

Outside the Congress, GOA was joined by more than 20 other groups -- including the ACLU and CCRKBA -- in opposing the bill. While some in the media labeled this an odd coalition, it

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was only topped by the strange "bedfellows" supporting the bill. Rep. Charles Schumer (D-NY) applauded Republicans Hyde, Hatch and McCollum for "the leadership they displayed." Rep. Hyde returned the compliment, thanking Mr. Schumer "for his cooperation" and for being "very helpful on this bill." Hyde also listed the coalition of groups outside the Congress that supported the terror bill. He mentioned about a dozen groups, including "the Christian Coalition; the Anti-Defamation League . . . [and] National Rifle Association."

"Hall of Shame" Award: Sen. Bob Dole. The biggest disappointment came when Sen. Bob Dole betrayed gun owners last year. Sen. Dole had originally promised in March of 1995 that repealing the semi-auto ban "is one my legislative priorities." However, Sen. Dole never introduced a bill to accomplish that objective. Furthermore, on May 26, 1995, he asked for a "Unanimous Consent" agreement that "no assault weapons amendments be in order to the terrorism bill" (Source: Congressional Record, 5/26/95, p. S 7610). Per Dole's solicitation, the official Senate calendar for the first day of debate on the terror package clearly stated that, "No assault weapon amendments [shall] be in order to S. 735."

By doing this, Sen. Dole prevented any repeal amendment from being attached to the terror bill. Attaching a gun ban repeal to the terrorism bill would have done one of two things: it would either have ensured that the gun ban repeal was enacted into law, or more likely, would have ensured the defeat of the terror bill. But Bob Dole took the lead in squelching the gun ban repeal, thus ensuring that the repeal would not stall their efforts at passing a government terror bill.

1. To trigger federal involvement under this section, the offense must involve "conduct transcending national boundaries" and must be conduct that "affects" -- or merely threatens to affect -- "interstate or foreign commerce." We already have much experience with the interpretation of comparable language. In one case, the Supreme Court held that a farmer growing and consuming his own crops was "affecting commerce" because he had NOT purchased his crops from the market. (See Wickard v. Filburn, 1942.) In other words, he had negatively impacted interstate commerce by failing to buy his crops in the open market.

Given this abusive interpretation of "affecting commerce," can we really count on "transcending national boundaries" to provide any meaningful safeguard in liberal Federal courts? Hardly. The bill merely defines "transcending national boundaries" as conduct "occurring outside the United States . . . [and] in the United States." Relatively insignificant factors -- such as a foreign witness or victim, a foreign gun or article of clothing -- could be enough to trigger federal involvement using the Court's Wickard test.

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Moreover, consider how easily an offender can affect commerce under Section 702: a self-defense shooting only needs to "obstruct, delay, or affect interstate or foreign commerce, or would have so obstructed, delayed, or affected interstate or foreign commerce if the offense had been consummated." This is hardly a limitation to federalizing all kinds of crimes.

Both of the terms -- "affecting commerce" and "transcending national boundaries" -- can be twisted and abused in the same way the Supreme Court abused similar language in the Wickard case. This would leave the Federal government free to prosecute many state crimes involving violence or property, thus giving the BATF more power and jurisdiction. Just like the authors of the RICO statute never dreamed their legislation would someday apply to non-violent, pro-life demonstrators, one might never be able to predict how far this federalization provision could be stretched to cover honest gun owners.

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