



## “VETERANS 2ND AMENDMENT PROTECTION ACT” WOULD ALLOW RE-ARMING OF THE MENTALLY ILL

The “Veterans 2nd Amendment Protection Act” (S.669 and H.R.2547) would repeal longstanding regulations barring mentally incompetent persons from possessing firearms where the U.S. Department of Veterans Affairs (VA) has determined they cannot manage their own affairs due to severe mental illness.

This legislation would allow mentally ill persons to possess firearms even if the VA determined that they are: 1) “mentally incapacitated,” 2) “mentally incompetent,” or 3) “experiencing an extended loss of consciousness.”<sup>1</sup> **Over 100,000 mentally incapacitated or incompetent persons could be allowed to arm themselves immediately**, despite findings by the VA that they are unfit to manage their affairs, unless and until a court intervenes in each case.<sup>2</sup>

This legislation poses a **serious danger to veterans, their families, and the public**. Anyone unable to manage his or her own affairs due to mental illness should not be permitted to take on the responsibilities of gun possession. Numerous mentally ill persons have committed violent gun crimes. At least 121 Iraq and Afghanistan war veterans have been charged with a killing after returning from war.<sup>3</sup> There is also a heightened risk of suicide when a dangerously mentally ill person has access to guns. Recently there has been a dramatic increase in veteran suicides, and studies show that access to a gun increases the risk of suicide.<sup>4</sup> The Supreme Court in *District of Columbia v. Heller* specifically recognized the importance of “longstanding prohibitions on the possession of firearms by ... the mentally ill.”<sup>5</sup>

## CURRENT FEDERAL LAW AND VETERANS AFFAIRS PROCEDURES PROTECT PUBLIC SAFETY AND DUE PROCESS RIGHTS

Regulations implementing the Gun Control Act of 1968 bar gun possession by anyone who “[i]s a danger to himself or to others; or [l]acks the mental capacity to contract or manage his own affairs” due to mental illness.<sup>6</sup> The legislation would **override standards used by the VA for nearly four decades to determine mental illness**.<sup>7</sup> Current federal law and VA procedures ensure that only seriously mentally ill persons are barred from gun possession:

- Significant Medical Evidence Required – Evidence must be “clear, convincing and leave[] no doubt as to the person’s incompetency” or based on specific medical findings and show that the person “lacks the mental capacity to contract or to manage his or her own affairs.”<sup>8</sup>
- High Burden of Proof – “Where reasonable doubt arises ... such doubt will be resolved in favor of competency.”<sup>9</sup>
- Due Process Protected – A person declared incompetent must receive notice and an opportunity for a hearing.<sup>10</sup>
- Gun Possession Allowed if Competency Restored – Any person who regains competency may again possess firearms.<sup>11</sup>

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<sup>1</sup> S.669, § 2; H.R.2547, § 2.

<sup>2</sup> VA data, January 2008.

<sup>3</sup> Deborah Sontag & Lizette Alvarez, *Across America, Deadly Echoes of Foreign Battles*, N.Y. Times, Jan. 13, 2008.

<sup>4</sup> Ratii A. Desai, PhD et al., *Suicide Among Discharged Psychiatric Inpatients in the Department of Veterans Affairs*, Military Medicine, 2008 (finding that gun ownership is “significantly associated with the likelihood of psychiatric patients committing suicide with a gun”).

<sup>5</sup> *District of Columbia v. Heller*, 128 S.Ct. 2783, 2816-17 (2008) (“nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill”).

<sup>6</sup> 27 C.F.R. § 478.11.

<sup>7</sup> Veterans Administration regulations, 36 Fed. Reg. 19,020 (Sep. 25, 1971), codified at 38 C.F.R. § 3.353.

<sup>8</sup> 38 C.F.R. § 3.353(c).

<sup>9</sup> 38 C.F.R. § 3.353(d).

<sup>10</sup> 38 C.F.R. § 3.353(e).

<sup>11</sup> NICS Improvement Amendments Act of 2007, Pub.L. 110-180, 121 Stat. 2559, 18 U.S.C. § 922 (note).