



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

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February 1, 2017

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, D.C.

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, D.C.

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C.

The Honorable Charles Schumer
Minority Leader
U.S. Senate
Washington, D.C.

***Re: Social Security Administration Rule Infringing On
Second Amendment Rights***

Dear Speaker Ryan, Majority Leader McConnell, Minority Leader Pelosi, and
Minority Leader Schumer:

We, the Attorneys General of Wisconsin, Arizona, Georgia, Kansas, Louisiana,
Michigan, Montana, Nevada, North Dakota, Ohio, South Carolina, Texas, and West
Virginia, write to inform you about an important action that you can take to protect
the Second Amendment rights of Social Security beneficiaries.

In the Gun Control Act of 1968, Congress narrowly prohibited someone “who has
been adjudicated as a mental defective or who has been committed to a mental
institution” from possessing a firearm or ammunition affecting interstate commerce.
18 U.S.C. § 922(g)(4).

On December 19, 2016, the Social Security Administration (SSA) published a final
rule entitled, “Implementation of the NICS Improvement Amendments Act of 2007.”
See 81 Fed. Reg. 91702 (Dec. 19, 2016). This new regulation broadens the previously
narrow prohibition for those “adjudicated as a mental defective or who ha[ve] been
committed to a mental institution” to sweep in numerous individuals that Congress
never intended to cover with this exclusion. Specifically, under this new rule, SSA
may designate a person as “mental[ly] defective” and then take away his Second
Amendment rights if it determines that he “lacks the mental capacity to contract or
manage his own affairs.” *See* 20 C.F.R. § 421.105. This would include some Social
Security beneficiaries whose benefits have been “made through a representative

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payee.” See 20 C.F.R. § 421.110(b)(5). And SSA appoints representative payees when it “determine[s] this is necessary because the individual’s interests would be better served by the appointment of a payee.” 81 Fed. Reg. 91702, 91709.

We, the undersigned Attorneys General, believe that this regulation illegally infringes upon the Second Amendment rights of Social Security beneficiaries. The right to own and possess a firearm is protected by the United States Constitution, see *District of Columbia v. Heller*, 554 U.S. 570 (2008), and cannot be abridged on a basis as flimsy as a finding that a beneficiary would be “better served by the appointment of a payee.” 81 Fed. Reg. 91702, 91709. Moreover, the regulation violates basic notions of due process by permitting a federal agency to revoke Second Amendment rights without a hearing, and only permitting a beneficiary to challenge the decision later, in an administrative process that could take months or years. See *Mathews v. Eldridge*, 424 U.S. 319 (1976).

We understand that Congress is considering a joint resolution (H.R.J. Res. 40, 115 Cong. (2017)) of disapproval under the Congressional Review Act, 5 U.S.C. §§ 801, 802. We strongly support such action and call upon Congress to honor this country’s constitutional commitment to protecting Second Amendment rights.

Thank you for your consideration in this matter.

Sincerely,



Brad D. Schimel
Attorney General of Wisconsin



Mark Brnovich
Attorney General of Arizona



Christopher M. Carr
Attorney General of Georgia



Derek Schmidt
Attorney General of Kansas

The Honorable Paul Ryan
The Honorable Nancy Pelosi
The Honorable Mitch McConnell
The Honorable Charles Schumer



Jeff Landry
Attorney General of Louisiana



Bill Schuette
Attorney General of Michigan



Tim Fox
Attorney General of Montana



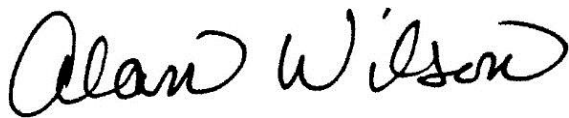
Adam Paul Laxalt
Attorney General of Nevada



Wayne Stenehjem
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Attorney General of Texas

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A handwritten signature in black ink that reads "Patrick Morrissey". The signature is written in a cursive, slightly slanted style.

Patrick Morrissey

Attorney General of West Virginia