AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 2708

OFFERED BY MR. NADLER

Strike all that follows after the enacting clause and
insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Disarm Hate Act".

3 SEC. 2. PREVENTION OF PERSON WHO HAS BEEN CONVICTED OF A MISDEMEANOR HATE CRIME,

4 OR RECEIVED AN ENHANCED SENTENCE FOR

5 A MISDEMEANOR BECAUSE OF HATE OR BIAS

6 IN ITS COMMISSION, FROM OBTAINING A

7 FIREARM.

9 (a) DEFINITIONS.—Section 921(a) of title 18, United

10 States Code, is amended by adding at the end the fol-

11 lowing:

12 "(36) The term 'convicted in any court of a mis-

13 demeanor hate crime'—

14 "(A) means being convicted by a court of an off-

15 fense that—

16 "(i) is a misdemeanor under Federal,

17 State, or tribal law;


"(ii) has, as an element, that the conduct of the offender was motivated by hate or bias because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity (as defined in section 249), or disability of any person; and

"(iii) involves the use or attempted use of physical force, the threatened use of a deadly weapon, or other credible threat to the physical safety of any person; and

"(B) does not include—

"(i) a conviction of an offense described in subparagraph (A), unless—

"(I) the person—

"(aa) was represented by counsel in the case; or

"(bb) knowingly and intelligently waived the right to counsel in the case; and

"(II) in the case of a prosecution for an offense described in subparagraph (A) for which a person was entitled to a jury trial in the jurisdiction in which the case was tried—
"(aa) the case was tried by a jury; or

"(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise; or

"(ii) a conviction of an offense described in subparagraph (A) if—

"(I) the conviction—

"(aa) has been expunged or set aside; or

"(bb) is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense); and

"(II) the pardon, expungement, or restoration of civil rights does not expressly provide that the person may not ship, transport, possess, or receive firearms.

"(37) The term 'received from any court an enhanced hate crime misdemeanor sentence'—
“(A) means a court has imposed a sentence for a misdemeanor under Federal, State, or tribal law—

“(i) that involves the use or attempted use of physical force, the threatened use of a deadly weapon, or other credible threat to the physical safety of any person; and

“(ii) based, in whole or in part, on a judicial finding that the conduct of the offender was motivated, in whole or in part, by hate or bias for any reason referred to in paragraph (36)(A)(ii); and

“(B) does not include—

“(i) the imposition of a sentence described in subparagraph (A), unless—

“(I) the person—

“(aa) was represented by counsel in the case; or

“(bb) knowingly and intelligently waived the right to counsel in the case; and

“(II) if the sentence described in subparagraph (A) was imposed in a prosecution for an offense for which a person was entitled to a jury trial in the jurisdiction in which the case was tried—
“(aa) the case was tried by a jury; or
“(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise; or
“(ii) the imposition of a sentence described in subparagraph (A) if—
“(I)(aa) the conviction of the offense for which the sentence was imposed has been expunged or set aside; or
“(bb) the offense for which the sentence was imposed is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense); and
“(II) the pardon, expungement, or restoration of civil rights does not expressly provide that the person may not ship, transport, possess, or receive firearms.”.

(b) Prohibition on Sale or Other Disposition of Firearm.—Section 922(d) of such title is amended in the first sentence—
(1) in paragraph (8)(B)(ii), by striking “or” at the end;
(2) in paragraph (9), by striking the period and inserting “; or”; and
(3) by inserting after paragraph (9) the following:
“(10) has been convicted in any court of a misdemeanor hate crime, or has received from any court an enhanced hate crime misdemeanor sentence.”.

(c) PROHIBITION ON POSSESSION, SHIPMENT, OR TRANSPORT OF FIREARM.—Section 922(g) of such title is amended—
(1) in paragraph (8), by striking “or” at the end;
(2) in paragraph (9), by striking the comma and inserting “; or”; and
(3) by inserting after paragraph (9) the following:
“(10) who has been convicted in any court of a misdemeanor hate crime, or has received from any court an enhanced hate crime misdemeanor sentence.”.

SEC. 3. SEVERABILITY.
If any provision of this Act or any amendment made by this Act, or any application of such provision or amend-
1. ment to any person or circumstance, is held to be invalid,
2. the remainder of the provisions of this Act and the amend-
3. ments made by this Act and the application of the provi-
4. sion or amendment to any other person or circumstance
5. shall not be affected.