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110TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 110–843

NATIONAL CAPITAL SECURITY AND SAFETY ACT

SEPTEMBER 15, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 6842]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 6842) to require the District of Columbia to revise its laws regarding the use and possession of firearms as necessary to comply with the requirements of the decision of the Supreme Court in the case of District of Columbia v. Heller, in a manner that protects the security interests of the Federal government and the people who work in, reside in, or visit the District of Columbia and does not undermine the efforts of law enforcement, homeland security, and military officials to protect the Nation's Capital from crime and terrorism, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Amend section 3 to read as follows:

SEC. 3. REVISION OF DISTRICT OF COLUMBIA FIREARMS LAWS.

(a) REQUIRING DISTRICT TO REVISE LAWS.—Not later than 180 days after the date of the enactment of this Act, the District of Columbia shall revise the laws and regulations of the District of Columbia which govern the use and possession of firearms, as necessary to comply with the requirements of the decision of the Supreme Court in the case of District of Columbia v. Heller.

(b) CONFORMING AMENDMENT TO LOCAL LAW.—Title VII of the Firearms Control Regulations Act of 1975 (sec. 7—2507.01 et seq., D.C. Official Code) is amended by adding at the end the following new section:

"SEC. 712. CONSISTENCY WITH FEDERAL REQUIREMENTS.

"The Mayor and the Council shall ensure that this Act and the regulations promulgated to carry out this Act are consistent with the requirements of the decision of the Supreme Court in the case of District of Columbia v. Heller.".

Amend the title so as to read:

A bill to require the District of Columbia to revise its laws regarding the use and possession of firearms as necessary to comply with the requirements of the decision of the Supreme Court in the case of District of Columbia v. Heller.

PURPOSE AND SUMMARY

H.R. 6842, the National Capital Security and Safety Act, was introduced by Reps. Eleanor Holmes Norton and Henry A. Waxman on September 9, 2008. The purpose of H.R. 6842 is to require the District of Columbia to revise its laws, as necessary, in order to ensure they are consistent with the Supreme Court decision in District of Columbia v. Heller.[1]

BACKGROUND AND NEED FOR LEGISLATION

It is unlawful under the District of Columbia Code to carry an unregistered firearm.[2] Prior to District of Columbia v. Heller, pistols were not allowed to be registered except in narrow instances.[3] The Code defined a pistol as "any firearm originally designed to be fired by use of a single hand."[4] The District of Columbia Code required residents to keep any firearm unloaded and disassembled or bound by a trigger lock unless it was located in a place of business or was being used for lawful recreational activities within the District of Columbia.[5] It was also unlawful to carry a pistol in the District without a license,[6] though the Chief of Police could issue a license for up to one year "if it appears that the applicant has good reason to fear injury to his or her person or property."[7]

Dick Heller, a resident of the District of Columbia, challenged the District's handgun ban after the District denied his application

[1] *District of Columbia* v. *Heller*, 128 S.Ct. 2783 (2008).
[2] D.C. Code § 7–2502.01(a).
[3] D.C. Code § 7–2502.02.
[4] D.C. Code § 7–2501.01(12).
[5] D.C. Code § 7–2507.02.
[6] D.C. Code § 22–4504(a).
[7] D.C. Code § 22–4506.12.

to register a handgun he planned to keep at his home. The Supreme Court held in a 5–4 decision that the District's ban on handgun possession and the District's requirement that firearms in the home be kept unloaded or locked at all times violate the Second Amendment. The Court found that an absolute prohibition on handguns held and used for self-defense in the home is unconstitutional.

The Court found that "[l]ike most rights, the right secured by the Second Amendment is not unlimited."[8] Heller listed categories of restrictions that the Court found presumptively lawful but clarified that the list was not exhaustive. These included prohibitions on the possession of firearms by felons and the mentally ill, laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, and laws imposing conditions and qualifications on the commercial sale of arms.[9] The Court also recognized that the Second Amendment does not protect "those weapons not typically possessed by law-abiding citizens for lawful purposes."[10]

The District's prohibition on carrying a handgun without a license was not addressed directly by the Court but the Court pointed to a concession by Heller that the District's law is "permissible so long as it is 'not enforced in an arbitrary and capricious manner.'"[11]

The Court focused on the ability to use handguns for self-defense in the home. The Court held that the District's requirement that a firearm in the home be kept disassembled or bound by a trigger lock at all times was unconstitutional because it would make it impossible to use the gun for self-defense. However, the Court indicated that some laws regulating the safe storage of firearms would be permissible.[12]

On July 15, 2008, the D.C. City Council passed, and the Mayor signed, temporary legislation allowing District residents to possess pistols in their homes if such pistols are registered.[13] In addition, such pistols are required to be kept unloaded, disassembled, or secured by a trigger lock except while being used "to protect against a reasonably perceived threat of immediate harm to a person within the registrant's home."[14]

The D.C. City Council is expected to make changes to this temporary measure. On September 18, 2008, and October 1, 2008, the City Council is expected to hold public hearings on the issue of District gun laws. Soon thereafter, the City Council is expected to pass permanent changes to District gun laws.

On July 31, 2008, a little over one month after the Supreme Court's decision in the Heller case, H.R. 6691 was introduced. H.R. 6691 is substantially similar to H.R. 1399, a bill introduced earlier in the 110th Congress prior to the Heller decision.

The Committee on Oversight and Government Reform held a hearing on September 9, 2008, to examine legislative proposals re-

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[8] *District of Columbia* v. *Heller,* 128 S.Ct. 2783, 2816 (2008).
[9] Id. at 2816–2817.
[10] Id. at 2815–2816, *citing United States* v. *Miller,* 307 U.S. 174 (1939).
[11] Id. at 2819.
[12] "Nor, corespondingly, does our analysis suggest the invalidity of laws regulating the storage of firearms to prevent accidents." *Id.* at 2820.
[13] The Firearms Control Emergency Amendment Act of 2008, amending D.C. Code §§ 7.2502.02, 7.2502.03, and 7–2507.02.
[14] Id.

lated to the District of Columbia's firearms laws. The hearing examined the changes proposed by the bills and how these changes would impact the ability of law enforcement and homeland security agencies to fulfill their responsibilities.

Witnesses testified that the District of Columbia's concentration of federal buildings including the White House, national monuments, and the Capitol, and the high-profile officials and dignitaries that live, work, and visit the District, make it a "highly attractive target" for foreign and domestic terrorists.[15] District of Columbia Police Chief Cathy Lanier testified that a unique challenge for the District is the volume of motorcades that travel around the city every day. The President, Vice President, and the thousands of foreign dignitaries that visit each year move about the city in motorcades that do not have the benefit of the route closures performed when presidential and vice presidential motorcades travel outside of the District. The District also hosts numerous high profile events, including presidential inaugurations. Chief Lanier testified she had "grave concerns" about H.R. 6691. She also stated, "providing easy access to deadly semiautomatic firearms and high capacity ammunition clips and allowing them to be carried in a large number of places outside the home will make this job much more dangerous and difficult." [16]

LEGISLATIVE HISTORY

The Committee on Oversight and Government Reform held a hearing on September 9, 2008, titled, "Impact of Proposed Legislation on the District of Columbia's Gun Laws." Witnesses included Cathy Lanier, Chief of the District of Columbia Police Department, Phillip Morse, Chief of the United States Capitol Police, Kevin Hay, Deputy Chief of the United States Park Police, and Robert Campbell, Director of Security for the Washington Nationals Baseball Club.

H.R. 6842, the National Capital Security and Safety Act, was introduced by Reps. Eleanor Holmes Norton and Henry A. Waxman on September 9, 2008, and referred to the Committee on Oversight and Government Reform.

On September 10, 2008, the Committee held a business meeting to consider H.R. 6842 and ordered the bill to be favorably reported by a vote of 21–1.

SECTION-BY-SECTION

Section 1: Short title

This section provides that the short title of the bill is the "National Capital Security and Safety Act."

Section 2: Findings

This section includes findings of Congress. Some of these findings include that the District of Columbia is a local self-governing jurisdiction and the seat of the United States government, with unique federal responsibilities; the President, the Vice President, and many cabinet and other federal officials reside in the District of Co-

[15] House Committee on Oversight and Government Reform, Impact of Proposed Legislation on the District of Columbia's Gun Laws, 110th Cong. (Sept. 9, 2008).
[16] Id.

lumbia; and unregulated firearms in the capital would preclude the ability of the Metropolitan Police Department to track guns through registration and otherwise to help ensure that guns do not endanger federal officials and employees, visiting dignitaries, and other individuals.

Section 3: Revision of District of Columbia firearms laws

This section requires the District of Columbia, within six months after enactment, to revise its laws governing the possession and use of firearms as necessary to comply with the decision of the Supreme Court in District of Columbia v. Heller. This section amends the Firearms Control Regulations Act of 1975 by adding a new section requiring the Mayor and the Council of the District of Columbia to ensure that the District's firearms laws are consistent with Heller.

EXPLANATION OF AMENDMENTS

Rep. Issa offered an amendment to strike the language in the bill as introduced that would have required that revisions to the District of Columbia's firearms laws be based on specific criteria including the need to ensure the safety and security of the capital, including federal buildings, federal employees, and District residents and visitors, the need to ensure that the revisions will not interfere with the operations of federal and local law enforcement officials, and the need to ensure that the revisions will not compromise the ability of local and federal homeland security and military officials to carry out their duties to protect the capital from terrorism.

Under the Issa amendment, the District is not prohibited from considering these criteria but the District is not required to do so. The Issa amendment was adopted by voice vote.

COMMITTEE CONSIDERATION

On Wednesday, September 10, 2008, the Committee met in open session and ordered H.R. 6842 to be favorably reported to the House by a vote of 21–1.

ROLL CALL VOTES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
110TH CONGRESS
ROLL CALL

No. DATE: SEPTEMBER 10, 2008

Description: H.R. 6842, National Capital Security and Safety Act, As Amended

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MR. WAXMAN *(Chairman)*	X			MR. DAVIS (VA) *(Ranking)*	X		
MR. TOWNS	X			MR. BURTON		X	
MR. KANJORSKI				MR. SHAYS			
MS. MALONEY	X			MR. McHUGH			
MR. CUMMINGS	X			MR. MICA			
MR. KUCINICH	X			MR. SOUDER			
MR. DAVIS (IL)	X			MR. PLATTS			
MR. TIERNEY	X			MR. CANNON			
MR. CLAY	X			MR. DUNCAN			
MS. WATSON	X			MR. TURNER			
MR. LYNCH				MR. ISSA	X		
MR. HIGGINS				MR. MARCHANT			
MR. YARMUTH	X			MR. WESTMORELAND			
MR. BRALEY	X			MR. McHENRY			
MS. NORTON	X			MS. FOXX			
MS. McCOLLUM	X			MR. BILBRAY			
MR. COOPER				MR. SALI	X		
MR. Van HOLLEN	X			MR. JORDAN			
MR. HODES							
MR. MURPHY (CT)	X						
MR. SARBANES	X						
MR. WELCH	X						
MS. SPEIER	X						

Roll Call Totals: Ayes 21 Nays 1 Present _____

Voice Vote: Passed _____ Failed _____ Unanimous Consent: Passed _____ Failed _____

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of P.L. 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 6842 concerns the laws of the District of Columbia related to firearm possession and use and therefore does not apply to the legislative branch.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report, including the need for the District of Columbia to amend its laws to comply with the recent decision of the Supreme Court in District of Columbia v. Heller.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, including requiring the District of Columbia to revise its laws to ensure they are consistent with the Supreme Court decision in District of Columbia v. Heller.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 6842. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 6842 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 6842. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 6842 from the Director of the Congressional Budget Office:

SEPTEMBER 11, 2008.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6842, the National Capital Security and Safety Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 6842—National Capital Security and Safety Act

CBO estimates that enacting H.R. 6842 would have no effect on the federal budget. H.R. 6842 would require the District of Columbia to revise its firearms laws, as necessary, to ensure they are consistent with the Supreme Court decision in District of Columbia v. Heller.

The requirement imposed on the District of Columbia would be an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost to change those laws would be negligible and would not exceed the annual threshold for intergovernmental mandates ($68 million in 2008, adjusted annually for inflation).

The legislation contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs), and Elizabeth Cove (for the state and local impact). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

FIREARMS CONTROL REGULATIONS ACT OF 1975

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TITLE VII—MISCELLANEOUS PROVISIONS

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SEC. 712. CONSISTENCY WITH FEDERAL REQUIREMENTS.

The Mayor and the Council shall ensure that this Act and the regulations promulgated to carry out this Act are consistent with the requirements of the decision of the Supreme Court in the case of District of Columbia v. Heller.

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ADDITIONAL VIEWS

This is an "Alice in Wonderland" moment for the Committee—and it just gets "curiouser and curiouser." We've been taken down a rabbit hole and through the looking glass by the Democratic Majority. This Cheshire Cat of a bill is about to disappear except for its grin. Take a quick look at H.R. 6842—because it won't be around for long!

We have asked repeatedly: why we are doing this now? The Republican Minority has been made a spectator in a convoluted drama with more characters than a Russian novel.

Neither "gun control" nor "home rule" is a defined term. Each may mean different things to different people at different times—depending on the issue at hand and the underlying facts of a particular situation. But it does not appear we are going through this exercise because of either home rule or guns—but rather to provide political cover to some Democrats who want to cast a certain vote on the House floor before the November elections.

I found the hearing on H.R. 6691—the "Second Amendment Enforcement Act" which was introduced by 48 Democrats and 5 Republicans—to be somewhat bizarre and, for the most part, unhelpful. Ostensibly, the purpose of the hearing was to gauge the impact of changing the District of Columbia's gun laws. But we heard from only one District official who actually might be affected—the Chief of Police.

Not one locally elected official was present to describe the process of amending and enforcing a constitutional gun law; not one constitutional expert was called to testify on the parameters of the Heller ruling and how it directs the District in formulating public safety policies; and not one advocate for the Second Amendment was asked to articulate how those rights should conform to increased community security. We did hear numerous tales of woe and implausible horror stories about loaded Uzis at the Inaugural Parade—as if a potential terrorist or criminal would first register a weapon.

We also never heard from the Majority—which controls the agenda and called the hearing for a forum to decry H.R. 6691 as "threat"—that H.R. 6691 was introduced by 48 Democrats (and 5 Republicans) some of whom sit on this Committee. And if the bill is such a threat to security, why is the House Democratic Leadership—which controls the House floor agenda—setting the stage for passage of the legislation?

The Supreme Court of the United States has ruled the District of Columbia has been denying its residents protections guaranteed by the Bill of Rights—and no amount of hyperbole, hypotheticals, or political blind spots on the part of the Majority can get around this fact. Something must be done.

I continue to believe Delegate Norton's basic approach has merit. But Republican members have become bit players in a blockbuster movie produced and directed by the Democratic majority. H.R. 6691 will come before the House no matter the action taken by this Committee.

TOM DAVIS.

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