

No employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with any person or organization substantially involved in the conduct that is the subject of the investigation or the prosecution.

The regulations continue. They define political relationship, again, clear as a bell:

Political relationship means a close identification with an elected official, candidate, political party or campaign organization arising from service as a principal advisor or official. Personal relationship means a close and substantial connection of the type normally viewed as likely to induce partiality.

Jeff Sessions was chairman of the National Security Advisory Committee alongside LTG Michael Flynn. He was a senior adviser in the Trump campaign, the first Senator to endorse the President's campaign, and nominated him at the Republican Convention in Cleveland. Those facts and the Department of Justice's own rules disqualify Attorney General Sessions from running this investigation.

The words are crystal clear; there is no wiggle room. If Attorney General Sessions were to conduct or in any way be involved with this investigation, he would be violating Justice Department guidelines.

As bad a start as the Trump administration is off to, it would make things dramatically worse to ignore these guidelines, which were set up for the purpose of getting to the truth in a fair and impartial way.

Attorney General Sessions must recuse himself immediately. Any investigation headed by, directed by, or influenced by the Attorney General will be jaundiced from the very start.

Because the rules are so clear, I expect the Attorney General will recuse himself and allow an independent and thorough investigation to go forward.

We have an additional reason to seek an independent and transparent investigation because of how the White House has treated this matter over the past few weeks.

The White House knew for weeks that General Flynn misled the Vice President and let General Flynn stay on the job. They knew for weeks that his discussion about sanctions with the Russian Government could potentially compromise our national security because he would be subject to blackmail, and they let him stay on.

The President knew for weeks about this and let General Flynn stay on in his full capacity, present at and participating in the highest level of national security discussions, until those reports were made public.

If the reports of General Flynn's incorrect statements to the Vice President were never made public by the Washington Post, would the President's trust ever have eroded? Would General Flynn ever have been fired? Would he still be in his job today? We will never know now. The answer is very troubling.

If an investigation is not independent, nonpartisan, and, most of all, transparent, there is no guarantee this administration will take the decisive and immediate actions necessary to keep our country safe.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF A RULE SUBMITTED BY THE SOCIAL SECURITY ADMINISTRATION

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.J. Res. 40, which the clerk will report.

The bill clerk read as follows:

A joint resolution (H.J. Res. 40) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Social Security Administration relating to Implementation of the NICS Improvement Amendments Act of 2007.

The PRESIDING OFFICER. Under the previous order, there will now be 10 minutes of debate, equally divided.

The Senator from Iowa.

MR. GRASSLEY. Mr. President, before we vote on the resolution of disapproval, I want to reiterate several very important facts.

This resolution of disapproval is bipartisan. The resolution is also supported by 23 groups, mostly disability rights groups.

The disability groups believe that this agency—the Social Security Administration—and its regulation will unfairly stigmatize those with disabilities. Of course, they are right.

The American Civil Liberties Union has said this:

We oppose this rule because it advances and reinforces the harmful stereotype that people with mental disabilities, a vast and diverse group of citizens, are violent and should not own a gun. There is no data to support a connection between the need for a representative payee to manage one's Social Security disability benefits and a propensity toward gun violence.

The ACLU goes on to say:

Here, the rule automatically conflates one's disability-related characteristic, that is, difficulty managing money, with the inability to safely possess a firearm.

The agency regulation is defective in many ways. Namely, the regulation does not require the agency to prove a person is dangerous or mentally ill. The regulation also provides no formal hearing or due process before a person is reported to the gun ban list.

Supporters of the gun ban have said that repeal of this regulation will interfere with the enforcement of the gun prohibition laws. I want to say plainly and simply: This is hogwash. We should not let baseless scare tactics confuse this important issue.

Important Federal gun laws are still on the books, even if the agency rule is repealed. We aren't repealing any laws.

The new regulation is inconsistent with these existing Federal gun laws.

The agency still has a duty to report anyone who has actually been adjudicated as dangerously mentally ill to the gun ban list. That is also true of anyone convicted of a felony or a misdemeanor crime of domestic violence or involuntarily committed to a mental institution.

The Federal law requires this:

If a Federal department or agency . . . has any record of any person demonstrating that the person falls within one of the categories . . . shall . . . provide the pertinent information contained in such record to the Attorney General.

This law remains in effect.

Repealing this regulation will merely ensure that disabled citizens' Second Amendment rights are, in fact, protected.

Those rights will no longer be able to be revoked without a hearing and without due process. It will take more than a personal opinion—just a personal opinion of a bureaucrat—to abridge one's Second Amendment rights.

An existing statute requires agencies to report the individuals to the gun ban list who are ineligible to possess firearms. That requirement remains intact even if this regulation is repealed.

So it is plainly wrong to claim, as has been said, that if the regulation is disapproved, agencies will no longer have to report prohibited persons.

If the supporters of this regulation want to take away people's gun rights, then they need to acknowledge the government must carry the burden to actually prove a person—prove a person—is dangerously mentally ill. And the government must provide due process in that process.

They need to go back to the drawing board, in other words, because this rule is inconsistent with the very important Second Amendment rights to bear arms, own, and possess guns—buy and possess guns. Therefore, it must be repealed, and this resolution must be approved.

I yield the floor.

MRS. FEINSTEIN. Mr. President, I rise today to urge my colleagues to defeat a Congressional Review Act resolution that would weaken the FBI's gun background check system and make it easier for individuals with severe mental illness to buy guns.

Gun violence is an epidemic in our communities—killing more than 30,000 people each year; yet this resolution would prevent the Federal Government from taking even the most basic steps to improve enforcement of current gun laws.

It blocks a rule that requires the Social Security Administration to report to the FBI background check system individuals who have a severe mental illness that prevents them from managing their own affairs. This determination is made during the application process for Social Security disability benefits.

This policy could have prevented tragedies like that of Janet Delana and

her daughter Colby. Colby was diagnosed with paranoid schizophrenia in 2011. She received Social Security disability payments as a result of her mental illness and lived with her parents in Missouri. A year after her diagnosis, Colby used the money from her disability check to buy a gun at a local dealer. Her mom called the dealer and begged him not to make the sale. Janet explained that her daughter was mentally ill and suicidal and that she would likely use the gun to harm herself or others. Nonetheless, Colby passed her background check and bought the gun. Just an hour later, Colby shot her father to death and tried to kill herself. Janet's now a widow, and Colby lives in an institution. Their story didn't have to end that way. We should all agree that severely mentally ill individuals like Colby should not have access to guns. Federal law already says that individuals with severe mental illness are barred from purchasing or possessing guns. Yet time and again, we have seen prohibited purchasers like Colby pass background checks. That is because the background check system does not have records of all mentally ill individuals barred from buying guns.

While the background check system has denied gun transfers to 1.3 million prohibited individuals—including felons, drug addicts, and fugitives—it isn't perfect. There are individuals like Colby whose information should be in the system—but isn't. We need to improve the background check system and ensure information that is supposed to be in the system is in fact included.

A recent report by the Police Foundation and Major Cities Chiefs Association noted that this is critically important if we are going to reduce violent crime in our country. The 2007 mass shooting at Virginia Tech—the second deadliest mass shooting in our history—could have been prevented if we had a better background check system. Seung-Hui Cho, an angry, mentally disturbed individual, slaughtered 32 students and teachers and wounded many others. After the massacre, we learned that Cho in 2005 had been ordered to attend psychiatric treatment and a judge ruled that he presented “an imminent danger to himself as a result of mental illness.” As a consequence of this judge's determination, Cho's name should have been entered in the NICS database. But it wasn't—that is because the FBI didn't have the records.

In response to the shooting, Congress in 2007 unanimously approved the NICS Improvement Amendments Act to improve record keeping in the background check system. Senators Ted Kennedy, PAT LEAHY, CHUCK SCHUMER, and Tom Coburn worked together on the bill, and President Bush signed it into law. The bill was supported by both the National Rifle Association and the Brady Campaign to Prevent Gun Violence. That never happens.

It is this bill—passed unanimously and supported by the gun lobby—that

required the Social Security Administration to issue the rule we are debating today. The Social Security Administration engaged in a painstaking process over the past year to develop this policy. It received more than 90,000 comments from advocates and members of the public. The rule was carefully crafted to identify individuals like Colby, while protecting due process.

The majority of individuals with mental illness do not commit acts of violence, and they would not be affected by this rule. The rule covers only individuals with serious conditions, including schizophrenia, who need additional assistance to manage their affairs. This determination is made following an extensive review of medical evidence, which takes place before the person is approved for Social Security disability benefits.

The rule further specifies that it would only apply to prospective claimants—starting in December 2017. That means it would not apply to individuals who already receive disability benefits. Repealing this rule through the Congressional Review Act would not only overturn the policy that's been developed. It would block the Social Security Administration from ever taking action to implement the NICS Improvement Act and report mentally ill individuals to the FBI.

Time and time again, my Republican colleagues respond to horrific mass shootings by saying that we don't need any new gun laws. We just need to better enforce the gun laws we already have. That is exactly what this rule aims to do—improve enforcement of current law and make sure people already barred from buying guns can't buy guns.

So, the question comes: What won't Republicans do to appease the gun lobby?

We lose more than 30,000 people to gun violence each year in this country, many of whom are mentally ill and commit suicide. It should shock the conscience of the American people the Senate is considering weakening our Federal background check system in response to this unabated epidemic of violence.

I urge my colleagues to vote against repealing the Social Security Administration's rule. Thank you.

Ms. COLLINS. Mr. President, I rise in support of H.J. Res. 40, a resolution of disapproval of the rule submitted by the Social Security Administration relating to the implementation of the NICS Improvement Amendments Act of 2007. The rule in question would require the Social Security Administration to send to the Attorney General the names of certain beneficiaries for inclusion in the NICS background check database and would make it illegal for these beneficiaries to own or possess a firearm.

In matters where the government is promulgating regulations limiting the Constitutional rights of Americans, it

is especially important that the regulations be drafted carefully. I am concerned that this rule targets individuals with mental illness without requiring the Social Security Administration to determine that the individuals whose rights are being limited are dangerous either to themselves or others. As a result, this rule inadvertently reinforces an unfortunate and inaccurate stereotype that suggests that most individuals with mental illness are violent.

Rather than focus on whether the beneficiary presents a danger, the rule instead turns on beneficiaries' ability to manage their finances. Because of this, the rule includes a test that could lead to absurd and unfair results. Under the rule, two individuals could present the exact same condition and symptoms, but if one of them required assistance with their financial affairs, that person would be reported to the NICS background check system, while the other would not.

I hope that the Social Security Administration will consider these suggestions as well as the comments from my good friend from Pennsylvania, Senator TOOMEY, and others, and promulgate a new rule. Addressing these concerns would result in a more effective rule, consistent with Constitutional requirements, which would make Americans safer while protecting the rights of those living with mental illness.

Mr. VAN HOLLEN. Mr. President, guns kill 36,000 Americans every year. That's nearly 100 Americans every day.

To help address this scourge of violent death, Congress enacted the Brady Handgun Violence Prevention Act in 1993. The Brady Act required the Attorney General to establish the National Instant Criminal Background Check System, or NICS, to determine whether Federal law prohibits a potential buyer from getting a gun.

Following the Virginia Tech massacre in 2007, which left 33 dead, President George W. Bush signed into law the NICS Improvement Amendments Act to improve the national background check system. The Virginia Tech shooter was able to buy a gun because the background check system did not include information about his mental health.

The prohibition on buying a gun now applies to people who, as a result of their mental condition, have been determined to pose a danger to themselves or others or lack the capacity to manage their own affairs. The Social Security Administration proposed its rule to meet the requirements to strengthen the background check system in the 2007 NICS Improvement Amendments Act.

The Social Security Administration's rule defined Social Security disability beneficiaries who are have a mental impairment and need another person—known as a “representative payee”—to handle the receipt of their benefits to fall within the category of those

who lack the capacity to manage their own affairs. Importantly, these determinations would be subject to judicial review. The rule is not a perfect fit, but it is an appropriate one.

I have heard from some disability rights advocates that this rule may be unduly broad and might prohibit too many people from owning a gun. I am sensitive to the concerns of people with disabilities. It is wrong to stigmatize people with mental disabilities as the cause of gun violence. And people with disabilities, like all Americans, have important rights under the Second Amendment. I would be open to changes to the rule that would make appeals from determinations easier to make, and I would be open to other ways to better identify people who are a danger to themselves or others or lack the capacity to manage their own affairs.

A resolution to disapprove the rule under the Congressional Review Act, however, is not the right way to get to a better result. If Congress enacts the resolution of disapproval, then the law would prohibit the Social Security Administration from writing a better rule in its place.

Better still, Congress could enact sensible gun legislation. But instead of working with Democrats to improve the law, Republicans have chosen to use the blunt instrument of the Congressional Review Act to repeal the rule. Using the Congressional Review Act is far from the most precise way to address this problem.

The powerful gun lobby has prevented Republicans in Congress from supporting common sense legislation that most Americans favor. The overwhelming majority of Americans believe in universal background checks and that guns should be kept out of the hands of people who have been determined to pose a risk or are unable to manage their affairs. Repealing the Social Security Administration's rule would go in the opposite direction. Enacting this resolution of disapproval will only make it harder to keep American communities safe, and thus I oppose the resolution.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, whenever the discussion in the Senate turns to gun violence, we often hear Senators say: We shouldn't be talking about guns; we ought to be talking about mental health. That is exactly what we are trying to make sure is the focus of this debate because this proposed rule is about mental health, and it is about background checks; it is not about taking away anyone's constitutional rights.

Here is how the proposal works. If there is an individual with a severe mental impairment—that means that another person, perhaps a family member—is in charge of their Social Security benefits, then the background check is to be informed by Social Security that the person with a severe men-

tal impairment is ineligible to buy a gun.

Having listened to the debate yesterday, I think everybody is going to be a little confused about what happens then because the reality is that anyone who thinks they have been unfairly affected can appeal, and the likelihood is substantial that they are going to win. If the appeal goes the other way and the individual believes the decision is wrong, then that person can take the matter to court. It is not true to say this rule deprives any American of due process. It is a rule aimed directly at the two areas in this debate—mental health and background checks—where there is enormous support from the American people.

The reality is you can talk to people in virtually any community—you can go to a townhall meeting in any part of the United States—and you will hear enormous support for background checks. One recent poll found that 92 percent of gun owners supported expanded background checks. Ninety-two percent of gun owners supported background checks. So not only is the position I am articulating not extreme, opposing background checks is the position that, in fact, has become increasingly out of the mainstream.

As the courts continue to interpret the language of the Second Amendment, one matter has been clear: Background checks are a constitutional part of the exercise of those rights.

I have heard some saying that the rule can be improved, that it ought to be tailored. I am very open to having a debate around those kinds of questions. That is not going to be possible if this resolution passes. This will preempt debate. The resolution doesn't just scrap the rule, it blocks any further step on this issue for years. In my view, that would be the wrong way to go, even if you have suggestions for improving the rule.

So to wrap up the debate, I want colleagues to know that this rule, this proposal that has been described on the floor—this resolution—ought to be opposed because for those who want improved mental health, for those who want background checks, for those who are just saying what we need to do in this area as it relates to gun violence—it is not about Democrats and it is not about Republicans; it is about common sense. The commonsense position today for background checks, a focus on mental health, and, most importantly, common sense is to oppose the resolution.

I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. GRASSLEY. Mr. President, on this side I yield back our unused time.

Mr. WYDEN. I yield back.

The PRESIDING OFFICER. All time is yielded back.

The joint resolution was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third

time, the question is, Shall the joint resolution pass?

Mr. GRASSLEY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 66 Leg.]

YEAS—57

Alexander	Flake	Murkowski
Barrasso	Gardner	Paul
Blunt	Graham	Perdue
Boozman	Grassley	Portman
Burr	Hatch	Risch
Capito	Heitkamp	Roberts
Cassidy	Heller	Rounds
Cochran	Hoeven	Rubio
Collins	Inhofe	Sasse
Corker	Isakson	Scott
Cornyn	Johnson	Shelby
Cotton	Kennedy	Strange
Crapo	King	Sullivan
Cruz	Lankford	Tester
Daines	Lee	Thune
Donnelly	Manchin	Tillis
Enzi	McCain	Toomey
Ernst	McConnell	Wicker
Fischer	Moran	Young

NAYS—43

Baldwin	Gillibrand	Peters
Bennet	Harris	Reed
Blumenthal	Hassan	Sanders
Booker	Heinrich	Schatz
Brown	Hirono	Schumer
Cantwell	Kaine	Shaheen
Cardin	Klobuchar	Stabenow
Carper	Leahy	Udall
Casey	Markey	Van Hollen
Coons	McCaskey	Warner
Cortez Masto	Menendez	Warren
Duckworth	Merkley	Whitehouse
Durbin	Murphy	Wyden
Feinstein	Murray	
Franken	Nelson	

The joint resolution (H.J. Res. 40) was passed.

ORDER FOR RECESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate recess from 12:30 p.m. until 2 p.m. today; further, that the time during the recess count postcloture on the Mulvaney nomination.

The PRESIDING OFFICER (Mr. SULLIVAN). Without objection, it is so ordered.

CLOTURE MOTION

Mr. McCONNELL. I yield back all the time on this side.

Mr. CORNYN. Mr. President, I yield back all time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The senior assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Mick Mulvaney, of South Carolina,