



January 23, 2025

The Honorable Morgan Luttrell  
Chair, Subcommittee on Disability Assistance and Memorial Affairs  
House Committee on Veterans Affairs  
364 Cannon House Office Building  
Washington, DC 20003

The Honorable Morgan McGarvey  
Ranking Member, Subcommittee on Disability Assistance and Memorial Affairs  
House Committee on Veterans Affairs  
550 Cannon House Office Building  
Washington, DC 20003

Dear Chairman Luttrell and Ranking Member McGarvey:

In advance of the Subcommittee on Disability Assistance and Memorial Affairs hearing, "Correcting VA's Violations of Veterans' Due Process and Second Amendment Rights," we strongly encourage members of the Subcommittee to protect veterans from the suicide epidemic and reject any calls that would weaken the federal firearms background checks system. Policies that weaken critical safeguards designed to prevent firearm-related tragedies pose significant threats to both the well-being of our veterans and the safety of our communities.

American veterans are disproportionately impacted by the suicide crisis, with more than 6,500 veterans dying by suicide each year,<sup>1</sup> and more than 70% of veterans' suicides involving firearms, compared with 51% of all suicides nationwide.<sup>2</sup> Easy access to firearms greatly increases the risk of death by suicide, since the presence of a firearm significantly increases the likelihood that a suicide attempt will be fatal.<sup>3</sup> Indeed, research suggests that having a gun in the home triples a person's overall risk of suicide. Veterans own firearms at a higher rate than non-veterans. Nearly half of all veterans own firearms,<sup>4</sup> compared to about 30% of the general

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<sup>1</sup> Based on an average of the five most recent years of available data: 2016-2020. "National Suicide Data Report Appendix, 2022" US Department of Veterans Affairs, Office of Mental Health and Suicide Prevention, [https://www.mentalhealth.va.gov/suicide\\_prevention/data.asp](https://www.mentalhealth.va.gov/suicide_prevention/data.asp).

<sup>2</sup> "National Suicide Data Report Appendix, 2022" US Department of Veterans Affairs, Office of Mental Health and Suicide Prevention, [https://www.mentalhealth.va.gov/suicide\\_prevention/data.asp](https://www.mentalhealth.va.gov/suicide_prevention/data.asp); Centers for Disease Control and Prevention, Wide-ranging Online Data for Epidemiologic Research (WONDER), "Fatal Injury Data," last accessed Oct. 15, 2018, <https://wonder.cdc.gov/Deaths-by-Underlying-Cause.html>.

<sup>3</sup> Andrew Anglemeyer, Tara Horvath, and George Rutherford, "The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: a Systematic Review and Meta-analysis," *Annals of Internal Medicine* 160, no. 2 (2014): 101–110.

<sup>4</sup> Emily C. Cleveland et al., "Firearm Ownership among American Veterans: Findings from the 2015 National Firearm Survey," *Injury Epidemiology* 4, no. 1 (2017),

population.<sup>5</sup> Policies that create a barrier for inputting beneficiaries who may be at risk of harming themselves would deprive the Department of Veterans Affairs (VA) of critical tools to protect those beneficiaries, resulting in even more tragedies.

Harmful policies considered by this Committee and the U.S. House of Representatives in the 118th Congress put veterans at even greater risk and threaten to exacerbate the already too-high levels of suicide among the veteran population. For example, the “Veterans 2nd Amendment Restoration Act of 2024” would require the VA to notify the Department of Justice that records on VA beneficiaries transmitted by the VA “solely on the basis of a determination . . . to pay benefits to a fiduciary” without a judicial order for use by the National Instant Criminal Background Check System (NICS) “was improper” because such beneficiaries “were not adjudicated as a mental defective under 18 U.S.C. 922(g).” For decades, the VA has provided these records to NICS based on longstanding federal law and regulations, and has done so because these beneficiaries have been determined to be “mentally incompetent” due to injury or disease, including schizophrenia, panic disorder, PTSD, and others, which renders them prohibited from purchasing and possessing firearms. The VA does so through a robust process with strong due process protections built in, as Congress has required, including avenues to appeal, both pre- and post-deprivation, and have their firearm rights restored through both the VA and the courts.

The Veterans 2nd Amendment Restoration Act, however, would require the VA to look back at the hundreds of thousands of these records that have been transmitted to NICS using this process and, in effect, require their removal where there is not a judicial order. To that end, this legislation goes much further than the Consolidated Appropriations Act, 2024, that was enacted in March of 2024, and another harmful bill from the 118th Congress, H.R. 705, the Veterans 2nd Amendment Protection Act that the House Committee on Veterans Affairs passed in May 2024. Section 413 of the Consolidated Appropriations Act, 2024, prohibits the VA from using funds to report these VA beneficiaries to NICS absent a judicial order or finding of dangerousness. H.R. 705 would have prohibited the VA outright from transmitting these records to NICS. Neither would have changed the underlying laws or regulations that make these beneficiaries prohibited persons. The Veterans 2nd Amendment Restoration Act, however, would be retroactive and legalize firearm purchase and possession for this population of VA beneficiaries who, for decades, have been unable to purchase or possess firearms. It would invariably put hundreds of thousands of veterans and VA beneficiaries at risk of harm to themselves or others and represents one of the most significant weakenings of NICS in recent years.

As previously noted, the VA already builds in strong due process considerations. Should the VA determine that a veteran is “mentally incompetent” due to injury or disease, the veteran is assigned a fiduciary to manage their benefits and is prohibited from purchasing or possessing a firearm under longstanding federal law. Such determinations are rendered on the basis of clear

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[https://pmc.ncbi.nlm.nih.gov/articles/PMC5735043/#:~:text=Results,%25CI%2015.6%E2%80%9336.1%25\).](https://pmc.ncbi.nlm.nih.gov/articles/PMC5735043/#:~:text=Results,%25CI%2015.6%E2%80%9336.1%25).)

<sup>5</sup> Katherine Schaeffer, “Key Facts About Americans and Guns,” Pew Research Center, July 24, 2024, <https://www.pewresearch.org/short-reads/2024/07/24/key-facts-about-americans-and-guns/>.

and convincing evidence, “after receipt of medical documentation or if a court of competent jurisdiction has already made the determination.”<sup>6</sup> Before the passage of Section 413 in Fiscal Year 2024, the VA incompetency determination procedure included strong due process considerations to ensure the rights of veterans were protected, including providing the veteran:

- Notice of the proposed determination and evidence supporting it
- An opportunity to request a hearing
- An opportunity to present evidence, including evidence from a medical professional or other person, of the beneficiary’s ability to manage their benefits
- An opportunity to be represented, including by counsel, at a hearing and to bring a medical professional or other person to provide testimony at the hearing
- Multiple avenues to appeal the determination, pre- and post-deprivation, so that a veteran who has been reported to NICS has the opportunity to regain eligibility to possess a firearm, even while maintaining the services of a fiduciary

Another harmful policy from the 118th Congress, the “Safeguarding Veterans 2nd Amendment Rights Act of 2024” would prohibit the VA from initiating, participating, or advocating in what the gun lobby has deemed “gun confiscation” proceedings at the state-level—more appropriately called “Extreme Risk Protection Order” (ERPO) programs. Twenty-one states—red, purple, and blue—and Washington DC have enacted ERPO laws, which authorize courts to order, on the basis of evidence, the temporary removal of a firearm from someone determined to be a danger to themselves or others. In 2022, Congress made a historic bipartisan investment—\$750 million between Fiscal Year 2022 and Fiscal Year 2026—to support the implementation of these programs and other state crisis intervention programs with the landmark Bipartisan Safer Communities Act.

These ERPO processes have strong due process protections built in: evidence must be presented to a court for them to make a determination that there is reasonable cause for dangerousness to the petitioner, the respondent, or others. If so, an order is issued to temporarily separate that individual from firearms. At this hearing, or at one shortly after an *ex parte* order is issued depending on state law, the respondent can contest the order. In all states and the District of Columbia, due process is upheld, and all petitioners submit their evidence and testimony under penalty of perjury.

Since their implementation, ERPO has saved numerous lives: researchers estimate that for every 10 to 20 gun removals carried out under the ERPO laws in Connecticut and Indiana, one life was saved through an averted suicide.<sup>7</sup> For veterans, this has the potential to be even more impactful. Over nine million veterans receive health care through the Veterans Health Administration, meaning that VA medical practitioners may well be the first to observe warning

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<sup>6</sup> “Fiduciary” US Department of Veterans Affairs, Veterans Benefits Administration, last accessed Jan. 21, 2025, available at <https://www.benefits.va.gov/fiduciary/>.

<sup>7</sup> Jeffrey W. Swanson, et al., “Implementation and Effectiveness of Connecticut’s Risk-based Gun Removal Law: Does it Prevent Suicides,” *Law & Contemporary Problems* 80, (2017): 179–208; Jeffrey W. Swanson, et al., “Criminal Justice and Suicide Outcomes with Indiana’s Risk-Based Gun Seizure Law,” *The Journal of the American Academy of Psychiatry and the Law* 47, no. 2 (2019): 188-197.

signs that are a cause for alarm and are in a unique position to intervene to protect veterans in crisis from harming themselves or someone else. The VA should be encouraged and incentivized to use state-level ERPO programs, when and where appropriate, to do just that, but harmful legislation like the Safeguarding Veterans 2nd Amendment Rights Act does just the opposite.

Limiting access to guns for veterans and other VA beneficiaries who may be in crisis is a critical step to help keep them safe, especially for veterans who are at the highest risk for suicide. However, harmful policy proposals would undermine the work the VA does to save lives and keep veterans safe. We ask this Subcommittee to prioritize the safety and well-being of our veterans and their beneficiaries by not advancing harmful legislation that would put American veterans and communities at risk. Thank you for your attention to this urgent matter.

Sincerely,

Vanessa Gonzalez, Vice President, Government and Political Affairs, GIFFORDS  
Mark Collins, Director, Federal Policy, Brady